

Family Law Advocate Training Course

September 2021 - Week 1



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Topic:	Welcome and Working with the Law Foundation
Learning objective/s:	<p>Advocates will be familiar with:</p> <ul style="list-style-type: none"> • The Legal Advocacy Training Course content and assessment. • Law Foundation staff and their roles • Documents created by the Law Foundation to provide guidance to advocates on practice issues. <ul style="list-style-type: none"> ○ Scope of Service ○ Best Practices for Advocates ○ Conflicts ○ Reporting Child Abuse • Support for advocates <ul style="list-style-type: none"> ○ Supervising lawyers ○ FASL lawyer ○ Clinics
Activity:	<ul style="list-style-type: none"> • Presentations • Discussion in small groups with program staff
Resource persons:	<ul style="list-style-type: none"> • Law Foundation staff
Materials	<ul style="list-style-type: none"> • Scope of service documents • Best Practices for Advocates • Conflicts and Reporting Child Abuse documents • FASL info sheet
Assessment	<ul style="list-style-type: none"> • Test

FAMILY LAW ADVOCACY TRAINING COURSE 2021

Course Guide



Introduction

Welcome to the Family Law Advocate Training Course (FLATC) organized by the Law Foundation of B.C. We are very pleased to be able to provide this opportunity to family law advocates funded by the Law Foundation, as well as some other advocates in the province with other funding sources, to participate in training designed to equip you with the fundamental legal knowledge and advocacy skills that will help you to best serve your clients.

The FLATC is a required part of the ongoing education and training support for advocates provided by the Law Foundation. You are all part of the second series of the Family Law Advocate Training Course and we look forward to working with you.

This Handbook sets out information about the course content, explains the logistics of the course and where you will find materials, and sets out information about the assessments that are part of the course. Please take the time to read over the Handbook – and please contact us if you have any questions!

Curriculum

The curriculum of the Family Law Advocate Training Course was developed to provide you with practical skills such as: basic advocacy skills, oral presentations, writing skills, interviewing and case analysis, legal research, interpreting legislation, and file management. It will also cover legal topics such as: guardianship and parenting time, child and spousal support, divorce, protection orders and violence issues, financial statements, child protection, property law principles, and mediation and alternative dispute resolution.

The FLATC curriculum is designed to provide adult learners with information that is relevant to the work they do in B.C. as family law advocates. Many sessions include small group work or discussion so that participants may contribute knowledge they already have about topics. Skills training sessions provide time for participants to practice the skills being taught.

Materials

Apart from this guide, materials for this course will be available through the website we are using to organize the course – Sched. You will find the course schedule, lesson plans and materials for each session, and information about participants and presenters on Sched at:
<https://flatc2021.sched.com/>

Near the end of the session, Law Foundation staff will organize all course materials into an electronic binder that you can use as a reference for the open-book test scheduled for three weeks after the course ends. An electronic binder of all materials that will be compiled and provided to you once the course is complete.



In-class work

The schedule for the Family Law Advocate Training Course is very full. It is important that participants are at all sessions to learn what is being taught, to participate in group work, and to practise skills taught in some sessions. Having one person absent in a session will affect other participants working in a group with that person. We ask you all to make the course a priority while it is running and to attend all sessions.

If you find it unavoidable to miss a session, please tell us in advance if possible, or as soon as you can if you have an unexpected illness or serious emergency. (This should not include work for clients as we expect you to plan to have other staff cover your office responsibilities while you are at this course.) You can contact Lois (604-446 6261 / lshelton@lawfoundationbc.org) or Kayla (kblack@lawfoundationbc.org)

Preparation for class

The materials you need for each session will be posted on Sched before the session, and any pre-reading the instructor would like you to do will be noted in the Lesson Plan. We ask everyone to do any pre-reading that is listed. It will help you participate in any in-class discussions or group work.

It will be best for you and your clients if you arrange to have someone take responsibility for your files while you are at the FLATC. If no one can take over your files please try to manage your schedule so that you have no work to do on behalf of clients when training is scheduled.

Assessment

The Course will assess your understanding through a combination of assignments, in-class exercises, and tests.

Assignments over the full two weeks of training will include:

- Completing a Court Form
- Drafting an Affidavit
- Writing a submission to Court
- Legal research and statutory interpretation

These assignments will be available online via Edulastic, and must be completed by the due dates listed in the curriculum. To sign up for Edulastic to see your assignments and exams, please...

1. Visit: <https://app.edulastic.com/studentsignup>
2. Input the following information to enroll in the Family Law Advocacy Training Course:
 - Class Code: V2GZL5EA
 - Name: [Full Name]
 - Username/Email: [Please use your work email]
 - Password: [Whatever you'd like]



Please note: We expect any work submitted to be your own. Even when there is group work in class to prepare for an assignment, the version you submit should clearly be your own work.

Tests

- Week 1 Test: 3 weeks after Week 1
- Week 2 Test: 3 weeks after Week 2

Both tests will be open book. Questions on the test will only be based on core resource material and class lectures.

The passing grade for both tests is 65%.

All exercises and assignments will be marked as “successfully completed” or “not successfully completed”. Participants who successfully complete the course will receive documentation of their accomplishment.

If a participant does not successfully complete part of the assessment for the course, Law Foundation staff will work with them and their organization to arrange for the participant to re-do or review specific training sessions, and to re-do whatever part of the assessment they did not complete satisfactorily.

We Value your Feedback

Throughout each week of training, you will be asked to comment on the feedback form provided. We ask you to fill out in as much detail as possible. Please write down any suggestions for improvement – in course content, materials or presentations. Of course, any feedback you give is confidential.



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THE LAW FOUNDATION OF BRITISH COLUMBIA

Conflicts of Interest: Policy and Procedures for Law Foundation Funded Legal Advocates January 2020

Maintaining client confidentiality is a key responsibility of legal advocates. It is essential for you to properly do your work and to maintain client confidence in your services. This document explains what conflicts are, and sets out standard procedures that advocates should follow to avoid finding themselves with a conflict of interest. Concrete examples of particular situations, and a table listing some of these, are included to provide further guidance.

A. Conflicts of Interest

1. On initial intake

You and your organization owe a duty of undivided loyalty to your clients. To ensure that you do not take on a matter that conflicts with duties owed to current or former clients, you must do a conflict check of all advocacy clients every time someone asks you to represent them. You must not act for them if there is a conflict of interest.

A conflict of interest between Client A and Client B does not necessarily prevent you from providing information and referral only to Client A, and providing fuller service to Client B. Note, however, that if the Client A gives you information about their situation that may be related to the matter in which you are acting for Client B, you may be in a conflict even though you only gave Client A information and/or referral service.

2. Arising with an current client

If you discover a conflict of interest while representing someone, you must immediately advise the client and the other party that you can no longer assist.

Commentary in the Law Society of BC's *Code of Professional Conduct* (the "Code") Rule 3.4 sets out the following guidelines for lawyers about what constitutes a conflict of interest:

...a conflict of interest exists when there is a substantial risk that a lawyer's loyalty to or representation of a client would be materially and adversely affected by the

lawyer's own interest or the lawyer's duties to another client, a former client, or a third person. The risk must be more than a mere possibility; there must be a genuine, serious risk to the duty of loyalty or to client representation arising from the retainer. A client's interests may be seriously prejudiced unless the lawyer's judgment and freedom of action on the client's behalf are as free as possible from conflicts of interest.

Conflicts of interest can be complicated. If you feel that there may be a conflict of interest, you should discuss the situation with your supervising lawyer and obtain their opinion.

It is important to check thoroughly for conflicts when opening a new file, although you should also be alert for conflicts that develop during the course of the file.

B. Checking for Conflicts when Opening a New File

Clients of the agency include all clients, whether in the family law stream or the poverty law stream. The conflict rules and conflict check extend to all advocates working in the same agency.

Before opening a file for a new client, the advocate must always perform a conflict search to determine if the other side on the potential new client's file (called "the opposing party") has ever been a client of any of the advocates in the organization. If no opposing party has ever been a client of the agency, then the advocate is free to take on the new client.

The following steps set out proper file-opening procedure:

1. When an individual contacts your organization for service, reception staff or advocate will ask for the person's first and last name and the names of other parties involved.

Individuals who do not wish to provide this information may receive basic information and referral only.

2. Before providing brief or full service, staff will:
 - i. Check the client database to see if another party involved in the matter is, or has been, a client.
 - ii. Determine if there is a conflict. (For further guidance on this, consider the scenarios below.) If there is a conflict, the new client must be referred out.

- iii. Provide the individual with the applicable terms of service, either verbally, in writing, or both. Ideally clients will sign to indicate their consent. However, if this is not possible, staff will initial the intake form or service notes to indicate the client's consent.
3. Staff must enter all clients into the client database as soon as possible following intake and no later than the end of the business day, or, if staff are working off site, by the end of the next business day.

C. Scenarios

The scenarios included below provide guidance on conflicts by setting out examples of common situations in which you might have to consider if there is a conflict.

1. **Two advocates in the same agency acting for clients with competing interests**

Principle: Generally, conflict rules extend to all advocates working in the same agency. So, if your agency has both a poverty and a family law advocate, and the poverty law advocate saw a client then, generally speaking, the family law advocate cannot see a party with opposing interests to the client who met with the poverty law advocate.

This principle applies to lawyers in law firms where associates shall not represent parties with potentially conflicting interests because they have access to the client records and the client management software is the same. In fact, the Law Society BC goes so far as to say that lawyers sharing an office may not represent clients with adverse interests¹. The reason is the same -- lawyers have access to fax machines and incoming mail, pleadings etc, so they can access information that may be detrimental to the opposing party's file.

Is there any situation in which two advocates in an organization may see parties who could possibly have conflicting interests? Consider these indicia:

- i. Do you share a client database?
- ii. Do you have the same fax number and, as such, have access to incoming material about the other advocate's client?
- iii. Do you share a filing cabinet?

¹ Refer to the Code Rule 3.4-42 and 3.4-43 on space-sharing arrangements for details on this.
<https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/act-rules-and-code/code-of-professional-conduct-for-british-columbia/chapter-3-%E2%80%93-relationship-to-clients/>

- iv. Are your respective offices and filing cabinet locked or can your colleagues access your files?
- v. Do you have the same supervising lawyer?
- vi. Do you have the same supervisor with whom you discuss files?
- vii. Are there any other way(s) in which you may have access to the other advocate's client files?

If the answer to any of the above is 'yes', then you cannot both accept the clients.

If you answered all the above questions with a "no", then you may take the file. We encourage you to discuss this with your supervising lawyer or the CASL or FASL Lawyers. You will need to arrange for separate lawyer supervision for each client.

Practice tip: If your organization has both a poverty and family law advocate, and is worried about their advocates conflicting one another out in too many cases, consider using different databases for client details and creating walls so that advocates cannot view conflicting client information.

Fact Pattern 1: two clients with competing interests

Paul and Sara are married and have a child together. Sara wants the family law advocate's help with separation. Earlier this year, the poverty law advocate assisted Paul with an Employment Standards issue.

Analysis: No, you should not represent both concurrently. Therefore, Sara should be referred out. There might be a conflict in their interests in dealing with the family law matter, which would likely include child and possibly spousal support AND the poverty law advocate has financial information from working with Paul on Employment Standards matter.

Fact Pattern 2: two clients with no competing interests

Paula and Karima are roommates. Paula seeks help from Advocate 1 at your agency regarding an employment law matter, and Karima seeks assistance from Advocate 2 for an immigration issue. Can the advocates take both matters on?

Analysis: Yes, you may work with them concurrently. They do not have competing interests at the moment, so you may represent them both. You should advise them both that if a family law issue comes up, or another matter comes up that may give rise to a conflict, then you will not be able to assist either of them.

Potential for a conflict in another area of law does not prevent you from working with both parties. Of course, you evaluate conflict at the beginning before you commence work with a client, but it is helpful to constantly evaluate conflict as well.²

2. One advocate asked to assist clients who are spouses, or otherwise related

Fact Pattern 1 – spouses with unrelated issues

Joe and Sam have been living together in a marriage like relationship for 4 years. Joe wants to retain an advocate to help him with an EI appeal and Sam wants to retain the same advocate to help him with an immigration appeal.

Analysis: The advocate can act for both Joe and Sam. Their EI and immigration issues are not competing interests between them.

Ideally a separate advocate should act for each of Sam and Joe. That way, confidentiality between Sam and Joe can be better preserved even though the matters the organization is assisting with are wholly unrelated.

Fact Pattern 2 – spouses with unrelated issues that get complicated

The agency has 3 advocates, 2 in poverty law and 1 in family law. Charlie is a client of the poverty law advocate, getting help with an Employment Insurance appeal. Charlie's wife Sue wants to retain the family law advocate to help her do an uncontested divorce.

Analysis: The family law advocate should talk to their supervising lawyer. The family law advocate should get Sue's understanding and consent that the advocate is assisting only with the uncontested divorce. This is because family law cases can "morph" into other issues and the advocate should always be very clear about that issue he or she is dealing with. For example, IF the couple started to argue over financial issues, there would be a conflict because the advocate helping with the EI claim would likely have information about Charlie's finances.

Charlie's EI appeal and Sue's divorce are not related matters and there is likely nothing to prevent the advocate from assisting with the uncontested divorce. Charlie and Sue do not have opposing interests in this scenario.

Fact Pattern 3 – related issues

² The Code Rule 3.4-1[2] commentary reads "A lawyer should examine whether a conflict of interest exists not only from the outset but throughout the duration of a retainer because new circumstances or information may establish or reveal a conflict of interest."

Imagine the same as above but now Sue wants help to make a claim for spousal support against Charlie.

Analysis: These are related matters for clients with opposing interests. The family law advocate cannot assist Sue.

3. A new advocate is bound by earlier conflicts

Principle: You and your organization owe a duty of undivided loyalty to a past client. There is no expiration date on this duty to protect your client's interests.

Facts: In 2007, client Paula gets help from an advocate regarding a family law issue. In 2010, the advocate retires and a new advocate is hired. In 2017, Paula's spouse, Karima, visits the new advocate. Can the new advocate represent Karima?

Analysis: There is a conflict of interest. Paula and Karima are opposing parties. The advocates work for the same organization and may have access to previous records (on paper or otherwise). The duty to represent the client and act in their best interests does not end when the client walks out the door. The new advocate cannot assist Karima.

4. The opposing party is a former client

Principle: If a former client was helped in a meaningful way (that is, more than information referral), then you cannot assist a party with related, opposing interests.

Fact Pattern 1 – issues closely related

The potential new client (Client B) is subject to a child support order that the advocate helped the other side (Client A) get several years ago. Client A is now a "former client" of the organization. The child who was the subject of the child support order is 18 years of age. Client B wants to consult the advocate about child support for the 2 year old child of their new relationship.

Analysis: Client B's matter is not "wholly unrelated". This is because the new matter could reasonably be affected by, and/or related to, Client A's matter. Child support was a live issue in the former client's file and could be related in the new representation under the Child Support Guidelines hardship sections.

Fact Pattern 2 -- legal issues of opposing party resolved and therefore unrelated

On the same fact pattern as above, but now Client B's child with Client A is now 19 years of age, and is living in Alberta working in the oil patch. Client B does not owe any child support arrears to Client A, and their child is no longer entitled to child support.

Analysis: The advocate will have to obtain the relevant information and determine whether the information is in fact correct before acting, and these efforts should be set out in the file.

Fact Pattern 3 – organization no longer has documents for a former client

If Client A was a client 10 years ago and your agency shreds documents 7 years after file closings, then you may assist their spouse. Please make sure that you do not have a way to access records for Client A.

When in doubt about

- whether another client's or former client's matter is "related" to a matter for which the potential client seeks to retain the advocate, and/or
- whether a conflict exists which might prevent representation of the potential client, the Advocate should consult with their supervising lawyer before agreeing to represent the client.

The supervising lawyer will provide an opinion about whether the Advocate is permitted to assume conduct of the potential client's matter. The supervising lawyer's opinion should be in writing and should be kept in a file marked "Conflicts" if the potential client does not become a client of your organization, or in the client's file if the organization assists the client.

The supervising lawyer will want to determine whether the organization has a policy backed up with rigorous practice of periodically destroying client files (including data files) after 7 years. If this is the case, and there is no risk of the advocate having any access to confidential information of the former client (since the former client's file no longer exists), the advocate may act for the potential client.

5. Conflict between the advocate's client and a client of the supervising lawyer

When there is a conflict between the advocate's client and the supervising lawyer's client, the advocate and supervising lawyer cannot discuss the matter and the supervising lawyer cannot review the advocate's file on closing. The advocate should get advice from a different supervising lawyer (or the CASL or FASL lawyer) and the file should be sent to a different supervising lawyer for review on closing.

Practice tip: In certain cases it may be possible, subject to your supervising lawyer's views, to discuss a matter without disclosing the parties' names. If the facts do not identify the parties, then the advocate and supervising lawyer may discuss the matter without checking for conflicts.

6. Personal conflict

Sometimes personal relationships give rise to an actual conflict or a possible, perceived conflict between the advocate and their client. The client should be referred out or, at a minimum, the client should be advised of the personal relationship so that they can make their own decision about whether to continue with the advocate.

7. If a conflict is identified after service is provided

If you become aware of a conflict after providing services, consider the above scenarios to see if yours fits.

Notify your supervisor and supervising lawyer to reach a decision as to what to do and what to say (and not say) to your clients.

D. For Victim Service Workers and Family Law Advocates working at the same organization

There is a conflict of interest if the victim service worker is helping a client and the opposing party wishes to access family law services.

In some cases there may be firewalls or other insulation methods employed by the agency to ensure there is no conflict or sharing of confidential information. Consider the same indicia that apply to two advocates acting for clients with competing interests:

- i. Do you share a client database?
- ii. Do you have the same fax number and, as such, have access to incoming material about the other advocate's client?
- iii. Do you share a filing cabinet?
- iv. Are your respective offices and filing cabinet locked? This means, can your colleagues access your files?
- v. Do you have the same supervising lawyer?
- vi. Do you have the same supervisor with whom you discuss files?

- vii. Are there any other way(s) in which you may have access to the other advocate's client files?

Many organizations have both advocates and victim service workers. When they both work for the same organization, but do not work in the same area and maintain completely separate files, conflicts are unlikely to arise.

The situation that this section addresses, is when the advocate and the victim service workers work in the same environment and have access to the same client information.

Consider the following scenarios.

Fact pattern 1: One party is an existing victim services client. An opposing party wishes to access poverty law services for an unrelated matter.

Analysis: No conflict. Both parties may be served.

If either the poverty law worker or the victim services worker becomes aware that they are serving a client who is an opposing party to a client of the other program, they must notify the other worker; care must be taken to avoid both parties being in the office at the same time.

Fact pattern 2: One party is an existing victim services client. An opposing party wishes to access family law services for an unrelated matter (eg. the victim services worker is assisting a woman who assaulted by her husband and the husband comes to the family law advocate seeking assistance with cancelling spousal support arrears related to a previous partner).

Analysis: A decision will be made on a case by case basis with respect to services for the second client in consultation with staff, the advocate and their manager, and the supervising lawyer.

If service is provided to the second client, care must be taken to avoid having both people in the office at the same time.

Facts Pattern 3: One party is an existing victim services client. An opposing party wishes to access family law services for related matter.

Analysis: There is a conflict and the advocate cannot act. The opposing party should be referred out.

E. Conflict Chart

First Client	Second Client	Matter: same or unrelated?	Conflict?	Conflict Procedure to Follow
Poverty Law	Poverty Law	Unrelated	No	
Poverty Law	Poverty Law	Same or related	Yes	Opposing Party Referred Out
Poverty Law	Family Law	Either	Yes	Opposing Party Referred Out
Family Law	Poverty Law	Either	Yes	Opposing Party Referred Out
Family Law	Family Law	Either	Yes	Opposing Party Referred Out
Victim Services	Poverty Law	Unrelated	No	
Victim Services	Poverty Law	Same or related	Yes	Opposing Party Referred Out
Poverty Law	Victim Services	Unrelated	No	
Poverty Law	Victim Services	Same or related	Yes	Case by case; may follow "Both Parties Served" procedure if files handled entirely separately
Victim Services	Victim Services	Unrelated	No	
Victim Services	Victim Services	Same or related	Yes	Case by case; may follow "Both Parties Served" procedure if files handled entirely separately
Victim Services	Family Law	Unrelated	Yes	Case by case; may follow "Both Parties Served" procedure if files handled entirely separately
Victim Services	Family Law	Same or related	Yes	Opposing Party Referred Out
Family Law	Victim Services	Unrelated	Yes	Case by case; may follow "Both Parties Served" procedure if files handled entirely separately
Family Law	Victim Services	Same or related	Yes	Case by case; may follow "Both Parties Served" procedure if files handled entirely separately



THE LAW FOUNDATION OF BRITISH COLUMBIA

Reporting Child Abuse: Policy and Procedures for Law Foundation Funded Legal Advocates January 2020

Issue: Do advocates have to report child abuse to Ministry of Child and Family Development (MCFD), or are client communications with them protected under privilege?

Advocates do not have the same privilege as lawyers.

Advocates must report child abuse in the circumstances listed in section 13 of the *Child, Family and Community Service Act* that is set out below.

1. A child needs protection in the following circumstances:
 - a. if the child has been, or is likely to be, physically harmed by the child's parent;
 - b. if the child has been or is likely to be, sexually abused or exploited by the child's parent;
 - c. if the child has been, or is likely to be, physically harmed, sexually abused or sexually exploited by another person and if the child's parent is unwilling or unable to protect the child;
 - d. if the child has been, or is likely to be, physically harmed because of neglect by the child's parent;
 - e. if the child is emotionally harmed by:
 - i. the parent's conduct;
 - ii. living in a situation where there is domestic violence by or towards a person with whom the child resides;
 - f. if the child is deprived of necessary health care;
 - g. if the child's development is likely to be seriously impaired by a treatable condition and the child's parent refuses to provide or consent to treatment;
 - h. if the child's parent is unable or unwilling to care for the child and has not made adequate provision for the child's care;
 - i. If the child is or has been absent from home in circumstances that endanger the child's safety or well-being;
 - j. if the child's parent is dead and adequate provision has not been made for the child's care;
 - k. if the child has been abandoned and adequate provision has not been made for the child's care;

- I. if the child is in the car of a director or another person by agreement and the child's parent is unwilling or unable to resume care when the agreement is no longer in force.
- 1.1 For the purpose of subsection 1.b and c, but without limiting the meaning of 'sexually abused' or 'sexually exploited', a child has been or is likely to be sexually abused or sexually exploited if the child has been or is likely to be;
 - a. encouraged or helped to engage in prostitution, or
 - b. coerced or inveigled into engaging in prostitution.
- 1.2 For the purpose of subsection 1(a) and (c), but without limiting the circumstances that may increase the likelihood of physical harm to a child, the likelihood of physical harm to a child increases when the child is living in a situation where there is domestic violence by or towards a person with whom the child resides.
- 1.3 For the purpose of subsection 1.e, a child is emotionally harmed if the child demonstrates severe:
 - a. anxiety;
 - b. depression;
 - c. withdrawal; or
 - d. self-destructive or aggressive behaviour.

Reporting

Advocates should not make the decision to report child abuse on their own. The default position is not "just report". There must be persuasive grounds to make a report of child abuse.

Before making a report, an advocate should fully document the grounds they are relying on so that accurate evidence can be discussed with the supervising lawyer before taking any steps to report.

Discussions with the supervising lawyer should take place as soon as possible after the concern arises.

1. Does the advocate need to inform the client about their duty to report child abuse?

You should discuss the "duty to report" at the beginning of the first meeting with the new client. Suggestions for how to approach this are:

"everything you tell me is confidential other than I must discuss matters with my supervisor and my supervising lawyer for assistance and direction on your file. One exception to this rule is that if I believe that there is a threat

to a child's safety, then I have an obligation to report that to the Ministry of Children and Family Development.”

“you are my client now so before I make a report of my concern regarding a child's safety, I will speak with you”

The client has a right to know what you are obligated to do before they reveal any details to you.

2. Should the Advocate inform the client before calling the Director of Children and Families (commonly called MCFD) to make a report of a child in need of protection?

- Before calling MCFD, remember that the duty to report to MCFD does not negate the duty to act in the client's best interest. Try to avoid situations where the client withholds information from you for fear of being reported. You also do not want to take either the duty to act in the client's best interest or the duty to report child abuse lightly. This is a difficult path to tread. So do not make this decision alone.
- If you and your supervising lawyer decide that it is necessary to report to MCFD that you believe that a child is in need of protection, **before contacting the Ministry you should speak with the client about your obligation to report** and explain the reasons to them. Explain to the client that MCFD investigates all complaints and that if MCFD finds that there is no child protection concern, they may close the file. Consider telephoning MCFD with the client in the room. Consider using speakerphone so the client is a party to the conversation. Give your client the tools to deal with MCFD before and/or at the same time as you report. Help the client navigate MCFD and the complaint, and if required, help the client to apply for legal aid and refer to other resources.
- Under certain circumstances, contacting MCFD with the client may not be advisable (e.g. if you have concern that your client is harming the child). Again, this decision should be made in discussion with your supervising lawyer.
- Calls and reports made to MCFD are confidential, and the intake workers or social workers cannot divulge the name of the person who made the call.

3. What if a child tells the Advocate that his/her parents are abusing him?

If the child discloses to the advocate in the course of conducting a file that they are being harmed by their parents (whether they are the advocate's clients or not) in any of the ways set out in 13(1) *CFCSA*, this mandates the advocate to make the report to MCFD.

When hearing from children, especially very young children, context is important. You may wish to rely on other resources such as the children's lawyer or a counsellor.

4. What are an advocate's responsibilities if they hear information that raises child protection concerns when they accompany a client to a meeting with their lawyer?

Lawyers are protected by privilege and usually do not have to report child abuse (concerns of imminent harm or death are not protected by solicitor-client privilege and must be reported regardless of relationship or privilege). It is not clear whether third parties (like advocates) in the room are also covered by the lawyer's privilege.

- Communications with third parties may be considered privileged if the third party is acting on behalf of the client. Case law¹ tells us that the third-party's function must be considered essential or integral to the maintenance or operation of solicitor-client relationship for that to apply.
- The privilege protects communications to or by a "third party acting as a messenger, translator, and amanuensis, and includes a third party employing an expert to assemble information provided by the client and to explain it to the lawyer" (General Accident at p.323). If the lawyer is employing the third party, then privilege likely applies.
- This means that whether privilege extends to the advocate or not must be examined in light of the purpose for which the Advocate accompanied the client, and whether the presence was "necessary" for that meeting. For example:
 - if the Advocate was interpreting for the lawyer,
 - if the Advocate attends the meeting for the purpose of helping the client take notes and organize documents etc.

then there is an argument that the advocate's presence is integral to the meeting and "solicitor/client" privilege extends to the Advocate.

Best practice: Inform the client before accompanying the client to the lawyer's meeting that if a child protection concern arises, then you may have to report to MCFD.

It is also important to keep in mind that in many cases, third parties are persons who can be compelled to give evidence in Court. For example, if the client attends your office with a friend or family member whom they wish to have sit in on their meeting with you, that friend is likely a compellable witness and could be called upon to disclose the communications that took place at the meeting. The best practice is to meet with clients privately and without such third parties in attendance.

¹ *General Accident Assurance Co. v. Chrusz (1999)*, 180 D.L.R. (4th) 241 (Ont. C.A.) at paras. 120 to 122, cited with approval in *College of Physicians of British Columbia v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 at paras. 46 to 50, leave to appeal dismissed [2003] S.C.C.A. No. 83

5. Penalties for failing to report

Under section 14 of the *Child Family and Community Service Act* a person who has reason to believe that a child needs protection under section 13 must promptly report the matter to a director or a person designated by a director. To not report in these circumstances is an offence.

This section applies even if the information on which the belief is based

- a. is privileged, except as a result of a solicitor-client relationship; or
- b. is confidential and its disclosure is prohibited under another Act.

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

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

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

The limitation period governing the commencement of a proceeding under the *Offence Act*, does not apply to a proceeding relating to an offence under this section.

6. Examples: Which situation warrants reporting to MCFD?

- The mother tells you that she left an 11-year-old in the house for 5 minutes while she went to collect the mail. This does not warrant reporting.
- If mum and child disclose that another adult has sexually abused the child, then you need to report.
- If mum suspects that the father is abusing the child, ask for physical data. Ask what circumstance(s) gave rise to that suspicion. Make suggestions such as taking the child to a doctor, the police, get medical records, and verify information. You can have a discussion without reporting.
- A parent tells you that the other has been feeding the child popcorn for dinner. This does not qualify as “neglect” and you do not need to report.



THE LAW FOUNDATION OF BRITISH COLUMBIA

Family Law Advocacy Program Scope of Service November 2019

Overall Objective: To deliver a range of family law advocacy services including legal information, advocacy and assistance to individuals in the community. This will involve:

Areas of law covered:

Primarily family law, including child protection, with some assistance in other overlapping matters (e.g. immigration, criminal, etc.).

Family law matters covered:

- Guardianship and parenting time
- Parental responsibilities
- Child support
- Spousal support
- Divorce
- Assistance with separation agreements
- Protection orders
- FMEP
- Mobility/relocation
- Property, debts – up to 20k, emergency asset restraint
- Matrimonial property on reserve – identify issues and refer to appropriate service
- Child protection

The advocate will be properly trained and supervised by a supervising lawyer. The Law Foundation will develop training and qualification processes and support the advocates' professional development.

Level and type of services:

Information, education and building legal capabilities

The advocate will provide legal information to people who are having relationship difficulties in a one to one format and will organize public legal information sessions.

Triage and referral

The advocate will interview clients to help identify legal issues, prioritize their legal needs, and help them choose realistic and fair legal solutions by providing legal information, advocacy, referrals and access to volunteer lawyers. The advocate will provide clients with options and assist them with decision-making, keeping in mind their specific needs due to disability, cultural or language barriers, literacy issues, transportation and child care issues and make appropriate referrals to legal and other resources.

Information and summary advice

By providing supported information and assisting clients' access to summary advice, the advocate will contribute to the early resolution of their legal problems. The advocate will assist in this regard by preparing a written summary of the client's legal needs and a list of questions for them to discuss with duty counsel or when appropriate, a *pro bono* lawyer. The advocate will attend court on list days to assist unrepresented litigants by providing information about the court process, connecting them with duty counsel, identifying clients who require additional assistance from the advocate, and assisting in dealing with conflicts when possible. In cases of violence, the advocate will provide safety-planning, risk-assessment and crisis intervention, where needed, and refer client to appropriate resources (transition houses, trauma counselling, victim services, police etc.).

Supported dispute resolution

The advocate will support dispute resolution from the outset by educating clients about the nature of collaborative values and the availability of consensual dispute resolution ("CDR") in the family justice system. The advocate, while making it clear to clients that judicial resolution is available when needed, will help clients prepare for CDR. The advocate will screen for cases where CDR is not an appropriate option (e.g. where there is an acute power imbalance, violence, or high-conflict).

Legal representation

The advocate will not represent clients in court hearings but will assist unrepresented litigants by educating them on the court process. The advocate, under legal supervision, will also assist the client in the following ways:

- Preparing summaries of facts and memoranda outlining the client's legal issues to make best use of appointments with duty counsel, *pro bono* or low bono lawyers;
- Identifying documentation and evidence the client needs to support positions, provide coaching and interpreting substantive and procedural law;
- Providing tips for legal research and self-advocacy by assisting the client to draft documents;
- Helping with form completion (initiating proceedings, varying orders, enforcing orders) and document preparation, including financial statements, fee waiver applications, writing letters on behalf of the client;

- Communicating with the other party, as appropriate;
- Communicating with the other party's representative (lawyer or advocate);
- Accompanying the client to court to orient, assist and organize, for example, directing clients to duty counsel or other court staff and facilities (Judicial Case Manager, Court Registry), informing them about court room etiquette, providing some level of emotional support, taking notes and, when allowed by judge and is helpful to the client, speaking in the court; and
- Explaining orders or agreements, including how they impact the client's rights and obligations.

Other functions

- Identifying gaps in services and systemic issues and collaborating with others to identify solutions where appropriate;
- Assisting in accessing legal aid (including appeals), finding a lawyer, connecting clients with appropriate services and supports;
- Providing skill- based training to intermediaries and acting as a resource for other staff in the agency and in the community;
- Developing legal resources and hand-outs;
- Organizing pro bono legal clinics;
- Acting as a liaison to the justice system, including court, duty counsel, LSS, family justice counsellors, police/Crown and lawyers; and
- Staying apprised and educated of new legal developments and resources.

Child protection

Explaining child protection legislation, Ministry of Child and Family Development (MCFD) policies and legal proceedings and parents' rights and responsibilities to clients in plain language to ensure that parents understand the expectations the MCFD have when it enters into agreements with them, connecting parents with appropriate MCFD and community services.

Assisting in accessing legal aid (including appeals), finding a lawyer, connecting with appropriate services and supports.

Advocating/liasing with MCFD or delegated agencies' social workers, assisting to develop plans of care, reviewing and interpreting medical/psychiatric reports and assessments, and to help clients understand their content, and reviewing and explaining supervised visit reports.

Accompanying clients to court, appointments with lawyers, family planning meetings, family case conferences, integrated case management meetings, circles, meetings with social workers etc.

Coordinating with family support workers or other such intermediaries and acting as a resource to them.

Means Test/Working with Lawyers

All clients have access to up to two hours of free legal assistance, regardless of income. After that, they are means tested in accordance with guidelines developed by the Foundation, which include disclosure of income and assets. Where eligible, the clients are assisted in accessing legal aid through assistance with applications and appeals. Those clients that are able to pay for legal services are referred to the private bar.

Becoming a Commissioner for Taking Affidavits:

The advocate, their organization, and their supervising lawyer have discretion as to whether to seek the appointment order and deciding who can access the service. This discretion is subject to the following limitations:

- the supervising lawyer must be in agreement with the advocate obtaining the appointment as commissioner;
- advocates must limit their commissioning services to clients of the organization;
- advocates must not commission affidavits or statutory declarations on any matter that relates to real property or any other property or matters with a value in excess of \$20,000;
- advocates must take regular Law Foundation training on the correct procedure for commissioning affidavits and statutory declarations; and
- advocates must complete a checklist confirming the procedure they followed when confirming the identity of the client; the fact sheet must remain on the file after closing.

Conflicts Policy:

Each program will develop a conflicts policy. Family advocacy offices are designed to represent the interests of only one party to a dispute and therefore must keep a robust and up-to-date system of checking for conflicts. Services will be provided to the clients on a first come, first serve basis.

If the poverty law program and the family law advocacy program are housed in the same organization, the programs will share client lists. Accessing one program will disqualify the opposing separating spouse from accessing the program. First come, first served means that if client A is using poverty law services, their separating spouse B cannot access the family law advocate. But client B can access other services at the agency. Clients who are conflicted out should be referred to another family law advocacy program in the closest community.

Law Foundation Training:

Law Foundation Advocates are expected:

- To attend the Family Law Advocate Training Course;
- To attend the Provincial Training Conference every year;
- To attend the monthly two-hour family law workshop delivered by the lawyer for the Family Advocate Support Line (FASL); and
- To avail themselves of the Law Foundation Education and Training Fund where appropriate. Legal advocates funded by the Law Foundation working at least .5 FTE may apply to the fund for financial support for the costs of:
 - training for professional development, or
 - counselling to support advocates dealing with trauma related to their work.

Suggested Percentages as Guidelines:

- Advocacy 80% (75% if working in a focused area with 5% for Law Reform)
- PLE – 10%
- Community Involvement – 2.5%
- Systemic Advocacy - 2.5%
- Legal Supervision, Administration, and Training – 5%

If there is ambiguity or uncertainty as to the meaning of terms within this document, then the advocacy program will contact the Law Foundation program director to resolve the ambiguity or uncertainty.



Family Advocate Support Line

The Family Advocate Support Line (FASL) is a dedicated telephone support line designed to help family advocates, front-line workers, and support workers (collectively, "Support Workers") in BC. Our lawyer gives legal information and legal advice about family law and, at times, other areas of law that may intersect your family file. Help is offered primarily for matters involving divorce, separation (including separation agreements), child support, extraordinary expenses, spousal support, relocation, among other family law matters. We are able to help with family law matters at Provincial and Supreme Courts within BC.

Our lawyer also provides ongoing training on matters of family law and is happy to tailor presentation(s) to your unique needs. Please get in touch with her at the email address below for your and your organization's training needs.

Support Workers who need more information from FASL, please contact the FASL Lawyer at 778-558-9929.

Please note:

This program **only** provides assistance to Support Workers. If you have a legal issue you need assistance with, and you are not an advocate or community worker, please visit womenslegalcentre.ca to get the information that you need.



THE LAW FOUNDATION OF BRITISH COLUMBIA

LEGAL SUPERVISION REQUIREMENTS

October 2019

Thank you for agreeing to be a supervising lawyer for one (or more) of the Foundation's advocates. These advocates provide an important front-line service to low-income British Columbians and the lawyers who supervise the advocates are making an important contribution to their communities. Please take some time to become familiar with the type of work done by the program you are supervising.

General

A supervisory lawyer must be a member in good standing of the Law Society of British Columbia and be a minimum of a three year call.

As a starting proposition, the Foundation expects that each advocate should be supervised according to his or her level of competence and experience in each area of law. It is for the supervising lawyer to assess an advocate's competence and experience in each area of law, and to then determine the level of supervision required, based on the guidelines set out below.

A supervising lawyer is responsible for the supervision of an advocate's work in regards to substantive and procedural legal matters. It should be borne in mind that the advocate is an employee of an organization and as such will have a supervisor at that organization in regards to employment related matters. However, should a supervising lawyer have concerns regarding an advocate's performance of their duties, those concerns should be included in the supervising lawyer's reports.

The initial stages of supervision of an advocate should include the level of supervision for a new advocate. This is to allow the lawyer to become familiar with the advocate's work. The level of supervision can later be adjusted, as the advocate's competence and experience dictates.

It is expected that at the start of a relationship with an advocate, and annually thereafter, the supervising lawyer will attend at the advocate's office and review the advocate's files and file management systems to ensure they are appropriate. The Law Foundation has examples of file management documents that our advocates can use if you wish to see them.

Frequency of Meetings

There should be regular meetings between the advocate and the legal supervisor, in person if possible, and if not by Skype/Facetime. Meetings should take place at a minimum once per month in addition to being available by phone or email as required.

Meeting should include a review of the file list, and relevant files, to ensure proper advocacy and file management.

Levels of Experience

The criteria set out below in this section are meant to provide guidelines for a supervising lawyer to assess an advocate's level of experience. They are subject to the supervising lawyer's discretion when taking into account factors such as an advocate's education or prior related work experience.

New Advocate: a new advocate will generally be considered to be someone with up to two years experience in an area of law.

Intermediate Advocate: a junior advocate will generally be considered to be someone with two to five years experience in an area of law.

Senior Advocate: a senior advocate will generally be considered to be someone with more than five years experience in an area of law.

Levels of Supervision

The Law Foundation defines an Advice/Summary Service file as: Advice and assistance up to 2 hours.

The Law Foundation defines a Full Representation file as: Advice and assistance totaling more than 2 hours, must include document preparation, dealing with external bodies and/or representation at hearings.

New Advocate:

1. Review of all full representation files opened, including a merit assessment, and close monitoring of each full representation file to completion.
2. Review of all administrative tribunal and court documents before filing.
3. Review of letters or any other documents containing substantive arguments regarding a client's case, prior to their being sent.
4. Review of proposed advocacy work prior to any administrative tribunal or court appearance.
5. Periodic review of advocate's file list.
6. Answering any questions posed in relationship to supervised files.
7. Review of all full representation files being closed.

Intermediate Advocate:

1. Review of all full representation files opened, including a merit assessment.
2. Review of all administrative tribunal and court documents before filing.
3. Review of proposed advocacy work prior to any administrative tribunal or court appearance.
4. Periodic review of advocate's file list.
5. Answering any questions posed in relationship to supervised files.
6. Review of all full representation files being closed.

Senior Advocate:

1. Review or discuss of all full representation files opened.
2. Review of all court documents before filing.
3. Review or discuss proposed advocacy work prior to any court appearance.
4. Periodic review of advocate's file list.
5. Answering any questions posed in relationship to supervised files.
6. Review of all full representation files being closed.

Reporting

The Board of the organization the advocate works for should receive reports from the supervising lawyer with respect to the advocate's caseload, competence and skill, and indicating the level of supervision. These reports should be provided to the Board to coincide with the organization's activity reports to the Foundation, and at other times as required by either the organization or the Foundation.

In turn, the Board is accountable to the Foundation for the work of both the advocate and the supervising lawyer and should incorporate the supervising lawyer's report in its reports to the Foundation.

Please review the Legal Supervisors Reporting Requirements for more details.

Lesson Plan	
Topic:	Overview of Family Law
Timing	1.5 hours
Learning Objective:	<p>Learners will</p> <ul style="list-style-type: none"> • Be familiar with the Family Law Act, the Divorce Act and the Child, Family and Community Services Act • Understand the relationship between law, regulation, policy and case law in family law • Understand which family law cases are heard in Provincial Court and which go to the BC Supreme Court – and why • Be familiar with alternate dispute resolution options that might be available to their clients • Know about legislation that might be relevant in family law cases (FMEP, Criminal Code)
Activity:	<ul style="list-style-type: none"> • Presentation • Group discussion
Resource person	Vicky Law, Virtual Legal Clinic lawyer.
Materials:	<ul style="list-style-type: none"> • Powerpoint • Charts
Assessment:	Test

Family Law Overview

The *Family Law Act* and updates to the *Divorce Act*

Vicky Law

September 8, 2021



DISCLAIMER

Nothing we say in this presentation should be construed as legal advice. This is simply for information purposes only. Please consult with a lawyer if you need legal advice.

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Outline

- What is Family Law?
- Options for Resolution
- Key Terms
- Family Violence
- Resources

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What is Family Law?



- When relationships break down, family law governs how children will be cared for, child support, spousal support, and division of property and debts.
- Family law also provides remedies intended to protect people from family violence.
- Family law issues can be resolved with or without counsel, through negotiations, mediation, or litigation (court proceedings)

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What is Family Law?

- *Divorce Act*, RSC 1985, c 3 (2nd Supp) – amended on March 1, 2021
 - Federal law - applies only to married spouses;
 - Divorce, parenting orders, child support, and spousal support;
 - Does NOT deal with property/debt or protection orders.
 - Orders under the *Divorce Act* can only be sought in Supreme Court.
- *Family Law Act*, SBC 2011, c 25
 - Provincial law - applies to both married and unmarried couples;
 - Parenting of children, child support, spousal support, division of property and debts, conduct orders, and protection orders.
 - Does NOT deal with divorce;
 - Orders can be sought in either Provincial Court or Supreme Court.

This presentation will focus on the *Family Law Act* but does address recent changes made to the *Divorce Act*

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How can Family Law Matters be Resolved?

- There are several options for resolution.
- There are two ways to proceed:
 - i. Out of court settlement;
 - ii. Court

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Out of Court Settlement Options

- Mediation
 - Both sides work with a neutral third party, a mediator, to reach an agreement on all or some of the issues. Mediators are trained dispute resolution professionals and are often lawyers.
 - Can attend mediation with or without lawyers (but should receive independent legal advice before finalizing a settlement)

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Out of Court Settlement Options

- Parenting Coordinator
 - Person (usually a lawyer) hired voluntarily by both parties or appointed by the court to intervene when there is a dispute to keep parties from going to court. PCs can only make decisions on more minor issues once parties already have a final order or agreement in place.

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Out of Court Settlement Options

- Collaborative Lawyers
 - Parties and lawyers enter into agreement to attempt to resolve matters collaboratively and will not commence court proceedings. If one party does decide to commence court proceedings, the collaborative lawyers must withdraw.
- Negotiations (through lawyers or without lawyers)
 - Even if collaborative lawyers are not hired, most lawyers will assist parties in attempting to resolve matters by agreement, rather than in court

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Court Proceedings

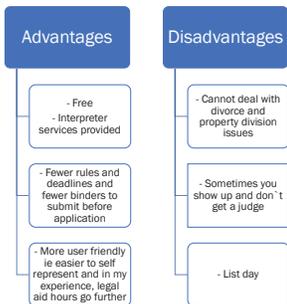
- A judge decides on some or all the issues and makes an order
- Often, the only way to get both parties to the table for out of court dispute resolution is to commence court proceedings.
- 2 courts in BC
- Both courts have Rules that set deadlines for the parties to respond to claims and to provide disclosure.

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Courts in BC – BC Provincial Court

BCPC can only consider FLA matters

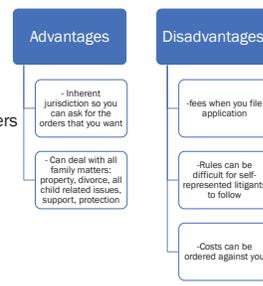


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Courts in BC – BC Supreme Court

BCSC can consider both FLA and DA matters



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Key Terms from the *FLA* and *DA*

FLA: "Child"

- Generally, a person under 19 years of age;
- But for purposes of child support, can be a person over 19 years of age, who is unable to withdraw from charge of their parents;
- For purposes of child support, a "child" can also be a step-child for whom a step-parent has contributed to the support of the child for at least one year

DA: "Child of the marriage"

- Child of two married spouses or former married spouses, who,
 - Is under 19 and has not withdrawn from charge of parents; or
 - Is over 19 but unable, because of illness, disability or other cause, to withdraw from charge of parents or obtain necessities of life.

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Key Terms from the *FLA* and *DA*

FLA: "Guardianship"

- Parents are generally guardians (FLA s.39);
 - Parents who have lived together with the child are guardians;
 - But if a bio parent has never lived with the child, they are not a guardian but could apply to become a guardian
- Only guardians can have "Parental Responsibilities" and "Parenting Time" with respect to a child (FLA s.40(1));
- People who are not guardians may have "contact" with a child (ss. 58 and 59)

Divorce Act

- Guardianship is not a term used under the DA

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Key Terms from the *FLA* and *DA*

DA: "Parenting Order" (DA s.16.1)

- Previously, order for custody.
- Court may make parenting orders for parenting time or decision-making responsibility by application of either spouse or by a person other than a spouse, who is a parent of the child or stands in the place of a parent

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Key Terms from the *FLA* and *DA*

FLA: "Parental Responsibilities"

- The ability to make decisions regarding the child's residence, education, health, etc.
- Section 41 of the Family Law Act sets out an exhaustive list of parental responsibilities;
- Parental responsibilities can be allocated to one or more guardians only or to all guardians acting together.
 - Shared parental responsibilities = duty to consult the other guardian before a decision is made and attempt to reach agreement. If no agreement, may need to go to court. Sometimes, one party is given final decision-making power.
- Must be exercised in the best interests of the child

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Section 41 of the Family Law Act:

- (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 Indigenous child, the **child's Indigenous 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.

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Key Terms from the *FLA* and *DA*

DA: Decision-making responsibility (DA s.16.2.(3))

- Similar to FLA parenting responsibility
- But the DA does not have a list of what the decision-making responsibilities are.
- Decision-making responsibility may be allocated to either spouse, both spouses, a person who is a parent or stands in place of a parent, or any combination.
- Unless otherwise ordered, a person with parenting time or decision-making responsibility is entitled to request from another person with PT or DMR or from others information about the child's well-being. (DA s.16.4)

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Key Terms from the *FLA* and *DA*

FLA (s.42) – Parenting Time

- during parenting time, subject to an order or agreement, a guardian may exercise parental responsibility of making day to day decisions (s.42(2))

DA (s.16.2(1)) - Parenting Time

- Unless otherwise ordered, day to day decisions affecting the children are allocated exclusively to the parent who is exercising parenting time (DA s.16.2(2)).

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Key Terms from the *FLA* and *DA*

• FLA (s.42) and DA (s.16.2(1)): Parenting Time

- There is **no presumption** in favour of any one schedule.
- Examples of schedules:
 - Week on/Week off
 - Every other weekend
 - 4-3-3-4
 - Supervised parenting time
- This is often the most contentious issue in family law matters and can continue to be a source of conflict for many years.

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Key Terms from the *FLA* and *DA*

FLA: Contact Time (FLA s.58-59)

- People who are not guardians of a child could have contact time (not parenting time) with a child.
- Examples: Biological parents who are not guardians, grandparents, other close family members.

DA: Contact Time (DA s.16.5)

- Persons other than spouses can apply for contact time with a child of the marriage.

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Key Terms from the *FLA* and *DA*

• “Best interests of the Child”

- Only the best interests of the child must be considered when making agreements or orders regarding guardianship, parenting arrangements or contact with a child (FLA s.37(1)). DA also says only BIC considered (DA 16(1))
- All of the child’s needs and circumstances must be considered to determine what is in the best interests of a child.
- FLA section 37(2) lists factors to consider when determining the best interests of a child under the FLA.
- DA sections 16(2) and (3) lists factors to consider under the DA.



FLA Best interests of the child factors

- a) the child's health and emotional well-being;
- b) the child's views, unless it would be inappropriate to consider them;
- c) the nature and strength of the relationships between the child and significant persons in the child's life;
- d) the history of the child's care;
- e) the child's need for stability, given the child's age and stage of development;
- f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise his or her responsibilities.

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Best interests of the child factors cont'd

- g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
- h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs;
- i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;
- j) any civil or criminal proceeding relevant to the child's safety, security or well-being.



