2021 Virtual Provincial Training Conference for Legal Advocates

THE LAW FOUNDATION OF BRITISH COLUMBIA

2021
PROVINCIAL ADVOCATES
TRAINING CONFERENCE

Legal Aid BC

Post covid update: housing issues and recent changes to EI and Canada Recovery Benefits

Kevin Love, Danielle Sabelli

Topic: Welfare & Benefits; Housing & Tenancy

Recording Link: https://youtu.be/gignGnu65XA

POST COVID UPDATE: WHERE ARE WE NOW?

Kevin Love, and Danielle Sabelli
Community Legal Assistance Society
October 5, 2021

WHERE HAVE WE BEEN?

- COVID-19 Order came into effect on March 30, 2020.
- COVID-19 Order was supposed to end when the declaration of the state of emergency expired or was cancelled.
  Moratorium on evictions
- Notices to end tenancy that were provided before the COVID-19 Order (prior to March 30, 2020), remained in effect and orders of possessions were granted.
- Most evictions were not permitted.

WHERE HAVE WE BEEN?

- However, landlords could still be granted an order of possession in situations where:
  - Notices to end tenancy were provided to tenants prior to the COVID-19 order;
  - A notice to end had been given by the tenant;
  - The tenancy was a fixed term and requires the tenant to vacate at the end of the term under the circumstances;
  - The tenancy agreement was a sublease;
  - The landlord and tenant had mutually agreed the tenancy has ended; and
  - The rental unit was uninhabitable or the tenancy was frustrated.

WHERE HAVE WE BEEN?

- During the COVID-19 Order, landlords could also apply for an order of possession if it was unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for the COVID-19 Order to end. Same approach as an application for an early end to tenancy (the "Exceptional Circumstances Provision").
- Landlords could also apply for an order of possession if the rental unit had to be vacated to comply with an order of the federal, provincial, regional or municipal government authority.

WHERE HAVE WE BEEN?

- Landlords and tenants could only obtain writs of possession from the Court in the following circumstances:
  - When the COVID-19 Order expired or was cancelled;
  - Under the Exceptional Circumstances Provision (s 56 of the RTA);
  - If the rental unit was uninhabitable (s 56.1 of the RTA); or
  - If the tenancy agreement was frustrated (s 56.1 of the RTA).
- The order of possession had to clearly state whether it was granted under sections 56 or 56.1 of the RTA. This told the Court whether the order was enforceable.

WHERE HAVE WE BEEN?

- If a landlord or tenant has already filed an order of possession before March 30, 2020, and the Court had not issued a writ of possession, the Court could return the order of possession to the landlord or tenant.
- If a writ of possession was granted on or before March 30, 2020, unless the writ of possession was obtained under sections 56 or 56.1 of the RTA, the landlord could not enforce the writ of possession until after the COVID-19 Order expired.
- A landlord or tenant who obtained a writ of possession for reasons not outlined under sections 56 or 56.1 of the RTA could not enforce it, otherwise they could be subject to fines or jail time.

WHERE HAVE WE BEEN?

Rent Increases

- A landlord could give a notice for rent increase during the COVID-19 Order.
- However, the rent increase would not come into effect until the COVID-19 Order expired or was cancelled, unless:
  - The rent increase is for one or more additional occupants; and
  - was authorized under the tenancy agreement.
- If a landlord had already given a notice for rent increase prior to the COVID-19 Order, the increase would not come into effect until after the COVID-19 Order expired or was cancelled.
- If a landlord did collect the increase amount during the COVID-19 Order, the tenant could deduct the additional amount from future rent payments.
- The rent increase freeze does not apply to non-profit housing where rent is based on income.

WHERE HAVE WE BEEN?

Landlord's right of access restricted

- Landlords were not allowed to enter a rental unit even if the landlord gave proper notice in accordance with the RTA.
- A landlord was only able to enter the rental unit if:
  - An emergency in relation to COVID-19 existed; and
  - The entry was necessary to protect the health, safety, or welfare of the landlord, a tenant, an occupant, a guest or the public.
- A landlord had to receive consent from the tenant before entering the unit for the following reasons:
  - To make regular repairs;
  - To show the unit to prospective tenants; and
  - To host an open house.

WHERE HAVE WE BEEN?

Extensions of time

- When considering whether to extend a limitation period, the COVID-19 pandemic was considered an exceptional circumstance.
- To request an extension of time, a party would need to provide a reasonable explanation why they were unable to file an application or evidence within the requisite timelines.

WHERE HAVE WE BEEN?

Serving documents

- Serving documents in-person was suspended, and email service of all documents was permitted.
- All documents were sufficiently served by email if:
  - the document was emailed and that person confirms receipt of the document. Deemed received on the date the person confirms receipt;
  - the document was emailed and that person responds to the email without identifying an issue with viewing or understanding the document. Deemed received on the date the person responds; or
  - the document was emailed to the email address that the person routinely used to correspond about tenancy matters. Deemed received three days after it was emailed.

WHERE HAVE WE BEEN?

Ministerial order no. 195 (effective June 24th)

- Repealed the COVID-19 order.
- amongst other things, all evictions allowed to proceed except evictions related to non-payment of rent.
- Moratorium on rent increases continued.

WHERE HAVE WE BEEN?

Covid-19 *(Residential Tenancy Act and Manufactured Home Park Tenancy Act)* (no. 2) Regulation (effective July 31, 2020)

- Policy Guideline # 52—COVID-19: Repayment Plans and Related Measures.
- Amended the Residential Tenancy Regulation.
- The moratorium on eviction for non-payment of rent ended on August 18, 2020. Tenants were expected to pay full rent as of September 1, 2020.
- Tenants were required to repay the rent and utility charges that become due from March 18, 2020 to August 17, 2020 (the "Affected Rent").

WHERE HAVE WE BEEN?

Ending the tenancy for the Affected Rent

- A landlord could provide a notice to end tenancy for non-payment of rent for rental arrears that accrued prior to March 18, 2020.
- A landlord could not issue a notice to end tenancy for non-payment of rent for the Affected Rent, unless the landlord has given the tenant a repayment plan for the unpaid amount and the tenant has defaulted on the repayment plan.
- A landlord could not issue a notice to end tenancy for cause for the Affected Rent for any reason (e.g. if one or more payments of the affected rent are late, breach of material term etc.)

WHERE HAVE WE BEEN?

Repayment Plans

- The landlord had to give the tenant a repayment plan if the tenant and landlord had not entered into a prior agreement (a written agreement entered before July 16, 2020).
- A repayment plan had to be served in person, by registered mail, or as ordered by the RTB.
- The earliest a repayment plan could have been issued was August 18, 2020.
- The date the first instalment was due had be at least 30 days after the date the repayment plan was given by the landlord.
- Tenants had until July 10, 2021 to repay the Affected Rent.

WHERE HAVE WE BEEN?

- A repayment plan had to be in writing and include the following:
  - the date the repayment period starts and ends (July 10, 2021);
  - the total amount of the Affected Rent that is overdue and the amount that must be paid in equal installments; and
  - the date on which each instalment must be paid (the date the rent is due under the tenancy agreement).
- If the repayment plan did not comply with the above, or included information that is inaccurate or incomplete, the landlord (or tenant if provided by the tenant), had to give the tenant another repayment plan that complied with the above.

WHERE HAVE WE BEEN?

Amendment to the repayment plan

- The tenant and landlord could agree to amend the repayment plan, but only as follows:
  - To extend the repayment period;
  - to change the amount payable in each instalment if the amount payable in earlier instalments is less than the amount payable in later instalments; and
  - to change the dates of instalments if the date of the first instalment is not earlier than the date the first instalment must be paid.

WHERE HAVE WE BEEN?