Key Terms from the *FLA* and *DA*

- Child Support
 - The right of the child (parents cannot contract out of child support)
 - *Federal Child Support Guidelines*
 - Monthly child support calculated based on where the payor lives, the number of children, and the payor's gross annual income.
 - Online calculators available to help parties determine the correct amount of child support.
- Special and extraordinary expenses
 - Examples: daycare, school fees, post-secondary, health expenses, extracurricular activities.
 - Shared by the parties in proportion to their incomes

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Key Terms from the *FLA* and *DA*

- Spouses (*FLA*, s. 3)
 - Married people;
 - People who lived together in a marriage like relationship for a continuous period of at least 2 years.
 - People who have children together and lived together in a marriage-like relationship for less than 2 years (except for purposes of property division and pension division). This means that for the purposes of spousal support, if parties lived together for less than 2 years but had children, they are spouses.
- In *DA*, spouses are only married people

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Key Terms from the *FLA* and *DA*

- Spousal support
 - A spouse may be entitled to spousal support.
 - *Spousal Support Advisory Guidelines*
 - Factors considered:
 - (a) The length of time the spouses cohabited;
 - (b) The functions performed by each spouse during cohabitation; and
 - (c) Any order, agreement or arrangement relating to support of either spouse.
 - Based on both parties' incomes
 - Quantum (low, mid, high) and duration

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Family Property Overview

What is Family Property ?

- Property acquired during the relationship and any increase in equity of previously acquired property/excluded property
- Family Debt – debt acquired in either party's name during the relationship is generally equally divided
- Bank Accounts, RRSPs, Savings, Stocks, Debts, Pensions, Businesses, Cars, Homes, etc.

How is Family Property Divided?

- Presumption is that spouses are entitled to half of the family property. (Regardless of whose name the property was acquired in during the relationship).
- A party can argue unequal division
- Married or not, same rights and obligations if you live together for 2 years in a marriage like relationship.

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Timing for Family Property Proceedings**

Court proceedings for the division of property and debt must be started within two years of:

1. the date of *divorce* or *annulment* for married spouses, or
2. the date of *separation* for unmarried spouses.

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Key Terms from the *Family Law Act*

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



Key Terms from the *Family Law Act*

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



What options are there for a person experiencing family violence?

- Family violence is relevant in the determination of the best interests of the child when making parenting arrangements (FLA) or parenting orders (DA).
 - Even if violence is directed at a spouse, the *FLA* and *DA* recognize that it can still be harmful to a child.
- Clients experiencing family violence can apply for a Family Law Protection Order under the FLA
 - An order made by a judge in either Provincial Court or Supreme Court;
 - Lists conditions that the person against whom the protection order is made must follow
- Can also apply for conduct orders and/or an interim order for exclusive use of the family home



Resources

- BC 211
- Intake at Rise Women's Legal Clinic
- Legal Aid BC
- Access Pro Bono – 30 minutes free summary legal advice
- Lawyer Referral Line – 30 minute consultation for free (won't usually receive advice at the consultation)
- Amici Curiae – volunteers help complete court forms
- Clicklaw Wikibooks -
https://wiki.clicklaw.bc.ca/index.php/JP_Boyd_on_Family_Law

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Questions?



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THANK YOU!

Vicky Law
vlaw@womenslegalcentre.ca

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Understanding Abuse	
Learning Objective:	Learners will: <ul style="list-style-type: none"> • Understand and screening - what constitutes abuse and what is abuse under the FLA • Be able to help clients plan for situations in the legal process when their ex-partner is present. • Know what support is available in the court process for clients dealing with violence. • Know how to help a client develop a safety plan • Be familiar with referral resources for either party in an abusive situation • Know what support is available to victims through transition houses and other resources
Activity	<ul style="list-style-type: none"> • Presentation • Small group work
Resource person	Andrea Bryson, Case Manager, RISE Women's Clinic
Materials	Binder materials
Assessment	Test

Understanding Abuse

Andrea Bryson, Case Manager

“... No system of law ever lives up to all of its aspirations, but a people’s collective aspirations provide direction, order, standards and ethics, and the power of hope. As with all law, Indigenous law contains thinking processes and intellectual resources, and it changes to live in each generation.” – Val Napoleon

<https://www.uvic.ca/law/assets/docs/ilru/What%20is%20Indigenous%20Law%20Oct%2028%202016.pdf>



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DISCLAIMER

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Agenda

- Why do we use terms like VAW and GBV?
- Intersecting oppressions
- Gendered Analysis [activity]
- Accountability
- How does violence impact people from different groups? [activity]
- Lifetime Spiral of Violence

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Why do we use terms like Violence Against Women & Gender Based Violence

- In 2016 80% of police reported domestic violence victims were women
- <1 in 5 will report violence to police
- 2 of 3 were victimized by current partner & over 10% were pregnant at the time
- Women experience deadly attacks 6 times more often by an ex-spouse than a current spouse

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Why do we use terms like VAW & GBV

Who perpetrates violence?

- 85% of same sex victims IPV homicide victims are male
- Men are perpetrators in 83% of cases where women is a victim & 76% of all crimes

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Those with intersecting oppressions are most at risk

- at least 8% of all murdered women aged 15 years and older were Indigenous
 - This is double their representation in the Canadian population
- Indigenous women are 20% more likely to experience injuries from IPV as non-Indigenous women
- Individuals with a cognitive or mental health disability are 4x higher than those without a disability to experience violent victimization.
 - Individuals with sensory or physical disability twice as high.
- 59% of senior's experiencing abuse are women



Those on the margins are most at risk

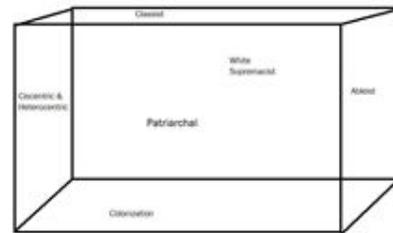
- Women in territories (remote communities) are 8x more likely to experience abuse compared to provinces
- Lesbian, gay and bi-sexual folk are 3x more likely to experience IPV
- 1 in 4 trans individuals experienced IPV
 - Almost 1 in 4 experienced sexual assault
- 2010 report on Mothers without Legal Status found 100% of precariously-statused women reported some form of abuse by their spouse



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A gendered analysis

- Activity: Think of the last movie you watched with a "strong male lead" – tell me about him



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Link to video: https://youtu.be/qT_dI2Rz9_Q?t=2m33s

Men Doing Anti-Violence Work:

- Byron Hurt
- Jackson Katz
- Michael Flood
- Michael Kaufmen
- Michael Kimmel
- Robert Jensen
- Rus Funk
- Sut Jhally
- Tony Porter

"Images of violence tell a story of violence of how to be in the world: Who can do what to whom and get away with it."



Accountability

The thing is, it's patriarchy that says men are stupid and monolithic and unchanging and incapable. It's patriarchy that says men have animalistic instincts and just can't stop themselves from harassing and assaulting.

It's patriarchy that says men can only be attracted by certain qualities, can only have particular kinds of responses, can only experience the world in narrow ways.

Feminism holds that men are capable of more – are more than that.

- <https://zeroatthebone.wordpress.com/2011/11/22/on-claiming-to-be-a-stupid-man-who-doesnt-know-anything/>



How might abuse impact people from different groups?
What are some concerns clients from that group might face in the family law process?

In groups of 4-5 you will be assigned a specific client group that experiences intersecting oppressions:

Group 1 - Low-income/ no-income folx

Group 2 - Indigenous Folx

Group 3 - Racialized folx

Group 4 - Folx with accessibility needs, neurodiversity & mental health consumers

Group 5 - Immigrant, Newcomers and English Language Learner

Group 6 - Trans/Non-Binary/Gender Diverse Folx



Low-Income/no-income Folx

Poverty is a major issue in Canada. Women, gender diverse/ trans folx, and children are more likely to be poor. Policies around poverty, even policies designed to improve the lives of those in poverty, often create harm to low-income folx – arbitrary line-up's, undignified questionnaires or eligibility criteria, and a lack of privacy are some of the ways that policies are structured to marginalize low-income folx.

The legal system is complicit in taking away low-income folx dignity – it was only in the last few years that a person was no longer called “Indigent” (Merriam-Webster define indigent as “suffering from extreme poverty; IMPOVERISHED; DEFICIENT; totally lacking in something specified”).

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Indigenous & Racialized Folx

Indigenous people are the caretakers of the land and have been here for time immemorial. They have continued to thrive in spite of Canada's policies of genocide, but these policies may impact the way that they approach the colonist legal systems.

Racialized folx can come from many backgrounds, but all of them experience the world in a context of white supremacy. The legal systems and many government and state policies perpetuate white supremacy, which may impact the way they approach Canada's legal systems.

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Folx with accessibility needs, neurodiverse & mental health consumers

Our world, which includes our legal system, is designed for people that do not have accessibility needs; many accessible features are 'add-on's' to the system designed for a normative person – this normative person walks, runs, sees far and near, hears clearly all the noises around them, they are neuro-typical and do not have chronic health conditions.

Neurodiverse & mental health consumers are often infantilized/ treated as a problem to fix, instead of as an autonomous person with a unique view of the world, and the right to choose how they manage their life and health.

The legal system and many government and state policies perpetuate ableism, which may impact the way they approach Canada's legal systems.

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Immigrant, Newcomers and English Language Learners

An immigrant is someone who was not born in Canada. A newcomer is a person who does not fully understand Canadian systems. English Language Learners are folx who do not speak English fluently – they may be both immigrants and newcomers, but may also include some Francophone and Indigenous folx from more remote communities. Not all immigrants consider themselves newcomers and not all English Language learners are immigrants or newcomers.

The Canadian legal system is not designed for people who may struggle with a system that is different the one they are more familiar or designed for them in their own language.

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2Spirit, Trans, Non-Binary, and Gender Diverse Folx

Before anything else, when a child is born we ask “is it a boy or a girl?” Our society is structured on a binary of male or female. Intersex folx until recently were assigned a sex at birth (sometimes facing corrective surgery to adhere to this binary). It was believed that if you were born male that would make you a man and if you were born female that it made you a woman.

These gender descriptions do not fit for all people. Some people identify on the binary, but a different one than they were assigned at birth (transgender) or between those binaries (non-binary/ gender diverse). Some folx find those categories too limiting and use other definitions.

In many Indigenous cultures, there people who did not fit the binary and had special places in the culture – modern Indigenous cultures have used the term 2Spirit to identify Indigenous folx that fall outside that binary.

The legal system and state are very much oriented towards cis men and cis women; and those who fall outside that binary (or were even perceived to fall outside the binary) would often be held in solitary or otherwise harmed.

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Domestic Violence & Gender Based Violence

- Gender based violence, domestic violence, family violence are all rooted in a social narrative of who can do what to whom and get away with it.
- Our role in assisting clients who may be facing intimate partner violence is to explore our own understanding of intimate partner violence and how we as a society understand intimate partner violence.
- We must refuse an analysis that individualizes suffering and perpetrating abuse, and recognize instead that, in our society, we all maintain structures that promote the perpetration of abuse, particularly for those who may experience intersecting oppressions.



Safety Planning

- Anyone who has lived in the Spiral of Violence is safety planning
- Ask clients what they are doing to stay safe, and validate it
- Suggest that they keep 211 handy
- Give them the contact information about the local transition house
 - Clients don't have to give up their home to stay
 - They can stay a day or longer, sometimes months
 - Transition houses are free and include food
- Validate that they are keeping themselves safe

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Resources:

- Is Your Client Safe – brochure for lawyers (2 pages): <https://lss.bc.ca/publications/pub/your-client-safe>
- Mothers without Legal Status for Service Providers (40 pages): https://wvcavan.org/sites/default/files/resources/downloads/MWLS_Information_for_Service_Providers_2017.pdf
- Responding to Multi-Abuse Trauma (352 pages – toolkit starts at page 155): http://www.nationalcenterdvtraumamh.org/wp-content/uploads/2012/09/RealTools_RespondingtoMultiAbuseTrauma_BlandaEdmund.pdf



Read, Follow, Share, & Link

- wavaw.ca
- bwss.org
- nwac.ca
- fredacentre.com/news/
- blogs.ubc.ca/cfls/
- qmunity.ca
- disabilityalliancebc.org/program/violence-prevention/

Encouraging Accountability:
 • moosehidecampaign.ca
 • www.whiteribbon.ca



Selected Citations

- <https://www.statcan.gc.ca/pub/85-002-x/2013001/article/11805/11805-3-eng.htm>
- <https://www.statcan.gc.ca/pub/85-002-x/2013001/article/11766/11766-1-eng.htm>
- <http://www.swc-cfc.gc.ca/violence/strategy-strategie/gbv-vfs-en.html>
- <http://www.statcan.gc.ca/pub/85-002-x/2018001/article/54910-eng.htm>
- <https://egale.ca/trans-day-remembrance-november-20-2016/>



QUESTIONS?



Family Violence Screening	
Learning Objective:	Learners will: <ul style="list-style-type: none"> • Understand what constitutes abuse • Understand the importance of screening for violence and techniques for encouraging disclosure. • Consider ethical issues that might arise when helping a client dealing with violence • Recognize the vulnerability of different groups (people on income assistance, immigrants) • Know what issues arise for children witnessing violence and what resources are relevant in these situations.
Activity	<ul style="list-style-type: none"> • Presentation • Small group work
Resource person	Andrea Bryson, Case Manager, RISE Women's Clinic
Materials	Binder materials
Assessment	Test

Screening Clients for Family Violence



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Agenda

Screening Clients for Family Violence

- Existing screening tools
- The function of screening tools
- The best screening tool
- Creating safety for victims to disclose
- How to probe for violence
- Witnessing resistance/resilience
- Mock Screening

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HELP Toolkit & Rise's Approach

The HELP Toolkit:

- **HAVE** an initial discussion about family violence
- **EXPLORE** immediate risks and safety concerns
- **LEARN** more about the family violence to help you determine what to recommend to your client
- **PROMOTE** safety throughout the family law case

The Rise Approach is to trust that the woman is **Resisting** abuse and is seeking help in achieving **Independence** and autonomy. Our role as legal support people is to center her **Self-Determination** & to **Educate** her on the law and her options so she can make the best choices for herself & her children.

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Screening Tools

Reviewed 86 screening tools to help determine best screening tools:

- 49 question categories, 5 most common question themes: physical abuse, fear of partner, threats of harm, sexual abuse, and emotional abuse
 - 80% asked about physical abuse (69 asked a question like "has your partner ever hit you?")
 - 65% asked about fear of partner (56 asked questions like "do you fear your partner may harm you?")
 - 59% asked if there were threats (51 asked questions like "has your partner threatened to hurt you?")
 - 49% of tools asked if there was a history or risk of sexual assault (42 asked a question like "has your partner forced you to have sex?")
 - 45% of tools asked about emotional abuse (39 asked a question like "has your partner ever put you down or called you names?")
- Only one tool asked if the person's immigration status was threatened.
- 60 of the tools required a follow-up screening

<https://www.justice.gc.ca/eng/rp-pr/jr/can-peut/p9.html> (Luke's Place)

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Risk assessment tools usually assess:

- Past violent behaviour
- Past violations of conditional release
- Relationship problems
- Employment problems
- Victim of and/or witness to family violence as a child
- Substance abuse/ dependence
- Suicidal or homicidal ideation
- Recent psychotic and/or manic symptoms
- Personality disorder

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What does using a tool look like?

- MASIC 5.5 pages including 43 yes/no/frequency questions
 - Identified as one of the most comprehensive assessment tools
 - Is to be done by the screener
 - Often provided to clients while waiting for the meeting
- While clients are answering questions they have to navigate:
 - Their feelings – do they want to talk about this?
 - Their safety – how confidential is this form really?
 - Their ability to get service – will you deny them?
 - Their likelihood of being believed. He's likely told her that her perceptions of the abuse are wrong, what if you don't believe her?



The function of screening tools

- Screening tools can often be a series of check boxes that may cover up opportunities to engage in meaningful discussion
- Some professionals treat the tool as the decider instead of their own sense of what is happening



The function of screening tools

- Screening tools are very difficult (if not impossible) to test for efficacy and effectiveness
 - How do we know if they are actually catching IPV victims as they are self-reporting?
 - What does it mean to screen for IPV – how do we measure outcomes? What next?
 - What is the function of a screening tool – what happens if it impacts relationship between client & clinician, what happens if it is a barrier to other services, what if it comes during a routine visit when the victim isn't receptive?

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The best screening tool

- Anyone who has lived in that spiral of violence knows how to keep themselves safe – this is true for women, for trans & gender diverse folks, and lesbian, gay and bisexual folk.
- Anyone who has lived in that spiral of violence has been told they are too sensitive, that they imagine things, or are too _____.
- The role of violence screening is to tap into the first part and to help quiet the second part.



The best screening tool

- Trust in your client to keep themselves alive.

Looking at the statistics:

- 1 in 3 women experience IPV
- About 48% of marriages end in divorce.
- There is likely a lot of overlap.

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Activity

- In pairs you are going to talk about the last big mistake you made and then the partner will report on it to the big group
- What did you do?
- How were other people impacted?
- Were you accountable?

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Creating safety for victims to disclose

- Clients are always managing their safety.
- Tell clients how you will use the information: “I need to ask some direct questions and I need an honest answer. This is why I need to know your answers....I will not be telling anyone about this information unless you want me to”
- Educate: Talk openly about what constitutes family violence.
 - “The FLA defines family violence is physical abuse, but also includes all these other forms of violence...”



Creating safety for victims to disclose

- Be oblivious: Talk about not knowing about their situation.
 - “You and I have only talked for a couple of minutes, so I don’t know anything about you or your ex, but I want to ask more about when you said...”
- Show that you’re trusting: Talk about others that you have listened to, and that have helped you to know more about family violence
 - “I hear from many women is that they don’t identify with the word violence, and I think that it’s because a lot of victims are portrayed as...”

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Creating safety for victims to disclose

- Create space and time: Your time is held in high value and she may feel on the spot to make decisions.
 - We’re discussing some pretty heavy things here. I am busy for the next two days, but will check my email and we can set up another phone call or you can tell me your decision at that time.
- Give Vocabulary: Help them find language or examples to describe this situation
 - “Have you ever heard of the term gaslighting? When I hear you say ____ it reminds me of that term. The term comes from...”



Creating safety for victims to disclose

Ask clients about their coping strategies:

- “I’ve talked to women who often change their behaviours to ensure that he is never angry like that again, does that sound like your situation?”
- “Sometimes when women experience abuse they know when he’s having a bad day/drinking/etc that they should not be home”

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Name power/reduce power

- What places of social privilege do you hold?
 - Can you practice with friends/family what it might look like to socially locate yourself as a point of connection?
- What do you wear and what does it represent – make that explicit.
 - I’m wearing basketball shorts because I only want to wear a suit when I have to
 - I wear a suit because I want you to know that I see you as important and I want to make a good impression

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Give power to Clients

- Explain your role and centre them as the expert of their experience.
 - My role is to provide you with information so that you can make the right decision for you and your children and then to implement your instructions to me.
 - I am here to provide you with tools and resources so that you can take the steps you need to in order to have more control of your life.
 - I'm here to help you navigate the legal system, but you are the one in the drivers seat.
 - I am here as a tool to be used as you need to, you don't owe me anything, there is no reciprocal obligation.

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How to probe for violence

- Has anyone ever talked to you about the definition of Family Violence from the *Family Law Act*. Can I walk you through that definition?
- You said something interesting, could I ask you some more questions about this?
- I can hear that you find this difficult to talk about, but I'm wondering if we could discuss this one piece you mentioned, we can stop and take a break at any time?
- I know we've talked about a lot of sensitive stuff, and I have some follow up questions, could we talk about these things next time we meet?



Witnessing resistance/resilience

- Resistance: An ability not to be affected by something, especially adversely.
- Resilience: The capacity to recover quickly from difficulties; toughness.
- **Everyone who experiences oppression resists it.**
- Sometimes strategies of resistance don't fit a normative archetype.



Witnessing resistance/resilience

- "I'm just trying to keep us safe"
 - You are doing that, being here today is you doing that and I'm going to make sure that you are aware of everything so you can keep making those good decisions.
- "I have made so many mistakes"
 - You say that, but all I see are all these amazing decisions that you've made, like coming to see me, like making a choice to leave the abuse even though it is causing you a lot of stress, etc.



So... what should I ask?

There are 4 reasons I like to use the FLA definition to screen for family violence

1. It tells clients that Family Violence defined "in the law" and will be considered.
2. It tells clients a legal definition of family violence that they can take with them into the world
3. It educates clients on the different ways that family violence occurs
4. It provides the actual evidence needed for the work

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Mock Screening

"family violence" includes

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

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Closing thoughts

- Assume that there is something that fits the FLA definition of violence in every file and always ask questions
- Talk about the definition of family violence with every client
- Make sure women know that the existence of violence won't stop your support, only that you'll try to make sure that there is safety



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Closing thoughts

- Even if family violence is ruled out, continue to listen for anything that could take you down a road of family violence
- Encourage trust and show that you believe women
- Know that women may not recognize that they've been abused
- When women disclose, honor that, witness that resistance and/or resilience



Homework

You have a sheet that spells out the definition of family violence and then has a spot where we've provided an example. There are spots for you to fill in two more examples – take some time to fill in those spots.

Meet up in pairs and do the practice screening with each other

QUESTIONS?

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Developing your own Screening Tool

Screening of family violence is often best done by asking questions rooted in the evidence required under the *Family Law Act*. Having a plain language definition available and comfortable to use will help you to be able to explain the definition in a way that your client can understand and relate to. For each part of the definition of family violence below, come up with two examples to describe that (you may want to try to come up with a term you would use to describe this concept to an English language learner).

This exercise should take you less than an hour, we encourage you to connect with others in the training to discuss if you are feeling stuck.

Family violence includes	FLA Term	Our example	Your first example	Your 2nd example
A)	physical abuse of a family member	Grabbing you by your wrist		
	forced confinement	Not letting you out of your bedroom		
	deprivation of the necessities of life	Locking you out of your home without your coat or phone		
	not including the use of reasonable force to protect oneself or others from harm	If you push him away to get to safety		
B)	sexual abuse of a family member,	Not allowing you to go to sleep until you have intimate relations		
C)	attempts to physically abuse a family member,	If you run away during an escalating incident		
	attempts to sexually abuse a family member,	If you consent to sex to stop him from assaulting you*		

D)	psychological or emotional abuse of a family member	Making you feel like you are the problem		
i)	intimidation	Making you fearful that there will be physical abuse unless you agree		
	harassment	Sending you facebook messages after you've told him to stop		
	coercion	Saying "I will kill myself if you leave"		
	Threats	Saying "If you leave I will hurt you"		
	Threats respecting other people	Saying "if you leave, I will tell your boss that you are stealing from your company"		
	Threats respecting pets	Saying "if you leave, I will not feed the cats"		
	Threats respecting property	He has a history of destroying your clothes and he threatens to do that again.		
ii)	unreasonable restrictions on, or prevention of, a family member's financial autonomy,	He doesn't show up for his parenting time, so you miss work.		
	unreasonable restrictions on, or prevention of, a family member's or personal** autonomy,	He picks a fight with you on the nights before your exams or when you have papers due, so you fail at school.		

iii)	Stalking or following of the family member	If he asks your friends or family if you will be at events		
iv)	Intentional damage to property	He tears up family photos		
E)	in the case of a child, direct exposure to family violence	He tells the children that you are a bad mother		
	in the case of a child, indirect exposure to family violence	Him and his friends badmouth you when the children are nearby		

*This is still sexual assault, but many women don't identify with concepts of what free and enthusiastic consent.

**Personal autonomy can include freedom of choice around:

- education,
- religion,
- culture, and
- health care

Topic:	Resources and Services for Advocates
Learning objective/s:	<p>Learners will be:</p> <ul style="list-style-type: none"> • Familiar with a variety of referral and legal information resources available in BC • Able to appropriately refer clients to resources • Able to access appropriate support for their advocacy work
Activity:	<ul style="list-style-type: none"> • Presentation
Resource person:	<ul style="list-style-type: none"> • Silvia, Senior Legal Information Outreach Worker, Legal Aid BC • Haley Hrymak, FASL lawyer
Materials	<ul style="list-style-type: none"> • Materials
Assessment:	<ul style="list-style-type: none"> • Test

Resources & Services for Family Law Advocates

September 2021

Aboriginal Legal Aid in BC

Legal Aid BC
Support when you need it

Legal Aid BC

<https://legalaid.bc.ca/>

- Legal Aid BC is a non profit society that provides:
 - Legal representation
 - Legal advice
 - Legal information
- Services available in many languages



Qualifying for Legal Aid Representation

https://legalaid.bc.ca/legal_aid/legalRepresentation

- Meet financial guidelines and
- Legal problem is covered by Legal Aid
 - Serious Family Issues
 - Child Protection
 - Criminal Law
 - Immigration Law (Refugee Claims, Deportation Orders, H&C)



Helping with an Application

- You can help your clients:
- Understand the intake process
 - Prepare for the interview
 - Follow up, making sure requested documentation has been provided to Intake
 - Applications are confidential
 - Clients can choose their own lawyer



Working with your Legal Aid Lawyer

<https://legalaid.bc.ca/publications/pub/working-your-legal-aid-lawyer>

Describes client and lawyer responsibilities to help them both know what to expect from a legal aid contract.

Also explains:

- what the lawyer's time on the case includes,
- what the lawyer can't do,
- change of lawyer requests, and
- where to find out about making a complaint.



Legal Advice

https://legalaid.bc.ca/legal_aid/legalAdvice



Duty Counsel

Family Law Line



Parents Legal Centre (PLC)

https://legalaid.bc.ca/community_workers/our-newsletters

Aboriginal Community Legal Workers, Paralegals and Lawyers assisting parents with their child protection cases in a collaborative way.

Lawyers can:

- Represent clients in mediations, Family Case Conferences, and other CFCSA meetings
- Represent client at uncontested hearings

Advocates can:

- Provide information and support
- Connect client with other services (counselling, housing, etc.)
- Go to meetings and appointments with clients

Legal Aid BC 

Appeal eligibility decision or complaint

<https://legalaid.bc.ca/about/complaintsEligibility>

Within 30 day from the date of refusal

Your request must:

- be in writing,
- set out your reasons for disagreeing with the decision, and
- include copies of supporting documentation.



Legal Aid BC 

Mail to:

- Provincial Supervisor, Legal Aid Applications
425 – 510 Burrard Street
Vancouver, BC V6C 3A8

Fax: 604-682-0787

For advocates only:

LABC Provincial Supervisors:

- Deneen: 604 (604) 601-6217,
deneen.Vancouver@legalaid.bc.ca
- Kirk: (604) 601-6210 kirk.vancouver@legalaid.bc.ca



Legal Aid BC 

Legal Information

https://legalaid.bc.ca/legal_aid/legalInformation

- Legal Information Outreach Workers (LIOW)
- Aboriginal Community Legal Worker (ACLW)
- Publications
- Websites
- Local Legal Aid office
- Community Partners



Legal Aid BC 

Legal Information Outreach Worker (LIOW)

https://legalaid.bc.ca/legal_aid/legalInformationOutreachWorkers

- LIOW services :
 - LIOW line 604-601-6166 or Legal Aid line 1-866-577-2525 (select legal information)
 - Family law website chat
 - Assist clients at Downtown Community Court and New Westminster First Nations Court
 - Free legal information session and legal information tables for community groups and events

Legal Aid BC 

Aboriginal Community Legal Worker (ACLW) Duncan and Nanaimo

https://legalaid.bc.ca/legal_aid/aboriginalCommunityLegalWorker

ACLW can give legal information and limited advice about:

- family and child protection law, Indian residential schools, housing, wills and estates
- attend court with you, help you prepare forms and letters, participate in negotiations
- give referrals to other services
- talk on your behalf to: MCFD staff, legal aid lawyer, duty counsel, or your band

Phone: Duncan (250) 748 1160, Nanaimo (250) 741 5529

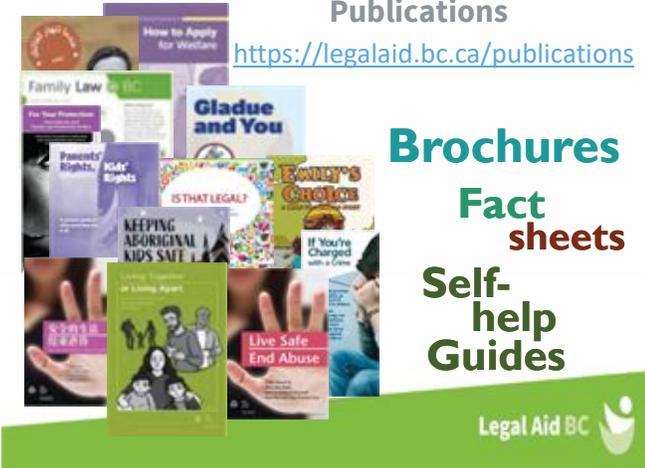
Email: anita.duncan@legalaid.bc.ca

Legal Aid BC 

Publications

<https://legalaid.bc.ca/publications>

Brochures
Fact sheets
Self-help Guides



Legal Aid BC

Free Family law Publications

<https://legalaid.bc.ca/publications/subject/3>



Legal Aid BC

What is a Spouse?



Married

You're a "spouse" if you were legally married to your former partner.

To be legally married, you must have had a legal marriage ceremony (religious or civil).



Unmarried

You're a "spouse" if you lived together in a marriage-like relationship for two or more years with your partner.

Many people call this a "common-law relationship" but that isn't a term used in BC family laws.

Legal Aid BC



Legal Aid BC

Family Law Act and Divorce Act



Legal Aid BC

LABC Self-Help Websites



- legalaid.bc.ca
- family.legalaid.bc.ca
- mylawbc.com
- aboriginal.legalaid.bc.ca

Legal Aid BC

legalaid.bc.ca



Legal Aid BC

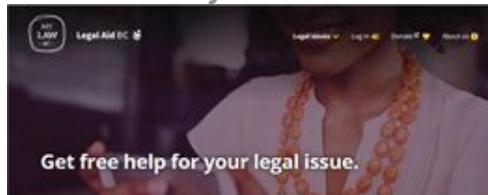
family.legalaid.bc.ca



* LiveHelp chat now available for questions about Family Law!

Legal Aid BC

mylawbc.com



Make an action plan

Separation and divorce

Abuse and family violence

Missed mortgage payments

Wills and planning for your future care

Get free mediation

Child support

Parenting arrangements

Negotiate with your spouse

Separation agreements

Legal Aid BC

aboriginal.legalaid.bc.ca



Legal Aid BC

How to Contact Us?

Legal Aid Call Centre and Family Law Line:
604-408-2172 or 1-866-577-2525

Local Legal Aid Office:
https://legalaid.bc.ca/legal_aid/legalAidLocations_Map

Legal Information Outreach Worker:
Direct: 604-601-6166

Legal Aid BC

Legal resources for family law issues

- JP Boyd on Family Law:
https://wiki.clicklaw.bc.ca/index.php?title=JP_Boyd_on_Family_Law
- Who to call: <https://family.legalaid.bc.ca/call>
- Where to go: <https://family.legalaid.bc.ca/visit>
- Unbundled Legal Services :
<https://unbundlinglaw.peopleslawschool.ca/>
- ACCESS Probono, ½ hr. free legal advice:
<https://accessprobono.ca/get-legal-help>
- BC211 referral services: 211, <https://bc211.ca/>
- Amici Curiae Paralegal Clinic:
<https://www.legalformsbc.ca/#/>

Legal Aid BC

OTHER LEGAL INFORMATION RESOURCES



www.justiceeducation.ca



www.clicklaw.bc.ca



www.povnet.org



www.peopleslawschool.ca



dialalaw.peopleslawschool.ca

Legal Aid BC



Keep up to date

The Factum – Legal Aid newsletter:
https://legalaid.bc.ca/community_workers/our-newsletters

Twitter: @legalaidbc



Facebook: Legal Aid BC



QR code:



Legal Aid BC



Thank you



Legal Aid BC



Domestic Violence and Abuse Resource List - September 2021

(Check also Family Law resources)

Organization	Contact	Website	Service
Rise Women's Legal Centre	#201-456 West Broadway Vancouver 604-451-7447 Clients and Potential Clients: 236-317-9000 intake@womenslegalcentre.ca	https://womenslegalcentre.ca/	Free and low-cost legal services to women in BC, including legal advice, some representation, and preparing court documents.
BWSS -Battered Women's Support Services	604 687 1867 1-855-687-1868 TTY: 604 687 6732	https://www.bwss.org/	Crisis Line, Legal support and Counselling
VictimLinkBC	1-800-563-0808 Text 604-836-6381 TTY :604-875-0885 (Greater Vancouver) 711 (Telus Relay Service for collect calls)	victimlinkbc.ca	This confidential, multilingual, free phone service is available across BC 24 hours a day, seven days a week. It provides information, support, and referrals to services or contacts in your community. Interpretation services are available for all the major languages spoken in BC.
BC Transition Houses	1-800-563-0808 (VictimLink) Text: 604.863.6381 TTY: 604.875.0885	https://bcsth.ca	Transition Houses and Transition House support workers
Seniors First BC	604-688-1927 (Vancouver) Email: info@seniorsfirstbc.ca	http://seniorsfirstbc.ca	Assists seniors in abusive relationships with counselling and legal support.
BC211	Phone or text: 211 (24 hours every day 211)	https://bc211.ca/	BC211 is an information and referral service available in many languages.
VLMFSS – Vancouver and Lower Mainland Support Services Society	604-436-1025 Toll-Free : 1-888-436-1025	https://www.vlmfss.ca	Providing counselling, advocacy, outreach and ongoing support to women and children hurt by family

Domestic Violence and Abuse Resource List - September 2021

(Check also Family Law resources)

	5000 Kingsway Plaza Phase III Suite 306 -4980 Kingsway Burnaby Office Hours: 9:00 a.m. to 5:00 p.m. Monday through Friday		violence, regardless of their immigration status. Offers services in over 24 languages. Supports clients emotionally and helps to access the systems.
Native Courtworker and Counselling Association of BC	604-985-5355, Toll Free: 1-877-811-1190	nccabc.ca	If you're Aboriginal, this association may be able to help you get legal information.
QMUNITY	(604) 684-5307 ext. 100	https://qmunity.ca	Support groups, counselling, and, resources
Legal Aid BC publication	604 408 2172 Toll Fee: 1-866-577-2525	https://legalaid.bc.ca/publications/subject/4	Free legal education booklets in different legal topics. Booklets are available in different languages.
MyLawBC		mylawbc.com	The website has a pathway on family law and other legal issues incl. abuse and family violence. This pathway helps you recognize signs of abuse and the effect it could have on your separation. It helps you create a safety plan and find the support you need to keep you and your family safe.
Dial A Law - Peoples Law School	604-331-5400 Email: info@peopleslawschool.ca	https://dialalaw.peopleslawschool.ca/family-violence/ https://www.peopleslawschool.ca/publications/family-violence-and-abuse	Information on family violence, where to go for help

Family Law Resources September 2021

Organization	Contact	Website	Service
LABC Family Duty Counsel		https://legalaid.bc.ca/legal_aid/familyDutyCounsel	Summary legal advice, on a first come first served base
LABC Family Advice Lawyers	Justice Access Centres and Family Justice Centres	https://legalaid.bc.ca/legal_aid/familyAdviceLawyers	Up to three hrs. of free legal advice from a family advice lawyer. Must qualify for the service
Family justice counsellors and Family Justice Centres	604-660-2421 (Greater Vancouver) 250-387-6121 (Victoria) 1-800-663-7867(elsewhere in BC) TDD (if you're hard of hearing) 604-775-0303 (Greater Vancouver) 1-800-661-8773(elsewhere in BC)	https://www.clicklaw.bc.ca/helpmap/service/1019 www2.gov.bc.ca (in the search bar, type family justice counsellors) https://www2.gov.bc.ca/gov/content/life-events/divorce/family-justice/who-can-help/family-justice-counsellors	Family justice counsellors can give you information about the law and the court process, and help you reach an agreement. They can also refer you to counselling, emergency, or other services. They work at Family Justice Centres across BC and at the Nanaimo, Vancouver, and Victoria Justice Access Centres.
Justice Access Centres	Greater Vancouver 604-660-2084 or Nanaimo 250-741-5447 or 1-800-578-8511 Victoria 250-356-7012 Service BC 1-800-663-7867 (ask to be put through to the Justice Access Center in Victoria or Vancouver)	https://www2.gov.bc.ca/gov/content/justice/about-bcs-justice-system/jac www2.gov.bc.ca (In the search bar, type family justice services)	At Justice Access Centres (JACs), you can: learn about the court system and court procedures, get legal information, find and fill out the right court forms, find out about free legal advice, and find alternatives to going to court.
Family LawLINE	604-408-2172 (Greater Vancouver) 1-866-577-2525 (elsewhere in BC) Legal Aid Vancouver	https://legalaid.bc.ca/legal_aid/FamilyLawLINE	Free legal advice over the phone from a family law lawyer. Family LawLINE lawyers give brief “next-step” advice about parenting arrangements, access, contact with a child, guardianship, child support, spousal support, property division, family agreements, adoption, and court procedures must qualify for the service.

Family Law Resources September 2021

Access Pro Bono Society of British Columbia	604-878-7400 (Greater Vancouver) 1-877-762-6664 (elsewhere in BC)	https://www.accessprobono.ca/	Volunteer lawyers provide brief legal advice at legal clinics throughout BC.
The Law Centre, Victoria	250-385-1221 (Victoria)	thelawcentre.ca	If you live in the Capital Regional District, you can get free legal advice from University of Victoria law students at The Law Centre in Victoria.
Unbundled Family Law Services		https://www.clicklaw.bc.ca/helpmap/service/1197	The BC Family Law Unbundling Roster is a list of family lawyers & paralegals who will perform select legal tasks for clients who do not want or cannot afford full-representation. Unbundled legal services means clients pay for some assistance depending on what help they want & what they can afford.
Amici Curiae Friends of Court	To book an appointment call or text: 778 522 2839 Email: legalformsbc@gmail.com	https://www.legalformsbc.ca/#/	Help with filling out court forms
Mediate BC	604-684-1300 Call toll-free: 1-877-656-1300	https://www.mediatebc.com/find-a-mediator	A mediator is a neutral third person who can help you and your spouse reach an agreement about parenting, support, and property division.
Family Maintenance Enforcement Program (FMEP)	Vancouver & Lower Mainland: 604-678-5670, Toll-free: 1-800-663-9666 Victoria: 250-220-4040 Toll-free: 1-800-663-3455 Northern & Interior: 250-434-6020, Toll-free: 1-800-663-3933	https://www.fmep.gov.bc.ca/about-the-program/	Helps with enforcing family maintenance orders
PovNet		http://www.povnet.org/find-an-advocate/bc	Find Community workers or Advocates

Family Law Resources September 2021

			A community worker can help you find solutions to your legal issues. To find a community worker in your area, see the above websites. Or contact your local library to find a community group that can help you.
Clicklaw		clicklaw.bc.ca	The Clicklaw website has links to legal information, education, and help for British Columbians. Here, you can find out about your rights and options to solve legal problems, find phone numbers for law-related help, and learn about family law and the legal system
JP Boyd on Family Law Wikibook		https://wiki.clicklaw.bc.ca/index.php/J_P_Boyd_on_Family_Law	Plain language family law information, court forms and documents. YouTube channel on family law
LABC Family Law in BC		https://family.legalaids.bc.ca/	This website has legal and self-help information, including: plain language basic information, frequently asked questions, step-by-step guides, definitions of legal terms, links to court forms, short online videos, and links to who can help you.
MyLawBC		mylawbc.com The website also has a pathway on abuse and family violence. This pathway helps you recognize signs of abuse and the effect it could have on your separation. It helps you create a safety plan and find the support you need to keep you and your family safe.	This website has three pathways for people going through a separation or divorce: ▪ Make a separation plan helps you figure out the best way for you and your spouse to work through and make a plan for your separation or divorce. It links to a Dialogue Tool for separating couples to work together to create a fair and lasting separation agreement.

Family Law Resources September 2021

			<ul style="list-style-type: none"> ▪ Get a family order helps you figure out which court to use and helps you with court orders. ▪ I've been served with a court document helps you figure out what to do next if you're served (given) court documents. ▪ Family Resolutions Center: free online mediation for parenting and child support and Dialogue tool to write a separations agreement
People's Law School	604-331-5400 info@peopleslawschool.ca	https://www.peopleslawschool.ca/search/?s=Family+law	free legal information webinars and publishes booklets about child support guidelines, family law, and more.
Justice Education Society		justiceeducation.ca	This website has information for couples separating, including the online course How to Separate, which helps people through separation or divorce. It includes information on how to settle out of court and how to prepare for court. The society also has an interactive guide for kids and teens about separation and divorce at familieschange.ca .
Parent Support Services Society of BC	1-877-345-9777 1-855-474-9777 (support line for grandparents raising grandchildren)	https://www.parentsupportbc.ca	This organization provides information, support, and resources to parents, grandparents, and caregivers. They can also help with your application for the Extended Family Program.
Society for Children and Youth of BC	778-657-5544 Toll free: 1-877-462-0037 303-1720 Grant Street, Vancouver Email: cylc@scyofbc.org	https://www.scyofbc.org/child-youth-legal-centre	Advocates' on behalf of vulnerable children and youth

Family Law Resources September 2021

<p>LABC Parent Legal Centres</p>	<p>1-866-577-2525</p>	<p>https://legalaid.bc.ca/legal_aid/parents-legal-centres</p>	<p>Information and advice for resolving child protection issues out of court, legal advice, representation, where appropriate, through collaborative processes such as mediation, family case planning conferences, legal advice and representation at uncontested hearings, advocate support, go to meetings and appointments, and referrals to other services, including online resources and other public agencies.</p>

	Protection Orders, Peace Bonds, and Conduct Orders
Timing	3 HOURS
Learning Objective:	<p>Learners will:</p> <ul style="list-style-type: none"> • Understand some of the systemic issues that survivors of family violence face when they seek protective orders • Know the role of protection orders, peace bonds, and conduct orders -- and how to apply for them. • Be familiar with options of applying for exclusive occupancy • Understand your role as a family advocate in applying for protection orders and communicating with the police on your client's behalf
Activity	<ul style="list-style-type: none"> • Presentation
Resource person	Haley Hrymak, Family Advocate Support Line lawyer
Materials	<p>Course materials LABC pamphlet For Your Protection https://family.legalaid.bc.ca/publications/your-protection?topic=27</p>
Assessment	Test

a

Key Research Findings

- Myths, Stereotypes, and the Patriarchal System put women and children in danger
- Lack of Understanding of Violence and Family Violence
- Inaccessible system- costs, barriers to representation, litigation abuse

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Myths and Stereotypes of Family Violence

Canadian expert, Dr. Peter Jaffe, has identified four stages that women experience when reporting a history of domestic abuse in family court:

First, **not being believed;**
then being believed, but having **the violence minimized;**
then being told that **the violence is an adult issue and not relevant for the children;**
and, finally, recognition of the impact of the violence but being told to **get over it and become a co-parent and put the past behind them.**

Peter Jaffe, "Assessment of Parenting Arrangements after Separation in the Context of Domestic Violence: Emerging Issues in Promoting Safety, Accountability & Healing" (Workshop delivered at the College of Psychologists of British Columbia, 21 November 2013)

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Non-Physical Violence are often ignored

- Psychological and emotional abuse
- Stalking
- Threats
- Financial abuse
- Litigation abuse

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Seeking Help

- Not Being Believed
 - "My lawyer told me I presented horribly in court and to let it go because 'nobody is going to believe you — it sounds like you're exaggerating.'"
 - "Once you've been victimized or been the victim, it falls on you to prove it, but you don't just prove it once. It's like continuing... over and over and over again. It's never just a one-time deal; say your story and walk away...."
- As a result of not being believed, and having their experiences minimized or ignored, women ask for what they think they might get, instead of what they need

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Protection Orders

- Now... taking that information and applying it to assisting your client with Protection Order applications

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Key Terms from the *Family Law Act*

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



Key Terms from the *Family Law Act*

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



More on "family member" and Protection Orders

- Spouse or former spouse (married or lived together in a marriage like relationship for at least 2 years)
- Current or former cohabiting partner (even if they do not meet the definition of 'spouse')
- The other parent or guardian of your children
- Anyone who lives with and is related to you or your former spouse, live in partner, or the other parent of your children.
- example: if children's paternal grandmother lives with the children's father, then the grandmother is a family member
- But if you live with a roommate that is not related to you, they are not a family member
- children

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What options are there for a person experiencing family violence?

- Family violence is relevant in the determination of the best interests of the child when making parenting arrangements.
 - Even if violence is directed at a spouse, the *Family Law Act* recognizes that it can still be harmful to a child.
- Clients experiencing family violence can apply for a Family Law Protection Order
 - An order made by a judge in either Provincial Court or Supreme Court;
 - Lists conditions that the person against whom the protection order is made must follow
- Peace Bond
- Criminal Charges
- Can also apply for conduct orders



Legislative Intent of Protection Orders

FLA consolidated restraining orders, and various types of orders to prohibit harassment and contact into protection orders.

- *Meant to be accessible, clear, and effective.*
- *The Ministry of Justice anticipated that the use of s.127 of the Criminal Code to enforce breaches of protection orders would result in timely and effective enforcement*
- *By making the breaches enforceable under the Criminal Code, the FLA sought to respond to the recommendations from reports including: Keeping Women Safe, and Honouring Christian Lee (2009 report) which emphasized a consistent enforcement approach for protection orders which required taking it outside of civil law*

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Issues with Protection Orders

1. More likely to receive protection from the legal system is assaulted, threatened, harmed, etc. from a stranger than a family member
2. Courts- granting very short-term protection (sometimes only a few weeks)
3. Service- proper service is required to be enforceable
4. Lack of knowledge of protection orders in criminal court system
5. Lack of consistency on enforcement of protection orders
6. Instances of police referring victims to get protection orders even when Peace Bonds more suitable (sometimes even when criminal charges are more suitable)
7. Lack of enforcement (regardless of conditions) of orders/breaches ... often not taken seriously

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Protection Orders

- A protection order is similar to criminal "bail conditions" or "probation conditions" in that a breach of a protection order is criminally enforceable and can result in arrest of the breaching party.
- A "family member" can apply for a protection order.
 - Can be a stand-alone remedy or part of a family law proceeding in either Provincial Court or Supreme Court.
- A PO application can be made by "a person on behalf of an at-risk family member" – s.183(1)(a) meaning support workers/advocates

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Applying for Protection Orders

- Who can apply for protection orders (s. 183(1)):
 - Any family member on their own behalf; or
 - Another person on behalf of an "at risk" family member.
- Legal Test - the applying party must prove that:
 - Family violence is likely to occur; and
 - They are an "at-risk" family member.
- An "at-risk" "family member" is: "a person whose safety and security is or is likely at risk from family violence carried out by a family member".
- S. 184 of the FLA sets out a list of "risk factors" the court must consider in determining whether to make a protection order.

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Is your client an "at-risk" family member

Whether to make protection order

- 184 (1) In determining whether to make an order under this Part, the court must consider at least the following risk factors:
- any **history** of family violence by the family member against whom the order is to be made;
 - whether any family violence is **repetitive or escalating**;
 - whether any psychological or emotional abuse constitutes, or is evidence of, a **pattern of coercive and controlling behaviour** directed at the at-risk family member;
 - the **current status of the relationship** between the family member against whom the order is to be made and the at-risk family member, including any recent separation or intention to separate;
 - any circumstance of the family member against whom the order is to be made that may increase the risk of family violence by that family member, **including substance abuse, employment or financial problems, mental health problems associated with a risk of violence, access to weapons, or a history of violence**;
 - the at-risk family member's **perception of risks** to his or her own safety and security;
 - any circumstance that may increase the at-risk family member's vulnerability**, including pregnancy, age, family circumstances, health or economic dependence.

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What remedies can a Protection Order include? - No contact and no attendance

Section 183(3):

- (3) An order under subsection (2) may include one or more of the following:
- a provision restraining the family member from
 - directly or indirectly communicating with or contacting the at-risk family member or a specified person,
 - attending at, nearing or entering a place regularly attended by the at-risk family member, including the residence, property, business, school or place of employment of the at-risk family member, even if the family member owns the place, or has a right to possess the place,
 - following the at-risk family member,
 - possessing a weapon, a firearm or a specified object, or
 - possessing a licence, registration certificate, authorization or other document relating to a weapon or firearm;
 - limits on the family member in communicating with or contacting the at-risk family member, including specifying the manner or means of communication or contact;

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What remedies can a Protection Order include? - Directions to police and other terms

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

- directions to a police officer to
 - remove the family member from the residence immediately or within a specified period of time,
 - accompany the family member, the at-risk family member or a specified person to the residence as soon as practicable, or within a specified period of time, to supervise the removal of personal belongings, or
 - seize from the family member anything referred to in paragraph (a) (iv) or (v);
- a provision requiring the family member to report to the court, or to a person named by the court, at the time and in the manner specified by the court;
- any terms or conditions the court considers necessary to**
 - protect the safety and security of the at-risk family member, or**
 - implement the order.**

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What evidence is needed to get a Protection Order?

- Primarily the at-risk family member's affidavit.
- To some degree, in courts there is still the **stereotype** that women in a "he-said/she-said" situation are not credible, and that corroborating evidence is necessary to prove family violence.
- Supporting evidence, if applicant has it, can include the following:
 - Bail conditions/criminal recognizance against former spouse
 - Letter from MCFD regarding safety concerns about former spouse
 - Letters from counsellors/support workers
 - Written threats etc from former spouse (eg. texts, Facebook)

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Protection Orders can be made even if ...

S. 184(4) allows the court to make an order for protection regardless of the following circumstances:

- A protection order has been previously made
- The family member is temporarily absent from residence
- At risk-family member is temporarily residing in shelter or safe place
- Criminal charges have been or may be laid
- At-risk family member has a history of returning to residence and live with abuser
- Conduct order restricting communication has been made

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How to Apply for a Protection Order in Provincial Court

- Prepare Documents:
 - Under new Provincial Court Family Rules, Form 12 Application for a Protection Order is required. This form includes a Schedule that the client must fill out as their affidavit in support of the orders sought.
 - If order is sought without notice, must indicate this on the Form 12 and provide evidence of why it is sought without notice.
 - If someone has evidence in support of a protection order, they can swear an affidavit in Form 45
- Appear in court
- Serve Protection Order on opposing party

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(Old Way)

- Prepare Documents:
 - Application to Obtain an Order (an originating document that sets out all of the orders an individual might ever seek in the course of the legal proceeding)
 - Notice of Motion (sets out a particular order that you are seeking on a particular hearing date)
 - Affidavit(s) (sets out supporting evidence)
- Appear in court
- Serve Protection Order on opposing party

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How to apply for Protection Orders (cont'd)

- Protection orders can be sought “without notice” to the other party.
 - Onus is on the applying party to provide the court with ALL material facts, including those that may be deleterious to client’s case. Otherwise there is a risk the order will be set aside if these facts come out later on.
- If client requires a protection order, it is likely that order will be sought without notice, unless there are other protective conditions in place (e.g. criminal bail conditions or a peace bond).
- Where other protective conditions are in place, can seek protection orders on short leave, that is, the other party will be provided a shortened period of notice.

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How long does a protection order last?

- If there is no end date set out in the order, a Protection Order will expire after one year.
- The court often grants without notice protection orders for a short period of time (week to few weeks), rather than the one year default.
 - This problem seems to be getting worse and in some cases seems to be unwritten policy in some courthouses.
- They often do this because they want the ex-spouse to be served as soon as possible, because they are reluctant to impose criminal conditions on a party when they are not present.
- To your client’s detriment, this puts the burden on the client and requires the client to prove, again, that they are an at-risk family member, and that family violence is likely to occur, rather than the ex-spouse having to prove that they are not violent and is not likely to harm your client.
- No solutions on this yet...just be aware and warn your client of this possibility.

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What to do if a party breaches a Protection Order

- The only way protection orders can be enforced is by calling the police
- Protection Orders are entered into a database accessible by police
- Nevertheless, client should carry a copy of the protection order with them at all times
- Keep Rise informed if PO breaches are not properly dealt with. May be nothing we can do, but we are considering a future report on PO’s in BC.

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Affidavit should include...

- History of relationship, dates of marriage/cohabitation, date of birth and ages of children (if any)
- History of violence in chronological order
- Use client’s words to describe their sense of safety, fear, and concern:
 - “I was frightened...”
 - “I did not feel safe...”
- What is the client concerned/worried/fearful of?
- Don’t use words such as “fighting” or “arguing”

Exhibits to include

- Affidavits of witnesses (i.e. friends/family members)
- Text messages / emails of threatening language
- Audio / Video Recordings are not usually used but see *S.B. v. D.D.*, 2015 BCSC 2589 (next slide)

Step 1: Complete Form 12

- Application About a Protection Order (Form 12)
- Think of it as 2 parts
- 1) the Application
- 2) the Affidavit

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Forms/Rules to Consult on Protection Orders

- Provincial Court Family Rules: Rule 67
- Form 12 (Karon's Word Version and the Court's 20 page pdf version)
 - Save this word version that Karon has made. Allows you to add in more information (instead of the PDF).
- FLA – Part 9- Sections 183-191 (but mostly 183-186)

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A few other things to consider on the form

- Question 21- safety concerns to the police “yes or no” - If “no” it may be relevant to add in if the client has reported safety concerns about the other party to the police in the past. For example, “No” because in the past when I called the police about the other party's threats/violence/X against me, they told me X.... and because of that I have never reported my safety concerns again to them.
- If not Ex-parte (so notice is given)- contacting the Sheriffs in advance of the court hearing
- Remember to explain to client that although without notice ... other party will receive this form and have a chance to respond.

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Filing

- You will want to call the registry to know about when the hearing will be/can be and what date to put on the form
- In person
- Fax
- If for Vancouver Provincial Court can email to and make sure you follow up: csbrcs@gov.bc.ca

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What is a Peace Bond?

Peace bonds are an “ancient power” enabling courts to carry out a judicial role as conservators of the peace”... This ancient power harkens back to a time when the justice system invested as many or more resources in keeping and making peace than in doling out punishment. The contemporary version of this ancient power exists both in **statute and common law**. In both cases, the issuance of a peace bond **does not involve the laying of a criminal charge, nor does it generate a criminal record**. A peace bond is focused on prevention not punishment. Accordingly, a peace bond bears more similarity to civil proceedings than to criminal proceedings. (*Haydock v Baker*, 2001 YKTC 502).

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Breaking it down...

- Preventive
- Does not need to be made against a family member
- Does not result in criminal conviction or criminal record
- Authorized by both statute and common law
- Different legal test than criminal conviction (more similar to civil test)
BUT
- Criminal consequences for breaching
AND
- Enforceable throughout Canada



Common law peace bond

- Jurisdiction to impose a peace bond at common law predates the enactment of Canada's Criminal Code
- At its core, the common law peace bond was a legal obligation to pledge monies or otherwise provide security in order to secure a subjects good behaviour
- Grounds for a common law peace bond are not defined exhaustively, but are likely broader than those for statutory peace bonds and require a general fear of breach of peace
- Does not require sworn Criminal Code information but should still be accompanied by information or other evidence under oath
- No maximum period for common law peace bond
- Prosecution of breach pursuant to s. 127 of the CCC



Use of common law peace bond

- Routinely used to resolve criminal charges without trial and particularly in cases involving domestic violence
- Central goal is to prevent a breach of the peace and its conditions should be preventive, not punitive, in nature (no-contact and perimeter restrictions, weapons bans, rehabilitative clauses, alcohol and substance prohibitions) and should have "minimal interference" with defendant's life
- Will always include a sum of money
- Can be made against anyone
- Can protect you, your children, your current partner, your property



Procedure on Common Law Peace Bond

- Does not require a sworn criminal information or guilty plea
- Prosecutor will inform court of grounds for believing that defendant will breach the peace (information may be provided by way of sworn evidence or affidavit, by reference to sworn information or by allegations of fact as with sentencing)
- Defendant will admit the grounds OR simply elect not to show cause why the peace bond should not be granted
- Terms will be ordered by court
- Enforced pursuant to section 127(1) CCC (disobeying a lawful order made by a court)



Section 810 Peace Bonds

- A peace bond is **a court order used to keep you from committing (or recommitting) a crime.**
- Section 810 of the criminal code: **810 (1)** An information may be laid before a justice by or on behalf of any person who fears on reasonable grounds that another person
 - (a) will cause personal injury to them or to their intimate partner or child or will damage their property; or
 - (b) will commit an offence under section 162.1.

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Publication etc of an intimate image without consent

A peace bond may be issued if the person fears another person will commit an offence under 162.1(1)

162.1 (1) Everyone who knowingly publishes, distributes, transmits, sells, makes available or advertises an intimate image of a person knowing that the person depicted in the image did not give their consent to that conduct, or being reckless as to whether or not that person gave their consent to that conduct, is guilty

- (a) of an indictable offence and liable to imprisonment for a term of not more than five years; or
- (b) of an offence punishable on summary conviction.

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Breaking it down...

- Requires the laying of an information (a sworn document that is completed with a justice of the peace)
- Can be laid by **any** person or on behalf of any person
- Fear must be of “personal injury” (case law confirms this can include psychological as well as physical injury)
- Fear must be on reasonable grounds (civil burden of proof on balance of probabilities)
- Can be made to protect the person, their children, their current spouse, their property
- Time limit of one year
- Prosecuted pursuant to section 811 CCC



Evidentiary burden

- (1) Subjective test – the person must personally fear that the defendant will cause personal injury or property damage
 - (2) Objective test – the fears must be based on reasonable grounds
 - assessed on balance of probabilities
 - draws on civil and criminal notions of “test of a reasonable person” which call for the perception of a reasonable person in a similar situation, with similar experience
 - common sense and experience are as important as the law in assessing the reasonableness of a fear of harm
- * record details about threats, keep records, emails, texts, social media posts



Problems with s. 810 peace bond

- May be difficult to do without counsel since the Crown does not take over until information is sworn
- If the respondent wishes to contest the order or can't be found, delays are inevitable
- Peace bonds cannot be obtained *ex parte* (without notice) and so process can be intimidating
- Generally no legal aid coverage as no possibility of jail
- If applying on own and a summons needs to be served on the respondent there may be a cost



Police and Peace Bonds

- If there are no criminal charges that the police can lay they may still be able to assist with a peace bond.
 - There is often misunderstanding about when people can get peace bonds, so please note:
 - *** Peace Bonds should be available to people who have fears that another person will cause psychological injury/harm. The phrasing of the criminal code is “personal injury” not physical harm. There doesn't need to be **physical** violence - past, present or future.***
- Peace Bonds are meant to *prevent* harm.



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Peace Bond Advantages

- Victim can apply to RCMP
 - At which time, potentially there are other charges that the RCMP can consider
- No lawyer necessary
- No cost
- No need to use legal aid hours (which may be maxed out by a protection order application)
- Can be enforced throughout Canada
- Disadvantage- potential delay in the Peace Bond coming into effect during which time there may be no protection
- Advantage of PO- can be done *ex parte* (without notice)

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Peace Bond- Breaking it Down

- Preventive
- Does not need to be made against a family member
- Does not result in criminal conviction or criminal record
- Authorized by both statute and common law
- Different legal test than criminal conviction (more similar to civil test)
BUT
- Criminal consequences for breaching
AND
- Enforceable throughout Canada



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Conduct Orders

- A "conduct order" is similar to the old "restraining order" under the previous *Family Relations Act*.
- A conduct order is a civil order which is made to (s. 222):
 - A) facilitate the settlement of a family law dispute
 - B) manage behaviors which may frustrate the resolution of a family law dispute
 - C) prevent misuse of the court process
 - D) facilitate arrangements pending final determinations of a family law dispute
- Conduct Orders are enforced similarly to regular civil court orders by going back to court and asking for fines or even imprisonment.

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Types of Conduct Orders

- S. 223: Orders respecting case management
 - Adjournments, dismiss/strike claims or applications, seize judges/masters, prohibit a party from bringing multiple applications
- S. 224: Orders respecting dispute resolution, counselling & programs
- S. 225: Orders respecting communications** (restrict communications)
- S. 226: Orders respecting residence
 - Ex-spouse must pay rent/mortgage/bills, prohibit termination of utilities, require someone to supervise removal of belongings from home
- S. 227: Other orders respecting conduct
 - Party must give security to court, report to court, or **do/not do anything**
- S. 228: Enforcing orders respecting conduct
 - Enforcement by fine, can specify amount
 - *Good to put the enforcement fine amount in initial conduct order

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Conduct Orders vs Protection Orders

- Protection Orders are enforceable via the criminal justice system. Conduct Orders are enforceable via the civil court system.
 - Protection Orders have stronger (ie. criminal) sanctions in the case of breach ie. Arrest and a criminal record
- Protection Orders expire. Conduct Orders normally do not expire.
 - A client **does not have to worry about a conduct order expiring** and having to re-apply for it
- Enforcing Conduct Orders => a breach of a no-contact conduct order can be used in court to convert it into a Protection Order:**
 - If a party fails to comply with an order made under section 225 (orders restricting communications), the court must consider whether it would be appropriate to make an order under Part 9 (Protection from Family Violence)

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McKenzie Friends/ Support Person

- Self-represented litigants may bring a support person, or McKenzie friend, into the courtroom when appearing before a judge or master.
 - As of April 2017 this was formalized in BC Provincial Court in a Notice to the Profession and Public: Use of a support person in civil & family proceedings.
 - The Guidelines for Using a Support Person in Provincial Court are linked in full Form 12 (20 page pdf)
- The support person may provide the following help in court:
 - Taking notes;
 - Organizing documents;
 - Making quiet suggestions to the litigant;
 - Providing emotional support; and
 - Any other task approved of by the judge.



Support Person cont...

- A Support Person cannot give legal advice or make submissions to the court.
- A McKenzie friend should not be someone who may be a witness later.
- A McKenzie friend should generally not be one of the children of the parties or someone else who is involved in the litigation.
- The BC Provincial Court has guidelines: <http://www.provincialcourt.bc.ca/downloads/Family/BCPC%20Support%20Persons%20GL%20flyer.pdf>



The flyer is titled "Provincial Court of British Columbia Support Person Guidelines". It is divided into several sections:

- Support Person:** Defines a support person as someone who is not a party to the case and is not a witness. They can help with taking notes, organizing documents, and making suggestions. They cannot give legal advice or make submissions.
- Who can be a support person?** Lists criteria: must be 18+, not a party or witness, not a child of a party, and not someone involved in the case.
- What can a support person do?** Lists tasks: taking notes, organizing documents, making suggestions, and providing emotional support.
- What a support person cannot do:** Give legal advice, make submissions, be a witness, or be a child of a party.
- How to use a support person:** The litigant must bring the support person to court, and the judge will ask if the support person is suitable.
- Additional notes:** A support person can be a McKenzie friend, but not vice versa. A support person can be a witness later.



How to be an effective McKenzie Friend

- Help your client to be more familiar with the court. Let them know what to expect on that day and to know more about the court processes.
- Give space for them to tell their story
 - If Support Workers give evidence that makes us a witness and unable to be a McKenzie Friend – even if the client doesn't call us, the OP may call on us to be a witness.
- Help support people understand their roles and how to support your client.
 - Let people know that they should not scowl or jeer in the gallery
 - If you see your client's witness in the gallery ask them to wait in the hall, if you see a witness for the OP alert the clerk
 - If a client remains 'sworn in' for evidence, helping them to know not to talk to others about their evidence and talk to supporters about the importance of giving her space and keeping the conversation away from court discussions



How to request a McKenzie friend or support person

- Your Honour, my name is _____, and I am the applicant in this matter. I am requesting that [name] be allowed to sit beside me as a support person.
- I understand that my support person is not allowed to address the court or give me legal advice.
- [name] will help me to organize my documents so I don't get flustered, take notes, and will help me to feel calmer and more focused.



Advocacy with the Police

- Is this someone who feels safe going to the police to report the criminal behavior and/or request a peace bond?
 - Note that for family law Protection Orders they don't necessarily have to go to the police at first, but the order will only have a chance of being enforceable if the person phones the police if the order is breached.
- Did they already go to the police? What was their response from the police if they tried that path? Would the client like your advocacy in communicating with the police?
- When criminal charges are present, criminal charges should be laid (Family violence is not a private family law matter). Listen for criminal charges when your client is speaking with you- uttering threats? Sexual assault? Assault? Criminal harassment/ Stalking?

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Potential Criminal Charges- Criminal Harassment (stalking)

- 264 (1)** No person shall, without lawful authority and knowing that another person is harassed or recklessly as to whether the other person is harassed, engage in conduct referred to in subsection (2) that causes that other person reasonably, in all the circumstances, to fear for their safety or the safety of anyone known to them.
- (2)** The conduct mentioned in subsection (1) consists of
- (a) repeatedly following from place to place** the other person or anyone known to them;
 - (b) repeatedly communicating with**, either directly or indirectly, the other person or anyone known to them;
 - (c) besetting or watching** the dwelling-house, or place where the other person, or anyone known to them, resides, works, carries on business or happens to be; or
 - (d) engaging in threatening conduct** directed at the other person or any member of their family.

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Potential Criminal Charges - intimidation

Intimidation

- 423 (1)** Every one is guilty of an indictable offence and liable to imprisonment for a term of not more than five years or is guilty of an offence punishable on summary conviction who, wrongfully and without lawful authority, for the purpose of compelling another person to abstain from doing anything that he or she has a lawful right to do, or to do anything that he or she has a lawful right to abstain from doing,
- (a) uses violence or threats of violence** to that person or their intimate partner or children, or injures the person's property;
 - (b) intimidates or attempts to intimidate that person or a relative** of that person by threats that, in Canada or elsewhere, violence or other injury will be done to or punishment inflicted on him or her or a relative of his or hers, or that the property of any of them will be damaged;
 - (c) persistently follows** that person;
 - (d) hides** any tools, clothes or other property owned or used by that person, or deprives him or her of them or hinders him or her in the use of them;
 - (e) with one or more other persons, follows** that person, in a disorderly manner, on a highway;
 - (f) besets or watches the place where that person resides**, works, carries on business or happens to be; or
 - (g) blocks or obstructs** a highway.

Exception

- (2)** A person who attends at or near or approaches a dwelling-house or place, for the purpose only of obtaining or communicating information, does not watch or beset within the meaning of this section.

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Exclusive Occupancy

- 90 (1)** For the purposes of this section, "family residence" means a residence that is
- a) owned or leased by one spouse or both, and
 - b) the ordinary place of residence of the spouses.
- (2)** The Supreme Court may make an order granting a spouse, for a specified period of time,
- a) exclusive occupation of a family residence, or
 - b) possession or use of specified personal property stored at the family residence, including to the exclusion of the other spouse.

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Exclusive Occupancy (Cont'd)

- Applications for exclusive occupancy can be brought without notice (often at the same time as protection orders).
- But orders for exclusive occupancy can only be brought in the Supreme Court (court filing fees apply)
- Legal test:
 - a) is continued cohabitation a practical impossibility; and
 - b) if so, on the balance of convenience which party should occupy?

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Advocates and Support Workers

- You are so valued! Our main recommendation from Rise to lawyers is that “whenever possible, assist women in connecting with an advocate or support worker”
- Our research has highlighted the immense benefits of the work of frontline advocates. They save lives.
- We recognize that advocates are often the people who bring some continuity to a family law matter and stay after legal aid hours are run out
- We also recognize that advocates are often experts in working with survivors to create safety, and this is the exact expertise the legal system lacks

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Community Referrals



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Why Referrals?

- Many survivors are coming to the legal system in part because they want to increase their safety and the safety of their children.
- However, they are about to go through a process that may do the opposite. They need to know that, because it is not common knowledge, and they need to have supports.
- We know that almost 50% of women in our research were told to not bring up family violence in court; 61.54% of women had safety concerns before and after court proceedings; 42% had safety concerns in the courthouse/courtroom

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Why Community Resources?

“Who is this person before me and what do they need that would assist them in having some of their basic issues addressed?” Zara Suleman, Family Law Lawyer, Suleman Law

You may be the first professional that this person has reached out to, and you are going to do everything you can to help, but we know that collaboration between all actors in the system is what prevents domestic homicide.

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Rise’s Current Research Project

- “Creating Safety in Rural Courthouses in BC”
- Funded by the Law Foundation of BC
- Expected to be released in February 2022

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Rise Women's Legal Centre's 2021 Publications

- "Decolonizing Family Law Through Trauma-Informed Practices" Myrna McCallum & Haley Hrymak
- "Why Can't Everyone Just Get Along? How BC's Family Law System Puts Survivors in Danger" Haley Hrymak & Kim Hawkins

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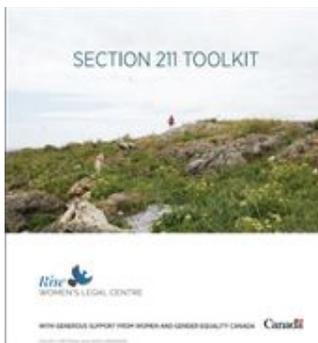


A Lawyer's Guide to Keeping Women and Children Safe



- Zara Suleman, Haley Hrymak & Kim Hawkins
- Read the Report [Here](#)

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[Click Here to Read Our "Section 211 Toolkit"](#)

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Resources

- 211
- Intake at Rise Women's Legal Clinic
- Legal Aid
- Access Pro Bono
- Amicus Curie
- FASL lawyer Rosanna Adams: fasl@womenslegalcentre.ca

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THANK YOU!

Questions?

Haley Hrymak Contact: hrymak@womenslegalcentre.ca

Rise Women's Legal Centre

<https://womenslegalcentre.ca/>

Twitter: @RiseWomensLegal

Instagram: <https://www.instagram.com/risewomenslegal/>

Facebook: <https://www.facebook.com/RiseWomensLegalCtr>

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Application About a Protection Order

FORM 12

Provincial Court Family Rules
Rules 67, 68 and 172

Registry location:	
Court File Number:	

Commented [KB1]: For a guide on filling out this form, refer to the [Form 12](#) in PDF format published on the Provincial Court Forms website.

1. My name is *[full name of person]*. My date of birth is *[mmm/dd/yyyy]*. My contact information and address for service of court documents by the other party and the court are:

Lawyer (if applicable):		
Address:		
City:	Province:	Postal code:
Email:	Telephone:	

Commented [KB2]: Per [Rule 175\(2\)](#) an address for service may be an address other than the party's home address.

If client does not want to disclose their home address to the other party, they can list another address so long as it is an address where they can receive mail (including PO Box) and that they check on a regular basis for receipt of any notice or service of documents.

If they list an email as an address for service they should regularly check that email.

2. The person I want protection from, or who had made an application for protection from me, is the other party. An application is usually made with notice to the other party. To give notice, they must be served with the application and supporting documents before the date set for the court appearance. An Application About a Protection Order can also be made without notice to the other party.

Select only one of the options below

- I am applying with notice to the other party
 I want to apply without notice to the other party because:

Tell the court why the application or your situation is urgent and what you believe will happen if the other party is served with the application and given a chance to attend court so that you can both be heard at the same time

Commented [KB3]: Consider if without notice application is necessary and clearly list out all the reasons why the application should be without notice.

3. The other party's name is *[full name of other party]*. Their date of birth is *[mmm/dd/yyyy or unknown]*. Their contact information, as I know it, is:

Lawyer (if applicable):		
Address:		
City:	Province:	Postal code:
Email:	Telephone:	

4. I am applying for the following order:

Select only one of the options below and complete the required schedule

- protection order *[complete and attach Schedule 1]*
 order to change an existing protection order *[complete and attach Schedule 2]*
 order to terminate an existing protection order *[complete and attach Schedule 3]*

For registry use only

This application will be made to the court at <i>[court registry, street address, city]</i> on <i>[date]</i> at <i>[time]</i> a.m./p.m.

NOTE TO THE OTHER PARTY: If you do not attend court on the date and time scheduled for the court appearance, the court may make an order in your absence.

SCHEDULE 1 – AFFIDAVIT FOR PROTECTION ORDER

This is Schedule 1 to the Application about a Protection Order

This schedule must be completed if you are applying for a protection order. A judge can make decisions based only on the information presented by the parties as evidence. Evidence must be relevant to the issue. Please complete the following affidavit to help you explain to the court why you need a protection order and what it should include. In some cases, if you have provided evidence in this affidavit, a judge may not need you to provide additional information in court.

Commented [KB4]: Since this is an affidavit, evidence needs to be clearly and fully set out. Statements must be factual and consistent and not include opinions. If something is based on belief, then state that it is on belief. Supporting evidence (previous orders, photos, correspondence from the other party, etc) should be attached to the affidavit as exhibits.

I, [full name of party], [occupation] of [address of party, city, province], SWEAR OR AFFIRM THAT:

1. I am making this affidavit in support of an application for a protection order.
2. I am applying for a protection order for the following person(s) to be protected:
Select and complete only those options that apply to your situation. You may select more than one.

- me
- the following child(ren) I am a parent or guardian to:
Complete only if applicable. You may leave this section blank.

Child's full legal name	Child's date of birth (mmm/dd/yyyy)	Other party's relationship to child	Child is currently living with

- the following adult family member(s) sharing the residence with a protected person:
Complete only if the adult family member sharing the residence with another protected person needs to also be protected. You may leave this section blank.

Full name	Date of birth (mmm/dd/yyyy)	Relationship to the protected person(s)

- other (specify): Name: [full name of other person to be protected] Date of birth [mmm/dd/yyyy]
Explain why you are applying for the other person

The person(s) identified in the section above is/are referred to as the protected party/parties. The other party is the person they need protection from.

ABOUT THE PROTECTION ORDER

3. *Complete only if applicable. You may leave this section blank.*
I do not want the other party to be able to attend at, enter or be found at the following place(s):
Select all options that apply
- residence
 - school
 - place of employment
 - child care facility
 - other (specify):
4. *Complete only if applicable. You may leave this section blank.*
The protected party may need to communicate with the other party for the following reason(s):
Select all options that apply
- consensual dispute resolution
 - parenting arrangements
 - ongoing court action
 - other (specify):
5. I have concerns the other party would cause harm with or threaten to use guns, explosives or another kind of firearm
 Yes No
If yes, explain the reason(s) for your concerns
- _____
- _____
6. I believe the other party owns or has access to guns, explosives or another kind of firearm
 Yes No
If yes, explain the reason(s) for your belief
- _____
- _____
7. I have concerns the other party would cause harm with or threaten to use a weapon that is not a gun or explosive
 Yes No
If yes, explain the reason(s) for your concerns
- _____
- _____
8. I believe the other party owns a weapon that is not a gun or explosive Yes No
Examples of weapons someone might own include swords, hunting knives, and nunchucks. If yes, explain the reason(s) for your belief
- _____
- _____
9. The protected party currently shares a residence with the other party Yes No

Commented [KB5]: Refer to the Provincial Court Picklist for sample protection order clauses.
<https://www.provincialcourt.bc.ca/downloads/family/Standard%20Wording%20of%20Family%20Law%20Orders%202021.pdf>

10. Complete only if applicable. You may leave this section blank.

I believe police assistance may be required for the following purpose(s):

Select all options that apply

- to remove the other party from the shared residence
- to supervise the removal of the protected party's personal belongings from the shared residence
- to supervise the removal of the other party's personal belongings from the shared residence
- to supervise the removal of the child(ren)'s personal belongings from a residence
- other (specify):

YOUR STORY

Relationship between parties

11. The protected party and the other party are:

Explain how the protected party/parties and the other party are related for the purposes of the application

Commented [KB6]: How are the protected party/parties and the other party "family members" pursuant to section 1 of the FLA? Remember that to obtain a protection order, the protected party and the other party must meet the definition of "family member".

If the protection order is only for the protection of a child(ren), please answer the following question for the parents or guardians of the child(ren)

12. The protected party is or has been spouses, or lives or has lived together in a marriage-like relationship, with the other party

Specify which protected adult if there is more than one: [name of party]

- Yes No

If yes, please complete all options below that apply to the parties

Date on which the parties began to live together in a marriage-like relationship: [mmm/dd/yyyy]

Date of marriage: [mmm/dd/yyyy]

Are the protected party and the other party currently separated Yes No Unknown

Spouses may be separated despite continuing to live in the same residence

If yes, the parties separated on [mmm/dd/yyyy]

Children

13. Select whichever option is correct and complete the required information

- The protected party and the other party are a parent, step-parent or guardian only to the child(ren), if any, identified in paragraph 2 of this affidavit
- The protected party and the other party are a parent, step-parent or guardian to the following child(ren) who is/are not identified in paragraph 2 of this affidavit:

Child's full name	Child's date of birth (mmm/dd/yyyy)	Protected party's relationship to child	Other party's relationship to child	Child is currently living with

14. Complete only if the protected party and the other party are a parent, step-parent or guardian
There are existing written agreements or court orders about the children concerning parenting arrangements, child support, contact with a child, or guardianship Yes No
If yes, attach a copy of the agreement(s) or order(s) to this affidavit

About my family

15. You may choose to complete this section or leave this section blank
I would like to share the following information with the court about the cultural, linguistic, religious and spiritual upbringing and heritage of my family, including, if the child is an Indigenous child, the child's Indigenous identity:

Other information

16. I have concerns about the mental health of the protected party and/or the other party Yes No
If yes, explain your concerns and the reason(s) for your concerns

17. Are there circumstances that may increase the risk of family violence Yes No
If yes, describe the circumstances such as: substance abuse, employment or financial difficulties, relationship status, criminal history, pregnancy, threats to you/another person/child/animal, stalking, forced sex, controlling behaviour, release from prison, strangling/choking/biting, threats or attempts to commit suicide, cultural religious beliefs or any other circumstances

18. There is an existing court order protecting one of the parties, the children, or restraining contact between the parties, including a protection order, child protection or supervision order, peace bond, restraining order, bail condition or other criminal orders
 Yes No
If yes, attach a copy of the order(s) to your application

19. Has the other party ever failed to obey a court order Yes No Unknown
If yes, describe the circumstances

Commented [KB7]: List out any orders that are attached and identify them as exhibits to the affidavit. It may also be useful to make a defined term for each order or agreement and use that term to refer to the order/agreement in the rest of the document. For instance: "Attached as Exhibit A herein is a true copy of the Order of Judge Smith made on January 15, 2020 (the "Smith Order"). The Smith Order is the order that is in force concerning guardianship, parenting arrangements, and child support."

Commented [KB8]: List out any orders or other applicable documents that are attached and identify them as exhibits to the affidavit. It may also be useful to make a defined term for each document and use that term to refer to the document in the rest of this form. For instance: "Attached as Exhibit B herein is a true copy of the bail conditions dated September 19, 2019 (the "2019 Bail Conditions")."

20. I have concerns the other party may not obey a court order Yes No

If yes, explain the reason(s) for your concerns

21. I have reported my safety concerns to the police Yes No

If yes, describe what action they have taken. You will be asked to describe specific incidents that police attended in a later section.

22. I have reported my safety concerns to a social worker (Ministry of Children and Family Development)

Yes No

If yes, describe what action they have taken

23. Is there any family violence you fear is likely to happen that you have not already described in this affidavit?

Yes No

If yes, explain what type of family violence and the reason for your fear

24. Do you have any concerns for the safety of the protected party/parties that you have not already described in this affidavit? Yes No

If yes, explain the concerns and the reason for your concerns

25. Describe any recent incidents of family violence against the protected party/parties and any child(ren). Include:

- *how the other party made the protected party and/or the child(ren) feel unsafe (describe examples of the other party's behaviour that made you afraid)*
- *a description of the incident(s) (write as much detail as possible)*
- *who was involved (include the police if they were involved at any time)*
- *who witnessed it*
- *any exposure the child or children have had to family violence or abuse*

Commented [HH9]: The violence does not necessarily have to be "recent" for a Protection Order to be granted. Ensure that the affidavit explains why the applicant believes that 1) family violence is likely to occur; and 2) they are an "at-risk" family member. When you help your client write this, go through section 184 of the FLA and pull out all of the relevant risk factors.

If relevant, try to include:

- 1) the client's concerns about what may happen if a PO is not granted
- 2) Why other types of orders (conduct orders) will not be sufficient
- 3) The Client's fears, and why this application has been brought ex-parte [if there is more to add than already indicated earlier... be very careful about repeating in this portion what you have already said above.]
- 4) the Risks

Depending on the history, you may need more space and that is ok. Take the space needed to write out (e.g. 4 additional pages- totally fine!)

Commented [KB10]: Use numbered paragraphs. Describe incidents chronologically setting out the approximate date on which each incident occurred.

If the client does not witness a specific incident, they should identify who told them about the incident and approximately when.

Application About a Protection Order

FORM 12

Provincial Court Family Rules

Rule 85

Registry location:	
Court File Number:	

1. My name is *[full name of person]*. My date of birth is *[mmm/dd/yyyy]*. My contact information and address for service of court documents by the other party and the court are:

Lawyer (if applicable):		
Address:		
City:	Province:	Postal code:
Email:	Telephone:	

2. I understand I need to give notice to the person I want protection from, or who had made an application for protection from me. This person is the other party. To give notice, they must be served with the application and supporting documents at least 7 days before the date set for the court appearance unless a judge allows the application to be made without notice or with less than 7 days' notice.

Select only one of the options below

- I am giving at least 7 days' notice to the other party
- I have completed an Application for Case Management Order Without Notice or Attendance in Form 11 requesting to waive the requirement for notice of this application
- I have completed an Application for Case Management Order Without Notice or Attendance in Form 11 requesting to modify the requirement for 7 days' notice to the other party
- I have a court order that allows the application to be made without notice or with less than 7 days' notice

3. The other party's name is *[full name of other party]*. Their date of birth is *[mmm/dd/yyyy]*.
The other party's contact information, as I know it, is:

Lawyer (if applicable):		
Address:		
City:	Province:	Postal code:
Email:	Telephone:	

4. I am applying for the following order:
Select only one of the options below and complete the required schedule

- protection order *[complete and attach Schedule 1]*
- order to change an existing protection order *[complete and attach Schedule 2]*
- order to terminate an existing protection order *[complete and attach Schedule 3]*

For registry use only

<p>This application will be made to the court at <i>[court registry, street address, city]</i> on <i>[date]</i> at <i>[time]</i> a.m./p.m.</p>

NOTE TO THE OTHER PARTY: If you do not attend in court on the date and time scheduled for the court appearance, the court may make an order in your absence.

SCHEDULE 1 – AFFIDAVIT FOR PROTECTION ORDER

This is Schedule 1 to the Application about a Protection Order

This schedule must be completed if you are applying for a protection order. A judge can make decisions based only on the information presented by the parties as evidence. Evidence must be relevant to the issue. Please complete the following affidavit to help you explain to the court why you need a protection order and what it should include. In some cases, if you have provided evidence in this affidavit, a judge may not need you to provide additional information in court.

I, [full name of party], [occupation] of [address of party, city, province],

SWEAR OR AFFIRM THAT:

1. I am making this affidavit in support of an application for a protection order.
2. I am applying for a protection order for the following person(s) to be protected:
Select and complete only those options that apply to your situation. You may select more than one.
 - me
 - the following child(ren) I am a parent or guardian to:
Complete only if applicable. You may leave this section blank.

Child's full legal name	Child's date of birth (mmm/dd/yyyy)	Child's relationship to the other party	Child is currently living with

- the following adult(s) sharing the residence with a protected person:
Complete only if applicable. You may leave this section blank.

Full name	Date of birth (mmm/dd/yyyy)	Relationship to the protected person

- other (specify): [full name of other person to be protected] and date of birth [mmm/dd/yyyy]
Explain why you are applying for the other person

The person(s) identified in the section above is/are referred to as the protected party/parties. The other party is the person they need protection from.

ABOUT THE PROTECTION ORDER

3. *Complete only if applicable. You may leave this section blank.*

I do not want the other party to be able to attend at, enter or be found at the following place(s):

Select all options that apply

- residence
- school
- place of employment
- child care facility
- other (*specify*):

4. *Complete only if applicable. You may leave this section blank.*

The protected party may need to communicate with the other party for the following reason(s):

Select all options that apply

- consensual dispute resolution
- parenting arrangements
- ongoing court action
- other (*specify*):

5. I have concerns the other party would cause harm with or threaten to use guns, explosives or another kind of firearm Yes No

If yes, explain the reason(s) for your concerns

6. I believe the other party owns or has access to guns, explosives or another kind of firearm

- Yes No

If yes, explain the reason(s) for your belief

7. I have concerns the other party would cause harm with or threaten to use a weapon that is not a gun or explosive Yes No

If yes, explain the reason(s) for your concerns

8. I believe the other party owns a weapon that is not a gun or explosive Yes No

Examples of weapons someone might own include swords, hunting knives, and nunchucks

If yes, explain the reason(s) for your belief

9. The protected party currently shares a home with the other party Yes No

10. Complete only if applicable. You may leave this section blank.

I believe police assistance may be required for the following purpose(s):

Select all options that apply

- to remove the other party from the shared residence
- to supervise the removal of the protected party's personal belongings from the shared residence
- to supervise the removal of the other party's personal belongings from the shared residence
- to supervise the removal of the child(ren)'s personal belongings from a residence
- other (specify):

YOUR STORY

11. The protected party and the other party are:

Explain how the protected party/parties and the other party are related for the purposes of the application

If the protection order is only for the protection of a child(ren), please answer the following question for the parents or guardians of the child(ren)

12. The parties are or have been spouses or live or have lived together in a marriage-like relationship

- Yes No

If yes, please complete all options below that apply to the parties

Date on which the parties began to live together in a marriage-like relationship: [mmm/dd/yyyy]

Date of marriage: [mmm/dd/yyyy]

Are the protected party and the other party currently separated Yes No Unknown

Spouses may be separated despite continuing to live in the same residence

If yes, the parties separated on [mmm/dd/yyyy]

13. Select whichever option is correct and complete the required information

- The protected party and the other party are a parent, step-parent or guardian only to the child(ren), if any, identified in paragraph 2 of this affidavit
- The protected party and the other party are a parent, step-parent or guardian to the following child(ren) who is/are not identified in paragraph 2 of this affidavit:

Child's full name	Child's date of birth (mmm/dd/yyyy)	Child's relationship to protected party	Child's relationship to the other party	Child is currently living with

14. Complete only if the protected party and the other party are a parent, step-parent or guardian

There are existing written agreements or court orders about the children concerning parenting arrangements, child support, contact with a child, or guardianship Yes No

If yes, attach a copy of the agreement(s) or order(s) to this affidavit

Family values

15. *You may choose to complete this section or leave this section blank*

I would like to share the following information with the Court about the cultural, linguistic, religious and spiritual upbringing and heritage of my family, including, if the child is an aboriginal child, the child's aboriginal identity:

16. I have concerns about the mental health of the protected party and/or the other party Yes No

If yes, explain your concerns and the reason(s) for your concerns

17. Are there circumstances that may increase the risk of family violence Yes No

If yes, describe the circumstances such as: substance abuse, employment or financial difficulties, relationship status, criminal history, pregnancy, threats to you/another person/child/animal, stalking, forced sex, controlling behaviour, release from prison, strangling/choking/biting, threats or attempts to commit suicide, cultural religious beliefs or any other circumstances

18. There is an existing court order protecting one of the parties, the children, or restraining contact between the parties, including a protection order, child protection or supervision order, peace bond, restraining order, bail condition or other criminal orders

Yes No

If yes, attach a copy of the order(s) to your application

19. Has the other party ever failed to obey a court order Yes No Unknown

If yes, describe the circumstances

20. I have concerns the other party may not obey a court order Yes No

If yes, explain the reason(s) for your concerns

21. I have reported my safety concerns to the police Yes No

If yes, describe what action they have taken. You will be asked to describe specific incidents that police attended in a later section.

22. I have reported my safety concerns to a social worker (Ministry of Children and Family Development)

Yes No

If yes, describe what action they have taken

23. Is there any family violence you fear is likely to happen that you have not already described in this affidavit?

Yes No

If yes, explain what type of family violence and the reason for your fear

24. Do you have any concerns for the safety of the protected party/parties that you have not already described in this affidavit? Yes No

If yes, explain the concerns and the reason for your concerns

25. Describe any recent incidents of family violence against the protected party/parties and any child(ren).

Include:

- *how the other party made the protected party and/or the child(ren) feel unsafe (describe examples of the other party's behaviour that made you afraid)*
- *a description of the incident(s) (write as much detail as possible)*
- *who was involved (include the police if they were involved at any time)*
- *who witnessed it*
- *any exposure the child or children have had to family violence or abuse*
- *any injuries or trauma from the incident*
- *any doctor's notes, police reports or photos (you must refer to them here as exhibits and make copies of them for the court)*

Preparing an Application About a Protection Order

Form 12

Provincial Court Family Rules

Complete this the form to ask the Provincial Court for a protection order under Part 9 of the *Family Law Act* or to change or terminate an existing protection order.

A [protection order](#) made under the *Family Law Act* is a court order that protects one family member from another family member if there is a risk of family violence. The order usually lists conditions the person named in it must follow. For example, a protection order may include a condition that the family member not have contact or communicate directly or indirectly with the family member that needs protection. It is a criminal offense for the person named in the protection order to disobey (breach) any conditions in the order. If they do, the police can enforce the order under the [Criminal Code](#) and the person may face significant consequences.

A protection order will expire on the date a judge orders for it to end. If the judge doesn't order a specific end date, it expires one year after the date it is made.

You can complete the application about a protection order form if you require protection for yourself and/or your child, or you can apply on behalf of another adult.

You can also complete an application about a protection order form if you want to ask the court to change or cancel an existing protection order.

There is no limit on protection order applications. Another application can be made if an application was denied, the terms of an order need to be changed, or an order has expired and another one is needed.

Help is available

If you have safety concerns about family violence, you may want to talk to a support worker. [VictimLinkBC](#) is a confidential, multilingual telephone service available 24 hours a day, 7 days a week at 1-800-563-0808. Victim services workers can provide crisis support, information and referrals to supports including safety planning, victim services, transition houses and counselling services.

Legal Assistance

Understanding the law and making sure you get correct information is important. If you get the wrong information or do not know how the law applies to your situation, it can be harder to resolve your case. Getting advice from a lawyer can help.

Lawyers – To find a lawyer or to have a free consultation with a lawyer for up to 30 minutes, contact the [Lawyer Referral Service](#) at 1-800-663-1919.

Legal Aid, Duty Counsel and Family Advice Lawyers – To find out if you qualify for free legal advice or representation, contact [Legal Aid BC](#) at 1-866-577-2525.

Legal Services and Resources – Visit [Clicklaw](#) at www.clicklaw.bc.ca/helpmap to find other free and low-cost legal services in your community.

What you need to get started

Try to collect as much information as possible before you start to complete the form.

You might need:

- birth dates, names, and other related information about the other party and your children
- any agreements or court orders you already have about protection or a family law matter
- information about the date(s) you started living together, got married, separated and were divorced, if applicable
- dates and details of any family violence incidents, if applicable

Step 1: Complete the Application about a Protection Order form

This form is available online at www.gov.bc.ca/court-forms or at any [Provincial Court Registry](#).

You can complete the form online and print it for filing. You can also complete it by hand. If you complete it by hand, be sure it's readable. Registry staff and staff at any [Justice Access Centre](#) or [Family Justice Centre](#) can help answer questions about the forms but they cannot help complete your forms or give advice about legal problems. If you need help filling in the forms and do not have a lawyer, ask the court registry staff or staff at the Justice Access Centre of Family Justice Center to refer you to someone who can help.

You need to complete and file the main part of the form and only the schedule that applies to your application.

Follow the instructions in the form. You will be given space to provide information that is important to support your application.

To prepare the form for filing:

- collect the schedule you completed, any existing orders or agreements as referenced in the form, and any additional documents, if applicable
- print or make copies of all documents: one set for you, one set for the Court, and one set for each other party
- staple each package of documents together
- bring all copies to the court registry for filing **or** send by mail or by fax filing using the [Fax Filing Cover Page Form 52](#)

Step 2: Determine if you should apply without notice

You normally need to give notice to the other party that you are applying for a court order. You give notice to the other party by having the application documents personally served on them.

Under some circumstances, an application about a protection order may be made without notice to the other party. For example, it may not be reasonable to give the other person notice (serve them with a copy of the application documents) before the application is heard by the court if:

- you or your children are in imminent danger of harm; or
- providing notice in advance would probably have serious consequences.

If you are making an application about a protection order without notice, you will have to satisfy the court that there is a real risk of some danger or serious consequence if notice were required before your order is made. If you apply for an order without notice, the application will be heard right away. The judge will decide if the order can be made without notice, if notice must be given, or if the notice period should be shortened. The time between the day that a party is served and the day that the application is heard is called the "notice period" or "notice." Normally, the other party must be served with at least 7 days' notice of the court appearance. A judge can also allow for an application to be served with less than 7 days' notice.

Step 3: If applicable, get the Schedule 1 affidavit sworn/affirmed and signed with a commissioner for taking affidavits

The Schedule 1 Affidavit must be signed with a commissioner for taking affidavits. They will need to see your photo ID and they will ask you to promise that the information in the application affidavit is true.

Lawyers and notaries are all commissioners for taking affidavits. The court registry also has staff who are commissioners for taking affidavits who can swear or affirm your affidavit for free.

If you cannot get the document sworn or affirmed before the document is filed, the unsworn document can be filed if you will be available to swear or affirm that the contents of the document are true during your court appearance.

Step 4: File your application and any supporting materials

You must file at the [Provincial Court Registry](#):

- where your existing Provincial Court case with the same parties is filed
- nearest to where you or the other person who needs protection lives, or
- nearest to where the child(ren) ordinarily live, if you fear for the safety of your children or there are children named in an existing protection order.

If your situation is urgent and you need to file the application about a protection order in another location, the court can give you permission to file the application at any [Provincial Court Registry](#) in the province. You can ask for permission using the [Application for Case Management Order Without Notice or Attendance Form 11](#).

The registry clerk will review your package to make sure it is complete before filing it. You will be given a copy for your records.

The registry will work with you to schedule a date for the court appearance. If you are making your application without notice and it is urgent, be prepared to wait at the courthouse after filing your application for your court appearance. Depending on the day, it can take some time to find an available judge and get you before the court, but they will make sure your application is heard as soon as possible.

There are no court fees for filing Provincial Court family documents.

Step 5: Unless you are making your application without notice to the other party, arrange for personal service of the Application About a Protection Order on each other party

Service is the act of giving or leaving documents with the required person. It is important that each other party know that a case is going on, are aware of what step is being taken, and are given a chance to tell their side of the story to the court.

You must arrange to have the other party personally served a copy of the documents with at least 7 days' notice of the date and time of the court appearance, unless the court has ordered something else. This means there must be at least 7 days between the date the documents are served on the other party and the date and time of the court appearance.

An adult (at least 19 years old), who is not a party to the case, must personally serve the application about a protection order by hand-delivering a copy of the application to the other party.

You may ask a friend, family member, or other adult person to personally serve the documents for you. You can also hire a person, called a process server, to serve the documents for you. Process servers are experienced in finding and serving people. To find a process server, search the Internet or look in the yellow pages.

The court may need proof you had the documents personally served. The person serving the documents must complete a [Certificate of Service Form 7](#) so that you can prove personal service of the documents took place. You must attach a copy of the documents to the Certificate of Service. Remember to make a copy before the documents are served.

Step 6: Attend the Court Appearance

A judge can make decisions based only on the information presented by the parties as evidence. Your evidence includes your application, any additional affidavit, and spoken evidence provided in court.

If you have a lawyer, they will come to court with you and assist during the hearing.

If you do not have a lawyer, you may find it helpful to bring a trusted friend or family member with you to provide emotional support, take notes, and organize documents during your court appearance. The Provincial Court has adopted [Support Person Guidelines](#) that explain when you are permitted to have a support person help you, and what they can do.

If you are attending at the courthouse in person for your court appearance, make a safety plan. If the other party is also attending, they will probably be close by. You can talk to a sheriff as part of your safety planning. The sheriff's office is available by phone. For contact information visit Courthouse Locations on the BC Government website at www.gov.bc.ca.

Your safety plan should include going to and from the courthouse.

Once a protection order is made

An order takes effect at the time it is made unless ordered otherwise. That means that the person identified in the protection order must follow the conditions of the order from the moment the judge makes the order in court.

Registry staff are usually responsible for drafting the protection order and getting it signed by the judge. The registry will then provide a copy to you, any other party who attended the court appearance, and the Protection Order Registry. The Protection Order Registry keeps a record of all protection orders. Police officers can contact them to check if a protection order is in place and get a copy of the order.

It is important for the person identified in the protection order to know that there is a protection order in place and what they must do or not do. If they were not in court when the order was made, the order must be personally served on them so they are aware of it. Registry staff will help to facilitate personal service of the protection order on the other party if they are in British Columbia. There is no fee for this service. If they are outside BC, you will need to arrange for them to be served.

To facilitate service, you must provide the registry with information about where the person may be found. To do this, you must complete a Request for Service of Family Protection Order form and give it to the registry.

Once the protection order has been served, a copy of the proof of service will be sent to the Protection Order Registry.

A police officer may take action to enforce a protection order whether or not there is proof that the order has been served on the person. If a protection order is not being followed, the police can enforce it under the Criminal Code. Call 911 for help.

A protection order will expire on the date a judge orders for it to end. If the judge doesn't order a specific end date, it expires one year after the date it is made.

There is no limit on protection order applications. Another application can be made if an application was denied, the terms of an order need to be changed, or an order has expired and another one is needed.

For more information visit Information on Protection Orders on the [BC Government website](#) at www.gov.bc.ca.

Help is available

If you have safety concerns about family violence, you may want to talk to a support worker. [VictimLinkBC](#) is a confidential, multilingual telephone service available 24 hours a day, 7 days a week at 1-800-563-0808. Victim services workers can provide crisis support, information and referrals to supports including safety planning, victim services, transition houses and counselling services.

Tips for Completing the Form:

Registry location and court file number –

Registry staff will give your case a file number when you file this document. You don't have to fill this in now unless you already have a case. If you do, copy this information from the top right corner of one of your filed court documents.

Information about the parties –

Party names:

- provide your legal names, including your middle names, from your birth certificate or through a [legal name change](#)
- a maiden name or married name can be used as a legal family name unless the name was [legally changed](#)
- if you or the other party go by another name, such as a usual name you would prefer to be called by, you can include it after the full name by including AKA (also known as)

Example: If your legal name is Robert Paul Smith but you are known as Bob Smith, your name should be given as Robert Paul Smith AKA Bob Smith

If you already have a court file, you should use the same name you have used for other applications. Copy your name from the first document you filed in your case.

Lawyer (if applicable) –

Some lawyers are hired for a limited purpose. For example, you may hire a lawyer only to give you legal advice, help you to complete court documents, or come to a court appearance with you. You will still be responsible for all other aspects of your case. If you hire a lawyer on a limited scope basis or for unbundled services, make sure you and the lawyer are clear about whether their name goes on the court documents. Usually it won't.

If you are a lawyer filling out this form for a client, or if you have a lawyer representing you, the lawyer's name should be included and you will usually give their address for service of court documents.

If your income is within the Legal Aid BC's financial guidelines, you may be eligible for a legal aid lawyer to represent you in an application about a protection order. Legal aid is only available to people who meet the financial eligibility criteria and who need an immediate court order to ensure the safety of themselves or their children. To find out if you qualify for free legal advice or representation, contact Legal Aid BC at 1-866-577-2525.