Rent increase freeze continued

- A landlord could give a notice of a rent increase, but the rent increase would not come into effect until November 30, 2020.

Landlord's right of access restricted

- A landlord could enter a rental unit for any of the following reasons by providing the tenant with proper notice for the following reasons:
  - Conducting move-in and move-out condition inspections and monthly condition inspections;
  - Making regular repairs; and
  - Showing the unit to prospective tenant and hosting an open house.

WHERE HAVE WE BEEN?

Tenant's right of access restricted

- A tenant could not request monetary compensation if the landlord terminated or restricted access to common areas for the following reasons (unless the RTB has already held a hearing before June 24, 2020):
  - to protect the health, safety or welfare of the landlord, the tenant, an occupant or a guest of the residential property due to the COVID-19 pandemic;
  - to comply with an order of a federal, British Columbia, regional or municipal government authority, including orders made by the Provincial Health Officer or under the Emergency Program Act;
  - to follow the guidelines of the British Columbia Centre for Disease Control or the Public Health Agency of Canada.

WHERE HAVE WE BEEN?

Applications for monetary orders for unpaid Affected Rent made before July 31, 2020

- If a valid repayment plan has been given to a tenant and the tenant is in good standing, an arbitrator could grant a monetary order, subject to the terms of the repayment plan.
- If a tenancy has ended prior to a repayment plan being given, and the tenant has failed to pay an installment, the arbitrator could grant a monetary order that the unpaid Affected Rent be paid in full as of the date of the order.
- Where a landlord was required to give a repayment plan but no valid repayment plan had been given and no valid prior agreement exists, the arbitrator could assist the parties in completing a repayment plan that meets the requirements of the Regulation or dismiss the application with leave to reapply.

WHERE HAVE WE BEEN?

Applications for monetary orders for unpaid affected rent made on or after July 31, 2020

- If no valid repayment plan has been given to a tenant and the tenant is in good standing, then an arbitrator could dismiss the application with leave to reapply, until such time as the tenancy ends and/or the tenant has failed to pay, at least, one installment.
- Applications for monetary orders for unpaid Affected Rent made after this time when a tenant is in good standing would be considered an attempt to circumvent the Regulation.
- A tenant could not be evicted due to unpaid Affected Rent until a landlord has given the tenant a repayment plan for the total amount of the Affected Rent.

WHERE HAVE WE BEEN?

Guest bans

- At the beginning of the COVID-19 pandemic, many non-profit housing providers instituted building-wide guest bans.
- Guest bans were directly contrary to public health advice concerning people who use drugs.
- Vancouver Coastal Health had recommended "that housing providers continue allowing visitors and use other prevention strategies so people do not use alone in their rooms."
- Building-wide guest bans were not permitted under the Regulation and remain unlawful under the RTA.

WHERE ARE WE NOW?

For the most part, the status quo has been restored.

Rent increase freeze continues

- The rent increase freeze has been extended once again, until December 31, 2021.
- Annual rent increase notices issued with an effective date after March 31, 2021 and before January 1, 2022 are cancelled. This means the earliest a tenant can see a rent increase is January 2022.
- The annual rent increase amount for 2022 will be 1.5%.

No more restrictions on tenant's right of access

- Landlords and tenants should continue to wear masks when accessing common areas and accessing and showing rental units.
- A landlord can no longer restrict or schedule the use of common or shared areas (effective July 10, 2021). If restrictions are kept in place a tenant can apply for dispute resolution for monetary compensation. A landlord would have to demonstrate the restrictions are reasonable.

WHERE ARE WE NOW?

No more restrictions on landlord's right of access

- A landlord may enter a rental unit, while wearing a mask, for any of the following reasons by providing the tenant with proper notice:
  - Conducting move-in and move-out condition inspections and conducting monthly inspections;
  - Making regular repairs; and
  - Showing the unit to prospective tenants - restricted to a maximum of six people, if space allows.
  - Guest bans may continue

WHERE ARE WE NOW?