Contact Information –

The court needs to know where to send documents to you and the other party and how to reach each of you.

Address: The court requires an address where you can get mail, but it doesn't need to be your address.

If you don't have a stable mailing address, or you are worried about your safety, you may be able to give the address of your lawyer, a friend or family member, or somewhere that mail can be collected for you.

If you don't have an address or contact information for the other party, complete as much information as you do know. Talk to the staff at the court registry about how they might be able to help you find contact information.

Email Address: The quickest way for the court and the other party to contact you is by email. If you give an email address, the court and the other party can send documents or communicate with you by email instead of using mail. If you can't or don't want to use email, you don't have to give an email address. Remember, if you agree to use email to receive court documents, you will get copies of court documents much faster than by mail. Make sure to check your junk box if you are expecting something from the court. Sometimes email filters will prevent you from receiving an important document.

Telephone number: It is also important for the court to have a telephone number where they can reach you. Make sure the telephone number is somewhere you can be reached during the day.

Giving notice –

You normally need to give notice to the other party that you are applying for a court order. You give notice to the other party by having the application documents personally served on them. Under some circumstances, an application about a protection order may be made without notice to the other party. To apply without notice, you will have to satisfy the court that there is a real risk of some danger or serious consequence if notice were required before your order is made. Tell the court why you are applying without notice if you are choosing this option.

Other party –

Note: If you need protection from more than one family member, you should complete an application about a protection order for each family member you need protection from.

You only need to fill in the contact information you know about the other party. You may leave any part of the contact information blank.

Applying for an order –

Select if you are applying for a protection order, to change an existing protection order, or to terminate (cancel) an existing protection order. Complete the required schedule based on the selection you made.

Scheduling –

The registry will work with you to schedule a date for the court appearance and will fill in the actual date on the form, just be prepared to talk about your availability if there are options for dates.

Application About a Protection Order

Form 12

Provincial Court Family Rules
Rules 67, 68 and 172

Registry Location:
Court File Number:

1. My name is _____ . My date of birth is _____
(full name of party/person) (mmm/dd/yyyy)
 My contact information and address for service of court documents by the other party and the court are:

Lawyer (if applicable):		
Address:		
City:	Province:	Postal Code:
Email:	Telephone:	

2. The person I want protection from, or who had made an application for protection from me, is the other party. An application is usually made with notice to the other party. To give notice, they must be served with the application and supporting documents before the date set for the court appearance. An Application About a Protection Order can also be made without notice to the other party.

Select only one of the options below

I am applying with notice to the other party

I want to apply without notice to the other party because:

Tell the court why the application or your situation is urgent and what you believe will happen if the other party is served with the application and given a chance to attend court so that you can both be heard at the same time

3. The other party's name is _____ . Their date of birth is _____
(full name of other party) (mmm/dd/yyyy or unknown)
 Their contact information, as I know it, is:

Lawyer (if applicable):		
Address:		
City:	Province:	Postal Code:
Email:	Telephone:	

4. I am applying for the following order:

Select only one of the options below and complete the required schedule

protection order [complete and attach Schedule 1]

order to change an existing protection order [complete and attach Schedule 2]

order to terminate an existing protection order [complete and attach Schedule 3]

For registry use only

<p>This application will be made to the court at _____ <small>(court registry, street address, city)</small></p> <p>on _____ at _____ am/pm. <small>(date) (time)</small></p>
--

NOTICE TO THE OTHER PARTY: If you do not attend court on the date and time scheduled for the court appearance, the court may make an order in your absence.

PROTECTION ORDER

Complete this schedule if you are applying for a protection order for yourself or on behalf of another person, including your child.

A protection order made under the *Family Law Act* is a court order to protect a family member from another family member if there is a risk of family violence.

Family violence includes physical, sexual, and psychological or emotional abuse of a family member. Psychological or emotional abuse includes intimidation, harassment, coercion, threats, financial abuse, stalking, and intentional damage to property.

In the case of a child, family violence includes witnessing or being exposed to family violence.

Family violence does not include self-defense.

Note: This schedule is an affidavit which means it will need to be sworn or affirmed with a commissioner for taking affidavits. See the instructions at the beginning of this form for more information on getting the document sworn or affirmed. You may also file the application without swearing or affirming it if you will be attending the court appearance.

Identification –

Provide your full name, occupation (what you do for a living) and address.

If you have used an address other than your own as your address for service for safety reasons, list the address here as “care of” or “c/o” the address you are using for service of court documents.

Who needs protection –

Think about who is an at-risk family member that needs protection from the other party.

The *Family Law Act* defines a family member, in respect of a person, as:

- the person’s spouse or former spouse
- a person with whom the person is living, or has lived, in a marriage-like relationship
- a parent or guardian of the person’s child
- a person who lives with, and is related to the person or a person referred to in the bullets above
- the person’s child

and includes a child who is living with, or whose parent or guardian is, a person referred to above.

Are you worried about your safety only, or also the safety of your children or another family member living with you?

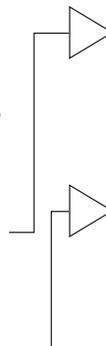
Tell the court who you need the court order to protect. If you are not sure, you may want to talk to a lawyer.

If you are asking for a protection order for **your children** or another **adult family member sharing your residence**, provide:

- their full name (usually the name on their birth certificate unless they had a legal name change),
- their date of birth, and
- for a child, their relationship to the other party
- for an adult sharing the residence, their relationship to the other protected person (adult or child)

If you are filing this application on behalf of someone else (instead of just helping them complete the form), then select “**other**,” give their name, and explain why you are making the application.

Note: You cannot apply only for the protection of another person’s child. If you believe a child needs protection and their parent or guardian is not willing or able to apply for a *Family Law Act* protection order on their behalf, contact the Ministry of Children and Family Development.



About the protection order –

This next set of questions will help the court understand what terms the protection order may need to include. You have already identified who needs protection; these questions help to figure out what that protection might look like.

No go: In addition to not making any contact with the protected party, there may also be places you don't want the other party to be allowed to go.

Select all the options you want in the protection order. If you don't want to restrict where the other person can go, you may leave this section blank.

You don't need to give specific names or addresses of these places now, but it is a good idea to bring that information with you to court as the judge might ask for it.



No contact except: Sometimes it is impossible to stop all communication with the other party if you have children together or you are still trying to sort out the details of your separation. If this applies to your situation, select all the options where you may need to communicate with the other party. If you don't need to communicate with them at all, you can leave this section blank.



Firearms prohibition: Indicate if you have concerns that the other party would harm or threaten the protected party using a gun, explosive or another kind of firearm. If you do have concerns, explain to the court why. You do not need to use any special wording. The key is to be clear about what you mean.



Surrender firearms: Indicate if you believe, or know, that the other party owns or has access to guns, explosives or another kind of firearm. If you answered yes, explain why you believe or know this. You do not need to use any special wording. The key is to be clear about what you mean.



Weapons prohibition: Indicate if you have concerns that the other party would harm or threaten the protected party using a weapon that is not a gun or explosive. Weapons could include knives, martial arts weapons, sports equipment, or tools. If you do have concerns, explain to the court why. You do not need to use any special wording. The key is to be clear about what you mean.



Remove weapons: Indicate if you believe, or know, that the other party owns or has access to a weapon that is not a gun or explosive. Most people will have access to kitchen knives, sports equipment or tools – you do not need to answer yes if these are the only weapons you believe the other party owns or has access to. If you do believe they own a weapon that is not a gun or explosive and you answered yes, explain why you believe or know this. You do not need to use any special wording. The key is to be clear about what you mean.



Residence: There are times when a protected party may be living with the person they need protection from. Is the protected party in this application sharing a residence with the other party?

If the protected party or other party has just left a shared residence but does not have a new permanent place to live, you can still answer yes to this question. A judge can make an order that they must leave the shared residence.



Remove person or belongings from residence: The court can order that the police help to remove the other party from a shared residence and/or that the police help supervise the removal or collection of belongings from a residence. If a protected party shares a residence with the other party, or has belongings at their residence, select the option that applies to the situation. If police assistance isn't necessary, you can leave this section blank.



ABOUT THE PROTECTION ORDER

3. Complete only if applicable. You may leave this section blank.

I do not want the other party to be able to attend at, enter or be found at the following place(s):

Select all options that apply

- residence
- school
- place of employment
- child care facility
- Other (specify): _____

4. Complete only if applicable. You may leave this section blank.

The protected party may need to communicate with the other party for the following reason(s):

Select all options that apply

- consensual dispute resolution
- parenting arrangements
- ongoing court action
- other (specify): _____

5. I have concerns the other party would cause harm with or threaten to use guns, explosives or another kind of firearm

- Yes No

If yes, explain the reason(s) for your concerns.

6. I believe the other party owns or has access to guns, explosives or another kind of firearm Yes No

If yes, explain the reason(s) for your belief.

7. I have concerns the other party would cause harm with or threaten to use a weapon that is not a gun or explosive

- Yes No

If yes, explain the reason(s) for your concerns.

8. I believe the other party owns a weapon that is not a gun or explosive Yes No

Examples of weapons someone might own include swords, hunting knives, and nunchucks.

If yes, explain the reason(s) for your belief.

9. The protected party currently shares a residence with the other party Yes No

10. Complete only if applicable. You may leave this section blank.

I believe police assistance may be required for the following purpose(s):

Select all options that apply

- to remove the other party from the shared residence
- to supervise the removal of the protected party's personal belongings from the shared residence
- to supervise the removal of the other party's personal belongings from the shared residence
- to supervise the removal of the child(ren)'s personal belongings from a residence
- Other (specify): _____

Your story–

It is important for the court to understand the relationship between the protected party and the other party, as well as some of the background that has brought you before the court to apply for a protection order. The next set of questions will help the court understand a bit more about everyone involved.

Relationship between the parties: Describe how the protected party/parties and the other party are related or connected to one another (for example, we were living together in a relationship and are both parents of the child).

You do not need to use any special wording. Describe the relationship or connection in your own words. If there is more than one protected party, be clear about the relationship or connection of the other party to each of them.

Spouses/lived together: Indicate if the protected party, or the parent/guardian of the protected child, and the other party:

- are spouses
- were spouses
- live together in a marriage-like relationship with the other party, or
- lived together in a marriage-like relationship with the other party

If yes, please answer the questions about the relationship. Provide specific dates where possible. If you do not know a specific date, provide the month and year.

Children: It is important for the court to know about each child in the relationship so that they may consider the implications of a protection order and whether the child should also be included in the protection order.

If you have identified the child in paragraph 2 already as a protected party (someone you want to have protected by the order), or you do not have a child, select the first option.

If the protected party or the other party have a child, but you are not applying for the child to be protected under the protection order, select the second option and complete the required information.

Existing written agreements or court orders: The court needs to know if there were any agreements or court orders made in the past that involve family law matters. This is so they can consider if the agreement or order is important to what you are asking the court to help with now. This includes:

- any agreements between you and the other party
- any court orders, in this court or any other court

About my family: If there is any information about your cultural, linguistic, religious and spiritual upbringing and heritage of your family, including if the child is an Indigenous child, that you would like to share with the court as part of your application, you may do so here. You do not need to complete this information.

YOUR STORY

Relationship between parties

11. The protected party and the other party are:

Explain how the protected party/parties and the other party are related for the purposes of the application.

If the protection order is only for the protection of a child(ren), please answer the following question for the parents or guardians of the child(ren).

12. The protected party is or has been spouses, or lives or has lived together in a marriage-like relationship, with the other party

Specify which protected adult if there is more than one _____
(name of party)

Yes No

If yes, please complete all options below that apply to the parties.

Date on which the parties began to live together in a marriage-like relationship: _____
(mmm/dd/yyyy)

Date of marriage: _____
(mmm/dd/yyyy)

Are the protected party and the other party currently separated Yes No Unknown

Spouses may be separated despite continuing to live in the same residence

If yes, the parties separated on _____
(mmm/dd/yyyy)

Children

13. *Select whichever option is correct and complete the required information.*

The protected party and the other party are a parent, step-parent or guardian only to the child(ren), if any, identified in paragraph 2 of this affidavit.

The protected party and the other party are a parent, step-parent or guardian to the following child(ren) who is/are not identified in paragraph 2 of this affidavit:

Child's full name	Child's date of birth (mmm/dd/yyyy)	Protected party's relationship to child	Other party's relationship to child	Child is currently living with

14. *Complete only if the protected party and the other party are a parent, step-parent or guardian.*

There are existing written agreements or court orders about the children concerning parenting arrangements, child support, contact with a child, or guardianship Yes No

If yes, attach a copy of the agreement(s) or order(s) to this affidavit.

About my family

15. *You may choose to complete this section or leave this section blank.*

I would like to share the following information with the court about the cultural, linguistic, religious and spiritual upbringing and heritage of my family, including, if the child is an Indigenous child, the child's Indigenous identity:

Mental health: Mental health conditions are disorders that affect your mood, thinking and behaviour. There are many different mental health conditions including depression, anxiety disorders, bi-polar disorder and schizophrenia.

Indicate if you have concerns about the mental health of a protected party or the other party. If yes, explain your reasons for the concerns and be sure to specify who those concerns are about. You do not need to use any special wording. The key is to be clear about what you mean.

Risk factors: There are certain circumstances that may make a person or relationship more at-risk for family violence. The circumstances may contribute to family violence but might not be the cause of the family violence. To better understand the circumstances that may contribute to family violence in this case, indicate if you believe there are circumstances that may increase the risk of family violence in the relationship. If yes, please describe the circumstances. A list is provided in the form of some common circumstances that may contribute to family violence. You do not need to use any special wording when you are describing the circumstances. The key is to be clear about what you mean.

Existing protection, restraining or no contact orders: The court needs to know if there are any other orders with protective conditions between the parties. This includes:

- any family law protection order from Provincial Court, Supreme Court, or another jurisdiction
- any criminal order or conditions protecting a party or restraining/restricting contact between the parties
- any peace bonds
- any other order the court may need to know about that restricts or restrains contact, or protects one party and/or a child from another party

Obeying a court order: A person does not always do what the court has told them they must do. Do you know if the other party has ever failed to obey (breached) a court order? If you answered yes, explain why you believe or know this. You do not need to use any special wording. The key is to be clear about what you mean.

Obeying a court order: The other party may never have been under a court order, or maybe this one would be different. Indicate if you have concerns the other party may not obey a court order (do what the court tells them to do). If you do have concerns, explain to the court why. You do not need to use any special wording. The key is to be clear about what you mean.

Reported to police: If you are a victim or witness of family violence, you may have reported safety concerns or an incident to the police or RCMP. If you have reported your safety concerns or an incident to the police, describe what actions the police have taken (for example they may have started a police report, talked to you and the other people involved, made an arrest). Whatever action you know the police have taken, describe it here in your own words.

Reported to a social worker: In situations where there is reason to believe a child (under 19 years of age) is being abused, neglected, sexually exploited, or is otherwise in need of protection, and a parent or guardian is unable or unwilling to protect the child, the matter must be reported to a social worker at the [Ministry of Children and Family Development](#).

For more information or to receive help making a report about a child or youth who needs protection, please call the [Helpline for Children](#) at 1-800-663-9122 at any time of the day or night.

If you have reported your safety concerns or an incident to a social worker, describe what actions the social worker has taken (for example they may have assessed the case and/or intervened). Whatever action you know the social worker has taken, describe it here in your own words.

Other information

16. I have concerns about the mental health of the protected party and/or the other party Yes No

If yes, explain your concerns and the reason(s) for your concerns.

17. Are there circumstances that may increase the risk of family violence Yes No

If yes, describe the circumstances such as: substances abuse, employment or financial difficulties, relationship status, criminal history, pregnancy, threats to you/another person/child/animal, stalking, forced sex, controlling behaviour, release from prison, strangling/choking/biting, threats or attempts to commit suicide, cultural religious beliefs or any other circumstances.

18. There is an existing court order protecting one of the parties, the children, or restraining contact between the parties, including a protection order, child protection or supervision order, peace bond, restraining order, bail conditions or other criminal orders

Yes No

If yes, attach a copy of the orders to your application.

19. Has the other party ever failed to obey a court order Yes No Unknown

If yes, describe the circumstances.

20. I have concerns the other party may not obey a court order Yes No

If yes, explain the reason(s) for your concerns.

21. I have reported my safety concerns to the police Yes No

If yes, describe what action they have taken. You will be asked to describe specific incidents that police attended in a later section.

22. I have reported my safety concerns to a social worker (Ministry of Children and Family Development) Yes No

If yes, describe what action they have taken.

Other information –

Family violence: Family violence includes physical, sexual, and psychological or emotional abuse of a family member. Psychological or emotional abuse includes intimidation, harassment, coercion, threats, financial abuse, stalking, and intentional damage to property. In the case of a child, it includes witnessing or being exposed to family violence. Family violence does not include self-defense.

Explain **what family violence** you fear. You can state the reason(s) why the protected party/parties are afraid of the other party and think family violence may occur. You do not need to use any special wording. The key is to be clear about what you mean.



Safety concerns: If you have any concerns that you have not already described that have you worried for the safety of the protected party/parties, you can use this space to add them. You do not need to use any special wording. The key is to be clear about what you mean.



Incident history –

Describe **any recent incidents of family violence** against the protected party and any child(ren).

Start with the most recent incident continuing backwards as far as you think it is important for the court to know. You do not need to use any special wording but it is important that you are clear and provide as much detail as possible, including:

- the date the incident occurred
- a description of the incident of family violence
- who was involved (including any witnesses or the police)
- the child(ren)'s involvement in the incident, if applicable
- any injuries or trauma from the incident
- any other detail about the incident you feel it is important for the court to know

Note: If there is a police report, medical report or doctor's note, or any photographs related to the incident, you must talk about them in this section, reference the document, state that it is attached as an exhibit and attach them as exhibits. Each exhibit gets a letter assigned to it, starting with 'A' and continuing through the alphabet. For example, the police report attached as Exhibit A.



23. Is there any family violence you fear is likely to happen that you have not already described in this affidavit? Yes No
If yes, explain what type of family violence and the reason for your fear.

24. Do you have any concerns for the safety of the protected party/parties that you have not already described in this affidavit
 Yes No
If yes, explain the concerns and the reason for your concerns.

25. Describe any recent incidents of family violence against the protected party/parties and any child(ren).
Include:

- how the other party made the protected party and/or the child(ren) feel unsafe (describe examples of the other party's behaviour that made you afraid)
- a description of the incident(s) (write as much detail as possible)
- who was involved (include the police if they were involved at any time)
- who witnessed it
- any exposure the child or children have had to violence or abuse
- any injuries or trauma from the incident
- any doctor's notes, police reports or photos (you must refer to them here as exhibits and make copies of them for the court)

Sworn or affirmed before me

at _____, British Columbia
city

on _____
date

A Commissioner for taking Affidavits in British Columbia
[print name or affix stamp of commissioner]

Signature

CHANGE AN EXISTING PROTECTION ORDER

You need to complete this schedule if you are applying to change an existing protection order, including adding or removing a term of the protection order, changing an existing term in the protection order, or changing when the protection order will expire.

If your application to change an existing protection order is granted by the court, they will cancel the existing protection order and make a new one using all the same terms that were in the previous order but with the changes made.

Existing order –

The court needs to have a copy of the existing protection order. Attach the copy to your application and indicate the date the protection order was made in the field provided.



Court appearance –

A protection order can be made without a party being present if they were served and didn't come to court, or if the court decided the order could be made without notice to the party.



Indicate if you were in court when the protection order was made. If you were not in court, explain why you weren't there. You do not need to use any special wording. The key is to be clear about what you mean.

Party –

Any party can apply to change an existing protection order. Let the court know what your role is in respect to the protection order.

If you are both the protected party or person who the protection order is against AND the parent or guardian of a protected party, select both options that apply.



Changes to the protection order –

Explain what changes to the protection order you are asking the court to make. Try to be clear about what part of the existing order you want to keep and what may need to be changed. You do not need to use any special wording. The key is to be clear about what you mean.



The facts –

What are the facts that support what you are asking the court to order?

Give a summary of the facts including why you want the court to change the order.

You do not need to use any special wording. The key is to be clear about what you mean and why you are asking the court to change the order.

Talk to a lawyer if you need help figuring out what facts you need to present to the court to support your application.

A judge can make decisions based only on the information presented by the parties as evidence. Evidence is presented in writing in an affidavit or as spoken evidence provided in court.

If you choose to, you can prepare an [Affidavit – General Form 45](#). If you do not wish to prepare an affidavit, be prepared to give evidence in court.



Schedule 2 – Change an Existing Protection Order
This is Schedule 2 to the Application about a Protection Order

This schedule must be completed if you are applying to change an existing protection order.

1. I am attaching a copy of the existing protection order made on _____
(mmm/dd/yyyy)

2. *Select only one of the options below*

I was in court when the protection order was made.

I was not in court when the protection order was made because:

Explain why you were not in court when the protection order was made.

3. I am the:

Select all options that apply

protected party

parent or guardian of a protected party

person who the protection order is against

4. I am applying for the existing protection order to be changed as follows:

YOUR STORY

5. The facts on which this application is based are as follows:

Explain why the order needs to be changed and the facts you want the court to consider.

TERMINATE AN EXISTING PROTECTION ORDER

You need to complete this schedule if you are applying to terminate (cancel) an existing protection order.

Existing order –

The court needs to have a copy of the existing protection order. Attach the copy to your application and indicate the date the protection order was made in the field provided.



Court appearance –

A protection order can be made without a party being present if they were served and didn't come to court, or if the court decided the order could be made without notice to the party.

Indicate if you were in court when the protection order was made. If you were not in court, explain why you weren't there. You do not need to use any special wording. The key is to be clear about what you mean.

Party –

Any party can apply to terminate a protection order. Let the court know what your role is in respect to the protection order.

If you are both the protected party or person who the protection order is against AND the parent or guardian of a protected party, select both options that apply.



The facts –

What are the facts that support what you are asking the court to order?

Give a summary of the facts including why the protection order should be terminated (cancelled).

You do not need to use any special wording. The key is to be clear about what you mean and why you are asking the court to terminate the order.

Talk to a lawyer if you need help figuring out what facts you need to present to the court to support your application.

A judge can make decisions based only on the information presented by the parties as evidence. Evidence is presented in writing in an affidavit or as spoken evidence provided in court.



If you choose to, you can prepare an [Affidavit – General Form 45](#). If you do not wish to prepare an affidavit, be prepared to give evidence in court.

Schedule 3 – Terminate an Existing Protection Order
This is Schedule 3 to the Application about a Protection Order

This schedule must be completed if you are applying to terminate an existing protection order.

1. I am attaching a copy of the existing protection order made on _____ that I am applying to have terminated.
(mmm/dd/yyyy)

2. *Select only one of the options below*

I was in court when the protection order was made.

I was not in court when the protection order was made because:

Explain why you were not in court when the protection order was made.

3. I am the:

Select all options that apply

protected party.

parent or guardian of the protected party

person who the protection order is against

YOUR STORY

4. The facts on which this application is based are as follows:

Describe why the order should be terminated and the facts you want the court to consider.

Lesson Plan	
Topic:	Parenting Arrangements
Timing	3 HOURS
Student prep	<ul style="list-style-type: none"> • Read <ul style="list-style-type: none"> ○ Living Together – Living Apart
Learning Objective:	<p>Learners will:</p> <ul style="list-style-type: none"> • Understand the concepts of: <ul style="list-style-type: none"> ○ guardianship ○ parenting time ○ parental responsibilities ○ parenting order and terms used in the Divorce Act. • Be familiar with arguments that a parent could make, and the evidence they should present, to support a claim for guardianship • Be familiar with the different rights and responsibilities for parents who are guardians and those who have parenting time. • Understand what a parent can do if the other parent is not abiding by a parenting order <ul style="list-style-type: none"> ○ denying access, ○ not following terms of the order. • Be familiar with principles considered if a parent wants to change a parenting arrangement. • Know limitation periods relevant to this issue.
Activity:	<ul style="list-style-type: none"> • Presentation • Group discussion of fact pattern
Resource person	Agnes Huang, Lawyer, Saltwater Law
Materials	Powerpoint
Assessment:	Test

Parenting Arrangements

Family Law Advocates Training Course
September 10, 2021

Agnes Huang
Saltwater Law
agnes@saltwaterlaw.ca

Terms

- ~~Custody~~
- Guardianship
- Parental Responsibilities
- Decision Making Responsibilities
- ~~Access~~
- Parenting Time
- Contact
- ~~Mobility~~
- Relocation

Legislation

Divorce Act (in force, March 1, 2021)

- 16.1 - Parenting Orders
- 16.5 - Contact Orders
- 16.6 - Parenting Plan
- 16.7 - Change in place of residence
- 16.9 - Relocation

Family Law Act

- Part 3 – Parentage
- Part 4 – Care of and time with children
- Part 10 – Expert reports, evidence of children, conduct orders

Divorce Act - terms

- s. 2(1) “Child of the marriage”: a child of two spouses or former spouses who, at the material time,
- (a) is under the age of majority and who has not withdrawn from their charge, or
 - (b) is the age of majority or over and under their charge but unable, by reason of illness, disability or other cause, to withdraw from their charge or to obtain the necessities of life
- s. 2(2) For the purposes of the definition *child of the marriage* in subsection (1), a child of two spouses or former spouses includes
- (a) any child for whom they both stand in the place of parents; and
 - (b) any child of whom one is the parent and for whom the other stands in the place of a parent.

Divorce Act - terms

s. 2(1) **parenting time** means the time that a child of the marriage spends in the care of a person referred to in subsection 16.1(1), whether or not the child is physically with that person during that entire time

s. 2(1) **relocation** means a change in the place of residence of a child of the marriage or a person who has parenting time or decision-making responsibility — or who has a pending application for a parenting order — that is likely to have a significant impact on the child’s relationship with

- (a) a person who has parenting time, decision-making responsibility or an application for a parenting order in respect of that child pending; or
- (b) a person who has contact with the child under a contact order

Divorce Act - Duties of Parties

Best interests of child

s. 7.1 A person to whom parenting time or decision-making responsibility has been allocated in respect of a child of the marriage or who has contact with that child under a contact order shall exercise that time, responsibility or contact in a manner that is consistent with the best interests of the child.

Protection of children from conflict

s. 7.2 A party to a proceeding under this Act shall, to the best of their ability, protect any child of the marriage from conflict arising from the proceeding.

Family dispute resolution process

s. 7.3 To the extent that it is appropriate to do so, the parties to a proceeding shall try to resolve the matters that may be the subject of an order under this Act through a family dispute resolution process.

Divorce Act – Parenting Orders

s. 16.1 (1) A court of competent jurisdiction may make an order providing for the exercise of parenting time or decision-making responsibility in respect of any child of the marriage, on application by

- (a) either or both spouses; or
- (b) a person, other than a spouse, who is a parent of the child, stands in the place of a parent or intends to stand in the place of a parent.

Contents of parenting order

s. 16.1(4) The court may, in the order,

- (a) allocate parenting time in accordance with section 16.2;
- (b) allocate decision-making responsibility in accordance with section 16.3;
- (c) include requirements with respect to any means of communication, that is to occur during the parenting time allocated to a person, between a child and another person to whom parenting time or decision-making responsibility is allocated; and
- (d) provide for any other matter that the court considers appropriate.

Divorce Act – Parenting Orders

Terms and conditions

s.16.1(5) The court may make an order for a definite or indefinite period or until a specified event occurs, and may impose any terms, conditions and restrictions that it considers appropriate.

Family dispute resolution process

s.16.1(6) Subject to provincial law, the order may direct the parties to attend a family dispute resolution process.

Relocation

s.16.1(7) The order may authorize or prohibit the relocation of the child.

Supervision

s.16.1(8) The order may require that parenting time or the transfer of the child from one person to another be supervised.

Prohibition on removal of child

s.16.1(9) The order may prohibit the removal of a child from a specified geographic area without the written consent of any specified person or without a court order authorizing the removal.

Divorce Act – Parenting Plan

Parenting plan

s. 16.6(1) The court shall include in a parenting order or a contact order, as the case may be, any parenting plan submitted by the parties unless, in the opinion of the court, it is not in the best interests of the child to do so, in which case the court may make any modifications to the plan that it considers appropriate and include it in the order.

Definition of parenting plan

s. 16.6(2) In subsection (1), *parenting plan* means a document or part of a document that contains the elements relating to parenting time, decision-making responsibility or contact to which the parties agree.

Family Law Act

Definitions:

- Child except in Parts 3 and 7 and s. 247, means a person who is under 19 years of age
- Guardian means a guardian under s. 39 and Division 3 of Part 4
- Parent means a parent under Part 3
- Family violence as defined under ss. 1, 37(2) and 38

Parentage

- Part 3 of the *FLA* sets out a scheme for the determination of parentage for all purposes of the law in B.C. except under the *Adoption Act*
- **s. 26(1)** The parents of the child are presumed to be the birth mother and the biological father
- Part 3 also deals with the parentage of children conceived as a result of assisted reproduction

Declaration of Parentage

British Columbia Birth Registration No. 2018-XX-XX5815, 2021 BCSC 767
(MJ Wilkinson)

- The petitioners, Eliza, Olivia, and Bill (not their real names) were living in a committed polyamorous relationship since 2017. They considered themselves to be a “triad”, which meant each had a relationship with the other and each relationship was considered equal.
- In 2018, Bill and Eliza conceived a child through sexual intercourse, without the use of assisted reproduction. During the pregnancy, Olivia, Eliza, and Bill agreed that Olivia would be involved in the child’s life as a “full parent.” In the fall of 2018, the child - a boy named Clarke (not his real name) - was born. Olivia played a very active role in preparing for his birth, and after Clarke was born.
- All three agreed that Olivia should be recognized as Clarke’s legal parent, alongside Eliza and Bill. However, Olivia did not have any legal rights as a parent. The *Family Law Act* recognizes that a child may have three or more legal parents if the child is conceived through assisted reproduction. The *FLA* does not contemplate a child having more than two parents when a child is conceived through sexual intercourse. BC law only recognized Clarke’s biological parents - Bill and Eliza - on his birth registration.

Declaration of Parentage

- Eliza, Olivia and Bill sought a declaration from the Court that Olivia also be recognized as Clarke's legal parent and added as a mother to the birth registration.
- Madam Justice Wilkinson agreed and exercised the Court's *parens patriae* jurisdiction pursuant to s. 192(3) of the *FLA* and declared that Olivia was also Clarke's legal parent.
- Madam Justice Wilkinson directed the B.C. Vital Statistics Agency to amend Clarke's birth registration so that Olivia is named as Clarke's third legal parent, alongside Bill and Eliza.

Declaration of Parentage

- According to Madam Justice Wilkinson, "[p]ut bluntly, the legislature did not contemplate polyamorous families. This oversight is perhaps a reflection of changing social conditions or attitudes . . . or perhaps is simply a misstep by the legislature".
- Madam Justice Wilkinson affirmed that B.C. courts are statutorily required to consider the best interests of the child in deciding whether a parentage declaration is warranted. On the facts in this case, it was clear that Clarke was being raised in a loving and supportive family by three highly capable parents. It was in Clarke's best interests to have all of his parents legally recognized as such.

Declaration of Parentage

- The Attorney General argued that the practical implications would be cured if Olivia was appointed a guardian of Clarke. Madam Justice Wilkinson disagreed and held that guardianship is not equivalent to parentage and that guardianship is not a "cure-all" for Olivia.
- A declaration of parentage is a lifelong immutable declaration of status, and there are significant rights and responsibilities that come along with it. It allows the parent to fully participate in the child's life. For example, the declared parent may register the child in school, make health care decisions, and obtain an MSP card, a social insurance number, airline tickets and passports for the child. Parentage also determines lineage, citizenship, potential access to parental leave, and certain financial obligations (including responsibility for child support) and ensures that a child will inherit on intestacy.
- Perhaps most importantly, the key difference between parentage and guardianship is that parentage is immutable: the relationship between a parent and their child cannot be broken.

Guardianship

- Guardianship is the full bundle of rights and duties involved in caring for and raising a child
 - Guardian of the person
 - Guardian of the estate

Note: the concept "joint guardianship" is not incorporated into the *FLA*; however, many people, including judges, still use that language in orders.

Guardian of the Person

- Parents are presumptively guardians while living together and after separation, unless agreement or order to contrary (s. 39(1))
- Person is a parent under section 30 (agreement with potential birth mother or donor re parentage)
- Parent who never resided with child is *not* a guardian unless agreement or regular care of child (s. 39(3))

Guardian of the Person

- A person who has custody of a child under ss. 54.01(5) or 54.1 of the *CFCSA* is deemed to be a guardian under the *FLA* (s. 51(5))
- Under s. 51 of the *Infants Act*, if a child has no guardian, or a guardian appointed is dead, refuses to or is incompetent at law to act, then the Director under the *CFCSA* is the personal guardian of the child and the Public Guardian and Trustee is the property guardian of the child

Guardian of Estate

- A child's guardian is not, by reason only of being a guardian, a trustee of the child's property or entitled to discharge property received on behalf of the child (s. 176)
- The exception is in relation to property the trustee has authority to hold for the child, or property within a prescribed value or a prescribed class of property (s. 178)

Regular Care

Test: "willingness to provide for the child's ongoing needs" and record of "usually" or "normally" doing so, more than just simply visiting the child at regular intervals.

Doyle v. Handley, 2018 BCSC 293 (MJ Armstrong)

- "R.D.G. had attended at the hospital where D. was born and visited her there and assisted, to some extent, when he could, shortly after her birth. None of that evidence, however, leads to the conclusion that he was caring for her."
 - However, Justice MacIntosh ordered that the father R.D.G. be appointed a guardian under s. 51(1). Not opposed and there was no basis in the evidence to deny guardianship to R.D.G.
 - Note: the mother J.M.R. had significant mental health issues; MCFD was involved. Primary care of D. was transferred to R.D.G. and his mother.
- R.D.G. v. J.M.R.*, 2016 BCSC 1149 (MJ MacIntosh)

Appointing a Guardian by Agreement

Section 50 - a person cannot become a child's guardian by agreement except

- (a) if the person is the child's parent, or
- (b) as provided under this Division (s. 51), the *Adoption Act* or the *CFCSA*.

Step-parent

- A step-parent is not a guardian of a step-child even if he/she/they has raised the child (i.e. regularly cared for the child). Section 39 only applies to "parents"
- A step-parent can apply for guardianship under s. 51
- If a step-parent has adopted the child, then the step-parent is a guardian.

Regular Care

J.M. v. R.B., 2014 BCPC 0269 (Judge G. Brown)

- 7-year old child; disclosure by child of inappropriate touching and other sexual behaviour by father. Father had regular parenting time until the allegations arose. Police found no criminal behaviour. Conduct complained of found to be highly improbable by Dr. Elterman.
- [91] Based on s. 39(3)(c) of the *Family Law Act*, I also find R.B. to be a guardian. He has regularly cared for K.B. even though his visits have recently been more restricted due to the allegation. I obviously would not be making this order if I had ruled differently concerning his risk to K.B. I am of the view R.B. regularly cared for K.B. because he was having visits every second weekend from mid-2012 until the allegations arose in the spring of 2013. He also saw K.B. on a less-structured basis prior to 2012. Furthermore, R.B. has K.B. on his medical-dental plan and he pays child support. He has been to some of her medical appointments.
- [91] In my view, "regularly cares for" under s. 39(3)(c) does not require something like 40 percent of time with the child. It is a fact-driven analysis based on the parent's regular involvement with the child.

The Court May Appoint a Guardian

Section 51 applies to non-parents, and to parents who have not lived with a child and have not had regular care of the child.

The Court may appoint a person as the child's guardian, or terminate a person's guardianship of a child (s. 51(1)(a))

- The test is the best interests of the child (s. 51(2))
- If a child is 12 years of age or older, the Court must not appoint a person as guardian without the child's written approval (s. 51(4))

Notice must be given to all parents, guardians and other who provide care for the child or with whom the child lives (s. 52(1))

Sections 208 and 209 - In case of Nisga'a and treaty first nations children (as defined under section 29.1 of the *Interpretation Act*), the applicable first nations government must be served and has standing. Current treaty first nations are the Maa-nulth (several First Nations on Vancouver Island), and the Tsawwassen First Nations.

Evidence for Appointment of Guardian

Section 51(2) – applicant must provide evidence respecting the best interests of the child

The *Provincial Court Family Rules* and the *Supreme Court Family Rules* set out evidence requirements for the appointment of a non-parent or parent without regular care as the guardian of a child, under section 51 of the *FLA*.

Provincial Court Family Rules, Rule 26
Supreme Court Family Rules, Rule 15-2.1

- The Affidavit must be prepared for guardianship applications, to which must be attached criminal records check (CPIC), and record checks from MCFD and the Protection Order Registry.
- The Affidavit must set out the Applicant's relationship with the child; any incidents of family violence affecting the children; any involvement in court proceedings under the *CFCSA*, the *FRA*, the *FLA* or the *Divorce Act* concerning children in the applicant's care; and any history of criminal convictions and the existence of any current criminal charges.
- There are prescribed forms for the child protection and Protection Order checks, which are obtained from the Court Registry.

The Supreme Court Rules and Provincial Court Rules provide that the Court may make an interim order for guardianship without the above affidavits if satisfied that it is in the best interests of the child to do so. The interim order must expire within 90 days unless renewed by the Court.

Termination of Guardianship

- Section 39(2) – an agreement or Order may be made after separation, or when about to separate, that one parent is not the child's guardian.
- Section 51(1)(b) – the Court may terminate a person's guardianship of the child, except when director is guardian under the Adoption Act or the *CFCSA*
- Termination of guardianship is only appropriate in:
 - extreme situations; important to give parents "maximum opportunity to remain a significant part of the child's life": *D. v. D.*, 2013 BCPC 135 (Judge Merrick)
 - rarest and clearest of cases where cancelling guardianship is clearly in the child's best interest": *S.H. v. R.G.*, 2013 BCPC 114 (Judge Hamilton)

Termination of Guardianship (1)

K.A.G. v. B.G.J., 2021 BCSC 142 (MJ Giaschi)

The claimant mother sought to terminate the guardianship of the respondent father. There had been several incidents of family violence by the father during and after the relationship. The father engaged in conduct that was abusive, harassing and threatening, which led to the mother obtaining a protection order, which the father breached. The father sent hundreds of abusive emails and text messages and other harassing conduct. The father was charged and pleaded guilty to criminal harassment, and was sentenced to time served (265 days) and 3 years probation..

The Court found that:

[74] Terminating the guardianship of a parent is a draconian step and should only be ordered in the most extreme circumstances and only if the concerns cannot be addressed through the allocation of parenting responsibilities: *M.A.G. v. P.L.M.*, 2014 BCSC 126, at paras. 44-46, *C.A.J. v. N.J.*, 2014 BCSC 279, at paras. 134-135; and *Xu v. Chu*, 2018 BCSC 2222, paras. 57-59.

Termination of Guardianship (1)

[75] The circumstances here are extreme but I am not satisfied that they so extreme that the respondent should be removed as a guardian. Pursuant to s. 40(1) of the *FLA*, only guardians can have parental responsibilities and parenting time. Hence, if the respondent is removed as a guardian, he will lose any opportunity of exercising parental responsibilities and parenting time and, much more importantly, the children will likely lose the prospect of a future relationship with the respondent. There is a possibility that the respondent can address his issues by attending counselling and seeking other professional help. If he does so, he should have the opportunity to come to court to show a material change in circumstances and thereby resume the role of a supportive, caring and nurturing father to his children. This would be in the best interests of the children. He cannot do this if he is removed as a guardian.

[76] Additionally, the compelling concerns of the claimant to be free of the respondent's harassing, manipulative and controlling conduct can be addressed in this case by giving the claimant all of the parental responsibilities and by denying any parenting time to the respondent. It is not necessary to also remove him as a guardian of the children at this time.

Termination of Guardianship (2)

Lessard v. Mahoney, 2019 BCSC 551

- 2009 final order – joint guardian; child almost 14 years old; changed last name to step-dad's.
- The father moved to Mexico. Last time the father saw the child in person was June 2009, just after the trial, when child was almost four years old. The last telephone or Skype call from the father to the child was in 2013. The father had not personally sent the child any correspondence since 2013.
- Court found that the father was a "non-entity" in his daughter's life. They have had virtually no contact over the last nine years since 2009 and there was no indication from the father that he intended to make efforts to reverse that situation.
- The mother was granted sole guardianship, aka the father's guardianship was terminated.

Divorce Act – Decision Making

s. 2(1) **decision-making responsibility** means the responsibility for making significant decisions about a child's well-being, including in respect of

- (a) health;
- (b) education;
- (c) culture, language, religion and spirituality; and
- (d) significant extra-curricular activities; (*responsabilités décisionnelles*)

Allocation of decision-making responsibility

16.3 Decision-making responsibility in respect of a child, or any aspect of that responsibility, may be allocated to either spouse, to both spouses, to a person described in paragraph 16.1(1)(b), or to any combination of those persons.

Entitlement to information

16.4 Unless the court orders otherwise, any person to whom parenting time or decision-making responsibility has been allocated is entitled to request from another person to whom parenting time or decision-making responsibility has been allocated information about the child's well-being, including in respect of their health and education, or from any other person who is likely to have such information, and to be given such information by those persons subject to any applicable laws.

Divorce Act – Parenting Time/Contact

Parenting time

16.2 (1) Parenting time may be allocated by way of a schedule.

Day-to-day decisions

16.2(2) Unless the court orders otherwise, a person to whom parenting time is allocated under paragraph 16.1(4)(a) has exclusive authority to make, during that time, day-to-day decisions affecting the child.

Contact

16.5(4) In determining whether to make a contact order under this section, the court shall consider all relevant factors, including whether contact between the applicant and the child could otherwise occur, for example during the parenting time of another person.

Contents of contact order

16.5(5) The court may, in the contact order,

(a) provide for contact between the applicant and the child in the form of visits or by any means of communication; and

(b) provide for any other matter that the court considers appropriate.

Parenting Arrangements

- **Parenting Arrangements** are defined as arrangements for parental responsibilities and parenting time (s. 1)
- Only a guardian can have parenting responsibilities and parenting time
- **Informal parenting arrangements** - If “normal” part of child’s routine, cannot be changed without consulting other guardians (s. 48), unless unreasonable or inappropriate to consult
- Court may make orders for the allocation of parental responsibilities or parenting time, that parties participate in dispute resolution, for the implementation of a parenting order, eg. re exchanges or supervised access (s. 45)

No Presumptions

s. 40(4) - No particular arrangement is to be presumed to be in child’s best interests.

- In particular, there is **no presumption** that:
 - Responsibilities should be allocated equally
 - Parenting Time should be shared equally
 - Decisions should be made separately or together

But... the *FLA* essentially sets up a “joint” guardianship regime as each guardian is entitled to exercise parenting responsibilities unless an agreement or Order provides otherwise.

Parental Responsibilities

s. 41 - Parental responsibilities concern the following:

- a) Day-to-day decisions affecting the child and day-to-day care, control and supervision of the child
- b) Where child will reside
- c) With whom child will live with and associate
- d) The Child’s education and participation in extra-curricular activities, including the nature, extent and location

Parental Responsibilities

s. 41(e) Child’s cultural, linguistic, religious and spiritual upbringing and heritage, including if the child is an Indigenous child, the child’s Indigenous identity

A.J.H. v K.J.H., 2020 BCPC 74 (Judge Mundstock)

- The mother and the father are both Christians but have different spiritual beliefs. The father is a Fundamentalist Baptist and believes in a literal interpretation of the bible.
- The father believes the government of Canada should reinstate the death penalty and homosexuals should be put to death. The Father believes a wife has a duty to obey her husband, and that women should not speak or teach in church. The father wants to teach his children his views of the bible so they can thrive by having the same firm foundation and stability. The father believes the mother’s religious instruction is harmful to the children and not in their best interests.

Parental Responsibilities

- Judge Mundstock granted the mother the authority to make decisions respecting their religious and spiritual upbringing. The judge was “concerned for the physical, psychological and emotional safety, security and well-being of the children if [the father] were to participate in their religious and spiritual upbringing.” The judge found the father’s views to be “anti-social and will cause the children to be unable to get along with a large number of people”.
- The judge also ordered that the father’s parenting time be in public, so that the father has little opportunity to teach his religious views to the children.

Parental Responsibilities

s. 41(f) Child's medical, dental and other health-related treatments, subject to the *Infant's Act*

A.B. v. C.D., 2020 BCCA 4

The Court of Appeal affirmed that the 14 year old child was mature enough to make decision to pursue gender transition treatment

g) Applying for passport, license, permit, benefit, privilege of 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 a parent or guardian is entitled or required by law to receive

Parental Responsibilities

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

Assigning Guardianship

- Section 53: A guardian may appoint a person to act as guardian in event of the guardian's death, and that person has the same responsibilities (not more, not less) as the guardian. That is, the surviving guardian does not automatically become the "sole" guardian of the child. (**Testamentary Guardian**)
- Section 55: A guardian may appoint a person to be a standby guardian, by execution of a prescribed form, to act in case of terminal illness or permanent mental incapacity on the party of the guardian. (**Standby Guardian**)
 - The person must accept the appointment as guardian: s. 57
 - Regulations were made under the *FLA* setting out prescribed forms to be used for the appointment of a testamentary or standby guardian.
- Section 43(2): If a guardian is unable to exercise any parental responsibilities, the guardian may authorize, in writing, a person to exercise, in the best interests of the child, one or more of the guardian's parental responsibilities. (**Temporary Guardian**)

Note: A guardian cannot assign to a temporary guardian her/his responsibility in relation to where child will reside, the child's cultural, linguistic, religious and spiritual upbringing and heritage, or starting, defending or settling a proceeding

Parental Responsibilities

s. 41(j) - Requesting and receiving information from third parties health, education and other information respecting the child

- Question: does s. 41(j) permits a parent of a mature minor who has the capacity to give consent to health care treatment under section 17 of the *Infants Act* to access the records and information in connection with that mature minor's health care treatment without the child's consent.
- The *Infants Act* gives mature minors the right to consent the medical treatment, but there is no mention of a right to privacy of their records.
- Megan Ellis' case (oral reasons for judgment, not reported) – Mr. Justice G.C. Weatherill dismissed the application of mother to prohibit the father from accessing their 16-year old child's medical and counselling records. Leave to appeal was granted, but the father consented to order sought by the mother and the appeal did not proceed.

Suggested s. 41(j) term to avoid the above situation:

"The parties are each entitled to request and receive from third parties health, education or other information respecting the child, except in relation to health care provided pursuant to section 17 of the *Infants Act*"

Allocation of Parental Responsibilities

- A guardian must exercise parental responsibilities in the best interests of the child (ss. 40 and 43)
- Guardians must exercise parental responsibilities in consultation with all other guardians
 - unless there is agreement or Order to contrary, or
 - unless consultation would be unreasonable or inappropriate
- Parental responsibilities may be allocated among guardians by agreement (s. 44(1)(a)) or by Order (s. 45(1)(a)). That is, parental responsibilities need not be shared.
- **Note:** An agreement is only binding and an Order can only be made in respect of parenting arrangements if the guardians (parents) are separated: ss. 44(2) and s. 45(2).

Parenting Time

Section 42

- **Parenting time** is time that a child is with a guardian, as allocated under an agreement or Order
- During parenting time, a guardian may exercise day-to-day decisions affecting the child, unless an agreement or Order says otherwise.

Contact

- **Contact** is time someone who is NOT a guardian has with a child, including people other than parents: ss. 1 and 58
- Agreements for contact are only binding if made with all guardians having parental responsibility for contact: s. 58
- Orders for contact may include terms and conditions, such as supervision requirements” s. 59

Restrictions on Parenting Time (1)

C.D.A. v. P.R.B., 2020 BCSC 1337 (MJ N. Smith)

The respondent Mother was seeking to review the parenting order, asking for primary residence or equal parenting time.

A Master had made an Order in December 2019 that the child reside primarily with the father with the mother having parenting time in public.

The mother had suffered for most of her life from anxiety and depression and from an eating disorder.

Restrictions on Parenting Time (1)

The Master had stated that once the mother had put together a better and more extensive pattern of counselling and self-awareness in respect of her unfortunate mental health issues, the parenting time was subject to review.

The father wanted supervised parenting time, relying on the mother’s clinical records.

MJ Smith stated that the mother, having had significant insight in recognizing her need for treatment and appropriately seeking treatment, “now finds the records of that treatment being used against her.”

Restrictions on Parenting Time (1)

MJ Smith did not agree with the father that the onus is on the mother to provide a report confirming she is capable of parenting. Nothing in Master’s order set the bar that high.

“The mother suffers from anxiety and depression. Those are conditions that cannot be minimized, but they are all too common in society and their presence, in itself, cannot be grounds for denying or restricting parenting. Most important, there is nothing in the clinical records to suggest her condition poses a risk to the child.”

Restrictions on Parenting Time (1)

The father said the child has nightmares after spending time with the mother.

MJ Smith: “It is virtually impossible to weigh or fully appreciate the context of hearsay statements of a 2 year old, particularly one who spends most of his time with adults who are clearly hostile to the mother.”

“The child has not had a normal relationship with his mother for a third of his life. There is need for some caution, but on the balance and considering the s. 37 factors, it is in best interests of the child to restore his relationship with his mother. Unlikely to happen if all her time is supervised and even less so if her time is at locations where their interactions are being directly monitored by the father and others close to him.”

Restrictions on Parenting Time (1)

An order for supervised access requires evidence of exceptional circumstances because it is one small step away from complete termination of the parent-child relationship. The Court must weigh child’s right to a relationship with a parent and the risk of harm, among other factors.

(adopting Master Elwood’s approach in *M.D.F. v. D.O.T.C.*, 2020 BCSC 522)

MJ Smith noted that there are 16 years of co-parenting ahead of these parents. His Lordship ordered unsupervised graduated parenting time for the Mother.

Restrictions on Parenting Time (2)

M.D.F. v. D.O.T.C., 2020 BCSC 522 (Master Elwood)

Parties have two children: 4 and 1-1/2 years old

The mother was seeking to have the father's parenting time be supervised until the matter can be dealt with at trial.

The father has a history of depression and suicidal ideation; he attempted to commit suicide (overdose) following separation.

The father argued that the evidence is insufficient to show any risk of harm to the children and that he is doing well and receiving appropriate and ongoing treatment. He was seeking unsupervised parenting time and a section 211 report.

Restrictions on Parenting Time (2)

Is threatening to commit suicide family violence?

Master Elwood: "I have no difficulty accepting the mother's proposition that a threat to commit suicide may constitute family violence, particularly where the threat is used as a form of psychological weapon in a family dispute. However, I think it would be a mistake for the court to label every disclosure of suicidal ideation as family violence. *To do so risks stigmatizing people who struggle with mental illness and suicidal thoughts as violent or abusive.* Telling a spouse about suicidal thoughts is not, in-and-of-itself, abusive. Context is important." [emphasis added]

"Characterizing every disclosure of suicidal ideation as family violence would also risk discouraging those who need help from seeking that help and deprive their spouses of important information. As the mother herself argues, former spouses and medical professionals must rely on self-reporting by a suicidal spouse to recognize a potentially dangerous situation." [emphasis added]

Restrictions on Parenting Time (2)

"There is no evidence the father used the statements about his suicidal thoughts as a form of psychological abuse. His disclosures began before the relationship broke down. No evidence he used disclosures as leverage or retaliation against the mother. If anything, the father knowingly weakened his position on parenting arrangements by disclosing these thoughts to the mother."

"There is no evidence the father talked about suicide in the presence of the children, with the exception of one telephone call when he should have known the child was on speakerphone with mother. No evidence of a pattern of the father exposing child to statements that would scare her."

Restrictions on Parenting Time (2)

Should supervision of the father's parenting time be ordered?

The mother insisted on supervision post discharge from hospital. The father's only option was to agree or not see children altogether.

Note: there was no judicial determination that supervision was warranted.

Master Elwood: "While evidence of the father's recovery is promising, I am unable to conclude on this interim application that he has fully overcome the depression that drove him to attempt suicide in February 2019. The question of whether he is fully clear of the risk of another suicide attempt can only be determined, if at all, at a trial with benefit of full testimony, cross and expert evidence. For present purposes, I must assume the father remains at risk based on the factors identified in February 2019."

Restrictions on Parenting Time (2)

However, the question was not whether the father is at risk of attempting suicide again, but rather whether without supervision, the father poses a risk to the physical, psychological and emotional safety and well being of the children.

"In my view, it is a large step from the recognized risk of a repeat suicide attempt to a risk that the father would seek to take his life or endanger the safety of his children while they are in his care. That step is too large for me to take on the evidence."

Some factors considered by Master Elwood:

- Psychiatrists did not express concern for the safety of the children.
- The father was cleared to work in emergency department, responsible for health and safety of vulnerable persons.
- No evidence of reckless behaviour by the father that has put children's safety at risk.
- A year had passed and no evidence of any behaviour by the father that he had put children at any risk.

Restrictions on Parenting Time (2)

Conclusion: The best interests of the children will be protected by allowing the father unsupervised parenting time with the father continuing with health monitoring program, regular updates from treating psychiatrist, and full and ongoing disclosure to the mother.

Restrictions on Parenting Time (3)

A.P. v. S.T., 2019 BCSC 1780 (MJ Mayer)

Parties shared the parenting of six year old P.

S.T. struggled with alcoholism after child was born. She completed a residential treatment program.

In 2017, S.T. began working as an escort out of her rented home to supplement her income as a hair stylist.

A.P. notified S.T.'s landlord of escort business and S.T. was evicted – Court called this conduct inappropriate.

A.P. called MCFD, which led to S.T. having supervised visits.

Restrictions on Parenting Time (3)

MJ Mayer: "In my view, working as an escort is a personal choice which S.T. was and is able to make. Her choice of work as an escort does not necessarily impact her ability to parent P, so long as she maintains an appropriate separation of this activity from her son."

S.T. was no longer working as an escort. She said she was working as a hairstylist in a separate rented commercial space.

MJ Mayer: "If she was operating an escort business out of this separate space, which I do not find is the case, this would not necessarily qualify as a material change of circumstance justifying a reconsideration of P's parenting arrangements. Something more would be required indicating that this activity put P at risk or otherwise impacted S.T.'s ability to care for him."

S.T. did not adequately consider the obvious risks of bringing clients into her home shared with P even when she was not there. But she has admitted her mistake now.

Changing a Parenting Order

"There is really no such thing as an absolutely final order or agreement involving children. All orders and agreements involving children can be changed, but in general, something new must have happened since the original order or agreement was made that affects the best interests of the children."

Mary Mouat and Samantha Rappaport, "Estrangement and Alienation" chapter, J.P. Boyd on Family Law

Section 47 – A court may change, suspend or terminate an order respecting parenting arrangements, if satisfied that, since the making of the order, there has been a change in the needs or circumstances of the child, including because of a **change in the circumstance of another person**.

Section 60 – same wording in respect of contact orders

Test for a "material change in circumstance"

- a change in the condition, means, needs or circumstances of the child and/or the ability of the parents to meet the needs of the child,
- which materially affects the child, and
- which was either not foreseen or could not have been reasonably contemplated by the judge who made the initial order.

Williamson v. Williamson, 2016 BCCA 87

Best Interests of the Child

Determining Child's Best Interests

Divorce Act

Section 16(1) to (7)

Family Law Act

Sections 37 and 38

Section 211 Reports

Views of the Child

Appointment of a Lawyer for the Child

Divorce Act – Best Interests

16 (1) The court shall take into consideration **only the best interests of the child** of the marriage in making a parenting order or a contact order.

Primary consideration

(2) When considering the factors referred to in subsection (3), the court shall give primary consideration to the child's physical, emotional and psychological safety, security and well-being.

Factors to be considered

(3) In determining the best interests of the child, the court shall consider all factors related to the circumstances of the child, including

- (a)** the child's needs, given the child's age and stage of development, such as the child's need for stability;
- (b)** the nature and strength of the child's relationship with each spouse, each of the child's siblings and grandparents and any other person who plays an important role in the child's life;

Divorce Act – Best Interests

- (c) each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse;
- (d) the history of care of the child;
- (e) the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;
- (f) *the child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage;*
- (g) any plans for the child's care;
- (h) the ability and willingness of each person in respect of whom the order would apply to care for and meet the needs of the child;
- (i) the ability and willingness of each person in respect of whom the order would apply to communicate and cooperate, in particular with one another, on matters affecting the child;

Divorce Act – Best Interests

Factors relating to family violence

16(4) In considering the impact of any family violence under paragraph (3)(j), the court shall take the following into account:

- (a) the nature, seriousness and frequency of the family violence and when it occurred;
- (b) whether there is a pattern of coercive and controlling behaviour in relation to a family member;
- (c) whether the family violence is directed toward the child or whether the child is directly or indirectly exposed to the family violence;
- (d) the physical, emotional and psychological harm or risk of harm to the child;
- (e) any compromise to the safety of the child or other family member;

FLA - Best interests of the child

Best interests of child

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

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

- (a) the child's health and emotional well-being;
- (b) the child's views, unless it would be inappropriate to consider them;
- (c) the nature and strength of the relationships between the child and significant persons in the child's life;
- (d) the history of the child's care;

Divorce Act – Best Interests

- (j) any family violence and its impact on, among other things,
- (i) the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child, and
- (ii) the appropriateness of making an order that would require persons in respect of whom the order would apply to cooperate on issues affecting the child; and
- (k) any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child.

Divorce Act – Best Interests

(f) whether the family violence causes the child or other family member to fear for their own safety or for that of another person;

(g) any steps taken by the person engaging in the family violence to prevent further family violence from occurring and improve their ability to care for and meet the needs of the child; and

(h) any other relevant factor.

Past conduct

16(5) In determining what is in the best interests of the child, the court shall not take into consideration the past conduct of any person unless the conduct is relevant to the exercise of their parenting time, decision-making responsibility or contact with the child under a contact order.

FLA - Best Interests of the child

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

(f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise his or her responsibilities;

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

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

FLA - Best interests of the child

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

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

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

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

Assessing Family Violence

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

- (a) the nature and seriousness of the family violence;
- (b) how recently the family violence occurred;
- (c) the frequency of the family violence;
- (d) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at a family member;
- (e) whether the family violence was directed toward the child;
- (f) whether the child was exposed to family violence that was not directed toward the child;
- (g) the harm to the child's physical, psychological and emotional safety, security and well-being as a result of the family violence;
- (h) any steps the person responsible for the family violence has taken to prevent further family violence from occurring;
- (i) any other relevant matter.

Indigenous Heritage - BIC

- Unlike in the *Divorce Act*, the definition of the best interests of the child in the *FLA* does not include "a child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage"
- However, in *Dodginghorse v Limas*, 2019 BCSC 1385 (MJ Wilson), the Judge dealt with the child's Indigenous heritage and an "additional factor" to be considered in determining the best interests of the child.
- In *Dodginghorse*, the Mother grew up and continues to live on the Adams Lake Reserve near Chase, B.C., but she is a member of the Tsuu T'ina Nation (southern Alberta). The child Amelia was 8 years old

Additional Factor – Amelia's indigenous heritage

[70] The court is obligated to consider all of the child's needs and circumstances, including but not limited to those factors specifically enumerated in s. 37(2) of the *FLA*. However, the list of factors is not exhaustive and the court may consider other factors that may assist in determining the best interests of a child.

Indigenous Heritage - BIC

[71] In this case, I consider Amelia's indigenous heritage to be a factor. Mr. Rod Thomma and Mr. Robin Billy both gave evidence about cultural activities in the Shuswap Nation, which includes the Adams Lake Reserve.

...

[74] It is important that Amelia learn of her culture and heritage. Moreover, not only is it important that she learn it, it is something that she has actively engaged in while she has been living in Chase. As such, learning about her heritage and becoming an active participant in her community is not simply aspirational as it relates to Amelia, but is already a fundamental part of her life.

[75] Living in Texas would not preclude her preserving some exposure to her heritage and culture, and I accept Mr. Limas' evidence that he would take active steps to ensure she maintained contact with her heritage. However, she would not be immersed in the culture on a full-time basis and would not enjoy the opportunity to learn the language. This consideration would also militate in favour of Amelia remaining in Chase.

Indigenous Heritage - BIC

[78] I do not need to decide the extent to which Amelia's indigenous heritage and culture interacts with the mandatory factors enumerated in s. 37(2) of the *FLA* because even if I did not consider it and relied solely on the statutory factors, the outcome would be the same. However, I would be remiss if I did not address Amelia's heritage in these reasons because it is a fundamentally important aspect of her life and her story would therefore be incomplete without it.

Mr. Justice Wilson concluded that it was in the best interests of Amelia to remain living in Chase with her mother and for her father to have parenting time with Amelia for the whole of her Spring Break and summer holidays from school and much, or all, of the Winter Break from school (depending on the year).

DA v. FLA - BIC

M.W. v N.L.M.W., 2021 BCSC 1273 (MJ Veenstra)

The trial completed in mid-January 2021 but reasons for judgment were not issued until after the new *Divorce Act* came into effect. Mr. Justice Veenstra invited the parties (the Claimant was represented by counsel; the Respondent was self-represented) to provide additional submissions with respect to the impact of the *Divorce Act* amendments.

Mr. Justice Veenstra found that there is considerable overlap between the *FLA* provisions with respect to best interests of the child and the new provisions of the *Divorce Act*. Much of the language used is the same. However, Mr. Justice Veenstra found that, regarding the best interests of the child, there are "two areas in which the language of the respective statutes shows a difference in emphasis".

DA v. FLA - BIC

The two differences, according to Mr. Justice Veenstra are as follows:

First difference

Consideration of past conduct: The Judge stated that section 16(5) of the *Divorce Act* arguably permits broader consideration of past conduct. It prohibits consideration of past conduct unless “relevant to” exercise of parenting responsibilities. Section 37(4) of the *FLA* restricts consideration of past conduct to situations where it “substantially affects” a factor in s. 37(2). That said, Mr. Justice Veenstra found that, given that the ultimate question under each statute is the same (i.e., the best interests of the child), in most cases these different wordings will give rise to no difference in result.

DA v. FLA - BIC

Mr. Justice Veenstra also cited the Department of Justice’s explanatory note with respect to s. 16(6) of the *Divorce Act* :

It is well accepted that unless circumstances, such as safety concerns, indicate otherwise, children should have strong relationships with each parent. Sufficient time with each parent is necessary to maintain these relationships.

However, the optimal amount of time depends on an individual child’s circumstances and must be based on what is in the child’s best interests. Therefore, courts must take into account all factors relating to the best interests of the child in determining what division of time would be best.

Mr. Justice Veenstra concluded that what appears to be a difference in emphasis will likely have little effect in application. In the circumstances of this case, both the *Divorce Act* and the *FLA* provisions lead to the same result, regardless of any difference in emphasis in the relevant wording.

DA v. FLA – Family Violence

Mr. Justice Veenstra then went on to state that:

[107] Thus, the proper approach is to first assess the allegations of family violence, and then to consider whether any family violence found to have occurred “substantially affects”, or at least is relevant to, one of the factors listed in *DA* s. 16 or *FLA* s. 37.

[108] The court should also be careful not to label conduct as “family violence” where there is no evidence the child has suffered any physical or emotional harm as a result of the parents’ conduct. The provisions of the *FLA* relating to family violence are intended to address a serious social issue and to protect children and spouses from actual harm or danger: *C.L.M. v. M.J.S.*, 2017 BCSC 799 at para. 365.

[109] The best interests of a child are promoted and protected by making orders that contemplate real and substantial risks to their safety, security and well-being, in respect of both the possibility of a risk apprehended by the court actually existing or becoming manifest, and the risk of potential harm to a child as a result, and the risk of possibly harming a child’s interests by any other that might be too broad: *N.D.T. v. T.F.T.*, 2016 BCSC 134 at para. 103.

Note: I see this restrictive characterization of family violence as problematic.

DA v. FLA - BIC

Second difference:

Preference for, or emphasis on sharing of, parenting time: The Judge noted that section 16(6) of the *Divorce Act* gives effect to a desire for a child to have “as much time with each spouse as is consistent with the best interests of the child”, while section 40(4) of the *FLA* eliminates any presumption of equal sharing of parenting time. Mr. Justice Veenstra noted however that both provisions are absolutely clear that the best interests of the child are paramount.

The Judge held that although the *FLA* makes clear that there is no presumption in favour of equal parenting time, the connection between a child’s emotional well-being and a healthy relationship with both parents is a matter often recognized by the courts, citing *D.A.B. v. C.A.S.*, 2020 BCSC 807 at paras. 151 and 155 and cases cited therein.

DA v. FLA – Family Violence

M.W. v N.L.M.W., 2021 BCSC 1273 (MJ Veenstra)

Mr. Justice Veenstra noted that, while the provisions as to family violence in the *Divorce Act* came into effect only recently, the *FLA* provisions have been in effect for several years. Given that the provisions in each statute are similar (although not identical), the jurisprudence that has developed under the *FLA* is of assistance in interpreting both.

The Judge then cited *R.W. v. P.C.*, 2017 BCSC 998 at para. 76:

[76] In cases where family violence is alleged, it is the obligation of the court to assess the evidence provided and determine whether or not it had indeed occurred and its extent. It is insufficient for one party to merely allege that she was the subject of abuse. The court must consider the evidence provided by both parties as well as other witnesses to determine what had taken place over the course of the marriage.

Section 211 (FLA) Reports

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

- (a) the needs of a child in relation to a family law dispute;
 - (b) the views of a child in relation to a family law dispute;
 - (c) the ability and willingness of a party to a family law dispute to satisfy the needs of a child.
- (2) A person appointed under subsection (1)
 - (a) must be a family justice counsellor, a social worker or another person approved by the court, and
 - (b) unless each party consents, must not have had any previous connection with the parties.
 - (3) An application under this section may be made without notice to any other person.

Section 211 & VOC Reports

- (4) A person who carries out an assessment under this section must
- prepare a report respecting the results of the assessment,
 - unless the court orders otherwise, give a copy of the report to each party, and
 - give a copy of the report to the court.

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

Note: Recommendations made in section 211 reports are not determinative; however, judges often rely on them.

Views of the Child Report / Hear the Child Report

- A useful tool, but not a full assessment where the needs and views of the child and the ability and willingness of each parent to meet the child's needs are considered.
- Can be completed by a number of professionals, including lawyers.

Children's Voices

Keith v MacMillan 2014 BCSC 1352 (MJ Donegan)

- The parents were unable to co-parent successfully after separation. They tried mediation and counseling and each blamed the other for the lack of success.
- The Court had the benefit of a Views of the Child Report for two children aged 9 and 11, which shed light on the parents' communications and co-parenting difficulties:
 - The children were asked to rate how their parents "get along" on a scale of 0 to 10, with zero representing "no cooperation". The older child gave his parents a "minus 6" and the younger child gave her parents a "zero"!
 - The children shared the family violence they witnessed and experienced; neither parent had disclosed the family violence
- The Court ordered a comprehensive section 211 report to further investigate the issues raised by the children in the Views of the Child report.

Other Ways to Get Child's Evidence

Family Law Act

Court may decide how child's evidence is received

s. 202 In a proceeding under this Act, a court, having regard to the best interests of a child, may do one or both of the following:

- admit hearsay evidence it considers reliable of a child who is absent;
- give any other direction that it considers appropriate concerning the receipt of a child's evidence.

Children's Lawyer

s. 203 (1) The court may at any time appoint a lawyer to represent the interests of a child in a proceeding under this Act if the court is satisfied that

- the degree of conflict between the parties is so severe that it significantly impairs the capacity of the parties to act in the best interests of the child, and
- it is necessary to protect the best interests of the child.

(2) If the court appoints a lawyer under this section, the court may allocate among the parties, or require one party alone to pay, the lawyer's fees and disbursements

Children's Lawyer

Provincial Court Family Rules

Child's lawyer

162(1) If a case involves a child and the child is represented by a lawyer in the case, the lawyer for the child must

- file and serve on the parties Form 40 [Notice of Lawyer for Child] when the lawyer starts representing the child, and
- file and serve on the parties Form 41 [Notice of Removal of Lawyer for Child] when the lawyer stops representing the child.

(2) The lawyer for a child

- must be notified of all hearings, conferences and trial dates relating to the case,
- must be served all documents that the parties are served, and
- may attend all hearings, conferences and trial dates relating to the case.

(3) For the purposes of these rules, a lawyer may start representing a child at any time during a case.

Standard Wording of Order (Picklist)

"Pursuant to section 202 and/or 203(1) of the Family Law Act, the child(ren), (name, date of birth) may be represented by counsel appointed by the Child and Youth Legal Centre/(lawyer's name)."

Parenting Time Issues

Parenting: Ancillary Issues

- Failure to Exercise Parenting Time/Contact
- Denial of Parenting Time/Contact
- Child Abduction
- Estrangement and Alienation

Failure to Exercise Parenting Time/Contact

- Section 63 of the *Family Law Act* addresses this issue and provides limited remedies – ensuring the prescribed remedy is not at odds with the child’s best interest – for example forcing a relationship with an uninterested adult.
- This section gives judges the discretion to allocate the cost, if any, required to facilitate parenting time/contact or the family dispute resolution, including reimbursing the other parent for lost wages and child care expenses.

Failure to Exercise Parenting Time/Contact

Section 63(1): If a person fails repeatedly to exercise the parenting time or contact with the child to which the person is entitled under an agreement or order, whether or not reasonable notice was given, the court on application may make an order to do one or more of the following:

- (a) require one or more of the things described in section 61 (2) (a), (b) or (e) [*denial of parenting time or contact*];
- (b) require the person to reimburse any other person for expenses reasonably and necessarily incurred by the other person as a result of the failure to exercise the parenting time or contact with the child, including travel expenses, lost wages and child care expenses;
- (c) if the court is satisfied that the person who failed to exercise the parenting time or contact with the child may not comply with an order under this section, order that person to do one or more of the things described in section 61 (2) (f).

(2) In making an order under subsection (1)(a), the court may allocate among the parties, or require one party alone to pay, the fees relating to the family dispute resolution, counselling, service, program or transfer.

Failure to Exercise Parenting Time

A.K. v J.R.J., 2019 BCSC 868 (MJ G.C. Weatherill)

Mr. Justice Weatherill held that in determining whether a party should be reimbursed for costs due to the other party failing to exercise parenting time, the court must consider only expenses actually incurred and if such expenses were reasonable and necessary.

[35] In my view, fairness dictates that all daycare and nanny expenses reasonably and necessarily incurred by the plaintiff for D.’s care during times when the respondent would otherwise have been responsible for his care be paid by the respondent, and where she has failed to exercise her parenting time without reasonable excuse. The claimant is entitled to a declaration, rather than an order, to that effect because s. 63(1)b) of the *FLA* contemplates reimbursement of expenses actually incurred rather than those that may be incurred in the future. The claimant will be required to demonstrate that the expenses he incurred were “reasonable and necessary”.

Denial of Parenting Time/Contact

Section 61 establishes an enforcement regime for judges to ensure parties respect each other’s parenting time and contact arrangements.

Section 61(2) provides a range of remedies, from preventative to punitive, that a judge can order when there is a *wrongful* denial of parenting time or contact, including: requiring parties or their children or both to attend family dispute resolution, counselling or other services; granting compensatory time; ordering the offending party to reimburse expenses incurred as a result of the denial; and requiring the offending party to provide security or pay a fine of up to \$5,000.

This section gives judges the discretion to allocate the cost, if any, of family dispute resolution, counselling or supervised transfer of children to facilitate parenting time or contact.

However, the application must be made within 12 months of the denial.

When denial is not wrongful

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

- (a) the guardian reasonably believed the child might suffer family violence if the parenting time or contact with the child were exercised;
- (b) the guardian reasonably believed the applicant was impaired by drugs or alcohol at the time the parenting time or contact with the child was to be exercised;
- (c) the child was suffering from an illness when the parenting time or contact with the child was to be exercised and the guardian has a written statement, by a medical practitioner or nurse practitioner, indicating that it was not appropriate that the parenting time or contact with the child be exercised;
- (d) in the 12-month period before the denial, the applicant failed repeatedly and without reasonable notice or excuse to exercise parenting time or contact with the child;

When denial is not wrongful

- (e) the applicant
 - (i) informed the guardian, before the parenting time or contact with the child was to be exercised, that it was not going to be exercised, and
 - (ii) did not subsequently give reasonable notice to the guardian that the applicant intended to exercise the parenting time or contact with the child after all;
 - (f) other circumstances the court considers to be sufficient justification for the denial.
- (2) If, on an application under section 61, the court finds that parenting time or contact with a child was denied, but was not wrongfully denied, the court may make an order specifying a period of time during which the applicant may exercise compensatory parenting time or contact with the child.

When denial is not wrongful

D.N.L. v. C.W.S., 2014 BCSC 1417 (MJ Pearlman)

- Case involved a 12-year old child who refused to spend time with her Father.
- The Father was seeking to enforce parenting time and the Mother was seeking to terminate parenting time with the Father
- Views of the Child Report – the child reported that she did not want to spend time with her Father because of his angry outbursts, accusations against her Mother, refusals to let her go to her Mother's home when the child was upset, insults against her Mother and maternal grandmother, and blaming the child for his behaviour.
- The Father claimed mother turned child against him
- Psychologist found it was the Father's own conduct
- The Court, after considering section 37 factors in relation to the Father's conduct, found it is in the child's best interests to terminate the Father's court-ordered parenting time

Denial not justified

T.N.S. v. G.V., 2020 BCSC 1866 (MJ Matthews)

Final consent order; 12-year old child would not go to Father's. Although the did not fall within the section 62(1) factors, Madam Justice Matthews considered the Mother's grounds for denying parenting time to the Father:

- a) Child refuses to have parenting time with her father and, short of "dragging her by the hair", Mother cannot make child go. *Court - Mother did not use all the parental tools to persuade child*
- b) Father has not engaged in the counselling that Mother and child want in order to repair the relationship between Father and child. *Court - no evidence the Father was refusing counselling*
- c) Father moved and his new residence was 45 minutes from the child's school, dance activities, and friends. *Court - no reason to cease parenting time*
- d) Father does not support the child in her schooling or dance, the two things that are most important to the child: *Court - no evidence the Father did not support the child's activities*

Conclusion: Denial of parenting time was not justified; parenting order is to be followed

Child Abduction

Section 64 provides for two types of orders with respect to removal of a child.

- The first type allows a court to restrict a person from taking a child out of a certain area - generally about parenting together and making sure each guardian knows where the child is.
- The second type is used where there is concern that a person may remove and not return a child. In these circumstances, the court may take action to stop the person from leaving with the child, such as surrendering passports or providing security to motivate the person to stay.

Section 80 addresses the *Hague Convention on the Civil Aspects of International Child Abduction* to ensure the continued application of the Convention in British Columbia.

The *Hague Convention on the Civil Aspects of International Child Abduction* Under this Convention, the removal of a child, or the retention of a child, is considered wrongful if it breaches the rights of custody under the law of the jurisdiction in which the child was **habitually resident** immediately before the removal/retention, and those custody rights were actually being exercised. Article 3 of the Convention dictates that a court must order return of the child "forthwith" unless one of the narrow exceptions under Articles 12, 13 or 20 apply.

Child Abduction

De Oliveira v. Campbell, 2019 BCSC 623 (MJ MacNaughton)

The child was born in Brazil; when the child was 3 years old, the family moved to Portugal. After separating, the parties divorce and obtained a consent order whereby they were the joint custodial parents and guardians of the child in Portugal.

With the consent of the Father, the Mother brought the child to B.C. for a visit with her brother. The Mother did not return to Portugal as planned. The Father sought the return of a 5-year old child to Portugal.

Madam Justice MacNaughton applied the hybrid approach (per *Balev*, 2018 SCC 16) in determining habitual residence. The Judge held that habitual residence is determined immediately prior to the wrongful removal or retention. The best interests of the child are not a factor in determining whether to return a child to their place of habitual residence.

The Court found that the child's habitual residence was Portugal.

Orders to Prevent Removal of Child

s. 64(1) On application, a court may make an order that a person not remove a child from a specified geographical area.

(2) On application, if satisfied that a person proposes to remove a child from, and is unlikely to return the child to, British Columbia, the court may order the person who proposes to remove the child to do one or more of the following:

- (a) give security in any form the court directs;
- (b) surrender, to a person named by the court, passports and other travel records of the person who proposes to remove the child or of the child, or of both;
- (c) transfer specific property to a trustee named by the court;
- (d) if there is an agreement or order respecting child support, pay the child support to a trustee named by the court.

(3) This section does not apply in relation to the relocation of a child within the meaning of Division 6 [Relocation] of this Part.

(4) A person required by an order made under this section to hold passports, travel records or other property delivered under the order must do so in accordance with the directions set out in the order.

Estrangement/Alienation

- There are no specific provisions under the *Family Law Act* that deal with allegations of parental alienation. However, there are numerous judgments on the issue.
- Justice N. Kent, in *N.R.G. v. G.R.G.*, 2015 BCSC 1062, provides an excellent overview of the signs of estrangement and alienation and possible remedies.

[277] **The difference between an estranged child and an alienated child lies in the cause;** estrangement, sometimes referred to as "realistic estrangement", is the label applied when the child understandably refuses contact with a parent because of the **latter's behaviour** whether it be physical or emotional abuse, rigid or restrictive parenting, immature and self-centered behaviour, and/or dysfunctional conduct arising from the parent's own psychological or psychiatric issues. In such circumstances, the child's rejection of the parent may well be a reasonable and adaptive response to the estranged parent's behaviour.

[278] An **alienated child**, on the other hand, is the label frequently applied when **there is little or no objectively reasonable cause** for the child's rejection of the parent and particularly when it is the product of the other parent's hostility and antipathy towards his/her former spouse and the intentional undermining by the former of the child's relationship with the latter. While the undermining of the relationship can arise from direct or indirect behaviours, in its worst form the parental conduct is expressly designed to alienate the child from the other parent. Such conduct is pernicious and unpardonable.

Estrangement/Alienation

- Parental influence is a normal part of parenting and socialization. It is how parents teach their children and it only becomes concerning if the influence benefits the parent, not the child.
- Preference is also a normal part of life; children can prefer one parent because they have shared interests or temperament. It becomes problematic if a child over identifies with one parent to the detriment of the child's relationship with the other (alignment).
- To *alienate* means to make separate. To *estrangle* means to make indifferent. In family law, both terms relate to a breakdown in a child's relationship with a parent.
- There can be good reasons for a child not wanting to see another parent: bad behaviour by a parent can result in estrangement. Concerns arise when there is no reason or no real reason for the child's behaviour.
- Children can become estranged from one parent for a good reason that has nothing to do with the behaviour of the other parent. In some cases, a child's relationship with one parent can be damaged by the actions of the other parent, sometimes in the course of a custody battle and sometimes intentionally. Where children's relationship with one parent is intentionally damaged, usually by the actions of the other parent, those children are often described as being alienated from the other parent.

Mary Mouat and Samantha Rappaport, "Estrangement and Alienation" chapter, J.P. Boyd on Family Law

Remedies Adopted by Courts

N.R.G. v. G.R.G., 2015 BCSC 1062 (MJ Kent)

[288] A very helpful review of the legal responses to alienation can be found in Bala *et al.*, "Alienated Children And Parental Separation: Legal Responses In Canada's Family Courts", 33 *Queen's L.J.* 79 (2007). The various mechanisms often used by the courts include:

- Detailed case management and parental conduct orders with cost consequences for non-compliance;
- Judicial exhortation urging compliance and emphasizing the emotional harm caused to the children (generally only effective in less severe cases of alienation);
- Court-ordered therapeutic intervention where appropriate, while recognizing "force-marching" a child to reunification may in some cases be unrealistic and harmful;
- Ordering supervised access/parenting time to allay any child anxiety and possibly pave the way for further strategies to achieve positive relationships;
- Suspension of child or spousal support as a sanction to enforce more engagement with the other parent;
- Transferring custody from the alienating parent to the rejected parent where expert testimony establishes the long-term benefits will outweigh any short-term emotional trauma to the child;
- Terminating access by/parenting time of the alienated parent when the alienation is so entrenched that the "cure is worse than the illness", recognizing that children do sometimes resume a relationship with a rejected non-custodial parent after a long period without contact, albeit perhaps only in later years.

Relocation

Legal Overview

Divorce Act

Sections 16.7 and 16.8 – change of residence

Section 16.9 - relocation

Family Law Act

Section 46 – relocation if no order or agreement

Division 6 (Part 4) – relocation if order or agreement

Divorce Act - Relocation

s. 2(1) relocation means a change in the place of residence of a child of the marriage or a person who has parenting time or decision-making responsibility — or who has a pending application for a parenting order — that is likely to have a significant impact on the child's relationship with

(a) a person who has parenting time, decision-making responsibility or an application for a parenting order in respect of that child pending; or

(b) a person who has contact with the child under a contact order

Divorce Act – Change of Residence

s. 16.8 provides that (1) a person with parenting time or decision-making responsibility intends to change their or the child's residence, that person needs to provide (2) notice in writing of the date of move and new address, (3) unless the court finds it not appropriate to do so, such as because of family violence.

s. 16.8 applies to moves that do not constitute relocations (i.e. that do not *significantly impact* the child's relationship with the other party). Notice needs to be given under s. 16.8 if a party moves to a different house in the same city, for example.

Divorce Act – Relocation

Notice

16.9 (1) A person who has parenting time or decision-making responsibility in respect of a child of the marriage and who intends to undertake a relocation shall notify, at least 60 days before the expected date of the proposed relocation and in the form prescribed by the regulations, any other person who has parenting time, decision-making responsibility or contact under a contact order in respect of that child of their intention.

Content of notice

(2) The notice must set out

- (a)** the expected date of the relocation;
- (b)** the address of the new place of residence and contact information of the person or child, as the case may be;
- (c)** a proposal as to how parenting time, decision-making responsibility or contact, as the case may be, could be exercised; and
- (d)** any other information prescribed by the regulations.

Exception

(3) Despite subsections (1) and (2), the court may, on application, provide that the requirements in those subsections, or in the regulations made for the purposes of those subsections, do not apply or may modify them, including where there is a risk of family violence.

Divorce Act – Relocation

Best interests of child — additional factors to be considered

16.92 (1) In deciding whether to authorize a relocation of a child of the marriage, the court shall, in order to determine what is in the best interests of the child, take into consideration, in addition to the factors referred to in section 16,

- (a)** the reasons for the relocation;
- (b)** the impact of the relocation on the child;
- (c)** the amount of time spent with the child by each person who has parenting time or a pending application for a parenting order and the level of involvement in the child's life of each of those persons;
- (d)** whether the person who intends to relocate the child complied with any applicable notice requirement under section 16.9, provincial family law legislation, an order, arbitral award, or agreement;
- (e)** the existence of an order, arbitral award, or agreement that specifies the geographic area in which the child is to reside;
- (f)** the reasonableness of the proposal of the person who intends to relocate the child to vary the exercise of parenting time, decision-making responsibility or contact, taking into consideration, among other things, the location of the new place of residence and the travel expenses; and
- (g)** whether each person who has parenting time or decision-making responsibility or a pending application for a parenting order has complied with their obligations under family law legislation, an order, arbitral award, or agreement, and the likelihood of future compliance.

Factor not to be considered

(2) In deciding whether to authorize a relocation of the child, the court shall not consider, if the child's relocation was prohibited, whether the person who intends to relocate the child would relocate without the child or not relocate.

Divorce Act – Relocation

M.L.E. v. D.K.E., 2021 BCSC 1790 (MJ Coval)

- The claimant Mother sought to move with the three teenaged children to Hamilton; eldest child beginning studies at McMaster University. The Father was opposed to the move.
- The Mother and the children left the family home due to the conduct of the Father.
- A Hear the Child Report was prepared. The children reported that they were scared of their Father and noted problems with his drinking. The children want to live with their Mother.
- Mr. Justice Coval noted that the Father is taking positive steps to improve his situation, such as seeking treatment in relation to his mental health and alcohol misuse.

Divorce Act – Relocation

Relocation authorized

16.91 (1) A person who has given notice under section 16.9 and who intends to relocate a child may do so as of the date referred to in the notice if

- (a)** the relocation is authorized by a court; or
- (b)** the following conditions are satisfied:
 - (i)** the person with parenting time or decision-making responsibility in respect of the child who has received a notice under subsection 16.9(1) does not object to the relocation within 30 days after the day on which the notice is received, by setting out their objection in
 - (A)** a form prescribed by the regulations, or
 - (B)** an application made under subsection 16.1(1) or paragraph 17(1)(b), and
 - (ii)** there is no order prohibiting the relocation.

Divorce Act – Relocation

16.96 (1) A person who has contact with a child of the marriage under a contact order shall notify, in writing, any person with parenting time or decision-making responsibility in respect of that child of their intention to change their place of residence, the date on which the change is expected to occur, the address of their new place of residence and their contact information.

Notice — significant impact

(2) If the change is likely to have a significant impact on the child's relationship with the person, the notice shall be given at least 60 days before the change in place of residence, in the form prescribed by the regulations, and shall set out, in addition to the information required in subsection (1), a proposal as to how contact could be exercised in light of the change and any other information prescribed by the regulations.

Divorce Act – Relocation

- Mr. Justice Coval considered the test for relocation under s. 16 of the *Divorce Act* and, on considering the best interests of the children, granted the relocation on an interim basis.
- The Father had conceded that at least for now the children should reside with their Mother.

[38] The case law recognizes that relocation is one of the most impactful decisions a court is asked to make, potentially having a long-term impact on children's relationships with the non-relocating parent (*Nolle v. Reece*, 2016 BCSC 2201). That is especially so in a situation like this where the proposed relocation is far away.

[39] The cases recommend particular caution regarding a relocation such as this, at the early stage of the proceedings and significantly different from a status quo which is serving the children well. By this of course I mean the current status quo rather than the status quo a few months ago. At such an early stage, before a s. 211 report or a trial, the court may not have sufficient understanding of the situation to assess what is in the best interests of the children.

[40] Despite heeding these warnings, in my view the particular circumstances of this case make it appropriate for relocation. Consideration of the evidence in light of the statutory considerations strongly suggests it is in the children's best interests to move to Hamilton with their mother now.

FLA - Relocation

The [Relocation] Division's goal is to introduce some certainty to this area of law by mandating notice of a proposed move, defining what constitutes relocation and directing courts about both circumstances that should be considered and those that should not.

The introduction of certainty will reduce the need for lengthy litigation and, thus, reduce the costs associated with disputes over relocation.

Ministry of Justice, The Family Law Act Explained

FLA - Relocation

“For good reason, the prospect of a relocation application invokes something akin to dread in some members of the court. Almost inevitably, someone's heart is broken no matter what the outcome. ...”

Master Keighley, *L.L.J. v. E.J.*, 2013 BCSC 1233

FLA - Guardianship is Key

- **Section 40:** only guardians may have parental responsibilities
- **Section 41:** parental responsibilities includes decisions about where a child resides or with whom the child lives or associates
- **Section 69:** only guardians have the right to challenge a relocation

Changing a Child's Residence

- s. 46(1) applies if:
- no written agreement or Order respecting parenting arrangements;
 - application is made for an Order (under s. 45); and
 - a guardian plans to change the child's residence and that change can reasonably be expected to have a significant impact on that child's relationship with another guardian.

Informal Parenting Arrangements

- s. 48 applies if
- no agreement or Order respecting parenting arrangements; and
 - guardians have had an informal parenting arrangement in place for a period of time, establishing a **normal routine** for the child.

Guardian must not change the informal parenting arrangements without consultation with the other guardians, unless consultation would be unreasonable or inappropriate in the circumstances.

Application to Change Residence

- s. 52: Notice of the application to change the residence of a child must be given to:
- each parent or guardian of the child affected by the application;
 - each adult person with whom the child usually lives and who generally has care of the child; and
 - any other person to whom the court considers it appropriate to serve with notice.

The exception is if there are *CFCSA* (child protection) Orders

The Court can grant an exemption from the notice requirement if the Court considers it appropriate (such as, due to family violence).

Yes or No to Change of Residence

s. 46(2) provides that whether a change of residence is granted is determined along with parental arrangements (parenting responsibilities and parenting time) and contact.

Factors:

- Best interests of the child: s. 37(2);
- Reasons for the change in location of the child's residence; and
- *Must not* consider whether the moving guardian would do so without the child (the improper double-bind question).

Relocation

Part 4, Division 6 (ss. 65 to 71) applies if:

- written agreement or Order respecting parenting arrangements or contact; and
- guardian plans to relocate himself or herself or the child, or both.

section 65(2)

L.J.R. v. S.W.R., 2013 BCSC 1344 (Betton J.)
S.J.R. v. R.M.N., 2013 BCSC 1812 (Punnet J.)
A.J.D. v. E.A.E., 2013 BCSC 2160 (Harris J.)

Definition of Relocation

s. 65(1): "Relocation" means a change in the location of the residence of a child or child's guardian that can reasonably be expected to have a significant impact on the child's relationship with

- a guardian, or
- one or more other persons having a significant role in the child's life.

Significant Impact

- Change of residence within a metropolitan centre (i.e. the Lower Mainland) does not qualify as a "relocation".

Berry v. Berry, 2013 BCSC 1095 (Master MacNaughton)

Preliminary Question: what moves would result in significant impact triggering Division 6?

Notice of Relocation

s. 66: Notice must be given

- to all other guardians and persons having contact with the child;
- at least 60 days in advance; and
- in writing, with the date of the relocation and the name of the proposed location.

The Court can grant exemption if

- notice cannot be given without incurring a risk of family violence; or
- no ongoing relationship between the child and other guardian or contact person.

Application for exemption can be brought *ex parte*.

Resolving Relocation Issues

s. 67: After notice is given:

- Guardians and contact persons must use best efforts to cooperate in resolving any issues relating to the proposed relocation.

However, nothing prohibits:

- A guardian from bringing an application for an Order respecting relocation (under s. 69); or
- A person with contact from bringing a application for an Order respecting contact (under ss. 59 or 60).

Objecting to Relocation

s. 68: If the other guardian objects to the relocation of a child, that guardian must

- File an application for an Order to prohibit the relocation (under s. 69),
- Within 30 days after receiving notice of the plan to relocate the child.

Kicker:

If the other guardian does not initiate an application in Court objecting to the relocation within 30 days of being given notice, then the relocation may occur on or after the date stated in the written notice.

Orders Respecting Relocation

s. 69: The Court can make an Order permitting or prohibiting the relocation.

Test:

- Best interest of the child: s. 37(2);
- Good faith; and
- Reasonable and workable arrangements to preserve the relationship between the child and the other guardians, persons entitled to contact, and other persons who have a significant role in the child's life.

Onus depends on whether or not there is **substantially equal** parenting time.

Reasonable & Workable Arrangements

M.N. v. C.J., 2014 BCSC 6 (MJ Jenkins)

- The Father had not proposed reasonable and workable arrangements to preserve relationship between mother and son (8 year old).
- This did not defeat the Father's relocation application; rather the Court imposed such arrangements.

Not Substantially Equal Parenting Time

s. 69(4): The relocating guardian must satisfy the Court that

- The proposed relocation is made in good faith; and
- She/he has proposed reasonable and workable arrangements to preserve the relationships.

If Court is satisfied of the above, then relocation must be considered to be in the best interest of the child unless other guardian satisfies the Court otherwise.

Onus is on the opposing guardian.

Substantially Equal Parenting Time

s. 69(5): The relocating guardian must satisfy the Court that

- The proposed relocation is made in good faith;
- She/he has proposed reasonable and workable arrangements to preserve the relationships; and
- The relocation is in the best interests of the child.

Onus is on the relocating guardian.

Substantially Equal Parenting Time

M.M. v. C.J., 2014 BCSC 6 (MJ Jenkins)

- Each guardian exercised equal parenting time from separation to February 2013; then mother had five of 14 days.
- Mr. Justice Jenkins J. found this was "a significant amount of parenting time" and held that each parent has substantially equal parenting time.

Factor *Not* to be Considered

s. 69(7): The Court *must not* consider whether a guardian would still relocate if the child's relocation were not permitted (the improper double-bind question).

Four Possible Scenarios

- Relocation allowed; other parent stays
- Relocation allowed; other parent moves
- Relocation denied; moving parent moves
- Relocation denied; moving parent stays

J.P. v. J.B., 2013 BCPC 168 (Judge Merrick)

H.N.M. v. S.C.J.K., 2014 BCSC 231 (MJ Rogers)

Other Orders

s. 70: If the relocation is permitted, the Court can make other orders

- allocating parenting arrangements between the guardians; and
- if necessary, requiring the relocating guardian to post security in any form the Court directs, or transfer specific property to a trustee.

In making such an Order, the Court must seek to preserve, to a reasonable extent, parenting arrangements under the original agreement of Order.

BUT, if the relocation is not permitted, that does not constitute a change of circumstance for the purpose of applying to vary the parenting arrangements: s. 71.

Good Faith

s. 69(6): In determining “good faith”, the Court must consider all of the relevant factors, including:

- The reasons for the proposed relocation;
- Whether the proposed relocation is likely to enhance the general quality of the child's life and of the relocating guardian's life, including increasing emotional well-being or financial or educational opportunities;
- Whether proper notice was given; and
- If there are any restrictions on relocation in the written agreement or Order

Best Interests of the Child

s. 37(2): To determine the “best interests of a child”, the Court must consider all of the child's needs and circumstances, including the following:

- (a) the child's health and emotional well-being;
- (b) the child's views, unless it would be inappropriate to consider them;
- (c) the nature and strength of the relationships between the child and significant persons in the child's life;
- (d) the history of the child's care;
- (e) the child's need for stability, given the child's age and stage of development;
- (f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise his or her responsibilities;

Best Interests of the Child

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

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

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

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

Evidence

- Economic Factors
- “[child] deserves the opportunity not to live in poverty” (*J.P. v. J.B.*, 2013 BCPC 168)
- Mother could work as teacher in Peace Region; parties combined income would be higher than if mother stayed in Kelowna (*H.N.M. v. S.C.J.K.*, 2014 BCSC 231)
- Health and well-being of guardian

Uncharted Waters

- Guardian moving without child: section 65(2)
- Best efforts to cooperate in resolving any issues relating to the proposed relocation: section 67(1)
- Preserving, to a reasonable extent, the parenting arrangements in an original order or agreement: section 70(2)

Must I Stay or Can I Go Now?

- Relocation issues will remain among the most difficult problems for parties, lawyers and Courts to sort through. They are often tough cases.
- There is often no clearcut answer: the Court will still be left with the task/responsibility of weighing compelling and, generally, competing factors, and coming up with what it thinks is in the best interest of the child.
- There will need to be much more thinking about the parenting arrangements/parenting time, if a move is likely to be contemplated at some point.

Conduct Orders

Orders Respecting Conduct

Explanation from the Ministry of Justice:

- This Division [Division 5] provides a court with a wide range of tools to help judges manage behaviour, de-escalate tensions, promote compliance, and facilitate the settlement of disputes. It includes a collection of tools and remedies that range from preventive measures, such as sending people to counselling or programs to punitive measures, such as fines or payment of expenses to encourage compliance. Conduct orders will allow a judge to tailor processes to the needs of a particular family.
- These new measures are available to both Supreme and Provincial Court. This will ensure more consistency between tools and remedies available between the two levels of court and ensure that Provincial Court, whose authority to act must be provided for in legislation, has the tools they need to effectively manage family law cases.

Purpose of Conduct Orders

- s. 222** The Court may make an order an under this Division for one or more of the following purposes:
- a) to facilitate the settlement of a family law dispute or an issue in dispute
 - b) to manage behaviours that might frustrate the resolution a family law dispute
 - c) to prevent misuse of the court process,
 - d) to facilitate arrangements pending final determination of a family law dispute

Scope of Conduct Order

V.E.A. v. A.R.G., 2013 BCPC 0325 (Judge Gouge)

The Mother refused to sign the child's passport application. Judge Gouge considered whether the court had the authority to require the Mother to sign the passport application.

[24] It is unnecessary, and would be unwise, for me to attempt an exhaustive definition of the terms used in section 222 of the *Family Law Act*. It is sufficient for me to opine that, in the context of section 222(b), "resolution" means the imposition by the court of a set of rights and obligations which will govern the parties' future conduct in relation to one or more of the issues in the proceeding.

[25] With that definition in mind, I conclude that an order to compel Ms. A. to sign E's passport application may be made for the purpose of managing a behaviour on the part of Ms. A. which would be likely to frustrate the resolution of an issue between Ms. A. and Mr. G. which is in issue in this proceeding. The "behaviour" in question is Ms. A's refusal to sign the passport application. The issue is Mr. G's mobility rights as a custodial parent. The "resolution" might be an order of this court, under section 69 of the *Family Law Act*, authorizing Mr. G. to remove E., temporarily or permanently, from Canada. Accordingly, this court is empowered by section 222 and section 227 of the *Family Law Act* to order Ms. A. to modify her behaviour to avoid a frustration of the court's authority to adjudicate disputes about E's mobility.

...
[30] There will be an order that Ms. A. sign E's passport application and deliver the completed application, bearing her signature, to Mr. Gosh (as counsel for Mr. G.) no later than 4:00 p.m. on Monday, December 2, 2013.

Dispute Resolution/counselling

- s. 224** A court may make an order
- (a) requiring the parties to participate in family dispute resolution;
 - (b) requiring one or more parties, or a child (with or without consent of the guardians) to attend counselling, specified services or programs

Restricting Communications

s. 225 Unless a Protection Order is more appropriate, a court may make an order setting restrictions or conditions re communications between parties, including when or how may be made, such as:

- Communication only by text or email
- Prohibiting direct communication
- Restricting communication to child-related subjects

Orders to ensure Conduct

- s. 227** A court may make an order requiring a party to
- (a) give security in any form;
 - (b) report to the court or to a person named by the court;
 - (c) do or do not do anything, as the court considers appropriate, in relation to a purpose in s. 222

Enforcing Conduct Orders

s. 228 (1) In a party fails to comply with an Order under Division 5, the court may

- (a) make a further order
- (b) draw an adverse inference
- (c) make an order requiring a party to pay
 - (i) for expenses reasonably and necessarily incurred as a result of non-compliance, including fees and expenses related to family dispute resolution
 - (ii) an amount not exceeding \$5,000 for the benefit of a party, or a spouse or a child whose interest were affected by the non-compliance
 - (iii) a fine not exceeding \$5,000
- (d) may any other order necessary to secure compliance

s. 228(2) If a party fails to comply with a Communications Order (s. 225), the Court *must* consider whether it would be appropriate to make a Protection Order.

Extraordinary Remedies

- s. 231(1)** This section applies if a person fails to comply with an order made under this Act, and the court is satisfied that no other order under this Act will be sufficient to secure the person's compliance.
- (2) The court may make an order that a person be imprisoned for a term no more than 30 days.
 - (3) Person must be given a reasonable opportunity to explain non-compliance; the court may issue an arrest warrant
 - (4/5) For wrongful denial of parenting time (s. 61) or contact, the court may order a police officer to apprehend the child and take child to the person
 - (6) In order to locate and apprehend a child, a police officer may enter and search any place where the child is believed to be.