Service by email still permitted

- At any time, a tenant or landlord may provide an email address for service purposes. By providing an email address, the person agrees that documents pertaining to their tenancy may be served on them by email.
- A tenant or landlord must provide to the other party, in writing, the email address to be used. There is no prescribed form for doing so.
- If an email address given for the purposes of serving documents changes at any time, the onus is on the party to ensure an updated address is provided to the other party.

WHERE ARE WE NOW?

Renovictions

- Landlords will no longer be able to issue a notice to end tenancy for renovations and repairs. A notice to end tenancy for renovations or repairs that is issued to a tenant after July 1, 2021 is not valid.
- Instead, landlords will need to apply to the RTB for an order to end tenancy and an order of possession.

WHERE ARE WE NOW?

- In their application to end a tenancy for renovations and repairs, a landlord must show that:
  - they have all the necessary permits and approvals required for the renovations or repairs;
  - the unit must be vacant in order to carry out the repairs;
  - the renovations or repairs are necessary to prolong or sustain the use of the rental unit or building; and
  - no reasonable accommodations can be made to maintain the tenancy.

WHERE ARE WE NOW?

- The landlord will need to serve the notice of hearing on the tenant, who will be able to participate in the hearing and provide evidence that the landlord does not meet the statutory requirements to end the tenancy.
- Successful landlords will receive an order of possession with an effective date of no earlier than four months from the date of the order.

WHERE ARE WE NOW?

Tenant's compensation

- If the landlord does not complete renovations or repairs as stated in the notice to end tenancy, a tenant can apply to the RTB for compensation that is the equivalent to 12 months' rent.
- Previously, the onus was on the tenant to prove that the landlord did not do what they stated they would do on the notice to end tenancy, which was very difficult to do. As of July 1, 2021, the onus will now be on the landlord to prove they did what they said they would instead of the tenant.

WHERE ARE WE NOW?

Additional rent increase

- Landlords will be able to apply to the RTB for dispute resolution to request an additional rent increase for capital expenditures.
- Eligible capital expenditures include:
  - those that are made to maintain the property to comply with health and safety standards;
  - Those that are made to replace a major system that is no longer operative or is at the end of its useful life; or
  - Those that are made to reduce energy use, greenhouse gas emissions or improve the security of the property.

WHERE ARE WE NOW?

Complaints to the RTB

- Drawing on guidance from the BC Ombudsperson and feedback from service users and RTB staff, the RTB have taken steps to make their complaints process more accessible, transparent, and fair.
- Once received, the complaint or concern will be forwarded to the appropriate manager/supervisor for review.
- Complainants will receive a written response outlining the steps that were taken to review the complaint.
- The RTB will respond to the complaint within 30 days of receipt.

WHERE ARE WE GOING?

Expanding Grounds for Review Consideration

- If a landlord or tenant disagrees with an RTB decision, either party can apply to the RTB to have that decision reviewed. The grounds for review have been expanded to include:
  - Due to circumstances that were outside a party's control and not anticipated, the party submitted evidence after the deadline to submit evidence but before the hearing and that evidence was not before the RTB arbitrator;
  - A procedural error was made a person who performs administrative tasks for the RTB that affected the result of the hearing;
  - A technical irregularity or error occurred that affected the result of the hearing;
  - The RTB arbitrator did not determine an issue they were required to determine; and
  - The director determined an issue they were not able to determine.

WHERE ARE WE GOING?

- The already existing grounds for review of an RTB decision will also change. A party can request a review of an RTB decision if they were unable to attend part of the hearing instead of unable to attend the entire hearing.
- Parties who request a review on the grounds of new and relevant evidence must also demonstrate the evidence would have some effect on the decision.
- The RTB will also have the authority to review their decisions on their own initiative, rather than waiting for a landlord or tenant to file for review themselves.
- These changes to the grounds for review of RTB decisions also apply to parties who receive a notice of administrative penalty from the Compliance and Enforcement Unit (CEU).