Extraordinary Remedy - Jail

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

- After 11 days of trial ending in May 2014, the Respondent Mother was awarded guardianship and the Applicant Father was denied any contact until he demonstrated he can successfully devote himself to therapy to deal with his psychological issues.
- The Mother sought a fine (under s. 228) and imprisonment (under s. 231) for failure to comply with orders.
- Protection Order previously granted; the Father breached on countless occasions, led to criminal harassment charges. The Father pled guilty, received a conditional sentence.
- At the end of trial, Judge Bond had ordered a publication ban.
- The Father sent emails to the Mother's lawyer saying he has told church elders of mother's propensity for violence, calling the Mother and her husband "nutjobs", attaching a naked photo of the Mother, and so on.
- Judge Bond stated that the Father was motivated to continue to attempt to harass the Mother. Judge Bond concluded a fine would not secure compliance; the Father was already \$12,000 in child support arrears.
- Judge Bond considered the Father's extended history of harassing the Mother, his failure to address his anger, and his sending of offensive materials to others
... Judge Bond ordered the Father be jailed for 10 days

Topic:	Best practices: File management and professional responsibility
Timing	3 HOURS
Learning Objective/s:	<p>Learners will be able to :</p> <ul style="list-style-type: none"> • Set up a file according to best practices (and Law Foundation administrative requirements) for opening and closing files, retainer letters, and dates to be tracked by BFs. • Always consider limitation periods and other deadlines when setting up a file and use systems for tracking them. • Explain how principles of conflicts and confidentiality apply to your client files • Work appropriately with the supervising lawyer for their programs. • Identify ethical issues to consider when opening a file or when an issue arises. • Explain best practices for handling ethical issues raised in class. • Know where to find information about limitations
Activity:	<ul style="list-style-type: none"> • Discussion of file management materials. Review of model file materials • Presentation on, and discussion about, ethical issues • Group work on fact patterns with ethical problems
Resource person:	Odette Dempsey-Caputo, Staff Lawyer, Poverty Law Clinic, Kamloops
Materials:	
Assessment:	Test

FILE MANAGEMENT and Professional Responsibility

Presented by **Odette Dempsey-Caputo**




Foundation



Objectives



- Someone should be able to pick up your file and have a good understanding what is going on.
- Helps you organize the file and ensure that you work efficiently.
- To get you to Document, Document, Document.

CONFLICT CHECK

1. WHAT IS A CONFLICT CHECK?
2. WHEN DO YOU DO A CONFLICT CHECK?
3. WHO ARE YOU CHECKING?

Conflict

Conflict of Interest:
You have a duty of undivided loyalty to your client.

Conflict check:
A conflict check is completed to confirm the client does not have a conflict with another client's interest.

Keep a list:
Keep a list of your clients and of other advocates and lawyers at your organization. The intake form will help you with this.

Types of Conflict:
A conflict can be with another client, a current client, with you personally or someone else in your organization or with your organization.



IF THERE IS A CONFLICT

Conflict

STOP: DO NOT allow your client to tell you anything more.

SILENCE: DO NOT tell your client what the conflict is.
This can be a breach of confidentiality to your other client.

SEND: A closing letter to the client who you have the conflict with and close the file immediately.

You should also document the communication you had with the client.





Lu Is Laan

Lu Is Laan has been living with Klarck Centt for two and half years. She moved out last week. She had to leave her dog Kryptonight behind as she had to stay at a friends house and couldn't take him.

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When?
Who?

CONFLICT SCENARIOS

Scenario 1: Advocate A and B work for Pics Sell Family Centre. Advocate A is acting for Lu Is Laane Advocate B is acting for Klarck Centt.

Scenario 2: Advocate A is acting for Lu Is in her Family matter. Lu Is's Dad Rex contacts Advocate B at Pics Sell about human rights complaint he has.

Scenario 3: Isabelle is married to Sy Lent and they have a child together. Isabelle wants to separate from Sy Lent. Sy Lent and Isabelle come to advocate A and say they want help with a separation agreement.

Scenario 4: Isabelle and Lau De come to Advocate A for help with a matter with MCFD and their three children as Lau De has a drug problem.

Now What?



Liability Waiver

- You can have the client sign this form to acknowledge the risks in their participation in the program.
- It can help to reduce the risk of the legal liability of the organization.
- DOES NOT include negligence.



Confidentiality Waiver

- This waiver allows you to discuss the client's case with someone outside your organization.
- We will discuss this issue more in the Professional Responsibility section.



Consent Forms

- These forms advise another organization that the client is agreeing that they can share their information about the client with you.
- The organization may require you to sign their specific consent form.

Gather information!!!



Collect information so you can determine how to meet your client's needs.

Limitation Periods



You will want to determine the limitation period right away.

A limitation period is the time in which you have to start a legal process or you will not be able to proceed with the claim. The date is the end of that period.

You find them in legislation and policies.
You **MUST** inform your client of them.
If you are unsure talk to your supervising lawyer.

Note: The average limitation periods 2 years.

Do you need to close the file?

- Conflict
- Deadline/limitation too close
- Difficult client
- Outside your approved matters/scope
- Good idea to send letter explaining why



LEVEL OF SERVICE



REFERRAL INFORMATION

Less than 30 min
 Legal and non legal services
 Have a list ready
 Always good to include a referral in a conflict file

SUMMARY ADVICE

Less than 2 hours
 Should be given in writing
 If given verbally, follow up with writing
 You **MUST** include limitation dates

FULL REPRESENTATION

Takes more than 2 hours
 Often involves litigation or document drafting
 Client signs a Retainer Agreement (include a scope of work letter)
 You **MUST** include limitation dates



Lu Is Laan

Lu Is Laan has been living with Klarck Centt for two and half years. She moved out last week. She had to leave her dog Kryptonight behind as she had to stay at a friends house and couldn't take him.

What level for Lu Is Laan?



Is there a limitation date?



Full Representation

Open the File

Retainer Agreement- an agreement between you and the client about your services.

Scope of Work- a letter that explains what you will do for the client and the process ex. HRT or RTB.

RETAINER AGREEMENTS



- Always have the client sign a retainer agreement (two copies: client and you)
- It should set out exactly what you are helping them with.
- Each separate issue should be its own file and retainer agreement.
- Include: confidentiality, disbursements, file ownership, how to terminate the relationship.
- Should be signed by both of you.

SCOPE OF WORK LETTER



- It's a good idea to include a scope of work letter
- It should set out:
 - what the client told you
 - what information/documents you still need
 - what the process is for their issue
 - what their options are
 - what the risks and benefits of the options are
 - how you can help them
 - any limitation dates



COMMUNICATION WITH CLIENTS

Telephone	E-mail	Meetings
<p>Whenever you communicate with a client you should document it.</p> <p>Good idea to follow up with an email or letter.</p>	<p>Put emails, notes, and other communication with the client or other parties in the file.</p>	<p>Include in the notes:</p> <ul style="list-style-type: none"> • the date • what was said, who said it • what you advised • what needs to be done and by who

PHYSICAL FILE

- DOCUMENTS in chronological order (its common to have the most recent on the top)
- Date all notes.
- Stored in a locked area that is not easily accessible.
- Number or organized by name
- Open and closed files should be kept separately.
- Keep notes of ALL conversations you have with clients in the file.



DATABASE

- All summary advice and full representation files should be in the database.
- Upload Documents (scan if needed).
- Enter all limitation dates, hearing dates and relevant deadlines.
- Keep notes of ALL communications.



When to withdraw?



- Conflict
- No communication
- Lack of capacity
- No trust
- Lies to you
- Client asks you to lie
- Unreasonable

CLOSING THE FILE

Common Reasons to close a file are:

- you have completed your scope of work
- the client decides to end the relationship with you
- you have decided to end the relationship
- a conflict arose



SEND a letter saying you have done so.



Return all original documents and confirm in the letter you have done so



Do up a closing memo

DO NOT destroy your file even if your client says they want you to.

What do you Keep?

- Your notes
- Your forms (intake, confidentiality waivers et c., copies to client)
- Your work sheets
- Original retainer agreement (copies to client)
- Communication from the client to you (copies to client)
- Communication from you to the client and/or third parties (copies to client)
- Other documents you and your supervising lawyer deem necessary.




- Must be kept in safe secure location
- Have a retention and destruction plan
- Use closing checklist

Confidentiality



YOU HAVE A DUTY OF CONFIDENTIALITY TO YOUR CLIENT!!!!!!

Circle of Trust



Program colleagues
Supervising lawyer
Law Foundation

You will need a consent form for anyone outside the circle.

Not in the Circle



Other service providers
Client's relatives
Some people in your organization
Your family

You should not even confirm they are a client without your client's permission

Explain confidentiality to your client?



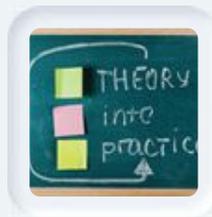
- Immediately
- What it is
- Who is in the circle (you can include this in the retainer)
- Exceptions

Exceptions

Child Protection	Court Order	Harm
You MUST report child abuse. S.14(2) of the CFCSA	Advocates do not have the same protection as lawyers.	If your client is going to hurt themselves or someone else.

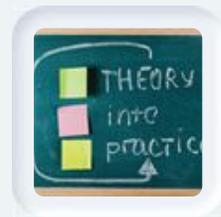
If you are in doubt talk to your supervising lawyer

Scenarios



Fact Pattern #1

You have an excellent working relationship with the receptionist at your office. In casual conversations in the office, you have heard a little bit about her sister Mulan's separation from her husband Li Shang. The sister's husband is on the same curling team as your husband. By all accounts, their separation is cordial. The receptionist approaches you at the end of a day and asks if you will help the couple prepare a simple Separation Agreement. The receptionist assures you there are no issues in dispute and they can both come to see you and provide joint instructions. You know the couple is in a tight spot financially, as the husband has been laid off from his job in the military for some time. They cannot afford a lawyer. There are no other resources they could use closer than a two hour drive away.

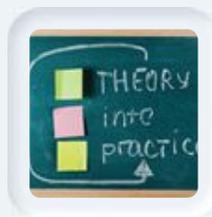


Do you help them? If so, how? What should your concerns be?

Fact Pattern #2

You help your client Chrissy and her daughter Juna move into transition housing for women and children fleeing abuse. One day, a worker from Chrissy's transition house calls you to "problem-solve" about an issue that has arisen between Chrissy and another resident. She says that Chrissy has given her permission to talk to you about this.

What do you do?

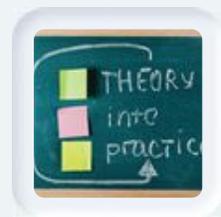


Fact Pattern #3

Beth Boland comes into your office for an intake meeting. You do a conflicts check and there does not appear to be a conflict. You also explain your duty of confidentiality. Beth starts talking about her Family Law problems and her dealings with MCFD. Beth is worried that MCFD will learn about her addiction to OxyContin.

What should you do immediately?

What do you reiterate about the scope of your duty of confidentiality? Do you have an obligation to report this information to MCFD?



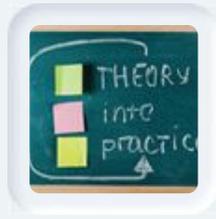
Fact Pattern #4

Your old client Ellen is back to see you, several years after you represented her in her Family Law case (you are now an old hat at Family Law, mentoring newer advocates).

Ellen comes to your office with her new spouse, Portia. They tell you that:

- Portia has a three year old grandson, Charlie, who is in foster care.
- Ellen and Portia want Charlie to live with them and they hope to eventually adopt him.
- Charlie's mother and MCFD are supportive of this plan.
- MCFD has advised Ellen and Portia to apply for guardianship of Charlie under the FLA
- Ellen and Portia would like you to assist both of them with their guardianship applications.

What steps should you take regarding conflicts?

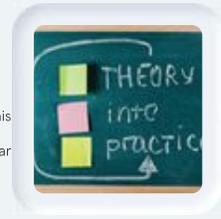


Fact Pattern #5

Your client Jennifer has you helping her with a Financial Statement.

Jennifer has learned from reviewing Brad's Financial Statement that Brad and his mother are joint holders of a large investment account. Brad and his mother have written affidavits stating that the money belongs to Brad's mother and Brad's name is on the account so he can help his mother manage it. Jennifer is very suspicious of this explanation. You input Brad's mother's name into the Law Foundation database and realize that a year ago, you assisted Brad's mother in a Family Law dispute with her ex-husband (Brad's stepfather).

What do you do?



Thank you!

Contact us if there are any questions.



Website

<https://kamloopsefry.com>



Phone

250-374-2119



Email

Odette@kamloopsefry.com



NAME OF ORGANIZATION
ADDRESS

AUTHORIZATION AND WAIVER OF CONFIDENTIALITY

To: **NAME AND ADDRESS OF ORGANIZATION OR INDIVIDUAL YOU ARE ASKING FOR INFORMATION**

This is to notify you that I, _____
authorize the person(s)/organization listed below to act as my representative.

You are authorized to release any and all information regarding my case, including that which is considered confidential, as the person listed below may request.

My authorized representative is: **NAME OF ADVOCATE** _____

Signature: _____

Date: _____

S.I.N.: _____

Birthdate: _____

NAME OF ORGANIZATION
ADDRESS

PERSONAL AND CONFIDENTIAL

Date:

CLIENT ADDRESS:

Dear **CLIENT:**

Re: **DESCRIPTION OF LEGAL MATTER**

As we discussed during our meeting, before we could agree to assist you in this matter, we had to investigate whether working for you on this matter could negatively affect the interests of existing or former clients, or if there might be some other reason that we would be unable to adequately represent your interests.

We have performed a conflict of interest check and found that we have a conflict of interest in this case and, therefore, cannot assist you.

Please be aware that there may be time limits on you making a claim. Since time limitations may be critical in your case, if you want to go ahead with your case, you should immediately contact a lawyer or another agent for assistance regarding this matter.

Yours truly,

NAME OF ORGANIZATION
ADDRESS

PERSONAL AND CONFIDENTIAL

Date:

CLIENT ADDRESS:

Dear **CLIENT:**

Re: **DESCRIPTION OF LEGAL MATTER**

After considering the facts and legal issues involved in your case, we regret that we cannot provide further assistance. As we discussed in our meeting of _____:

SET OUT REASONS YOU CANNOT ASSIST THIS PERSON WITH THEIR PROBLEM

- 1.
- 2.
- 3.

This letter is not an opinion about the merits of your case. In saying that we cannot assist you, we are not expressing an opinion about whether you should take further action.

You should be aware that there may be strict time limitations you have to meet in order to protect your rights. If you do not begin your lawsuit by filing an action within the required time, you could be lose any right to make a claim. Therefore, if you want to continue with your case, you should immediately contact a lawyer to obtain advice about any deadlines and to obtain legal representation. We cannot be responsible for your meeting any outstanding deadlines or limitation dates.

Yours truly,

Date: _____

NAME OF ORGANIZATION

FILE CLOSING FORM

Client: _____

Primary legal issue:

- Income Security (includes CPP, WCB, Welfare, Disability, EI)
- Housing (includes Residential Tenancy)
- Debt
- Family
- Child Protection
- Other (includes Criminal, Mental Health, Immigration/Refugee, Wills/Estates, Human Rights, Consumer, Employment, etc.)

1. Briefly describe the client's problem: _____

2. What did the client want to have happen? _____

3. What did the client actually get? _____

4. For better or for worse, has the client's problem finished or reached a conclusion? Please explain. _____

File Opening Checklist

- Intake Form Completed
- Conflict Check Completed
- Limitation Dates Checked
- Retainer Letter Sent
- Authorizations to Release Information to an Advocate Obtained
- Consent for Disclosure of Information and Waiver of Confidentiality

Date: _____

NAME OF ORGANIZATION
ADDRESS

INTAKE FORM

Last Name: _____ Middle Name: _____

First Name: _____

Phone-Home: _____ Phone-Work: _____

Phone-Cell: _____

E-mail Address: _____

Birth date: _____ Birthplace: _____

Marital Status: _____ Sex: ___M ___F ___other

Alias or other names you are known by: _____

BC Care Card #: _____

Driver's License #: _____

S.I.N.: _____

Status Card #: _____

If you are of Native Ancestry, please indicate the following:

- | | |
|--------------------------------------|------------------------|
| <input type="checkbox"/> Status | Band Name: _____ |
| <input type="checkbox"/> Non-Status | Nation/Ancestry: _____ |
| <input type="checkbox"/> Métis/Inuit | |
| <input type="checkbox"/> Off Reserve | |
| <input type="checkbox"/> On Reserve | |

If applicable, name the opposing parties in this matter and their relationship to you:

NAME OF ORGANIZATION
ADDRESS

To Dr. **NAME**
ADDRESS

MEDICAL AUTHORIZATION

This document authorizes you to give **NAME OF ADVOCATE** any information and opinions that she/he may require regarding my present or past physical condition and treatment. This may include: your prognosis, as well as access to or copies of x-rays, records, or other documents that you may have regarding my past or present condition or treatment.

You are not to disclose any information concerning myself to any persons other than **NAME OF ADVOCATE**, without written authority from me to do so.

All prior authorizations of disclosure are hereby cancelled. I hereby waive any privilege I have to the information referred to in this document.

Name: _____

Signature: _____

Date: _____

S.I.N.: _____

Birthdate: _____

NAME OF ORGANIZATION
ADDRESS

PERSONAL AND CONFIDENTIAL

Date:

CLIENT ADDRESS:

Dear **CLIENT:**

Re: **DESCRIPTION OF LEGAL MATTER**

We regret that we cannot provide further assistance. As we discussed in our meeting of _____ we cannot take your file because (*select from reasons below, depending on the client's situation*):

1. your case does not have merit
2. the type of assistance you need is not within our mandate – it is not a service we can provide
3. working on this case would require more resources than we have available

This letter is not an opinion about the merits of your case (*this would not be included if your reason for declining was because the case has no merit*). In saying that we cannot assist you, we are not expressing an opinion about whether you should take further action.

You should be aware that there may be strict time limitations you have to meet in order to protect your rights. If you do not begin your lawsuit by filing an action within the required time, you could be lose any right to make a claim. Therefore, if you want to continue with your case, you should immediately contact a lawyer to obtain advice about any deadlines and to obtain legal representation. We cannot be responsible for your meeting any outstanding deadlines or limitation dates.

Yours truly,

5 File Management Tips

1. Colour code files: use different coloured file folders for each of the areas of law you work in. For example, all family files would be pink, all criminal files green, all PWD files red, etc.
2. Create a numbering system: you need to keep track of all the files you have open, and all the files you have ever had open, but which are now closed. You can simply start with "001", for your first file, and then each subsequently opened file would take the next number. Another method is to have a numbering system within each area of law you work in. For example, all family files (which all have the same colour file folder) would begin with "10". The first family file would be "10-001" and so on.
3. Separate open files from closed files: You need a central file cabinet in which you keep all the files that are currently open and which you are working on. You also need to have a separate file cabinet in which you store all your closed files.
4. Create a central file index: This can be on paper or computer or both. It will have two parts: a list of all your open files, and a list of all your closed files. The list should contain basic information such as client name, address, legal matter, file number, date file opened and date file closed.
5. Same client, new matter, new file: if a client you have an open file for comes to you with another problem – open a new file for the new matter. Even if the two problems are connected, as they often will be, you should have a separate file for each matter you are assisting a client with.

Ownership of File Contents

The Client is entitled to:

1. originals of all documents existing before they retained the advocate (unless belonging to a third party)
2. originals of letters by the advocate to the client
3. originals of letters sent by third parties to the advocate
4. any expert opinions and medical reports
5. copies of letters sent by the client to the advocate
6. copies of letters sent by the advocate to third parties
7. notes of conversations with witnesses (if the hearing has not been held)
8. memorandum of law
9. transcripts of any proceedings held
10. all legal documents prepared in relation to the file

The Advocate is entitled to:

1. notes of conversations (other than with witnesses, if the hearing has not been held)
2. notes on evidence and notes of submissions to courts and tribunals
3. inter-office memos
4. routine forms such as diary, time or BF forms
5. originals of letters sent by the client to the advocate
6. authorizations and instructions given to the advocate by the client

The documents the client is entitled to must be provided to the client upon demand. The advocate is still entitled to keep copies for their file. The documents the advocate is entitled to do not have to be provided to the client.

What to do with Closed Files

GENERAL CONSIDERATIONS

Advocates are responsible for maintaining the safety and confidentiality of their client's files and should take all reasonable steps to ensure the privacy and safekeeping of client's information. The duty of confidentiality survives the professional relationship and continues indefinitely after the advocate has ceased to act for the client.

Many of the documents in a file belong to the client and it is the advocate's responsibility to ensure these are returned to the client when the file is closed.

When a file is closed determine a destruction date. While some documents in the file will have been disposed of upon closing the file, the destruction date is the ultimate date upon which the balance of the file will be destroyed.

STORAGE OF CLOSED FILES

Closed files should be stored securely, separately from open files. Unused office space is an option for the storage of closed files. Since client confidentiality is a concern, closed files should be stored in areas where only staff have access.

It is advisable to store files at the office for at least two years after closing, because this is the most likely time when access may be needed.

If, after storing closed files on site for two years, space becomes an issue, then renting secure off-site storage space may be necessary.

HOW LONG TO RETAIN CLOSED FILES

There is no universal agreement on how long to retain files. Each organization should develop their own policy on the retention and destruction of files, in consultation with the supervising lawyer for the advocacy program.

As a general guideline, files should be retained for a period of six years after they are closed. This general guideline is taken from the Law Society of BC document *Closed Files - Retention and Disposition*, which is available on their website. That document provides more specifics on retention of closed files, based on area of law, beginning at page 28.

DESTRUCTION OF CLOSED FILES

When it is time to destroy closed files, confidentiality remains a concern. It is not acceptable to throw files in the trash or into a dumpster.

Burring files may be an option, if there is access to a facility that can ensure the complete destruction of all the file contents.

The main destruction method is paper shredding. An organization may choose to purchase or lease its own paper shredder.

Alternatively, organizations may hire a paper shredding company. Many such companies will travel anywhere in British Columbia to shred and then recycle the material. Companies charge by the weight or the volume of the material to be shredded, with some variation depending on location in the province.

Document shredding is also available from some of the off-site file storage businesses.

A more comprehensive examination of the retention and disposition of closed files can be found in the Law Society of BC document *Closed Files - Retention and Disposition*, June 2013

Available: <http://www.lawsociety.bc.ca/docs/practice/resources/ClosedFiles.pdf>



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www.lss.bc.ca

LawLINE

November 6, 2007

Manjeet K. Chana
Provincial Training Advocacy Conference

Myth vs. Fact: Conflicts of Interest

1. **Myth or Fact: It is a conflict of interest to represent both parties in the same matter (for example, where you are representing both the landlord and tenant in a residential tenancy matter or a husband and wife in the early stages of a family law matter).**

Fact. You cannot act for both parties in the **same** matter in light of these considerations:

- Duty to give undivided loyalty to each client. This duty cannot be met if you determine that the two parties have very different interests;
- Each party may have information that they do not want the other to know.

However, you can act for clients who have opposing interests in **different** matters where:

- The matters you are representing both parties on are substantially unrelated;
- Both parties are informed you will act for each of them and they both consent;
- You do not have confidential information about one of them that might reasonably affect the representation of the other.

2. **Myth vs. Fact: It is a conflict of interest to act for multiple clients who appear to be on the “same side” (eg. co-tenants in a residential tenancy matter or a spouse and his or her c/l spouse in a child protection matter).**

Myth. You may act for two or more clients who may be “on the same side” as long as:

- You tell each client that you have a duty to give undivided loyalty to each of them and each of them gives their informed consent (in writing, if possible) for you to represent both of them;



- You tell each client that if you get confidential information from one of them, it will have to be disclosed or told to the other;
- You get each client's informed consent for what to do in case you later get information from one client that is relevant to you representing both clients. Your clients agree that if this situation arises, you either (1) cannot disclose the information to the other client and you withdraw from representing both or (2) they agree that you must disclose the information to the other client and continue acting for the clients jointly.

3. **Myth vs. Fact: It is not a conflict of interest to represent a party in a matter where the opposing party is a former client of yours (eg. a wife that you formerly represented in a family law dispute is now a client of another advocate on the other side of your current client, the husband, in the same ongoing dispute);**

Myth. The correct principle is: if you have acted for a client ("A") in a matter, you should not act against "A" in the same or any related matter because you may have confidential information that might affect your representation of your current client ("B"). The exceptions to this rule are:

- "A" is told that you are going to be acting for "B", who is someone adverse in interest to him/her in the same or related matter and "A" gives you informed consent to do so; or,
- your representation of "D", a new client, is substantially unrelated to the representation of "C", your former client, and you do not possess confidential information arising from representing "C" that might reasonably affect the representation of "D".

4. **Myth vs. Fact: It is a conflict of interest to act for a client where his or her interest in a matter competes with a personal or financial interest you have or that of a third party with whom you have a relationship (eg. a family member of yours).**

Fact. Generally speaking, a legal advocate must, if he or she has a financial interest in a matter they are conducting for a client, adopt the position of saying "I can be your business partner or I can be your legal advocate but I cannot be both". Note that a



transaction of sale or purchase between a legal advocate and client will be upheld if the legal advocate can prove:

- that he or she made full disclosure to the client of all relevant information known to him or her;
- that the price was fair; and
- that the client was advised by an independent solicitor to whom all circumstances were disclosed

5. **Myth vs. Fact: When you are sharing an office space with another advocate, it is not a conflict of interest to act on behalf of a client who has an opposing interest to that of a client of another advocate.**

Myth. It is a conflict of interest for an advocate to represent a client whose interest is adverse to a client of another advocate in a space-sharing arrangement. One exception to this is where each advocate who is sharing space discloses in writing to all of his or her clients:

- that an arrangement for sharing space exists;
- the identity of all the advocates who make up the office acting for the client, and;
- that advocates sharing space with the office are free to act for other clients who are adverse in interest to the client.

6. **Myth vs. Fact: A conflict of interest can arise as a result of an advocate transferring from one advocacy office to another.**

Fact. A conflict of interest exists if you transfer from one office to another office and:

- either you or your new office knows or later learns that your former office and your new office each represent a client in the same matter;
- the clients have interests that conflict (opposing co-tenants/co-defendants); and,
- you actually have relevant information about the case that may result in prejudice or unfairness to your former client if the information is disclosed to your new office.



In this situation, your new office has to stop acting for its client unless 3 criteria are met:

- the former client consents to your new office continuing representation; or
- your office can show that it is in the interests of justice that your new office's representation of the client continue; or
- your new office has taken reasonable steps to ensure that there will not be disclosure of the former client's confidential information to anyone else at your new office. This means you cannot participate in any way in your new office's representation of the new client unless the former client consents.

This does not apply to a government employee transferring from one department, ministry or agency to another.



664

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

Date: 20050627
Docket: 1615, 1738
Registry: Nelson

IN THE MATTER OF
THE CHILD, FAMILY AND COMMUNITY SERVICE ACT,
R.S.B.C. 1996 c. 46
AND THE CHILD:

[REDACTED], born [REDACTED]

IN THE MATTER OF
THE FAMILY RELATIONS ACT,
R.S.B.C. 1996 C. 128
AND

[REDACTED]

AND

[REDACTED]

Before: The Honourable Judge Fabbro

Oral Reasons for Judgment
June 27, 2005

Counsel for Director: R.G. Stacey

Counsel for [REDACTED], the [REDACTED] J.E.S. Hemphill

Counsel for Marcia Early, social worker: P.D. Gartner

Place of Trial/Hearing: Nelson, B.C.

[1] THE COURT: I will deal with the matter of the Director's witness, Marcia Early, and the issue of privilege that arose last time we were in court.

[2] This is an application for the granting of privilege by the mother to a witness called by the Director in these proceedings whereby the Director is seeking an order for continuing custody of the child, D.M.W. The witness, Marcia Early, has acted as advocate and provided support and guidance to the mother in these proceedings. She has worked in conjunction with the lawyer acting for the mother. The witness is employed at the Advocacy Centre and is a community based victim assistance worker and provides assistance to individuals with child welfare and other family issues, including custody. Her mandate is set out in Exhibit 4. She often acts as a contact person with social workers, doctors, lawyers and others involved in these matters.

[3] She concedes that arrangements and conversations with social workers concerning child access are not confidential, nor is her involvement at the integrated management meetings. She has testified that she does not assure her clients complete confidentiality, but advises them that their communications may be subject to the directions of the court. The code of ethics at the Advocacy Centre has a

confidentiality rule that applies, except in the event of child abuse.

[4] Ms. Early has retained counsel and opposes questioning by Director's counsel in areas where she has communicated with the mother in private and in confidence. It is submitted on her behalf that her value as an advocate in this community, aiding clients who are generally poor and underprivileged, would be compromised should she be required to reveal matters heard in confidence.

[5] The law on this issue provides as follows: Whether privilege attaches to a particular communication, a Canadian court ought to consider whether Wigmore's four conditions are satisfied. In *M.A. v. Ryan* [1997] 1 S.C.R. 157, the court held that it is now accepted that the common law permits privilege in new situations where reasoned experience and applications of the principles that underlie the traditional privileges so dictate. Privilege is now to be considered on a case-by-case basis rather than by category of class privilege.

[6] I conclude that the first and second category of Wigmore's conditions are clearly at play in this case. The third requirement that the relation must be one which in the opinion of the community ought to be seditiously fostered is

equally satisfied. In addition, I am not able to allow the Director's questioning of the witness without the risk of offending the principle of solicitor/client privilege at play here because of this witness's cooperation and aid to counsel for the mother.

[7] Legal Aid cutbacks is a real life reality that prompts advocates such as this witness to take on responsibility perhaps formerly carried on by counsel and her confidential communications are protected under the umbrella of solicitor/client privilege. The fourth requirement in *M.A. v. Ryan* is that the interests served by protecting the communications from disclosure outweigh the interests of pursuing the truth and disposing correctly of the litigation. This case concerns allegations of the mother's neglect in the care of the child and the interests of the child is paramount. The court should not also lose sight of the principles set out under this legislation that provides a presumption in favour of family. However, I am satisfied that the Director has other sources of information from which it is able to fully bring the relevant evidence necessary for the court to properly and correctly decide this case. The effect of forcing this witness to disclose confidential communications would have a serious effect on society and on those members of

society who are generally poor and underprivileged and rely on the Advocacy Centre and its people to aid them when they come into conflict with the courts. There are child abuse cases where it is essential to learn of the confidential communications even made to an advocate. This is not one of them.

[8]. Except then for those areas that were not thought to be confidential by the witness and mentioned above, I intend to offer privilege to the witness for the reasons given above. I was not convinced that those cases provided by counsel dispose of this issue in any other way. I am grateful to counsel for their submissions and cases that they have provided to the court.

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I hereby certify the foregoing to be a true and accurate transcript of the evidence recorded on a sound recording apparatus, transcribed to the best of my skill and ability.

Gail Adams

G. A. Adams, Transcriber
for Echo Services Ltd.

Fact Pattern #1

You have an excellent working relationship with the receptionist at your office. In casual conversations in the office, you have heard a little bit about her sister Mulan's separation from her husband Li Shang. The sister's husband is on the same curling team as your husband. By all accounts, their separation is cordial. The receptionist approaches you at the end of a day and asks if you will help the couple prepare a simple Separation Agreement. The receptionist assures you there are no issues in dispute and they can both come to see you and provide joint instructions. You know the couple is in a tight spot financially, as the husband has been laid off from his job in the military for some time. They cannot afford a lawyer. There are no other resources they could use closer than a two hour drive away.

Do you help them? If so, how? What should your concerns be?

Answer:

- You should not be acting for either of them as there is potential you know information about one or the other person you wouldn't necessarily know otherwise.
- A conflict includes a perception of a conflict.
- It does not matter that there are not other resources.
- The receptionist is too close to the people involved.

Fact Pattern #2

You help your client Chrissy and her daughter Juna move into transition housing for women and children fleeing abuse. One day, a worker from Chrissy's transition house calls you to "problem-solve" about an issue that has arisen between Chrissy and another resident. She says that Chrissy has given her permission to talk to you about this.

What do you do?

Answer:

- You do not even confirm that Chrissy is a client.
- You indicate that you can not say whether or not she is a client and if she is a client you will need written permission (email, letter et c.) saying that you can talk to the transition house.
- This issue may not even be in the advocates scope of service depending why there is an issue with other resident and if housing security is important to the file.

Fact Pattern #3

Beth Boland comes into your office for an intake meeting. You do conflicts check and there does not appear to be a conflict. You also explain your duty of confidentiality.

Beth starts talking about her Family Law problems and her dealings with MCFD. Beth is worried that MCFD will learn about her addiction to OxyContin.

What should you do immediately?

What do you reiterate about the scope of your duty of confidentiality? Do you have an obligation to report this information to MCFD?

Answer:

- The first thing you do is stop the client from talking.
- You then go over your duty of confidentiality to the client and the exceptions.
- You may or may not need to report it to MCFD. If the OxyContin use is not impacting the client's ability to parent (i.e. they never use it around the children, they are never under the influence while taking care of the children)

Fact Pattern #4

Your old client Ellen is back to see you, several years after you represented her in her Family Law case (you are now an old hat at Family Law, mentoring newer advocates).

Ellen comes to your office with her new spouse, Portia. They tell you that:

- Portia has a three year old grandson, Charlie, who is in foster care.
- Ellen and Portia want Charlie to live with them and they hope to eventually adopt him.
- Charlie's mother and MCFD are supportive of this plan.
- MCFD has advised Ellen and Portia to apply for guardianship of Charlie under the FLA
- Ellen and Portia would like you to assist both of them with their guardianship applications.

What steps should you take regarding conflicts?

Answer:

- You should talk to your supervising lawyer.
- If you do take on both clients then you need to make it clear that if the clients' interest separate you will not be able to help either of them.
- If you decide to only help one of them then it would be Ellen as she was your client previously.

Fact Pattern #5

Your client Jennifer has you helping her with a Financial Statement.

Jennifer has learned from reviewing Brad's Financial Statement that Brad and his mother are joint holders of a large investment account. Brad and his mother have written affidavits stating that that the money belongs to Brad's mother and Brad's name is on the account so he can help his mother manage it. Jennifer is very suspicious of this explanation. You input Brad's mother's name into the Law Foundation database and realize that a year ago, you assisted Brad's mother in a Family Law dispute with her ex-husband (Brad's stepfather).

What do you do?

Answer:

- You have identified a conflict.
- You should talk to your supervising lawyer first.
- You would send a conflict letter to the client and no longer help the client.
- You cannot tell the client what the conflict is.

Lesson Plan	
Topic:	Child and Spousal Support
Timing	3 HOURS
Student prep	<ul style="list-style-type: none"> • Living Together Living Apart (pp 30 – 40)
Learning Objective:	<p>Learners will:</p> <ul style="list-style-type: none"> • Understand who is eligible to claim spousal support and child support. • Understand the principles used in determining who receives child and spousal support. • Understand the principles used in determining how much support one spouse must pay another • Be familiar with tables used to calculate child and spousal support. • Understand extraordinary expenses under the Child Support Guidelines. • Be familiar with the court procedures a person must go through to apply for child or spousal support, get any arrears owing, or to vary an order. • Know the time limits for applying for spousal or child support. • Be familiar with options clients have to enforce child or spousal support orders. • Know how to use My Support Calculator • Know what resources are available to help clients with support matters, where they are, and who can access them. (eg. Family Justice Centres and Family Duty Counsel)
Activity:	<ul style="list-style-type: none"> • Presentation on learning objectives. • Group work on fact patterns (identifying factors to consider in support claims and calculating it)
Resource person	Tanya Thakur, lawyer, Crossroads Law
Materials:	
Assessment:	Test

Child and Spousal Support

Presentation created by Magal Huberman and edited by Tanya Thakur
Delivered by Tanya Thakur, Crossroads Law

Applicable Legislation

- *Divorce Act* (Canada): the *Divorce Act* is federal legislation. It applies to parties who are married, as well as to parties who were divorced under the the *Divorce Act*.
- The *Family Law Act* (FLA): the FLA is the BC provincial legislation. It applies to both married and unmarried (“common law”) parties.
- The Child Support Guidelines (CSG): the CSG are regulations to the *Divorce Act*, and they also apply to child support under the FLA. The CSG are an essential component of the law about child support.

What is Child Support?

- Monthly payment in a set amount (subject to review or variation), typically referred to as “table amount” or “basic child support”.

AND

- Additional amounts for “special and extraordinary expenses”, which are specified expenses listed at section 7 of the CSG, commonly referred to as “section 7 expenses”.

Note: child support may also be paid in lump sum, but this is highly unusual.

Child Support – Who is Responsible to Pay?

General Principle: Each parent is responsible for the support of their child.

Therefore:

- Who is a parent?
- Who is a child?

Divorce Act: Spouse and Child of the Marriage (s. 2(1))

spouse means either of two persons who are married to each other

Child of the marriage means a child of two spouses or former spouses who, at the material time:

(a) is under the age of majority and who has not withdrawn from their charge, or

(b) is the age of majority or over and under their charge but unable, by reason of illness, disability or other cause, to withdraw from their charge or to obtain the necessities of life.

Divorce Act: Child of the Marriage cont. (s. 2(2))

Child of the marriage

For the purposes of the definition **child of the marriage**, a child of two spouses or former spouses includes:

(a) any child for whom they both stand in the place of parents; and

(b) any child of whom one is the parent and for whom the other stands in the place of a parent.

Child support – *Divorce Act*: Does a Spouse Stand in Place of a Parent?

- Determination must take into account all relevant factors, viewed objectively. These factors include (non-exhaustive):
 - Intention (express/formal or implied from actions).
 - The child's participation in the family; whether the person provides financially for the child (depending on ability to pay); whether the person disciplines the child as a parent; whether the person represents to others that he or she is responsible as a parent to the child; and, the nature or existence of the child's relationship with the absent biological parent.
- Every case must be determined on its own facts.
- The relevant period is during the relationship (not after separation).
- A person who stands in the place of a parent cannot unilaterally withdraw from that relationship.

Who is a Parent under the FLA for the Purposes of Child Support?

General Parentage Principles:

- The parents are the child's birth mother and biological father.
- Exception: if the child is adopted, the parents are the adopting parents.
- Exception: assisted reproduction and surrogacy.

In addition, for child support purposes, "parent" may include a stepparent, which means: a person who is a spouse of the child's parent and lived with the child's parent and the child during the child's life

Stepparent and Child Support under the FLA (cont.)

A child's stepparent does not have a duty to provide support for the child unless:

- (a) the stepparent contributed to the support of the child for at least one year, and
- (b) a proceeding for an order under this Part, against the stepparent, is started within one year after the date the stepparent last contributed to the support of the child.

Responsibility for Child Support under the FLA

Child: includes a person who is 19 years of age or older and unable, because of illness, disability or another reason, to obtain the necessities of life or withdraw from the charge of his or her parents or guardians.

Persons responsible to pay child support under the FLA:

- Parents (important – remember definition)
- Guardians (important – remember limitations)

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.

Stepparent and Child Support under the FLA

Spouse under the FLA:

(a) is married to another person, or

(b) has lived with another person in a marriage-like relationship, and

(i) has done so for a continuous period of at least 2 years, or

(ii) has a child with the other person (except for property division purposes).

A spouse includes a former spouse.

Stepparent and Child Support under the FLA (cont.)

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.

Child Support - Fact Pattern

- The parents (Angie and Alex) were married in 1990 and separated in 2010.
- They have one child, Nathan, aged 19. Nathan turned 19 on September 1, 2021.
- In 2012 Alex was ordered to pay monthly child support of \$300 under the *Family Law Act*.
- Alex discontinued payment when Nathan turned 19.
- Nathan is attending college on a part-time basis and plans to transfer to a university. He is also working part time to pay for his educational expenses. Since his parents' separation, he has refused to see his father.
- Will child support continue for Nathan?

Determining the Amount of Child Support

Basic Principle – determine the following:

- Income of the payor.
- Number of children entitled to support.
- Province of residence of the payor (if payor lives outside of Canada, then the province of residence of the recipient).

Based on the above:

Determine the table amount for the payor's income, number of children, and payor's province of residence.

Child support calculator is available at:

<https://www.justice.gc.ca/eng/fl-df/child-enfant/2017/look-rech.asp>

Beyond the Basic Principle – Cont.

- Split custody – each spouse has one or more of the children living primarily with him/her (CSG s. 8):
 - The amount of a child support order is the difference between the amount that each spouse would otherwise pay if a child support order were sought against each of the spouses.
- Shared custody - the child(ren) are in the care of each spouse at least 40% of the time over the course of a year (CSG s. 9):
 - Threshold issue: How to determine the amount/percentage of time that the children are in the care of each spouse?

Note: this is often a topic of dispute, both in determining what the parenting arrangements should be and in determining whether an existing arrangement qualifies as "shared custody".

Non-Parent Guardian and Child Support under the FLA

Guardians who are not parents:

- Do not have a duty to pay child support if their only parental responsibility is respecting the child's legal and financial interests.
- 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.

Beyond the Basic Principle

- Payor's income is above \$150,000 (CSG s. 4):
 - table amount; or
 - Table amount for \$150,000 plus a further amount that the court considers appropriate based on the condition, means, needs and other circumstances of the children and the financial ability of each spouse to contribute to the support of the children
- Payor "stands in the place of a parent" (CSG s. 5; note: also dealt with under FLA):
 - The amount of a child support order is the amount the court considers appropriate, having regard to the CSG and any other parent's legal duty to support the child.

Beyond the Basic Principle – Cont: Determination of child Support in Shared Custody

- First step: determine the "setoff amount", which is the difference between the amounts set out in the applicable tables for each of the spouses.
Example: the parties have two children. One parent's income is \$80,000 and the other's is \$50,000.

Table amount for two children for \$80,000: \$1,239

Table amount for two children for \$40,000: \$931

Setoff amount: \$1,239 minus \$931 = \$308

Note: the setoff amount is only the starting point; it is not the end of the analysis.

Beyond the Basic Principle – Cont: determination of child support in shared custody

- After determining the setoff amount, consider:
 - The increased costs of shared custody arrangements; and
 - The conditions, means, needs and other circumstances of each spouse and of any child for whom support is sought.

What does that mean in practice?

- Prepare a detailed budget, including fixed expenses (e.g. housing) and variable expenses (e.g. clothing, food).
- Understand and explain which expenses are related to the children, both directly (e.g. clothing) and indirectly (e.g. need for bigger home, increased food expenses, increased utilities bills, increased transportation bills).
- Any other effects of shared custody (e.g. – amount of child tax benefit)?

Beyond the Basic Principle – Cont.: Adult Children

- For adult children, the court may order (CSG s. 3(2)):
 - The table amount; or
 - if the court considers that approach to be inappropriate, the amount that it considers appropriate, having regard to the condition, means, needs and other circumstances of the child and the financial ability of each spouse to contribute to the support of the child.

Common situations and issues to address through evidence:

- Students: considerations may include whether the child lives at home, whether the child does or can work (at least part-time) or obtain student loans/scholarships, etc.
- Disabled children: considerations may include whether the child lives at home, whether the child does or can work (at least part-time), and any available financial assistance (e.g. government benefits).

Section 7 Expenses – Cont.

- In determining whether to approve a section 7 expense, the court has to take into account “the necessity of the expense in relation to the child’s best interests and the reasonableness of the expense in relation to the means of the spouses and those of the child and to the family’s spending pattern prior to the separation”.

Note: the amount of the expense may be an estimate.

Beyond the Basic Principle – Cont: Determination of Child Support in Shared Custody

- Important points to pay attention to when considering child support in shared custody:
 - Is one parent incurring disproportionately more expenses for the children?
 - Overall, do the children have a generally similar standard of living in each home? Are both parents reasonably able to afford it?
 - “Cliff effect” – if the living arrangements change into “shared custody”:
 - does the parent who now has more time also incur more expenses?
 - Does the parent who now has less time actually incur less expenses?
 - If child support decreases from the full table amount to the setoff amount, will the parent who now has less time with the children be able to reasonably afford the same standard of living for the children?

Special and Extraordinary Expenses (section 7 expenses)

To qualify as a section 7 expense, the expense must fall within one of the categories listed in section 7 of the CSG, and meet the criteria listed in that section.

Categories:

- **(a)** child care expenses incurred as a result of the custodial parent’s employment, illness, disability or education or training for employment;
- **(b)** that portion of the medical and dental insurance premiums attributable to the child;
- **(c)** health-related expenses that exceed insurance reimbursement by at least \$100 annually, including orthodontic treatment, professional counselling provided by a psychologist, social worker, psychiatrist or any other person, physiotherapy, occupational therapy, speech therapy and prescription drugs, hearing aids, glasses and contact lenses;
- **(d)** extraordinary expenses for primary or secondary school education or for any other educational programs that meet the child’s particular needs;
- **(e)** expenses for post-secondary education; and
- **(f)** extraordinary expenses for extracurricular activities.

Section 7 Expenses – What are “Extraordinary Expenses”?

- Extraordinary expenses for primary or secondary school education or for any other educational programs that meet the child’s particular needs.
 - Extraordinary extracurricular activities.
- To be “extraordinary”, the expenses have to fall into one of the above AND be:
- Expenses in excess of what the party asking for contribution can reasonably cover, taking into account that party’s income and the amount of “basic” child support that the party receives; OR
 - If the above is not applicable, then expenses that the court considers are extraordinary taking into account:

- (i) the amount of the expense in relation to the income of the spouse requesting the amount, including the amount of “basic” child support that the party receives;
- (ii) the nature and number of the educational programs and extracurricular activities;
- (iii) any special needs and talents of the child or children;
- (iv) the overall cost of the programs and activities; and
- (v) any other similar factor that the court considers relevant.

Section 7 Expenses: Summary of Principles

The expense has to:

- Fall within the enumerated categories (note: judicial interpretation continues to develop);
- Satisfy the requirement of “necessity” in relation to the best interests of the child and the reasonableness of the expense; AND
- If applicable, qualify as an “extraordinary expense”.

Therefore, the evidence required of the party seeking contribution to the expense includes:

- The nature of the expense;
- How it relates to the child’s best interests (will depend on the nature of the expense);
- The incomes and means of each party (and the child if applicable);
- Whether the parties incurred the expense during the relationship (but may not be applicable, e.g. short relationship, child’s needs change with child’s age).
- For school, other educational programs, or extracurricular activities: evidence to show that the expense qualifies as “extraordinary”.

Section 7 expenses: Calculation and Sharing

- Basic principle: the parties will share the expense in proportion to incomes.
- In calculating the amount of the expense to be shared: deduct any contributions from the child (if applicable).
- Take into account any subsidies, benefits or income tax deductions or credits relating to the expense, or eligibility for any of those.

Common disputes:

- Nature and extent of child care.
- Need for and reasonableness of health care expense (e.g. orthodontics, counseling).
- Need for and reasonableness of tutoring, private school tuition, etc.
- Post-secondary education: should the child work; should the child obtain student loans.
- Extracurricular activities: activity too expensive; too many activities; whether the “basic” child support payment can reasonably cover the expense.

Spousal Support – Fact Pattern

- Sarah has an ongoing family law dispute with her ex-spouse, Frank, and two children. They started living together in 2010 and separated in 2020. They had their first child (Billy) in 2012 and their second child (Susan) in 2014. Before having children, Sarah worked as a bookseller. After she had Billy, she stayed home to look after the children. She has been the children’s primary caregiver and looked after the family home.
- Sarah now works part-time as a cashier and earns \$20,000 per year. Frank works as a pharmacist and earns approximately \$75,000 per year.
- Is Sarah entitled to spousal support? If so, on what grounds?

Section 7 Expenses - Fact Pattern

- A parent is seeking section 7 expenses for a Young Drivers of Canada course taken by her 20 year old daughter in January through March of 2009 and the cost of reconstructive surgery for her in late 2010 following her 100 pound weight loss that left her with unsightly excess skin.
- Are the driver’s lessons special or ordinary expenses?
- Is the cost of the reconstructive surgery a special or ordinary expense?
- What do you think was the court’s ruling and reasoning?

Spousal Support: Objectives

An award of spousal support should (*Divorce Act*; similar in FLA):

(a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;

(b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;

(c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and

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

Spousal Support: Factors (*Divorce Act*; similar in FLA)

In making an order for spousal support, the court is required to take into consideration the condition, means, needs and other circumstances of each spouse, including:

(a) the length of time the spouses cohabited;

(b) the functions performed by each spouse during cohabitation; and

(c) any order, agreement or arrangement relating to support of either spouse.

Determination of Spousal Support: General

Overall Determination:

Step 1: is the client entitled to spousal support?

IF YES:

Step 2:

- Quantum – how much spousal support should be paid?
- Duration – for how long should spousal support be paid?

Step 2: Quantum and Duration – the Spousal Support Advisory Guidelines (the SSAG)

Note: before considering quantum and duration, ensure that entitlement can be established AND identify the bases for entitlement.

The SSAG:

- DO provide a set of formulas and principles for the determination of quantum and duration.
- DO NOT deal with the determination of entitlement.
- ARE advisory and ARE NOT legislated (contrast to the CSG).
- ARE NOT binding on the court but ARE given significant weight by the court.
- WILL be used in every spousal support case, at least as a starting point, so it is necessary to understand how they work.

Spousal Support and the SSAG – Cont.

Basic information for calculation:

- Income, age, and province of residence of each party.
- Length of the relationship (including cohabitation before marriage).
- The age of the recipient at separation.
- If applicable: number of children, their ages, and who they live with (payor, recipient, or shared).
- If applicable: amounts of section 7 expenses paid by each party.

After inputting this information, you will receive ranges of quantum and ranges of duration.

Step 1: Entitlement to Spousal Support

There are three bases for entitlement:

- **Compensatory:** to compensate the recipient for economic disadvantages arising from the relationship, for example as a result of child care responsibilities or relocation.
Note: economic disadvantages may include being limited to part-time work, loss of opportunities (e.g. for education, promotions, seniority).
Being in the same job before and after the relationship doesn't mean that there have not been economic disadvantages: the applicant may have given up professional development opportunities while the other spouse was able to develop his career.

- **Needs-based:** to address financial needs of the recipient.

Note: need is assessed in relation to the standard of living during the relationship and is not only at basic subsistence level.

- **Contract** (usually not applicable): based on a prior contract/agreement between the parties.

The three bases are not mutually exclusive – the applicant may establish entitlement on more than one basis.

Spousal Support and the SSAG – Cont.

Basic principle: child support (including section 7 expenses) takes precedence over spousal support.

Therefore, the SSAG has two basic formulas:

- With child formula: applies when there are children for whom child support, including section 7 expenses, is payable.
- Without child formula: applies when no child support is payable (e.g. when the parties don't have children; when the children are adults and financially independent).

The range of spousal support amounts under the "with child" formula will be lower than under the "without child" formula, because it takes into account the amount of child support payable, which leaves less money available for spousal support.

Spousal Support and the SSAG: Ranges of Quantum

Quantum: Low – Mid – High (subject to exceptions)

Where does the recipient fall on the range?

Basic principle: the stronger the claim, the higher in the range.

SO: Examine the basis for entitlement and the circumstances of your client.

Spousal Support and the SSAG: Ranges of Duration

Range of duration in “without child” formula: between one-half and the full length of the relationship (e.g. relationship of 6 years – between 3 and 6 years).

Range of duration in “with child” formula: between one-half of the relationship and the time that the youngest child is ordinarily presumed to complete high school.

“Rule of 65”: IF the age of the recipient at separation plus the length of the relationship equals 65 or more, then the duration of spousal support under the SSAG will be described as “indefinite” (e.g. recipient is 55 years old at separation and the length of the relationship was 15 years: 55+15=70).

Important note: “indefinite” doesn’t mean “permanent”. It only means that duration will not be set and may be subject to future reviews.

Where does your client fall in the range? As with quantum – depends on the strength of the claim and the circumstances.

SSAG – Revised User’s Guide

Though lengthy, it is important to read and be familiar with the Revised User’s Guide of the SSAG (available on the Department of Justice Website). In addition to detailed explanations on how to use the SSAG, the Guide also includes a summary of the bases for entitlement, calculating and imputing income, and principles of variation and reviews.

A non-exhaustive list of important points:

- Income disparity alone does not mean entitlement.
- Conversely, a zero range for amount should not be confused with a lack of entitlement; it may simply reflect current inability to pay

SSAG – Revised User’s Guide Cont.

- Ceiling and floor:
 - Support is not generally not payable when the payor’s income is below \$20,000;
 - Support may be at or below the “low” end when the payor’s income is between \$20,000 and \$30,000.
 - Ceiling: \$350,000.
- Restructuring options (e.g. lower amounts for longer duration; higher amounts for shorter duration).

SSAG – Revised User’s Guide Cont.

Always consider whether any of the exceptions may apply:

- (a) Compelling financial circumstances at the interim stage (SSAG 12.1)
- (b) Debt payments (SSAG 12.2)
- (c) Prior support obligations (SSAG 12.3)
- (d) Illness and disability (SSAG 12.4)
- (e) The compensatory exception in short marriages without children (SSAG 12.5)
- (f) Property division: reapportionment (B.C.) (SSAG 12.6.1)
- (g) Property division: “Boston” (SSAG 12.6.3)
- (h) Property division: high property awards (SSAG 12.6.2)
- (i) Basic needs/hardship (SSAG 12.7)

SSAG – Revised User’s Guide Cont.

Exceptions continued:

- (j) Non-taxable payor income (SSAG 12.8)
- (j.1) Payor resides in country where no tax deductibility for support
- (k) Non-primary parent to fulfil parenting role (SSAG 12.9)
- (l) Special needs of child (SSAG 12.10)
- (m) Section 15.3: inadequate compensation (SSAG 12.11)
- (n) Other grounds for departures, “new exceptions” (remember: the SSAG must be considered and have significant weight but they are advisory only).

Child and Spousal Support: Common Issues

- Financial disclosure
- Calculating and imputing income.
- Applying for support orders.
- Variation and review.
- Arrears and retroactive support.
- Enforcing orders.
- Taxes and benefits.

Financial Disclosure

Who has to provide disclosure?

- Person from whom support is sought.
- Applicant for support if the applicant's income is relevant (e.g. section 7 expenses; shared/split custody; spousal support).

What has to be disclosed?

- Look up section 21 of the CSG AND the rules of the applicable court.
- Income tax returns and notices of assessment.
- Additional documents depending on the sources of income of the payor and the applicant (e.g. employees, self-employed, recipients of income from employment insurance, social assistance, a pension, workers compensation, disability payments, rental income, etc.).
- Financial Statement with attachments.

Important: under the CSG, a provision in a judgment, order or agreement purporting to limit a spouse's obligation under the CSG to provide documents is unenforceable.

Calculating and Imputing Income

- Starting point: total income as shown at line 150 of income tax return/notice of assessment, subject to adjustments if applicable (e.g. union/other professional dues).
 - In a straightforward case (e.g. payor is a full-time employee), the payor's line 150 income will be used to calculate support.
- In general, the more control the payor can exercise over his/her reported income, the more investigation may be necessary to determine what the payor's income should be for support purposes.

Calculating and Imputing Income

- Imputing income means that the payor's income for support purposes is higher than the payor's actual or reported income.
- It is a tool to provide for a fair level of support when the payor's reported income doesn't reflect his/her actual or reasonable ability to earn income.

Can a person have different incomes for different purposes?

Yes: For example, tax laws allows for various deductions for self-employed persons, which reduce their line 150 income. However, in determining income for support purposes, the court is not bound to accept these deductions and may add back some or all of them to the payor's income, resulting in a higher income for support calculations.

Imputing Income: Cont.

Section 19 of the CSG sets out the bases for imputing income:

- (a)** the spouse is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of a child or by the reasonable educational or health needs of the spouse;
- (b)** the spouse is exempt from paying federal or provincial income tax;
- (c)** the spouse lives in a country that has effective rates of income tax that are significantly lower than those in Canada;
- (d)** it appears that income has been diverted (affecting support levels);
- (e)** the spouse's property is not reasonably utilized to generate income;
- (f)** the spouse has failed to provide income information when under a legal obligation to do so;
- (g)** the spouse unreasonably deducts expenses from income;
- (h)** the spouse derives a significant portion of income from sources that are exempt from tax/taxed at a lower rate than employment or business income;
- (i)** receipt of benefits from a trust.

Imputing Income: Cont.

Remember that your client may be the party asking to impute income to the other, or vice-versa (or both). This means that:

- If your client is asking to impute income to the other party, your client will have to explain the basis for imputing income and provide supporting evidence.
- If the other party is asking to impute income to your client, then your client will have to understand the basis for the application and present evidence to the contrary (essentially, that her stated income is accurate and reasonable in the circumstances).

Imputing Income: Cont.

Common examples of evidence to support (or oppose) imputing income:

- For un(der)employment: education, work experience, work history, health, child care obligations, and attempts to obtain employment.
- For unreasonable deductions of expenses from income: expense (or portion of it) is for personal benefit; expense is not reasonably related to the business; expense is excessive for reasonable business purposes.
- For undisclosed cash income (and also for unreasonable deduction of expenses): discrepancy between stated income and standard of living, expenses, assets, and debts; discrepancy between stated income for support purposes and stated income for other purposes (e.g. mortgage application)

Does the person's overall financial picture make sense?

Is the person alleging a drop in income/standard of living since separation that is not reasonably supported by evidence?

Applying for Support Orders

- Follow the rules of the applicable court (SCFR or PCFR) for starting a court action, for financial disclosure, and for bringing applications, including:
 - Service requirements;
 - Case conference requirements;
 - Court forms, financial statement, and affidavit with any necessary supporting documents.
- Overall framework:
 - What are the issues (what is your client asking for)?
 - What evidence does your client have to provide for each claim?
 - How to present the issues and the evidence in an organized and accessible manner?

Variation and Review

Common examples of reviews:

- annual exchange of income information and subsequent adjustments to child support (Note: unusual for spousal support).
- Review of spousal support when the circumstances are expected to evolve (e.g. recipient is trying to return to the workforce after long period as homemaker).

Common examples of variation:

- Unexpected changes to employment, income, health, etc.
- Unexpected changes to parenting arrangements (e.g. change to/from shared custody).

Arrears and Retroactive Support

- Arrears: outstanding amounts from existing order or written agreement.
- Retroactive support: asking for support for a period before an application for support/increased support was filed:
 - Asking for support for a past period for which no support was paid and there was no order or agreement.
 - Asking for increased support for a past period in which some support was paid (whether or not there was an order or agreement in place).

Variation and Review

Variations and reviews are both about changing the existing amount of support. However, there are some important differences:

- Variation:
 - The person applying to vary must show that there has been a material change of circumstances. This is a threshold requirement – if no material change shown, the application will be dismissed.
 - A material change of circumstances means that if the new situation was known at the time of the original order, it would have likely resulted in a different order.
 - Not every change is “material”.
 - A party can always apply to vary an order (may not succeed but can try).
- Review:
 - no requirement for a material change of circumstances.
 - The order/agreement has to specify what can be reviewed and in what circumstances.

Variation and Review: Summary

- Know your procedure – is it a review or a variation?
- If review – what are the terms of the review?
- If variation – has there been a material change of circumstances?
- For both: evidence in support of the new amounts of support that your client is asking for.

Retroactive Support

The court will consider four factors in determining whether to order retroactive child support:

- Reasons/reasonable excuse for the delay in the application.
- Blameworthy conduct of the payor.
- The circumstances of the children.
- Hardship to the payor.

Similar considerations also apply to retroactive spousal support, but with greater weight to concerns about delay, misconduct, and notice.

Issues to keep in mind: effective notice and how far back can a retroactive support order go.

Enforcing Orders

- In court: the recipient takes steps herself.
 - Through FMEP: FMEP decides on and takes enforcement steps.
- FMEP:
- Free service.
 - Either payor or recipient can enroll, whether or not there is a breach of order/agreement.
 - FMEP can enforce support orders and written agreements for support that have been filed in court.
 - Drafting considerations:
 - As precise as possible: nature of the payment, amounts to be paid and date of payment.
 - Section 7 Expenses: if possible, specify amount (but risky because expenses may fluctuate).

Taxes and Benefits

General practice point: always consider tax impact and potential impact on other aspects of the client's financial situation.

Taxes:

- Child support is not taxable or deductible.
- Periodic spousal support is taxable to recipient and deductible to payor; lump sum spousal support is not taxable or deductible.
- Some section 7 expenses may be deductible (e.g. medical expenses).

Benefits:

- Make sure to ask your client what benefits or other assistance she is receiving and check for potential impact: examples include reduction in Child Tax Benefit in shared custody situations (which will in turn affect the SSAG ranges).

Spousal Support Advisory Guidelines

https://www.justice.gc.ca/eng/rp-pr/fl-lf/spousal-epoux/ug_a1-gu_a1/toc-tdm.html

	Introduction to interviewing
Student prep:	Pre-reading <ul style="list-style-type: none"> • Interviewing • Question funnel • Interviewing Guide
Learning Objective/s:	Learners will be able to: <ul style="list-style-type: none"> • Describe the elements of an interview model • Conduct the fact gathering stages of the interview model provided in class • Identify when evidence is required.
Related issues/skills:	<ul style="list-style-type: none"> • Sensitivity to interviewing clients from other cultures, those with sensitive issues, or clients who are dealing with violence • Clients with mental health issues or disabilities • Helping clients who are upset. • Ethical issues in interviewing
Activity:	<ul style="list-style-type: none"> • The Instructors will lead a discussion of best practices in an interview, and will introduce the concept of a structured interview to maximize information gathering from a client • The Instructors will conduct a demonstration of the fact gathering stages of the interview model, and lead a class reflection on the demonstration • The Instructors will lead small group exercises on aspects of an interview • The Instructors will introduce the fact patterns to be used in the interviewing exercise and will discuss giving feedback
Resource person	Rhona Lichtenwald, Hillcrest Law
Materials:	<ul style="list-style-type: none"> • Interviewing • Question funnel • Interviewing Guide
In Class handouts	<ul style="list-style-type: none"> • Fact pattern for in-session exercise • Interviewing Fact Patterns for exercise
Homework:	<ul style="list-style-type: none"> • Review lesson notes and materials in preparation for interview morning • Review client Fact Pattern • Review Interview Guide
Assessment:	<ul style="list-style-type: none"> • Learners will be given feedback by a Guest Instructor and by a colleague in interviewing exercise

Client Interviewing

Legal Advocacy Training Conference
September 8-14, 2021



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CLIENT INTERVIEWING SKILL

GOALS FOR AN INTERVIEW

- Your goals for a client-centred interview are simple: you will get all the information necessary to properly assist client, and the client will feel supported and respected.
- Key features of skill is learning how to gather as much info as necessary (questioning); listen to client (analyzing information, organizing thoughts) and deliver basic preliminary legal information and options (communication skills).



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INTERVIEW STRUCTURE

Why?

- By having a structure to follow it can ensure that you are using the time efficiently for the client and gathering all the necessary information. Once you use the structure over time, it will become easier and you will feel more confident in your interview techniques.
- Having a structure prevents a common problem – where interviewers assume facts and take over the interview. It is important to listen, ask relevant questions and listen again before providing the client with information and options.

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Family Violence Screening and Trauma

FAMILY VIOLENCE SCREENING: In Family Law interviews, you will include on-going screening and assessment of family violence. For the purposes of our model, we will be using examples with family violence issues, so you can use your FLATC training.

BE TRAUMA INFORMED: inform yourself about the client's trauma and be aware/mindful of their background. Assess the client's ability to understand/speak English. Be aware of the client's contexts – be it indigenous, BIPOC, LBGQT2S, an immigrant, religious, marginalized or any other context that should help to inform you and how the interview should be conducted.

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Creating an interview environment

ONLINE interviews:

- Ensure that the client has access to technology that will work
- Make sure your background has little clutter and your camera is positioned clearly
- Be prepared for interruptions and glitches
- Have a "back up plan" in case tech fails – i.e. do by phone if necessary

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Creating an interview environment

IN PERSON interviews:

- Create a positive atmosphere that says “I’m listening”
- De-clutter the area if possible
- Avoid all paperwork on your desk that could be other clients’ work/seen by this client
- If available/possible have a glass of water for the client and tissues

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Interview Stages

The Law Society BC standard is based on a classic interview format:

The Advocate Interviewing and Advising Guide

Guide has 3 sections (total estimate of 30 minutes):

- **Organization** – this serves as a checklist of how to organize an interview:
 - ✓ Introduction
 - ✓ History
 - ✓ Questioning
 - ✓ Advising
 - ✓ Adjourning
- **Presentation** – this is how you present over-all with the client
- **Content** – this is particularly relevant to the advising portion of the guide

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Fact-gathering process

Introduction - preliminary problem identification

History – chronological overview

Questioning – theory development and verification

Purpose of this process:

1. Ensure the advocate obtains all of the relevant facts to properly provide info and options to client; and
2. Discourage the advocate from giving “premature advice/options” before advocate has all the relevant facts and understands the client’s concerns

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Stage 1 – Introduction: Preliminary Problem Identification

(2-3 minutes)

- (a) Begins interview appropriately.
 - Greet client, get them settled. Establish a rapport with the client (see “Presentation”).
- (b) Allows client to explain problems, concerns and goals.
 - Ask the client an open question to briefly explain why they have come to see you.
 - Use “scoop” questions in relation to client’s concerns (“are you concerned about anything else?”)
- (c) Summarizes the advocate’s understanding of client problems, concerns and goals.
- (d) Explains preliminary matters (confidentiality of interview and that you will be taking notes), structure of interview (briefly list the stages of the interview and what the client can expect) and how much time scheduled for interview.

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Introduction – Preliminary Problem Identification

- **Confidentiality:** remind the client that everything they tell you will be kept in confidence, other than you discussing with other staff in your organization for support or referrals.
- **Note-taking:** tell the client you will be taking some notes to help keep the facts straight. Tell them the notes will be kept confidential.

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Introduction – Preliminary Problem Identification

TIPS:

- Keep your opening simple and friendly
- Introduce yourself and if you wish, identify your preferred pronouns
- Confirm your client’s name, pronunciation and pronouns
- Simple questions like – “What brought you in today” or “Can you tell me a little bit about why you contacted our legal advocacy program?”
- Ask a scoop question to make sure you understand – “is there anything else about the problem?”

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Stage 2 – History: Chronological Order

(5 minutes)

- (a) Encourages client to relate history of problem using appropriate techniques.
 - Ask the client to provide the background information. Suggest the client tell you more about the background to the problem, by starting at the beginning and tell the story in their own words. As an open question:

“Please tell be the background to this problem, starting from the beginning and telling me what you can about this issue”.
 - Take some notes, but no need to take down every word.
- TIP – you may want to use a grid system for notes.**



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History.....(Herstory)



- (b) Avoids interrupting client with questions except:
 - (i) to clarify
 - (ii) to keep client on track
 - (iii) to avoid chronological gaps.

When client seems done, ask a simple question like: “Is there anything else in the background information?”

Important – if client has not offered any documents, make sure to ask before moving to the next stage.



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2. History: Chronological Overview

- The advocate asks the client to recount the events that resulted in the problem in chronological order (most people find this easiest).
- The advocate should keep their questions open, “what happened next” and avoid “narrow” questions at this stage.
- Asking narrow questions now interrupts the client’s flow – the idea here is to listen, take notes and keep client focussed on the events.
- Questions can be used for clarification (i.e. spelling of a name)
- Keep client on track (“before this fact, you were saying this....”)
- Avoid a chronological gap (“did anything happen between x and y”?)

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2. History: Chronological Overview

- If the client has not volunteered any documents (or you forgot to ask), remember to ask now.
- At the end of this stage, the advocate should have some idea of the “topics” or “issues” that will need more information from the client.
- If you are using paper notes, you may want to do a “grid” or a separate page for each topic and to prepare for more details in the questioning stage.

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Stage 3 – Questioning: Theory Development and Verification

(10-15 minutes)



- (a) Identifies potentially relevant topics.
 - identify the topics that require additional questioning.
- TIP - when the client is relating the history/background facts, make a grid or table, rather than linear notes. You can be identifying potential topics along the way.**

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Using a grid....



- A grid can be modified to include topics relative to a particular area of the law.
- For example: a family law scenario would include a topic about each spouse and children, and finances. A workplace accident would have a topic about the accident and a topic about a Worksafe claim. A tenancy issue would have topics about the landlord and the RTA.
- TIP** - **PEOPLE** that client refers to may be a **TOPIC**.
 - **FINANCES** of parties may be a **TOPIC**.
 - **CLIENT** is a **TOPIC**.
 - **INCIDENT** or **DOCUMENT** a **TOPIC**.



Questioning...



(b) Question client thoroughly and systematically on each topic to obtain relevant facts.

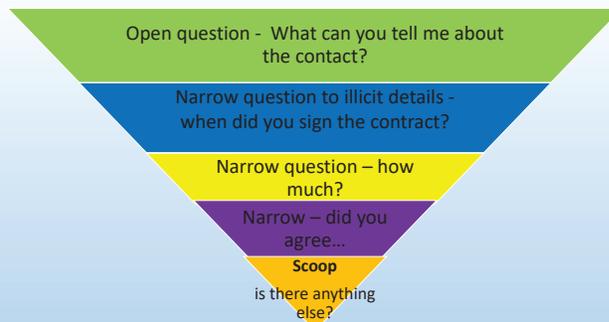
Once the advocate identifies the topics, the advocate needs to have a logical means of questioning the client – a “T-funnel” method, is a recommended approach by the Law Society for lawyers. The T-funnel approach maximizes the information and if followed correctly, assures the advocate that they obtain all relevant information.

Questioning...

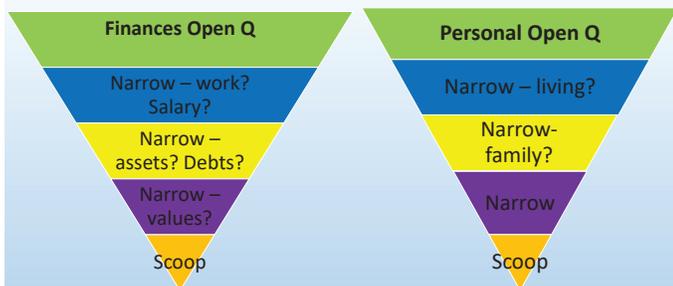
(c) Uses appropriate questioning techniques to motivate and exhaust client’s recall of relevant facts.

- The T-funnel technique maximizes the information on each topic. Do not move to the next topic without asking a **scoop question** and make sure to ask a scoop question at the end.
- **But**, do not just rely on scoop questions – make sure to ask some narrow questions.
- If we look at our grid again, it may look something like this....

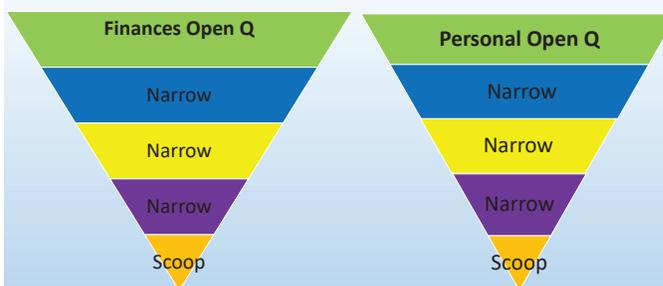
T-FUNNEL

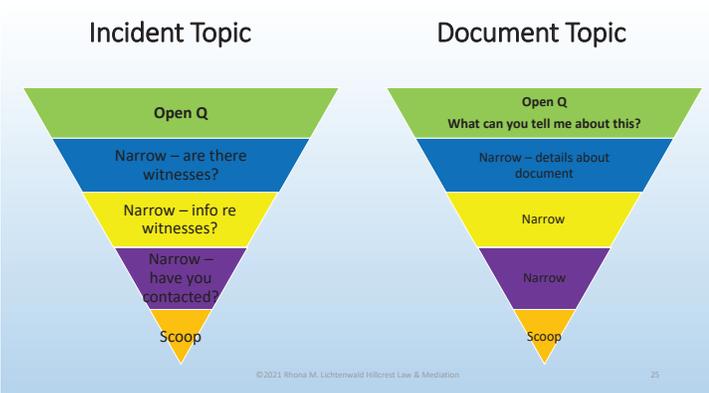


Client Topic



Opposing Party Topic





Questioning...

- (d) Identifies further facts required.
 - You may need to have the client obtain further facts (which means you may need to qualify your opinion).
- (e) Avoids giving premature legal information/options.
 - Avoid doing this in the questioning stage, even if the client asks. It can be premature without the entire picture. It can also result in you getting side-tracked and digressing. Make a note of the client question and then make sure to address it in the advising stage.

Stage 4 – Advising (10 minutes)

- (a) Gives brief introduction to the advising process.
 - Let the client know that you will provide legal information about the law, legal rights/obligations, outline options and discuss the advantages and disadvantages of each. You will encourage them to make a decision and provide a recommendation if appropriate.
 - (b) Briefly outlines the relevant law.
 - Keep this brief and speak plainly. If you need to refer to a statute do so, but don't quote reams of sections, paraphrase what is necessary. Don't quote of case law unless necessary.
- Example - In a family law case: "In BC, the law governing family law matters is the Family Law Act. It deals with issues like guardianship and parenting of children, child support, spousal support and division of family property. In your case...."

Advising...



- (c) Applies the law to the client's problem by:
 - (i) explaining the client's legal rights or obligations;
 - (ii) outlining the available legal and non-legal options; and
 - (iii) working with the client to identify and assess the advantages and disadvantages of each option.
 - (iv) If necessary, qualifies advice.
 - (v) encourages the client to make a decision (if appropriate, advocate makes recommendation).

Now is the time to apply the law to the client's situation. What are the client's legal rights? Are they entitled to compensation, for example? Do they have any obligations – do they have to compensate someone or do something?

Advising...



- Options – there are legal and non-legal options, just like in our writing exercise.
- **Legal options** may be options such as starting a legal action by filing a lawsuit; making a claim to an administrative tribunal; filing a defence. Are there any limitation periods?
 - **Non-legal options** may include: negotiation, mediation, doing nothing.
- Work with the client to see what are some of the pros and cons. For example, an advantage of suing may be obtaining financial gain, but the downside is that it will cost legal fees and will be extremely costly if the client is unsuccessful.

Advising...



- Qualify your advice if necessary, as it is only preliminary. You may need to do more legal research or obtain more information.
- Encourage the client to make a decision – and make a recommendation if appropriate. Some clients have clarity about what they want to do. Some need some more assistance. Sometimes they need time to think about things.
- If there is a **limitation period** – make sure to emphasize that – especially if you may not have contact with the client again.

Stage 5 – Adjourning

(2-3 minutes)

- (a) Determines if the advocate will assist the client further.
- (b) If appropriate, refers client to other source of assistance.
 - For example, a family law client may need counselling, or a debtor may need debtor’s assistance referrals.

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Adjourning...

- (c) Confirms a plan which specifies:
 - (i) steps to be taken;
 - (ii) time frames;
 - (iii) methods of obtaining further facts; and
 - (iv) advocate and client responsibilities.
- Clients should know what you as the advocate will do moving forward and what they need to do.
- (d) Adjourn interview.



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Presentation

Presentation should in the back of the lawyer’s mind throughout the interview.

- (a) Establishes and maintains rapport with client.

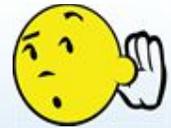
Make eye contact, smile, show that you are interested and make the client comfortable revealing their story. While notes are important, the lawyer doesn’t need to take down every word – take down important information like names, dates, issues, etc.

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Presentation...

- (b) Demonstrates effective listening skills.



“Easier said than done”. It is actually very difficult to listen. The advocate needs to quiet their mind and focus on the client. The problem is that we think much more quickly than speak. So, while the client is speaking, the tendency is to be thinking ahead. Try to stay focussed on the client and avoid jumping to theories or conclusions before the client has finished speaking. A good way of ensuring that you listen is to briefly summarize some key points back with the client, however, avoid repeating everything the client says or you will make the interview too tedious and lengthy.

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Presentation...

- (c) Uses language which
 - (i) is clear and concise;
 - (ii) avoids legal jargon; and
 - (iii) explains legal terms.

Avoid being long-winded. Speak in plain language. Instead of “commencing litigation”, say “sue” or “go to court”. Don’t assume the client understands legal terms. If client’s first language is not English you may be modifying language.

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Presentation...

- (d) Demonstrates courteous and professional attitude.

This should be obvious!

- (e) Provides smooth transitions between interview stages.

Avoid jumping from one stage to the next abruptly. Try a smooth transition like: “Thank you for describing the background to this situation, I would now like to ask you some detailed questions to make sure I have all the information.....” (from History to Questioning).

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Content

This section of the Guide relates to the legal advice and the procedural steps for the client to achieve their goals.

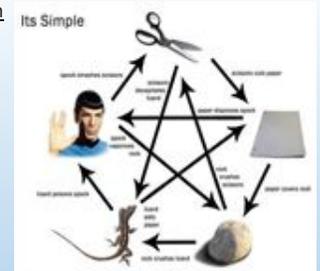
- (a) Accurately explains the substantive law and procedural steps relevant to the client problem.

Obviously, the client needs to understand their legal rights. The procedural steps are the “how” of achieving their rights or what they may be facing as a defendant. Court processes should be briefly explained, as clients are often very unaware of what is involved. Just saying that they can “sue” is not enough! What court level? How long will it take? What resources can the Advocate provide?

Content...

- (b) Uses common sense to give legal advice that addresses the client problem realistically, and does not seriously prejudice client interests.

- Remember that the client is coming to see you with a problem and wants solutions – be a **problem solver**.
- Think about results in practical terms.
- For example, if the client does not qualify for legal aid and has to go to court, what can they do?



Content...

- (c) Deals appropriately with ethical issues if any.

What if the client asks you to do something that may breach your ethical obligations – what if the client placed you in a conflict? Or asked you to do something either legally or ethically inappropriate. Keep these issues in mind and make sure to address these concerns. Be frank with the client about what you can and cannot do or what you can or cannot advise them to do.



Video demos

Demos are using a PWD benefits and RTB fact pattern

“Bad” demo – 2 mins

“Good” demo – 12 minutes – includes the introduction to the advising stage, but not the legal advice/options. Then jumps to closing.

Interview Role-Play

- Focus on introduction, history and questioning.
- Working in groups of 3, advocates will each act as advocate, client and observer then rotate.
- On your break read the fact patterns you will play as the client.

Time breakdown:

- 2-3 MINUTES INTRO
- 3-5 MINUTES HISTORY
- 10-15 MINUTES QUESTIONING - really try to use the T-funnel technique.

Stop at 20 minutes, then client will read out any information that the advocate missed. The observer can give feedback.

- Use the Guide for advising as your template.
- Try to remember presentation throughout!
- Each group has a lawyer who will give them feedback.

Questions?

Thank you

Date: _____ Completed for: _____

Client Role: _____ Completed by: _____

ADVOCATE INTERVIEWING AND ADVISING GUIDE

A. ORGANIZATION

COMMENTS

1. Introduction:

- [] a. Begins interview appropriately.
- [] b. Allows client to explain problems, concerns and goals
- [] c. Summarizes advocate’s understanding of client problem, concerns and goals
- [] d. Explains preliminary matters and structure of the interview.

2. History:

- [] a. Encourages client to relate history of problem using appropriate techniques.
- [] b. Avoids interrupting client with questions except:
 - [] (i) to clarify;
 - [] (ii) to keep client on track; and
 - [] (iii) to avoid chronological gaps.

3. Questioning:

- [] a. Identifies potentially relevant topics.
- [] b. Questions client thoroughly and systematically on each topic to obtain relevant facts.
- [] c. Uses appropriate questioning techniques to motivate and exhaust client’s recall of relevant facts.
- [] d. Identifies further facts required.
- [] e. Avoids giving premature advice.

4. Advising

- [] a. Gives a brief introduction to the advising process.
- [] b. Briefly outlines the relevant law.
- [] c. Applies the law to the client's problem by:
 - [] (i) explaining the client's legal rights or obligations;
 - [] (ii) outlining the available legal and non-legal options; and
 - [] (iii) working with the client to identify and assess the advantages and disadvantages of each option.
- [] d. If necessary, qualifies advice.
- [] e. Encourages client to make decision (if appropriate, advocate makes recommendation).

5. Adjourning

- [] a. Determines if the advocate will assist the client further.
- [] b. If appropriate, refers client to other source of assistance.
- [] c. Confirms a plan which specifies:
 - [] (i) steps to be taken;
 - [] (ii) time frames;
 - [] (iii) methods of obtaining further facts; and
 - [] (iv) advocate and client responsibilities.
- [] d. Adjourns interview.

B. PRESENTATION

- [] 1. Establishes and maintains rapport with client.
- [] 2. Demonstrates effective listening skills.
- [] 3. Uses language which:
 - [] (a) is clear and concise;
 - [] (b) avoids legal jargon; and
 - [] (c) explains legal terms.
- [] 4. Demonstrates courteous and professional attitude.
- [] 5. Provides smooth transition between interview stages.

C. CONTENT

- [] 1. Accurately explains the law and procedural steps relevant to client problem.
- [] 2. Gives advice which addresses client problem realistically, and which does not seriously prejudice client interests.
- [] 3. Deals appropriately with ethical issues, if any.

Adapted with permission from PLTC Litigation Interviewing and Advising Guide.

INTERVIEWING DEMONSTRATION – HOW TO DO IT

SEPT 2021

Advocate: Hi, thanks for coming in. My name is _____ and I am a community advocate. Hopefully I will be able to give you some help with your legal problem. I understand that your pronouns are she/her?

Sam: Yes

Advocate: Before we get started, I would like to assure you that I will keep everything we talk about confidential. That means everything you tell me stays between us unless you give me permission to tell someone else. This is important because, to be able to help you, I need to know all the information about your case, okay? So it's really important that you feel comfortable telling me everything.

Sam: Ok

Advocate: I will do my best to help you and if I can't help, I will try and point you in the right direction. Does that sound okay?

Sam: Yes.

Advocate: I want to explain how the interview will work. I will start by asking you to tell me all about what brought you here. I will then ask you some questions to fill in any gaps and make sure I understand your legal issue fully. I will be taking some notes during the interview. We can then work together to figure out what your options are. We have about half an hour for our meeting today. Does that sound okay?

Sam: Yes.

Advocate: So what brought you to our office?

Sam: Well first of all I'm really worried because I lost my welfare benefits and my landlord is trying to evict me. It's ridiculous, the Ministry thinks my friend Jon and I are a couple. He is my good buddy for sure, and we share a place, but what the hell, we are definitely NOT a couple. Just because we share a few bills. It's ridiculous.

Advocate: Okay, so it sounds like you have an issue with your income assistance benefits, and a housing problem. Does that sound right?

Sam: yes, it does.

Advocate: Are you concerned about anything else?

Sam: I'm worried about the eviction notice and where my daughter and I will live.

Advocate: Yes of course, I understand that is very worrisome. We will certainly talk about that.

History

Advocate: Okay I would now like for you to tell me more about the circumstances. If you are comfortable, maybe start at the beginning and tell me what happened.

Sam: Well, about a month ago, the Ministry sent me a letter saying my daughter and I are cut off and I owe \$2000 plus. Then I did a reconsideration but I lost. I tried to explain that Jon and I are just buddies sharing expenses. God, it's stressful. I have no idea what I'm supposed to do!

Advocate: I can imagine that it's really stressful for you. I'll do my best to try to help you with the situation. What else happened?

Sam: I am so worried about my daughter. She's just in Grade 7. I don't want to lose our place!

Advocate: I understand how upsetting this must be. Can you tell me more about losing your place?

Sam: Yes, my landlord gave me a notice of eviction when I missed my rent on the 1st of this month. I did get appeal benefits so I could cover my rent, but I didn't pay until a week late. I missed the deadline so now my landlord has asked for the Order to Possess. The hearing is in 2 weeks.

Advocate: I see you have a lot going on. Is there anything else?

Sam: I just wonder if I made a big mistake signing the Visa agreement and the car loan with Jon. I think that's really what got the Ministry going on this couple thing.

Advocate: Alright, so you have told me about your issue about the Ministry cutting off your benefits because they suspect you and your roommate are a couple. And you have told me about your landlord pursuing an Order of Possession. Are there any other big issues going on right now? Or anything you want to tell me?

Sam: Not really, I'm just really worried.

Advocate: Did you bring any documents with you?

Sam: No I didn't but I have all the documents at home and I can bring them in.

Advocate: Ok, that's great. So next, I'm going to ask you more detailed questions so I have more information, alright?

Sam: sure.

Questioning

Issue #1

Advocate: Let's start with the issue about the Ministry. Can you tell me more about that? Maybe start from the beginning?

Sam: Well 2 months ago my good buddy Jon moved in with my daughter and me because he was having a rough time having just left his girlfriend of many years. He isn't on benefits like me, he works at the store as a cashier but he gets bad hours and is in rough financial shape. He needed help, so I offered that he could stay with us and I would co-sign a loan and a credit card application for him. I was just trying to help my buddy out. Anyways, a couple of months ago he started staying with us, sleeping on our couch basically. He pays \$450 each month towards our expenses.

Advocate: All right, can you tell me how the Ministry got involved?

Sam: Well, last month they sent me a letter out of the blue. It said that I had to come in for a meeting and bring a bunch of financial documents about everyone in our house. I didn't think we were doing anything wrong, so I went to the meeting 2 weeks ago and brought all the documents they asked for. My income and expenses, credit info, and Jon's.

Then a couple of days later I got a letter saying I wasn't eligible for benefits anymore because Jon was a dependent, which seemed bizarre to me. They basically counted Jon's income and said he makes too much.

Advocate: What can you tell me about the documents you brought in and the interview?

Sam: yes, I brought my bank statements, income records for my old job, credit history, and everything. And I brought Jon's employment and income information, his bank statements, statements for the Visa we share, and his loan info. I co-signed a car loan for him because he needed one for work and his credit is bad.

Advocate: Okay, thanks. So what did you do when you got the letter from the Ministry?

Sam: Well, nothing at first. I was trying to cobble together rent money, but I couldn't. I finally went into the Ministry office after I got an eviction notice from my landlord. I think I went in on the 5th of this month?

Advocate: Okay. I'm going to ask you more questions about the eviction notice in a moment. But first, what happened next with the Ministry?

Sam: I appealed the cut-off of benefits. But then they dragged their butts and didn't get my appeal cheque until the fricking 7th, which was too late.

Advocate: Too late for what?

Sam: Too late to pay my rent within the 5 days on the eviction notice.

Advocate: Oh, okay. So you appealed with the Ministry, and they issued you appeal benefits, but not until the 7th? Is that right?

Sam: Yes.

Advocate: And so what happened with your appeal?

Sam: They finally got a reconsideration package thing ready for me, and I filed it with a letter from me and one from Jon explaining that Jon and I are old friends, but I lost.

Advocate: when did you receive the reconsideration decision?

Sam: Well I just got it in the mail on Monday. It is basically nonsense. I have all the documents at home. I can get them for you.

Advocate: That would be good – it would be really helpful to see the documents. Are you interested in appealing the decision?

Sam: No kidding!

Advocate: Are you receiving benefits right now?

Sam: Yes. Still appeal benefits, I think.

Advocate: And what kind of benefits are you on?

Sam: Persons with disabilities - PWD.

Advocate: and you mentioned your daughter. Does she live with you?

Sam: yes, she does.

Advocate: all the time?

Sam: yes.

Advocate: Okay, thanks. How much does Jon make?

Sam: I don't know. About \$1500 per month I guess?

Advocate: And do you have copies of the documents you gave the Ministry for your meeting?

Sam: yes, they're all in the documents I have at home.

Advocate: okay, thanks, is there anything else you want to tell me about your issue with the Ministry?

Sam: no, I just hope you can help.

Issue #2

Advocate: I hope so to. Before moving on to how I might be able to help, I'm going to ask some questions about your tenancy issue? I understand that your landlord has applied for a dispute resolution hearing to evict you, is that right?

Sam: yes that's right.

Advocate: Can you tell me more about that?

Sam: Sure. After the Ministry cut me off I missed this month's PWD cheque and I couldn't pay my rent on the 1st of the month. Well my landlord gave me a notice to evict the very next day. He just knocked on my door and gave it to me, right in front of my daughter. Because of the weekend and it taking the Ministry a few days to issue my appeal benefits, I didn't manage to pay the landlord until the 8th which was past my deadline. So he's resting on a technicality and going after the eviction.

Advocate: Okay. And can you explain what's happening with the Residential Tenancy Branch - RTB?

Sam: My landlord gave me a notice saying he's applied for a hearing to evict me. I got the package on my door last week, with the eviction notice and everything. I haven't done anything about that yet. I'm not sure what I'm supposed to do because I didn't pay when the notice said I had to pay.

Advocate: Do you know when the RTB hearing is set for?

Sam: I don't know exactly, but I have the documents at home and I can bring them in. It's in about 2 weeks, I think.

Advocate: That would be really helpful. Did your landlord accept your rent for this month when you were able to pay it?

Sam: Yes, he did.

Advocate: have there been any other problems in your tenancy?

Sam: No, not really. My landlord knows Jon lives there and is fine with it. I've lived there for 2 years.

Advocate: Is there anything else about your housing situation that's important?

Sam: Well, I really don't want to have to move. That is way too much stress for me and my daughter, especially with my bad back. And we have a good situation with Jon chipping in for rent and so on. We might move next summer to go closer to my daughter's school but until then I really need this place. I have been a good tenant, and it really pisses me off that my landlord is being so technical about this. Actually I feel like I have put up with a lot from the landlord, not complaining about the bathroom being gross for the past couple of years, tiles coming loose and everything. And that's how he repays me.

Advocate: Is there anything else that you want to tell me?

Sam: I don't think so.

Advocate: Okay, so we have the two issues – first, your RTB hearing in about 2 weeks, and second, the reconsideration decision you received on Monday about your PWD eligibility, which you want to appeal. Are those the main things you wanted help with?

Sam: Yes.

Advocate: Is there anything else important that I should know?

Sam: Not that I can think of.

Advising

Advocate: Ok now I'm going to give you legal information about your issues and we will look at some options and talk about the pros and cons of each option. Then we will see if you are ready to make a decision about what you would like to do, so we can come up with an action plan moving forward. It will be very important for me to get the documents that you have at home, as some of the legal information and options we discuss might change once I see the documents.

Sam: Okay, yes.

MOVE ON TO

- Giving any advice you can give (will be v. limited in this case)

- Coming up with a plan for next steps (file the EAAT appeal notice within the deadline, and get the docs ASAP)

Closing

Advocate: Okay Sam, when do you think you can bring in the documents you have at home? As soon as possible would be helpful.

Sam: I can bring them in tomorrow. Do you want all of them?

Advocate: yes, anything related to your issue with the Ministry or the housing issue, okay?

Sam: yup, I can do that.

Advocate: And you've signed your notice of appeal and consent form, so I will file that this week, within the 7 day deadline. So then a hearing will be set, Okay?

Sam: that would be great.

Advocate: And I need the documents to be able to assist with the RTB hearing and the appeal.

Sam: yes, I understand that.

Advocate: okay, so once you drop off the documents tomorrow, I will give you a call by Friday, does that work?

Sam: Yes, great.

Advocate: Alright Sam, I think that's it. It was great to meet you, and hopefully we can get these issues resolved for you, okay?

Sam: thanks for all your help.

INTERVIEWING DEMONSTRATION – HOW NOT TO DO IT

Advocate: Thanks for coming in. My name is ___ and I am a community advocate. Hopefully I will be able to help you with your legal problem. So I understand you have an issue with being cut off welfare?

Sam: Yes, that's right.

Advocate: Do you know why you were cut off?

Sam: Well... uh, it was... uh....something about my roommate, I think,. Um Jon is his name. Sorry, I'm really nervous and all of this. I don't know how it happened. I'm not super proud of being on welfare, you know? I don't like talking about this stuff and I don't want anyone else to know about it.

Advocate: Well we have to talk about it. Was Jon on welfare too?

Sam: No.

Advocate: Did you have income you weren't reporting?

Sam: No.

Advocate: do you have assets you didn't tell the Ministry about?

Sam: I don't think so.

Advocate: Did Jon give you money?

Sam: No.

Advocate: Did you get a job?

Sam: No. But I do...

Advocate: Did you not comply with your employment plan?

Sam: No... I don't know what that is. I don't think I have an employment plan.

Advocate: Well why were you cut off then?

Sam: Uh, I think they thought we were a couple.

Advocate: Oh, a dependency relationship. Right.

Sam: Pardon?

Advocate: Well sometimes the Ministry will cut people off from assistance when they believe a person is in a marriage-like relationship with someone else.

Sam: That's ridiculous, Jon and I are just friends. What should I do?

Advocate: Well let's back up. Do you have a decision from the Ministry?

Sam: Yes, and I also have this eviction notice! I'm really worried about it!

Advocate: You have an eviction notice! Why didn't you tell me that? Why did your landlord issue the notice?

Sam: I didn't pay my rent on time.

Advocate: Why not?

Sam: Because my assistance was cut off.

Advocate: Why doesn't the Ministry pay your rent directly to your landlord?

Sam: I don't know. I've never had a problem before. Why can't I pay my own rent?

Advocate: well obviously you've been having problems, and that can help sometimes.

Sam: But I was cut off. That's the reason I didn't have my rent. It's never been a problem before. I work really hard to make sure I pay my rent on time!

Advocate: what are you doing for income now?

Sam: the Ministry put be back on, so I'm getting my disability payments.

Advocate: you're on disability assistance?

Sam: Yes.

	Legal Aid Applications and Appeals
Timing	1.5 HOURS
Student Preparation	Read: <ul style="list-style-type: none"> • Working with your Legal Aid lawyer
Learning Objective:	Learners will be able to: <ul style="list-style-type: none"> • Show clients the legal information and self-help resources LSS has available on legal issues • Find information for clients about the legal advice services LSS provides, who they serve and where they are available • Find information for clients about legal representation services available through LSS • Explain the LSS guidelines for applying for legal aid and the avenues for appealing a negative decision. • Help a client prepare for an interview with LSS intake staff on a family matter. • Understand the criteria for appealing an application that has been denied coverage. • Help clients gather relevant information, and write a brief explanation that can be used in an appeal application.
Activity:	<ul style="list-style-type: none"> • Presentation and discussion about what legal aid services are available and how to access them, and what other services a client can use.
Resource person	Andrea Bryson, Case Manager, RISE Legal Clinic
Materials	Handouts in class
Assessment	Test

Assisting Clients with Family Law Legal Aid Applications & Eligibility Reviews

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Case Manager/Designated Paralegal
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Territory Acknowledgement

To learn more about the territory you reside or visit see: <https://native-land.ca>

Maps on this page from: <http://www.johomaps.com/na/canada/bc/vancouver/firstnations/firstnations.html>



DISCLAIMER

Nothing we say in this presentation should be construed as legal advice. This is simply for information purposes only. Please consult with a lawyer if you need legal advice.

NOT LEGAL ADVICE



Agenda

- Legal Aid Coverage & Financial Threshold
- Eligibility Reviews
- Letter Walk-thru
- Change of Counsel (if we have time)

- We will not be discussing Legal Aid applications for those seeking coverage for immigration, child protection, criminal, appellate cases, or when lawyers are refused extended hours.



Disclaimer

Rise is not affiliated with Legal Aid BC. This presentation has not been approved by Legal Aid BC and is based on our current knowledge and experience. Legal Aid BC may have different opinions on what we present. The information and tips we provide are based on our knowledge and best practices, but Legal Aid BC remains the authority on their programs.



I'm interested in knowing about your experience

- How many clients have you supported to apply for Legal Aid?
- How many clients have you supported to do an eligibility review (appeal) of a legal aid refusal?



Legal Aid

- Workers say no to really difficult situations all the time –
 - speak to the coverable issues and the financial eligibility only
- If you believe that your client's situation requires legal aid, do not decide your client is ineligible without trying
 - You do not have to try today
 - Make sure that you are clear about how close they fit to the eligibility threshold and situational coverage
 - Explain why it would be unjust to not cover them



Who is Eligible to Apply for Legal Aid?

- Immigration status does not impact eligibility
 - Legal Aid has the same duty of confidentiality as a lawyer – they are legally obligated NOT to report, and CBSA and related authorities would not be successful in asking for the files because they are covered by Solicitor-Client Privilege.
- Under-aged applicants
 - Doesn't include a minor who wants representation in a family law matter with their parents, or who is in Canada with their parents.
- High income earners/re-partnered clients
 - Always assess deductions bring them down below the threshold



Who is Eligible?

- What if they live in another province or have court in another province?
 - Reciprocal agreements with other provinces
- What if they have an urgent court date?
 - Legal aid approvals can happen in a day or two if necessary
- My client has mobility issues?
 - Application can be done by phone, and docs can be sent as photos by email
- I don't think my client is eligible for some other reason – but I think they should be covered?
 - Legal Aid is *highly* discretionary. Think of why the guidelines exist and speak to *that*



Legal Aid Thresholds

Legal Aid assesses thresholds in 3 ways:

- 1) Is there a coverable issue?
- 2) Does the client have a low enough monthly income?
- 3) Does the client have assets below the allowable limit?

Clients must meet all 3 thresholds to be eligible.



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What Family Situations are Eligible

- Regular Legal Aid – up to 35 hours of general prep + court time
 - Serious family law matters
 - Exceptional family law matters
- Limited Representation Contract (since Oct 2018 – in different ways) – up to 8 hours general preparation and 3 hours court time
 - Child support, spousal support and property division matters
 - Parenting arrangements
 - Service stop date of 120 days
- Additional tariff items at legalaid.bc.ca under Lawyers tab (Tariffs)



Limited representation

Seeking:

- Child support
 - Spousal support
 - Property division
 - Parenting arrangements
- Must meet income and asset thresholds



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LSS's definition of a "serious family matter"

Serious family problems

You can get a lawyer to represent you in your family law case in the following circumstances:

- In serious family situations, for example:
 - when you need an immediate court order to ensure your or your children's safety and security;
 - to resolve a serious denial of parenting time or contact with / access to your children;
 - when the other parent threatens to remove your children permanently from the province; or
 - when you have guardianship or custody of your children and the other parent has contact or access, but they have unlawfully held your children and not allowed you to carry out your guardianship or custody responsibilities.
- In other situations, depending on available funding, your circumstances, and based on a merit test, including:
 - to resolve serious legal issues in high conflict cases;
 - when you've experienced court-related harassment (your ex-partner is using the legal system to harass you);
 - when you're unable to represent yourself due to emotional abuse, psychological trauma, or mental illness; or
 - when all other efforts to resolve the case have been exhausted and resolving the case will make a significant difference to you or your children.