WHERE ARE WE GOING?

Greater Authority for the CEU to Pursue Investigations

- The CEU will be able to compel a party to produce different types of materials, including records from a third party who have information that might be relevant to the investigation, but are not a part of the investigation themselves.
- Although a recent study by UBC confirmed BC is the eviction capital of Canada (used data between 2013 and 2018), we don't know how the COVID-19 pandemic really affected or renters, or how many renters lost their home.

COVID UPDATE

Employment Insurance

10 changes you need to know about!

Danielle Sabelli and Kevin Love, lawyers
Community Legal Assistance Society
October 5, 2021

#1

It now takes 420 hours to qualify for all EI benefits in all places (until September 24, 2022).

#2

The minimum EI benefit is $300 for claims started between September 26 and November 20, 2021.

After that, the usual rules – 55% of average weekly earnings – apply.

#3

No more 50-week claims.

Claimants now get between 14 and 45 weeks depending on region and hours worked.

#4

The one week waiting period is back.

#5

Claimants once again need a doctor to fill out the form for sickness benefits.

#6

EI sickness to be extended to max 26 weeks in the summer of 2022.

#7

Separation money like severance or pay in lieu of notice is not deducted from EI and does not delay the start of benefits (until September 24, 2022).

#8

Quitting or being fired for misconduct only matters if it was your last job (until September 24, 2022).

#9

Fishers qualify with $2,500. Benefits can be calculated using earnings from current claim or one of the last two fishing claims for the same season, whichever is highest (until December 18, 2021).

#10

There is a review of the EI program going on right now.

Canada Recovery Benefit

4 changes you need to know!

#1

It's ending. Last payment period ends October 23, 2021 unless extended.

#2

Canada Recovery Benefit now pays $300 per week (down from $500).

#3

All EI benefits (regular and special) for claims started on or after September 27, 2020 count as income to qualify for the Canada Recovery Benefits.

#4

Temporary rules exempting EI and CRB payments from IA and DA deduction end after December 2021 (unless extended again)

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Legal Aid BC

Challenging and managing overpayments of federal pandemic benefits

Kevin Love

Topic: Welfare & Benefits

Recording Link: https://youtu.be/ZMGXwSfIchE

EI AND THE FEDERAL PANDEMIC BENEFITS:

Challenging and Managing Overpayments

Kevin Love, lawyer
Community Legal Assistance Society
October 5, 2021

What We Will Do

- Why are people getting overpayments?
- How can you fight overpayments?
- How can you manage overpayments if there is no way to fight it?

So Many Different Benefits! List of Short-Forms

- Canada Recovery Benefit (CRB)
- Canada Recovery Sickness Benefit (CRSB)
- Canada Recovery Caregiving Benefit (CRCB)
- Employment Insurance (EI)
- Canada Emergency Response Benefit (CERB)
- Employment Insurance Emergency Response Benefit (EI ERB)
- Income Assistance (IA) and Hardship Assistance (HA)
- Disability Assistance (DA) for Persons with Disability (PWD)
- Canada Pension Plan (CPP)
- Old Age Security (OAS) / Guaranteed Income Supplement (GIS)

What's Causing Overpayments?

- Some fraud, but other reasons more common.
- Rules were vague and unclear.
- Information people got was often wrong.
- Very little front-end verification.
- Many clients ended up getting the wrong benefit.

Common Problems Leading To CERB \ CRB Overpayments

- Problems with tax return (or not filing one).
- Misunderstanding about what should count towards the required $5,000.
- Appling for CERB from both Service Canada and CRA.
- Having an existing EI benefit period when applying for a CRB.
- Government reviewing CRCB eligibility after school year ended.

Common Problems Leading To EI Overpayments

- Getting automatically rolled onto EI when not entitled due to being unavailable for work.
- Other reasons include:
  - ➢A claim review that imposes a disqualification for quitting or misconduct.
  - ➢A review changing the claimant's hours or earnings, or whether claimant is covered by EI at all.
  - ➢Undeclared earnings while on claim.