Situational Eligibility

- Denial of access: The other party won't let them take child against a court order, when there has been an established access pattern, and when there is a pattern of unilateral decisions that result in denial of access
- Unilateral relocation: OP moving the child with or without telling your client
- Threats to take child away

Dependent on budget & assessed for merit

- Resolve serious legal issues in high conflict cases
- Court-related abuse & harassment
- Unable to represent due to emotional abuse, trauma or mental illness
- All other efforts have been exhausted and resolving them makes a significant difference to you or your children



Situational Eligibility

- Safety and security of the woman or child includes S. 1 "Family Violence" definition under FLA: violence, fear of violence, threats, and coercion are all violence
- With children, the emotional safety of children, access to their medical care and issues around neglect are also considerations
- Legal Aid doesn't have standard questions, help women speak to be heard.
 - Tell them which incidents to mention
 - Give them language to use (unilateral decision making, say protection order instead of divorce)

Financial Eligibility – monthly income

House hold size (as of Feb 2021)	Monthly Net* Income (Standard Cases)	Monthly Net* Income (CFCSA and Family Limited Representation)
1 person	\$1670	\$2670
2	\$2340	\$3340
3	\$3110	\$4010
4	\$3680	\$4680
5	\$4350	\$5350
6	\$5020	\$6020
7+	\$5690	\$6690

https://lss.bc.ca/legal_aid/dolQualifyRepresentation.php



What is income

- With the exception of Canada Child Benefit & GST – if they use it to live off of, it is income
 - Employment (including disability programs & self-employment)
 - Income assistance/income security programs
 - Child and spousal support
 - Current new spouse (not the OP's income)
 - Support from friends or family
- Income tax refunds or other atypical windfalls may be considered assets instead of income

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Allowable deductions

- Daycare costs – including summer and breaks
- Medical expenses paid out of pocket
- Child support/spousal support your client is **paying**
- Travel costs for access visits for long distances
- Court fines that if not paid could result in going to jail

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Asset limits

Household Size	Asset limit
1 person	\$2000
2 people	\$4000
3 people	\$4500
4 people	\$5000
5 people	\$5500
6+ people	\$6000



Legal Aid Refusal Form:

- This is the reason why it was refused
 - You only need to appeal the reason it was refused
- It says you have 30 days, but I have done eligibility reviews up to 90 days later
- Can send it via email to Provincialsupervisors@legalaid.bc.ca

The form is titled 'Legal Aid Representation Services - Refused'. It includes a header with 'Legal Services Society' logo and contact information. Below that, there are fields for 'Client name', 'Case number', 'LSS case no.', 'Initial legal assistance?', 'Date', and 'File no.'. The main body of the form contains a section titled 'Legal Aid Representation Services - Refused' with a warning: 'The Legal Services Society (LSS) cannot provide a lawyer for everyone. We are refusing your application because (see the reason listed below):'. There are three checkboxes: 'You do not qualify financially.', 'You did not provide enough information about your income and assets.', and 'Your situation does not qualify.'. Below these are instructions for the client: 'After you receive this form...', 'If you have new information regarding your case, please contact your local office to re-apply.', 'You may ask for a review of this refusal unless legal representation is not available for your issue.', 'To ask for a review, follow these steps: 1. Send us a letter asking for a review within 30 days from the date of refusal. 2. In the letter, explain as clearly as possible why you do not agree with our decision. 3. Put your case number on the letter. 4. Attach a copy of this form and any related documents to the letter. 5. Mail or fax your letter to: Provincial Supervisor, Legal Aid Applications, 880 - 310 Burrard Street, Vancouver, BC, V6C 3K8, Fax: 604-683-0707. The decision may take up to three weeks. We will mail the decision to you. Note: Do not send original documents, they will not be returned to you.'

If client is refused – Eligibility reviews

- Get the refusal form, [get the refusal form](#), **get the refusal form**
- Virtually all decisions for coverage areas are reviewable (incl change of counsel refusals)
- If you don't have the refusal form, talk to Legal Aid as about a third of clients who tell me they are refused are not actually refused in my experience
- Only focus on the issue in the refusal form:
 - If they check off ineligible for situation – review eligibility, and write out how it fits
 - If they check off ineligible for finances – review finances and write out how they are eligible
 - If they check off ineligible under exception review – review regular eligibility, figure out if anything new has happened



Situation ineligible

- It's not enough to have a sympathetic case – you need to have a case that follows coverage guidelines
- Get substantiating evidence if possible – especially if client has been previously denied
- Write your own observations – sometimes it's too hard for women to say that they are seeing an escalating pattern, but if you have expertise, write your own perceptions
- Is this a too early/too late situation – she needs legal aid cause he'll lose it when she serves him, or she served him and now he's on his best behaviour – explain this
- Has anything happened since the refusal – you can always add new information



Financial Ineligibility

- Legal aid usually assesses last 3 months, but can ask for longer. You can also provide more than 3 months to show client's financial eligibility if there is a short term increase
- Review client's income for:
 - Stability
 - Consistency
 - Patterns of instability
 - Court-related dips & surges
- Review full child care expenditures – not just the 3 months (esp bi-weekly paychecks)
- Medical expenses
 - Especially for parents of children w/ unique needs



Assets too high

- Work with lawyer to develop a strategy to use assets only down to asset exemption – some protection orders will never need legal aid
- Student loans – legal aid is usually understanding, but it never hurts to write out tuition and textbooks and divide the remainder into 4.
- It is rare to be refused for home (unless they are renting it out or have high equity and are sole owner) – typically need to show that they cannot get a loan against home to be approved for legal aid. If it is family property explain that (ideally get a letter from a lawyer saying that she cannot sell it because it is family property)



The eligibility review was refused – what next?

- Decisions made by Legal Aid are administrative law decisions, and as such the decision needs to have a certain degree of fairness and reasonableness throughout the process.
- There may be room for the decision to go to judicial review; this would require a lawyer to review this and an application for judicial review needs to be filed.
- There are a few lawyers who have done this, but they are few and far between and not all unfair decisions are unfair in an administrative law test for unfairness.



If you want to judicially review a case

Send myself or the VLC a package with:

- Any information you have about clients application and what they said to Legal Aid (if online application, include that)
- The refusal form
- The eligibility review
- All correspondence with Legal Aid from the application until present



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Let's do a letter walk thru now

- Eligibility Review Letter Guide



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Change of Counsel

- Why are you requesting a change of lawyer?
 - Legal Aid wants to ensure that the same problems won't be duplicated
- Is this a complaint about your lawyer?
 - Is this a bad fit versus the conduct would stop you from referring anyone in the future
- Have you talked to your lawyer about your concerns?
 - Explain what steps were taken
- What efforts have you made to restore your relationship with your lawyer?
 - Often redundant, but can be a place to outline client perception
- Please provide the name of the lawyer you would prefer
 - Explain that they will work with advocate to find new counsel
- This form will be sent to your lawyer
 - Would the client be better off with no lawyer than this lawyer?



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Thank you!

- Do you have any questions?



[Today's date]

To Legal Aid Provincial Supervisor,

I am writing this eligibility review on behalf of Jane Doe (born Jan 1, 1990) who was refused Legal Aid for [situational coverage/financial ineligibility].

She applied for Legal Aid on [date] after [she was assaulted/there was a safety issue/she was served papers/she spoke with an advocate who suggested she apply/etc].

[if applicable: She has upcoming court dates of Jan 1, 2020 for a 3-hour hearing in Supreme Court]

Ms. Doe came to my office on [date] to ask for help, at that time I _____. [in here, you want to show the timeline of when she approached the office, what steps were taken to go through her documents, this is particularly important if you are sending in an Eligibility Review late.]

When someone comes to you that has already been refused. Call their intake worker or email them and ask why they were refused and get the refusal form.

About 30% of the time when women tell me they were refused they have not been, so it is worth calling to ask to learn more about if and why they were refused.

Based on the information from Ms. Doe, we believe that her eligibility should be reviewed for the reasons below.

[For financial review:]

[Family size: because financial eligibility is based on family size, don't make assumptions that Legal Aid is measuring the family the same way – if it is straightforward, state it as fact. If there is a denial of parenting time or a need to maintain a household for the children, explain that]

[Straightforward family size] Ms. Doe lives with her children on a shared week on/week off rotation and as such counts as a family of 3.

[family size may be reason for refusal] Ms. Doe's ex-husband has been refusing to allow the children to reside with Ms. Doe as per their agreed upon schedule. The children have not been staying with Ms. Doe for almost 3 months and Ms. Doe needs to get a court order to have the children return to their schedule. Ms. Doe must maintain a home suitable for the children in order to get that court order, as such she should be assessed as a family of three.

[explain how you calculate the client's financials]

I reviewed Ms. Doe's bank statements for January, February and March 2019 and found that after allowable deductions her monthly income is \$2800, which is \$40/month below the financial eligibility threshold for a family of three. [LSS will have combed thru the finances looking for anything that *might* be income or may show that there are other sources of income – look through it as an outsider and use this as an opportunity to explain inconsistencies] In Ms. Doe's bank statement there are deposits around the 28th of each month, this is her roommate's portion of the rent and is not considered income. Further, on February 2nd and March 3rd, you can see payments from her work for \$100, and \$150 – these are mileage reimbursements to pay

for gas and insurance for her car as a part of its use for work purposes. None of these expenses should be considered income.

[if a client is above the threshold but below the \$500 exception]

I reviewed Ms. Doe's bank statements for January, February and March 2019 and found that after allowable deductions her monthly income is \$3300, which is \$460/month above the financial eligibility threshold for a family of three; however, I understand that Legal Aid is able to make exceptions for families that are up to \$500/month above the threshold. **[in this circumstance of financial ineligibility you will want to go into reasons why she needs to be covered situationally]**

[for situational coverage:]

[Situational coverage: look at the areas of coverage and what the client needs and match those two. Is it a safety issue, a denial of parenting time/access or the other parent won't return the child, the other parent is going to move away with/abduct the child]

[safety: clients safety and child's safety are both important]

[current safety] There was [incident: an assault, a series of text messages, her child told her about an incident, a threat] on [date], **[explain how Ms. Doe responded and why that lead her to apply for legal aid – 2 sentences tops]** Ms. Doe was afraid to call the police because the police were not responsive to her in the past. She was told by a friend to get a protection order, she contacted my office for help and she wants to explore getting a protection order or conduct orders to ensure that the opposing party will stop this and to protect her.

[fear of safety because of historic issues] Ms. Doe has experienced abuse for [#] years from the opposing party. Ms. Doe would like to apply to regularize her parenting arrangements because **[there should be a reason for it – like if he is making unilateral decisions, or engaging in behaviours that are affecting the children and why that will lead to a current issue]**; however, she knows that when she serves him papers he will likely get very angry and she worries that [he will come to the home, he will put the children in the middle, he will withhold the children, he will hurt her].

[denial of parenting time]

[when there is some parenting time] Ms. Doe had been having parenting time based on [an order/a formal agreement/an informal agreement/an arrangement that started after separation] where she had the children **[describe schedule: every other weekend, every other week Sunday to Sunday, a 4 week rotation based on the opposing party's schedule]**. Around [date] Ms. Doe notice that the opposing party was starting to restrict her time, it seems that his reasoning was ____ **[you don't have to go into depth – if he is making allegations of drug use and she has had issues with substance use you don't have to go into the whole history, just what is relevant at that time]** the opposing party is alleging Ms. Doe assaulted the child, Ms. Doe has not assaulted the child and MCFD has not taken steps to stop the visits. Ms. Doe needs an order to return the parenting time schedule.

[when she has no parenting time – recent] Ms. Doe has not had parenting time since [date], Ms. Doe tried to have parenting time by [asking him, asking his family, made an application herself to the courts, by arranging family members to help]; however, she has not had any visits during this time. Prior to this refusal of parenting time, Ms. Doe was seeing the child **[describe schedule in a sentence or two – if there was irregular visits you can speak generally like “at least once a month, based on when the opposing party would let her see the child”]** whenever the opposing party wanted babysitting, he would text her to come care for the child, but now he has his new partner watch the child and Ms. Doe has been asking for parenting time, but he refuses.

[when she wants to restart parenting time after long absence] **[explain the absence]** Ms. Doe has not seen her children for 18 months because she thought that putting the children in the middle of the fighting was worse for them as the opposing party was [telling the children to not go on visits/threatening to take away their activities/bribing them with trips/etc]. She regrets this decision and needs assistance to restart this relationship.

[when she has custody] Ms. Doe has court ordered custody based on the order of [date]. The opposing party has been following these visits, but on [date] he refused to return the child saying that the child alleges abuse. Ms. Doe has not abused the child, and needs an order to have the child returned.

[abduction] **[this is a narrative of the fear – try to include any specific reasons – ie: what someone has said, text messages, something she saw on Facebook]** Ms. Doe heard from the child on [date] that the opposing party plans to move away with the child soon; the child said to Ms. Doe that [whatever she heard] and she needs to get a non-removal order and ensure that the passport is provided to her or held by the courts to protect the child.

Ms. Doe was alerted by a mutual friend of her and the opposing party that he plans to move at the end of the month to Ontario. Ms. Doe asked her child “if her dad was moving”, the child got very still and then said no in a very quiet voice. Ms. Doe is concerned that the opposing party is planning to move and fears that based on the child’s nervous response that he will take the child.

The opposing party regularly takes the child against the court order on trips around North America. Recently, Ms. Doe saw that he was selling a huge amounts of household furnishings on Craigslist (she recognized the home in the background and their shared furniture) and saying that it needed to be gone before the end of the month.

[relocation] Ms. Doe received a [text, email, phone call] on [date] advising her that the opposing party plans to move with the child on [date] to [city]. Currently, Ms. Doe has the child with her [schedule] and [there are no plans to maintain her relationship with the child/and the opposing party’s plan to maintain the relationship are not suitable because ...].

[exceptional circumstances: When the “refusal after exception review” box is ticked, it means that she has a situation that is coverable and that she earns too much money. Or has a situation that is serious but not coverable, but the client is not financially ineligible. I would suggest contacting the intake worker to find out why she was refused and tailor it to that following the above guidelines.]

[additional barriers] Ms. Doe requires the assistance of counsel because she has barriers to self-representation. Her barriers are [disabilities/trauma-related/geographic/language-barriers] **[legal aid in exception review explicitly states that a case should be considered if: the applicant has a mental or physical disability and is unable to represent themselves (there must be a significant barrier that will create an injustice if the applicant isn't represented); or the applicant is so traumatized by past abuse that they're unable to represent themselves.]**

Sincerely

Your name

Role

Organization

Phone/email

Many English Language Learners report “losing their language” in stressful situations; even women who have been in Canada many years may “lose their English”, “lose their first language”, or “lose both languages” – it may be worthwhile to ask your client if she faces these barriers during times of stress and to include them in the additional barriers.

While language isn't identified as an issue in the IPP that leads to coverage, it is an issue well worth exploring.

April 12, 2019

To Legal Aid Provincial Supervisor,

I am writing this eligibility review on behalf of Jane Doe (born Jan 1, 1990) who was refused Legal Aid for situational coverage and financial ineligibility.

She applied for Legal Aid on March 7th after she was served papers by the opposing party. The opposing party's application has her appearing in Supreme Court Chambers on April 29, 2019.

Ms. Doe came to my office on March 20th to ask for help, at that time I reviewed her situation and finances and thought that her situation was coverable and her finances should be considered below the threshold based on a family of 3. I understand that Maria the intake worker assessed her as a single person household.

Based on the information from Ms. Doe, we believe that her eligibility should be reviewed for the reasons below.

Ms. Doe's ex-husband has been refusing to allow the children to reside with Ms. Doe as per their agreed upon schedule. The children have not resided with Ms. Doe for almost 3 months and Ms. Doe needs to obtain a court order to have the children return to their schedule. Ms. Doe must maintain a home suitable for the children in order to get that court order. As such, she should be assessed as a family of three.

I reviewed Ms. Doe's bank statements for January, February and March 2019 and found that after allowable deductions her monthly income is \$2880, which is \$40/month below the financial eligibility threshold for a family of three.

In Ms. Doe's bank statement, there are deposits around the 28th of each month; this is her roommate's portion of the rent and is not considered income. Further, on February 2nd and March 3rd, you can see payments from her work for \$100, and \$150 – these are mileage reimbursements to pay for gas and insurance for her car as a part of its use for work purposes. None of these expenses should be considered income.

Ms. Doe had been having parenting time based on an informal agreement where she had the children every other week Sunday to Sunday. Around January 2nd, Ms. Doe noticed that the opposing party was starting to restrict her time, it seems that his reasoning is alleging Ms. Doe assaulted one of the children, Ms. Doe has not assaulted the child and MCFD has not taken steps to stop the visits. Ms. Doe needs an order to return the parenting time schedule.

Ms. Doe requires the assistance of counsel because she has barriers to self-representation. She struggles as an English language learner to maintain her English in stressful situations; however,

as an established resident of Canada, she has not kept up with her first language and struggles with the use of translation.

In addition, because of the history of abuse between Ms. Doe and the opposing party, she has expressed significant fear in having to represent herself and having to cross examine him in court. This is part of the reason why she did not seek out legal help when he started to keep the children away from her.

Sincerely,

Andrea Bryson
Case Manager
Rise Women's Legal Centre
236-317-9000/intake@womenslegalcentre.ca

Lesson Plan	
Topic:	Financial Statements
Timing	1.5 hours
Student prep	Review Provincial Court Form F4 and BCSC Form F8
Learning Objective:	<p>Learners will:</p> <ul style="list-style-type: none"> • Understand when a client must fill out a financial statement. • Be familiar with the information that should be included in a financial statement. • Be familiar with how to review and how to challenge a financial statement from the opposing party. • Be familiar with strategies for helping clients when it is difficult to document the income of the opposing party (eg. “imputing income” for self-employed spouses or one who has not paid taxes). • Be familiar with procedures in both Provincial and Supreme Court for applying for variations in the amount of child support (reduction or increase). • Be familiar with resources available to help clients complete the financial statement.
Activity:	<ul style="list-style-type: none"> • Presentation
Resource person	<ul style="list-style-type: none"> • Agnes Huang, Lawyer, Saltwater Law
Materials:	<ul style="list-style-type: none"> • Course materials
Assessment:	Test

Anatomy of a Financial Statement

Family Law Advocates Training Course
September 14, 2021

Agnes Huang
Saltwater Law
agnes@saltwaterlaw.ca

Duty to Disclose

Failure to disclose can result in penalties being imposed under s. 213 of the *FLA*. This provision is intended to equip the court with more tools to address willful non- and late disclosure.

J.D.G. v. J.J.V., 2013 BCSC 1274 (MJ Punnett)

Once non-disclosure at any stage has been established, the onus on satisfying the court that there has been full disclosure is on the non-disclosing party.

Cunha v. Cunha, (1994) B.C.L.R. (2D) 93 (MJ Fraser)

Supreme Court - Timeline

Rule 5-1(11)

Claimant: within 30 days of serving the Notice of Family Claim

Respondent: within 30 days after service of the Notice of Family Claim (same timeline for Response to Family Claim and Counterclaim, if outside of Canada or U.S., within 60 days after service)

Duty to Disclose

Section 5 of the *Family Law Act*

(1) A party to a family law dispute must provide to the other party full and true information for the purposes of resolving a family law dispute.

(2) A person must not use information obtained under this section except as necessary to resolve a family law dispute.

Supreme Court Family Rules

Rule 5-1

The following must file and serve a Form 8 Financial Statement:

- A person seeking to obtain an order or to change or terminate an order or agreement for child support or spousal support
- A person seeking to obtain an order for property/debt division
- A person responding to a claim concerning child support, spousal support and/or property/debt division

Rule 5-1(8): Exception, for child support only

- If parties have agreed on the annual income of the party required to pay child support, the parties do not have to file and serve Financial Statements
- But, the parties must both sign and file and Form F-9 (Agreement as to Annual Income) along with the most recent income tax return and notice of assessment of the payor.

Supreme Court – Updating Financial Statements

Parties have an **ongoing obligation** to disclose any material change in financial circumstances

Rule 5-1(15) and (16): If the information contained in the Financial Statement is rendered inaccurate or incomplete due to a material change of circumstances, a written statement of the correct information or a revised Financial Statement must be served, along with any additional documents, within 28 days of the material change.

Rule 5-1(18): Parties must file updated Financial Statements at least 28 days, but not more than 63 days before the start of a trial or hearing.

Supreme Court - Enforcement

Rule 5-1(28): If a party fails to file and serve a Financial Statement and applicable documents, or fails to comply with an order under this Rule to provide particulars, the court may:

- order that a Financial Statement, applicable documents or particulars be filed and served on terms the court considers appropriate
- dismiss all or part of a party's claim or application
- strike out all or part of a party's response to family claim or counterclaim
- punish the party for contempt of court
- impose a fine under s. 213(2)(d)(iii) of the *FLA*
- draw an adverse inference against the party
- attribute income to that party in an amount the court considers appropriate
- make an order for costs

Supreme Court - Confidentiality

Rule 5-1(29)

Any person having access to documents obtained under Rule 5-1 **must not disclose** the documents or information to anyone other than

- for the purpose of a valuation of an asset
- for the determination of a party's income, and
- in the course of permitting documents to be introduced into evidence during a family law case

Provincial Court Family Rules

Rule 3

When financial statements are required or referred to in these rules, they must be filed, unless otherwise indicated,

(a) in Form 4 [*Financial Statement*], and

(b) with any attachments that are described in that form for the family law matter or other specific circumstances that apply.

Provincial Court - timeline

Rule 25 - Applicant

A party who brings an application for an order for child support must file a Form 4 Financial Statement, in addition to any applicable information and documents described in Form 4 as required under the child support guidelines.

A party who brings an application for an order for spousal support must file a Form 4 financial statement.

Note: the Financial Statement must be filed at the same time as the application is filed.

Provincial Court - timeline

Rule 28 - Respondent

A party served with an application for child support or spousal support, must file a Form 4 Financial Statement *with* the party's Reply (within 30 days after service)

Rule 34 – Applicant, responding to Counterclaim

Applicant must file a Form 4 Financial Statement with the party's Response to Counterclaim (within 30 days after service)

That is, if the Application does not include a claim for child support or spousal support but the Counterclaim does, then the Applicant has to file a Financial Statement (within 30 days after service)

Provincial Court - enforcement

Rule 147 - Non-compliance with rules

(1) A judge may do one or more of the following if a party does not comply with these rules or an order made by a judge or family justice manager under these rules:

- (a) disregard a document filed in the course of the proceedings;
- (b) change or cancel an order;
- (c) order a court appearance to be cancelled or adjourned or to continue as if the party were not present, whether the party is actually present or not;
- (d) require that the party meet a requirement by a specified date;
- (e) require that the party pay
 - (i) any other person for all or part of the expenses reasonably and necessarily incurred by that other person as a result of the non-compliance,
 - (ii) an amount not exceeding \$5 000 to or for the benefit of any other person, or a spouse or child whose interests were affected by that person's actions, or
 - (iii) a fine not exceeding \$5 000;
- (f) make any order or give any directions that the judge considers necessary and advisable in the circumstances, including an order dismissing or granting an application made.

Federal Child Support Guidelines

Section 21 – Disclosure of financial information

ss. 21 (1) and 21(2): A spouse who is applying for, or responding to, a child support order must include the following with the application:

- (a) three years of personal income tax returns
- (b) three years of notices of assessment and reassessment
- (c) where the spouse is an employee, the most recent statement of earnings
- (d) where the spouse is self-employed, for the three most recent taxation years
 - (i) the financial statements of the spouse's business or professional practice, other than a partnership, and
 - (ii) a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the spouse does not deal at arm's length;

Federal Child Support Guidelines

(e) where the spouse is a partner in a partnership, confirmation of the spouse's income and draw from, and capital in, the partnership for its three most recent taxation years;

(f) where the spouse controls a corporation, for its three most recent taxation years

(i) the financial statements of the corporation and its subsidiaries, and

(ii) a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the corporation, and every related corporation, does not deal at arm's length;

(g) where the spouse is a beneficiary under a trust, a copy of the trust settlement agreement and copies of the trust's three most recent financial statements; and

(h) in addition to any income information that must be included under paragraphs (c) to (g), where the spouse receives income from employment insurance, social assistance, a pension, workers compensation, disability payments or any other source, the most recent statement of income indicating the total amount of income from the applicable source during the current year, or if such a statement is not provided, a letter from the appropriate authority stating the required information.

FCSG - Enforcement

Section s. 22 (1): If a spouse fails to comply with section 21, the other spouse may apply

- (a) to have the application for a child support order set down for a hearing, or move for judgment; or
- (b) for an order requiring the spouse who failed to comply to provide the court, as well as the other spouse or order assignee, as the case may be, with the required documents.

Section 22 (2): Where a court makes an order under paragraph (1)(a) or (b), the court may award costs in favour of the other spouse up to an amount that fully compensates the other spouse for all costs incurred in the proceedings.

Section 23: Where the court proceeds to a hearing on the basis of an application under paragraph 22(1)(a), the court may draw an **adverse inference** against the spouse who failed to comply and impute income to that spouse in such amount as it considers appropriate.

FCSG - Enforcement

Section 24: Where a spouse fails to comply with an order issued on the basis of an application under paragraph 22(1)(b), the court may

- (a) strike out any of the spouse's pleadings;
- (b) make a contempt order against the spouse;
- (c) proceed to a hearing, in the course of which it may draw an adverse inference against the spouse and impute income to that spouse in such amount as it considers appropriate; and
- (d) award costs in favour of the other spouse up to an amount that fully compensates the other spouse for all costs incurred in the proceedings.

FCSG – Continuing Obligation

Section 25(1) Every spouse against whom a child support order has been made must, on the written request of the other spouse or the order assignee, not more than once a year after the making of the order and as long as the child is a child within the meaning of these Guidelines, provide that other spouse or the order assignee with

- (a) the documents referred to in subsection 21(1) for any of the three most recent taxation years for which the spouse has not previously provided the documents;
- (b) as applicable, any current information, in writing, about the status of any expenses included in the order pursuant to subsection 7(1); and
- (c) as applicable, any current information, in writing, about the circumstances relied on by the court in a determination of undue hardship.

FCSG – Information Requests

Section 25(4): Where a spouse or an order assignee requests information from the other spouse under any of subsections (1) to (3) and the income information of the requesting spouse is used to determine the amount of the child support order, the requesting spouse or order assignee must include the documents and information referred to in subsection (1) with the request.

Section 25(5): A spouse who receives a request made under any of subsections (1) to (3) must provide the required documents within 30 days after the request's receipt if the spouse resides in Canada or the United States and within 60 days after the request's receipt if the spouse resides elsewhere.

What parts to fill in – SC

Supreme Court – Form 8 Financial Statement

Part 1- Income: spousal support and child support

Part 2 – Expenses: spousal support; child support except if there are no claims for s. 7 expenses, no step-children, all children under age 19, no shared custody, income under \$150,000, and no undue hardship claim

Part 3 – Assets and Debts: spousal support; child support if step-children, child over age of 19, shared custody, income over \$150,000, claim for undue hardship, or claim for section 7 expenses; property or debt claim

Part 4 – Special and Extraordinary Expenses: child support with claim for section 7 expenses

Part 5 – Undue Hardship: child support with claim of undue hardship

Part 6 – Income of Other Persons in Household: child support with claim of undue hardship

What parts to fill in - PC

Provincial Court – Form 4 Financial Statement

Part 1- Income: spousal support and child support

Part 2 – Personal Expenses and Debts: spousal support; child support if there is split or shared custody, section 7 expenses, children over age 19, step-parent, income over \$150,000, claim regarding payment of arrears, undue hardship claim

Part 3 – Assets : spousal support; child support if there is split or shared custody, section 7 expenses, children over age 19, step-parent, income over \$150,000, claim regarding payment of arrears, undue hardship claim

Part 4 – Income of Other Persons in Household: child support with claim of undue hardship by either party

Part 5 – Undue Hardship: child support with claim of undue hardship

Attachments

For both Supreme Court and Provincial Court

- Income tax returns and notices of assessments
- Statement of earning
- EI benefit statements
- Workers' compensation statements
- Income assistance statement
- If self-employed, breakdown of salaries, wages and management fees paid to persons not at arms-length

Attachments

- If partnership, confirmation of income or draws
- If control of corporation, financial statements and breakdown of salaries, wages and management fees paid to persons not at arms-length
- If beneficiary under a trust, trust settlement agreement and financial statements

Attachments

For Supreme Court only

- Property assessment

For Provincial Court only

- Interest and investment statement
- Pension income statement

If a party did not retain copies of their T1 General Income Tax Returns, ask them to obtain a copy of their Income Tax Return Summary from CRA. The Notice of Assessment does not break down the source of income.

Tips for Financial Statements

Remember that a Financial Statement is an affidavit, given under oath or affirmation

- It is important to ensure that information is accurate
- If a party has not filed their income taxes for the previous year, include any documentation regarding the party's total income for that year, such as a T4 slip (employment income) or T5 slip (investment income) or EI statements (not just most recent)
- Write "unknown" if party does not know the value
- If not certain, say "estimated" or "approximate"; do not just guess (as the opposing party may seek to rely on the figure stated)
- If the date of the value of the asset or debt (e.g. bank accounts or loans) is not the date of the Financial Statement, then indicate the date (e.g. "as of ...")
- For value of assets, note the source; e.g. "2021 property assessment"; "blue book value"
- Put attachments in some logical order; e.g. 2018 ITR, 2018 NOA, 2019 ITR, 2019 NOA, etc.; current pay statement/current EI statement.
- **Paginate** the attachments (SCFR, Rule 5-1(3))

Annotating the Financial Statement

The Supreme Court Financial Statement allows a party add commentary under: "I anticipate the following significant changes in the information set out in this financial statement" (page 1)

The Provincial Court Financial Statement asks the party to confirm whether a) the party expects any significant changes to total income on the party's tax return this year or b) what the party expects their total income to be this year. (Part 1, section 5)

- In addition to the above information, a party may want to provide explanations about statements/figures deposed to in the Financial Statement.
- It is important to do so because the Financial Statement is a statement given under oath and, therefore, inaccuracies may be used against a party.

Annotating the Financial Statement

Annotations can be used to...

- Explain that certain expenses a party cannot afford (e.g. tutoring, vacation) or are being paid by another person (e.g. vehicle lease by parents) or shared with current spouse (e.g. rent)
- Break out the expenses under the various headings in Part 2 (e.g. Health and Medical, Miscellaneous/Other)
- Detail section 7 expenses for the children, current and anticipated
- Explain why party has not filed income tax returns and when such returns will be filed
- Explain nature of disability (e.g. added expenses or no prospect to return to work)
- Explain capital gains on income tax return (e.g. sale of rental property)
- Explain the expenses claimed as a sole proprietor of a business
- Explain the \$100,000 in a bank account
- Explain payment terms for monies borrowed from a friend
- Explain the reason for the disposition of an asset (RRSP)

Annotating the Financial Statement

- A party may be penalized if the Financial Statement is false, incomplete or misleading
- Annotate the Financial Statement if necessary to provide explanations to better ensure accuracy and clarity.
- Include extra pages if necessary to provide the additional commentary

Provincial Court Form 4 Financial Statement

Financial Statement
Form 4
Provincial Court Family Rules
Rules 3, 25, 26 and 172

My name is _____ of _____ (select in care of person)

My spouse's name is _____

My children's names are _____

Swear or affirm that:

1. The information set out in this financial statement is true, to the best of my knowledge.

2. I have made complete disclosure in this financial statement of:

Select all options that apply:

- my income, including benefits and adjustments, if any, in Part 1
- my expenses and debts, in Part 2
- my assets, in Part 3
- income of other person(s) in my household, in Part 4 (unless holding), in Part 5

Sworn or affirmed before me at _____ British Columbia

on _____

_____ (Signature)

_____ (Signature)

_____ (Signature)

Part 1 - Income

1. I am attaching a copy of each of the following documents to my financial statement:

- my tax return and related schedules for each of the three most recent taxation years, and
- any notice of assessment and reassessment issued by the CRA for each of the three most recent taxation years.

2. All of my sources of income and amounts of income per month are as follows:

Select and complete all that apply. Please use gross amounts (before taxes or deductions)

- employment income of \$ _____ from _____
- employment insurance benefits of \$ _____
- workers compensation benefits of \$ _____
- interest and investment income of \$ _____
- pension income of \$ _____
- government assistance income of \$ _____ from _____
- self-employment income of \$ _____
- trust income of \$ _____
- other income of \$ _____ from _____

3. I am attaching proof of income from all applicable sources, including my:

Select and attach all that apply:

- most recent pay stub or statement of earnings, or a letter from my employer stating my salary and/or wages
- most recent employment insurance benefit statement and record of employment
- most recent workers compensation benefit statement
- most recent interest and investment statement
- most recent pension income statement
- most recent government assistance statement
- self-employment income for the three most recent taxation years, including:
 - (i) the financial statements of my business or professional practice, other than a partnership, and
 - (ii) a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom I do not deal at arm's length
- corporation income for the three most recent taxation years, including:
 - (i) the financial statements of the corporation and its subsidiaries, and
 - (ii) a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the corporation, and every related corporation, does not deal at arm's length
- trust settlement agreement and the trust's three most recent financial statements
- other (specify): _____

Supreme Court – F8

Only significant change to the form is under Part 3 – Property

Added category: Excluded Property

Description (describe the property excluded)	Date of Acquisition (dd/mm/yyyy)	Value at Acquisition or Commencement	Current Value

Other Party’s Financial Statement

Focus on what is missing and if the information in the Financial Statement makes sense

- Check the math
- Look at the income documents, especially if the party is self-employment or receives rental income (not claimed)
- Have client consider what they know about the other party’s financial circumstances, including if the other party works for cash, spent a lot on entertainment or hair products, owns property with family members
- List out what other information or documents are required to determine appropriate income for support purposes

Further Information

Supreme Court Family Rules

Section 5-1(13): If the Form 8 Financial Statement lacks sufficient information, the other party may demand particulars

Section 5-1(14): If the party fails to provide those particulars within 7 days, the court may make any order it deems appropriate including an order for the particulars or a new Form 8 to be delivered with a specified time

Further information

Provincial Court Family Rules

Rule 62: a case management judge may make orders to manage a case including orders about:

- setting a specified period for filing and exchanging information or evidence, including a Form 4 Financial Statement
- specifying and requiring information that must be disclosed by a person who is not a party to a case

Further Information

Supreme Court Family Rules

Rule 9-1(1): All parties must prepare a List of Documents (in Form F20) that lists all documents in that party’s possession or control that could be used in trial to prove or disprove a material fact.

Rule 9-1(6): A party must deliver a supplemental List of Documents if new documents come into the possession or control of the party

Provincial Court Family Rules

Rule 112(1): At a trial preparation conference, a judge may order (f) the filing and exchange of lists of documents

Orders Respecting Disclosure

Section 212 of the Family Law Act

Section 212(1): A court may at any stage of a proceeding make an order to disclose information in accordance with the SCFR or the PCFR

Section 212(2): If such an order is made, the court may order a party to pay the other party or another person, all of part of the expenses reasonably and necessarily incurred in complying with the order

Section 212(3): A person must not disclose the information obtained except as necessary to resolve the family law dispute, and in accordance with the order

Consequences of Non-Disclosure

Section 213 of the *Family Law Act*

Section 213(1) This section applies to a person who

- fails to comply with an order made under section 212
- fails to comply with a requirement to disclose information under the *SCFR* or the *PCFR*
- provides information that is incomplete, false or misleading

Consequences of Non-Disclosure

Section 213(2) of the *Family Law Act*

In such circumstances where section 212(1) applies, the court may do one of the following:

- (a) make an order under section 212
- (b) draw an adverse inference, including attributing income to a person
- (c) require a party to give security in any form

Consequences of Non-Disclosure

- (d) Make an order requiring a person to pay
- (i) A party for all or part of the expenses reasonably and necessarily incurred as a result of the non-disclosure of information or the incomplete, false or misleading disclosure, including fees and expenses related to the family law dispute resolution
 - (ii) An amount not exceeding \$5,000 to or for the benefit of a party, or a spouse or child whose interests were affected by the non-disclosure of information or the incomplete, false or misleading disclosure
 - (iii) A fine not to exceed \$5,000
- (e) Make any other order the court considers appropriate

Penalties for failing to disclose

Notice of intention to seek a fine must be given

- \$2,000 where information was “incomplete, false and misleading”
MacGrotty v. MacGrotty, 2014 BCSC 317 (MJ Halfyard)
- \$2,500 because delay of 11 months and failure to take even preliminary steps toward producing financial statement
Cully v. Cully, 2013 BCSC 2457 (MJ Fleming)
- \$2,880 for failing to disclose basic information, aggravated by wish to avoid child support (reduced from \$4,000 because of limited financial resources)
J.C.P. v. J.B., 2013 BCPC 297 (Judge Merrick)

\$13,617.00

... that is the amount Judge Challenger fined party for failure to disclose under s. 231(2)(d)(i)

“With respect to reasons for non-disclosure, no legitimate reasons were ever provided... I find that Mr. B. must be penalized for his abuse of the court process and wasting court time and Ms. F’s resources... For this proceeding alone she has incurred legal bills that amount to \$13,617.00.”

T.J.B. v. B.A.F., 2014 BCPC 290 (Judge Challenger)

Writing Skills – Affidavits	
Student prep	
Learning Objective:	Learners will: <ul style="list-style-type: none"> • Understand what can be included in an affidavit • Learn strategies for presenting evidence from electronic devices in an affidavit • Learn how to write an affidavit • Understand how to present an affidavit in court
Activity:	<ul style="list-style-type: none"> • Practical tips for drafting affidavits. • Review of model affidavits. • Review and revision of sample affidavits. • A group discussion to identify all important elements of the fact situation to address in the affidavit. • Individual work in class to develop a first draft of an affidavit for your client.
Resource person:	
Materials:	<ul style="list-style-type: none"> • Presentation • LABC Checklist for Affidavits • LABC Tips for Drafting an Affidavit • LABC Sample Affidavit
Assessment:	Affidavit assignment

DRAFTING AFFIDAVITS

Rupi Sahota

Law Foundation New Advocates Training

September 14, 2021



What is an affidavit?

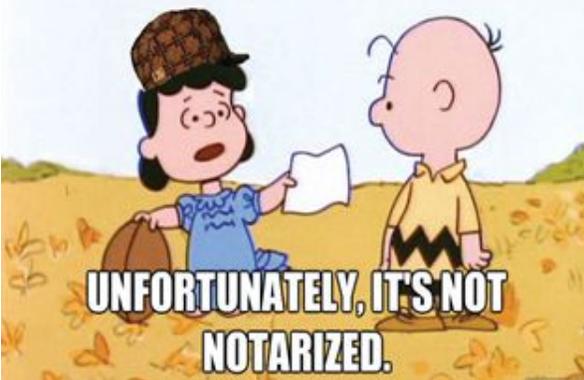
An affidavit is a written statement from an individual which is sworn to be true. It is a substitute for oral evidence where an individual would testify in the witness box.

In Supreme Court parties cannot give oral evidence during interim applications or summary trials. They can only give oral evidence at trial.

Requirements

- ❑ All paragraphs must be numbered.
- ❑ All pages must be consecutively numbered (including exhibit pages).
- ❑ All exhibits must be identified by sequential letters. When all letters have been exhausted then switch to double letters i.e. AA.
- ❑ All exhibits must be stamped/ signed by the person swearing the affidavit.

PROVIDES A SIGNED AFFIDAVIT.



Requirements

- ❑ The style of proceeding must appear in the same format as the Notice of Family Claim. This format should remain unchanged throughout the life of the court case unless a judge orders otherwise.
- ❑ The affidavit should identify the deponent i.e. I, Jane Doe, Accountant, of 3454 Main Street, Vancouver, British Columbia, V3J 7G2.
- ❑ The deponent does need to identify an address, but discuss C/ O address if there are safety concerns.

Requirements

- ❑ The deponent should identify their role in the proceeding.
- ❑ Once the affidavit is finalized and notarized any mistakes found must be corrected in front of the notary/ lawyer/ commissioner.
- ❑ If the deponent is not fluent in English then the affidavit must be translated, and an interpreter must sign an endorsement of interpreter.

Form F39
(Rule 10-4(2) and (7))

This is the _____ affidavit
of _____ in this case,
and was made on _____

Court File No.: _____
Court Registry: _____

In the Supreme Court of British Columbia

Claimant: _____

Respondent: _____

AFFIDAVIT

I, _____, of _____ in the City of Vancouver, in the Province of British Columbia SWEAR (OR AFFIRM) THAT:

1. I am the _____ in the proceeding herein and as such have personal knowledge of the facts and matters hereinafter deposed to save and except where the same are stated to be based upon information or belief and where so stated I verily believe the same to be true.

AFFIDAVIT
In the Provincial Court of British Columbia

Court File Number:
PAC Case Number:
Court Location:

Case name as it appears on the application:
In the case between:
And:

Name, occupation and current address for service of the person filing this affidavit:
What is the affidavit for?
What is your role with this application?
What are the facts?

I, _____
do _____
swear or affirm that:
I know or believe the following facts to be true. If these facts are based on information from others, I believe that information to be true.
I make this affidavit in relation to an application* by _____ for _____
 I am making the application* OR I am responding to the application*
OR I am _____

AFFIDAVIT

Follow the S.O.S Principle

- ❑ Simple
- ❑ Organized
- ❑ Short

Organizing materials

If your client is filing an application, then their affidavit should start with a summary of the case and mention relevant court Orders/ agreements.

Adding subheadings i.e. background etc. will help organize the affidavit.

Form F30 (Rule 10-4(2) and (7))

This is the 4th affidavit of Jane Doe in this case
and was made on XXXX

Court File No.: XXXX
Court Registry: New Westminster

In the Supreme Court of British Columbia

Claimant: JANE DOE also known as JANE DEER

Respondent: JOHN DOE

AFFIDAVIT

[Rule 21-1 of the Supreme Court Family Rules applies to all forms.]

I, JANE DOE also known as JANE DEER, of (address), (occupation), SWEAR OR AFFIRM THAT:

1. I am the Claimant in this action and as such have personal knowledge of the facts and matters deposed to save and except where stated to be made on the information and belief and where so stated I verily believe the same to be true.
2. I make this affidavit in support of my Notice of Application dated XXXX.

Background

1. The Respondent and I were married on XXXX and separated on XXXX.
2. There is one child of marriage namely, CHILD, born XXXX (hereinafter referred to as "Child").
3. There are various orders in place with respects to custody, guardianship, and access for Child.
4. On XXXX, the Respondent and I appeared at a JCC before Master XXXX where a final order was made. We consented that both parties would have joint custody and joint guardianship of Child, I would provide primary residence for Child, the Respondent would have reasonable and generous access to Child. I have attached the order to my affidavit as Exhibit "A".
5. An order for divorce was also made before the Honourable Justice XXXX on December XXXX.
6. On XXXX, I appeared before the Honourable Mr. Justice XXX and the non-rendered order was varied. The Respondent was served, but did not appear.

Explaining order sought or opposed

An applicant should provide a statement of the events that lead to the making of the application.

The respondent provides their version of the events leading up the application.

The respondent can address the applicant's version of those events if necessary.

Things to avoid

- ❑ Double hearsay, "John told me that Andy saw Jason at the children's daycare."
- ❑ Testimonial letters. If a third party can provide important information ask them to prepare an affidavit instead.
- ❑ Character assassinations.
- ❑ Stick to the facts. Failure can result in cost being awarded against your client.

Language

- ❑ Avoid absolutes such as, "John always cries during pick up and drop off." The opposing party/ counsel only has to cite a single incidence when that did not happen to discredit your client.
- ❑ In reference to the example above, if pick up/ drop off is particularly challenging your client should explain the situation with some examples.

Using social media

- ❑ Use social media if it is relevant to the case before the court. Do not add irrelevant pictures or messages to assassinate someone's character.
- ❑ Content from social media can be helpful if it contradicts allegations made by the opposing party.

Adding calculations

If you are including multiple calculations it might be easier to present these calculations in a table format.

Expense	Total	Claimants 66% Share
Martial Arts (XXXX)	\$25.00	\$16.25
Tutoring (XXXX)	\$120.00	\$78.00
Martial Arts (XXXX)	\$25.00	\$16.25
Skating (winter session)	\$88.20	\$57.33
Tutoring (XXXX)	\$140.00	\$91.00
Martial Arts (XXXX)	\$50.00	\$32.50
Tutoring (XXXX)	\$160.00	\$104.00
Martial Arts (XXXX)	\$25.00	\$16.25
Tutoring (XXXX)	\$120.00	\$78.00
Skating (Spring session)	\$106.00	\$68.90
Total:	\$859.20	\$558.48

Including exhibits

- ❑ Only attach documents that supports your clients' position.
- ❑ Ensure all exhibits are clear and legible.
- ❑ Useful exhibits include: Income tax returns, notice of assessments, T4's, paystubs, credit/ bank account statements, report cards, educational assessments, teachers letters, bills, invoices/ receipts, medical reports etc.

Are these helpful?

- ❑ Biased testimony letters. If a third party has important, useful information ask them to prepare an affidavit.
- ❑ Diary entries where client vents about opposing party.
- ❑ Photographs showing how happy the children are during parenting time.
- ❑ All e-mail or text correspondence between the parties.

Expert evidence

- ❑ Can be attached to an affidavit in the form of an evaluation, letter, assessment, reports etc.
- ❑ Your client should not be providing their own medical opinion.

Check in with your client

- ❑ Make sure the content of the affidavit is accurate. Your client could be cross examined in court.
- ❑ You do not want to misrepresent what your client is trying to say.
- ❑ If you are drafting the affidavit then use language that is appropriate for your client.

Language

- ❑ The tone and language used should be neutral. Avoid using inflammatory language.
- ❑ Avoid biased descriptions of your client's emotional state and reactions.
- ❑ Avoid crude or vulgar language.
- ❑ If the affidavit refers to children be mindful and state our children rather my children.

Opinion evidence

- ❑ An affidavit should consist of facts not your client opinion of someone or the situation.
- ❑ Avoid using, In my opinion; I think that; I believe; in my view.

Reviewing the case history can help

- ❑ Ask your client to bring in their file so you can review the case, previous court orders/ agreements and make sure the statements they are making are consistent with previous affidavit's.
- ❑ You can also determine what affidavit # is being drafted by looking at the case history.

Client misconceptions

- ❑ Your client might be hesitate to disclose information in their affidavit.
- ❑ All relevant information/ evidence must be included.

How can your client contribute?

- ❑ Ask your client to provide you with an outline. This might not be possible with all clients depending on their literacy skills.
- ❑ Client can collect and organize relevant documents i.e. expense receipts etc.

In a nutshell, a judge should be able to read your client's affidavit and understand the parties' background, their current circumstances, and the evidence supporting their application or response.

Let's talk specifics

How do you tackle an affidavit as it relates to extra-ordinary expenses, alterative service, travelling with children and relocation?

What evidence should you include? What type of exhibits are relevant to these types of applications?

Has anyone written an affidavit as it relates to any of these issues?

Extra-ordinary expenses

- ❑ What expenses have been incurred?
- ❑ Ask client to collect receipts for expenses claimed.
- ❑ If there are multiple receipts you might want to create a table in the affidavit.
- ❑ Has your client asked OP to contribute towards these expenses? If so, do they have some evidence.

Extra-ordinary expenses

- ❑ If an existing Order outlines the percentage that OP should pay, include those calculations in your table. It will be easier to argue in court if the retroactive proportions are already calculated.
- ❑ If your client is seeking expenses dating back a number of years it might be easier to divide the affidavit into sections and group expenses a year at a time.

Travelling with children

- ❑ Ask client if they have booked tickets.
- ❑ The client may want to contact OP in advance to ask for their permission to travel and/ or sign travel documents. If OP does not provide consent, the letter can be attached to the affidavit to show the client tried to obtain consent prior.

Alterative service

- ❑ Outline attempts made to locate OP with dates.
- ❑ Outline if there are safety concerns.
- ❑ Does OP use social media?
- ❑ Need to show that your client has made all reasonable attempts to locate OP for service.

Travelling with children

- ❑ Review past orders for any terms that pertain to travel or non-removal. If there is a non-removal clause it will need to be varied to permit travel.
- ❑ Does the child have a valid passport?
- ❑ Is the client travelling to a country that requires a visa?

Travelling with children

- ❑ Ask client how long they plan on travelling with the child, and whether these plans fall during school time?
- ❑ Ask client to speak with the child's teacher to see if lesson plans, homework, or other journal assignments will be issued during their absence.
- ❑ If OP will be missing parenting time, how does client propose to make up missed time?

Relocating with children

- ❑ Obtain Orders/ agreements that pertain to guardianship, parenting rights/ responsibilities and parenting time.
- ❑ Explain the current parenting arrangements.
- ❑ Has OP stopped exercising parenting time? If so, explain how and when parenting time stopped.
- ❑ Where is client planning on relocating to? Explain in detail where, why?

Relocating with children

- ❑ Will the client be relocating to an place with more family/ social connections then now?
- ❑ If client is living without any family/ social connections here then explain.
- ❑ Explain employment opportunities in new location. Has the client been offered employment? Attach a job offer letter if possible. Explain how the same opportunities are not available currently.

Relocating with children

- ❑ Will the new location be more affordable compared to how client is currently living? Explain difference in living costs.
- ❑ Explain where client will be living and where the child will be going to school.
- ❑ If OP wants to maintain contact with child explain arrangements for FaceTime/ Skype.
- ❑ Can arrangements be made for parenting time during school holidays?
- ❑ If there is a non-removal order in place then that will need to be varied.

Resources

- ❑ <https://supremecourtbc.ca/sites/default/files/web/A-Guide-to-Preparing-Your-Affidavit.pdf>
- ❑ https://wiki.clicklaw.bc.ca/index.php?title=How_Do_I_Prepare_an_Affidavit%3F

Affidavit writing assignment

Write an affidavit supporting Marge Simpson's application for a protection order.



What additional information could you ask Marge?

What exhibits would you add to your affidavit?

Assignment is due on October 8, 2021.



LABC Affidavit Checklist

<https://family.legalaid.bc.ca/sites/default/files/2021-05/Checklist-of-information-to-include-in-an-affidavit-or-bring-to-court.pdf>

LABC Tips for Drafting an Affidavit

<https://family.legalaid.bc.ca/bc-legal-system/legal-forms-documents/affidavits/how-do-you-write-affidavit>

LABC Sample Affidavit

https://family.legalaid.bc.ca/sites/default/files/2019-04/Affidavit_SAMPLE.pdf