How To Approach Overpayments

1. What benefit are you dealing with?
2. Has the time limit to declare an overpayment passed?
3. Has the time limit to collect the overpayment passed?
4. What is the time limit and process for your client to reconsider or appeal?
5. Is there a basis to challenge the overpayment?
6. If the debt is properly owing, is there a basis to apply for a write-off?
7. If the debt cannot be challenged or written-off, is a payment plan possible?

#1: First Thing First! What Benefit Are You Dealing With?

- Must figure out what benefit the client received.
- CERB is sometimes used as a catch-all term.
- If really CERB, was it through Service Canada or CRA?
- Did the client get more than one type of benefit?

Richard

Richard comes to your office. He says the government is making him pay back his CERB. How would you go about confirming what benefit Richard actually received?

How to Find Out What Benefit Client Got?

- Ask to see letters.
- Why did client apply for benefits? Out of work? Sick? Providing care?
- Ask client to log into MyCRA or Service Canada account.
- Call CRA or Service Canada.
- When were the benefits paid?
  - CERB and EI-ERB (mostly) ended in September 2020.
  - Many people automatically transitioned to EI at the end of September 2020.
  - Very few regular EI claims between April and September 2020.

#2: Has Time Limit To Declare An Overpayment Passed?

EI: 36 months, 72 months if misrepresentation.

CERB: No specific deadline.

CRBs: 36 months, 72 months if misrepresentation.

#3: Has Time Limit To Collect The Overpayment Passed?

EI: 72 months from when overpayment declared.

CERB\CRB: Six years from when debt became due and payable. There are exceptions and extensions:

- Claimant acknowledges debt or makes partial payment.
- Government gets a legal judgement against claimant.
- May still be able to deduct the debt from other benefits after this deadline.

Note: Deadline paused during a formal reconsideration/appeal.

#4: Figure Out Your Deadline: Employment Insurance

EI (Including EI ERB):	Reconsideration 30 days. Appeal to SST 30 days.
EI application deadline:	Usually four weeks after interruption of earnings.

#4: Figure Out Your Deadline: CERB And CRB

CERB (through CRA):	No reconsideration or appeal. However informal recon possible.
CRBs:	Reconsideration 30 days. No appeal after reconsideration.
CRB application deadline:	60 days after last day in week (or period) client is applying for.

#5: Is There A Basis To Challenge The Overpayment?

- Don't jump to a write-off or repayment plan if there shouldn't be an overpayment in the first place!
- Must look at criteria for the particular benefit.
- Can be challenging because decision letters often have very little information.
- Sometimes client come with Notice of Debt, not the decision that created the overpayment.

Richard

Based on the information Richard provides, you determine that he is actually being asked to repay EI he received from October to December, 2020. Richard was automatically transitioned from CERB to EI at the end of September, 2020, but he didn't really understand what was happening.

The letter from Service Canada says Richard is being asked to repay EI because he was unavailable for work. The letter notes that Richard's kid was at home with him, and not at school.

- What are Richard's options to challenge this decision or fix the situation?
- What further questions would you ask Richard?

#6: Is There A Basis To Write-off The Debt?

- "Write-off" means to wipe the debt off the government's books.
- Does not mean debt is not legally owing.
- EI has provisions specifically dealing with write-off.s
- CERB and CRBs have no specific write-off provisions.

#6: Writing-Off EI Debt

- General EI Overpayments:
  - Section 56 of the Employment Insurance **Regulation**
- EI ERB Overpayments:
  - Section 153.1306(1) Of the Employment Insurance **Act.**

#6: Writing-Off EI Overpayments

- Undue hardship.
- Severance becomes payable after EI paid (not relevant now) if no misrepresentation by claimant.
- Later decision from CRA impacting insurable hours and earnings if no misrepresentation by claimant.
- Bankruptcy.
- Death.
- Very small or uncollectable debts.
- Note: Always discretionary! These do not automatically get a write-off.

#6: Writing-Off EI Overpayments

- Some reasons for write-off apply only if overpayment is declared more than a year after the week for which benefits were paid:
  - Commission delay or error.
  - Employer error on RoE or about hours or earnings.
- Must not be due to false or misleading information from claimant (accidental or deliberate).
- Generally requires that claimant could not have reasonably known benefits were being wrongly paid.

#6: Writing-Off EI Overpayments: Process

- Lots of confusion and very little information.
- Call Service Canada at 1(800)206-7218.
  - Say you want to apply for a write-off, which needs a "level two decision-maker".
- CRA apparently makes "recommendations" to Service Canada about undue hardship.
- Often get bounced back and forth.
- No right to reconsider or appeal write-off decisions.

#6: Writing-Off Other Federal Benefit Overpayments

- No explicit right for individual claimants to request a write-off.
- Exception: Self-employed people who qualified for CERB with $5,000 gross as opposed taxable income.

#7: Payment Plans

- CRA collects all EI debts.
- Call CRA 1-866-864-5841.
- A payment plan does not necessarily stop CRA from scooping other benefits.
- A partial payment is a debt acknowledgement which can restart the clock for CERB \ CRB collections.

Richard

Richard tells you that he is an only parent. His kid was not in school because of an underlying condition that makes Covid a greater risk. He was not looking for work while collecting EI.

- Do you think an application for reconsideration has a strong chance of succeeding?
- What other options could you recommend for Richard?
- What further questions would you have for Richard?

QUESTIONS?

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Legal Aid BC

Helping clients apply for the right benefit: working through examples

Kevin Love

Topic: Welfare & Benefits

Recording Link: https://youtu.be/flLy2uql7a8

NAVIGATING BENEFITS DURING THE PANDEMIC:

Choosing the right ones and avoiding problems

Kevin Love, lawyers
Community Legal Assistance Society
October 5, 2020

What We Will Do

- Overview of EI changes.
- Overview of other pandemic related benefits.
- Figure out what your client should be applying for.
- Look at how the benefits interact and intersect.
- Identify potential problems.

So Many Different Benefits! List of Short-Forms

- Canada Recovery Benefit (CRB)
- Canada Recovery Sickness Benefit (CRSB)
- Canada Recovery Caregiving Benefit (CRCB)
- Canada Emergency Response Benefit (CERB)
- Income Assistance (IA) and Hardship Assistance (HA)
- Disability Assistance (DA) for Persons with Disability (PWD)
- Canada Pension Plan (CPP)
- Old Age Security (OAS) / Guaranteed Income Supplement (GIS)
- Employment Insurance (EI)
- Workers' Compensation Board (WCB)

Employment Insurance

- Most employment automatically covered by EI.
- Regular EI benefits for people out of work for reasons beyond their control.
- Special EI benefits for people who need time-off for specific reasons.
- Requires an "interruption of earnings":
  - Regular benefits: 7 days no work, no pay.
  - Special benefits: 40% reduction in average weekly earnings.
- Should apply within four weeks of interruption of earnings.

Employment Insurance: Qualifying And What You Get

- 420 hours of insurable employment to qualify for all benefits in all places (until September 24, 2022).
- Regular benefits: Disqualifications for quitting without justice cause or getting fired for misconduct.
- Regular benefits: Must be available and capable of working; demonstrate job search and accept suitable employment.
- Claims starting between September 26 and November 20, 2021, minimum $300.
- After, the usual 55% of pre-injury earnings applies.
- Between 14 and 45 weeks depending on region and hours.

Canada Recovery Benefits

- CRB for people who have lost earnings because of COVID (up to 54 weeks).
- CRCB for people who have to provide care to child or dependent for reasons related to COVID (up to 42 weeks).
- CRSB for people who cannot work because they are sick with covid or must isolate (up to 4 weeks).
- Ending October 23, 2021 unless extended.

Canada Recovery Benefits

- Qualify based on earnings ($5,000).
- New: Money from EI claims beginning on or after September 27, 2020 counts. Pregnancy or parental benefits count even before this date.
- At least a 50% reduction in average weekly earnings.
- CRB: Can be disqualified for unreasonably quitting.
- CRB: Obligation to seek work and accept reasonable work offers.
- CRB rate down to $300 per week. CRSB and CRCB still $500.
- Must apply within 60 days of last day in benefit period.

EI or CRB?

- EI generally for employees.
- CRB generally for self-employed people not covered by EI.
- If out of work, must apply for EI if eligible.
- If sick or quarantining for covid, can apply for EI or CRSB.
- Cannot get more than one benefit at the same time.

EI or CRB? Problems

- Very hard to undue if people apply for wrong benefit.
- 60 day time limit makes it hard to go back and apply for the right one.
- Communication between EI and the CRA is brutal.
- People who have an active EI benefit period are being denied CRBs even if they are not entitled to EI.

Angie

Angie is a carpenter. She was working a contract that ended in early September. Now she's having trouble finding work and is worried about paying the bills. What questions would you ask Angie?

Angie

Angie said she was working full time for about four months. Her employer never gave her a record of employment but she says EI premiums were deducted from each pay-cheque. What would you tell Angie?

EI and Welfare: Standard rules

BENEFIT	TREATMENT
EI pregnancy, parental, compassionate care for critically ill child	Exempt
All other EI	Unearned income, deducted
CPP orphan and disabled contributor child benefit	Exempt
All other CPP	Unearned income, deducted
CPP lump sum retro	Unearned income only in month received (unless assigned to MSDPR)
WCB – temporary disability benefits	IA – Unearned income, deducted DA – Qualifying income
WCB – permanent disability benefits	Unearned income, deducted
WCB – lump sum "commuted pensions".	Unearned income only in month received. Maybe exempt as an "other award"?

EI \ CRB and Welfare: Current rules

BENEFIT	TREATMENT
All EI (until end of 2021)	Exempt if on assistance or PWD before April 2, 2020
CRBs (until end of 2021)	Exempt if on assistance or PWD before April 2, 2020

EI \ CRB and PwD: Problems

- EI requires a job search.
- EI often requires that people look for full-time work.
- Many PwD cannot work full-time.
- However, may not meet the EI sickness standard of being unable to work because of injury, illness, or quarantine.

Ronaldo

Ronaldo has been on DA consistently for about 5 years. He worked part-time at a grocery store to supplement his benefits. He was laid-off last week. He has never dealt with EI before but hears that its now easier for people to get. What questions would you ask Ronaldo to help him decide if he can \ should apply for EI?

Ronaldo

Ronaldo tells you he worked about 10 hours a week for the last few years. He said the store could have given him more hours but he doesn't feel physically able to do more. He says he would like to work part-time again as long as it's a good fit and he can limit his hours. What would you tell Ronaldo about applying for EI?

EI / CRB and CPP

- CPP retirement is **not** deducted from EI if qualifying hours were worked after pension started.
- CPP-D is not deducted from EI or CRB (or vice versa).
- You can have the capacity to do *some* work and remain eligible for CPP-D.

EI / CRB and CPP: Problems

- Tests for EI \ CRB and CPP-D do conflict.
- EI requires capacity to work and job search.
- CPP-D requires that claimant be incapable regularity of pursuing substantially gainful employment.
- There is risk trying to access EI / CRB and CPP-D at same time.

Patricia

Patricia has been on CPP-D for about 5 years following a very serious car crash. She supplemented her income by walking a dog once a day for an acquaintance. Recently, the dog owner canceled the dog walking arrangement. Patricia is wondering if she is eligible for any pandemic benefits. What questions would you ask Patricia?

Patricia

Patricia says the dog owner cancelled the arrangement because she was working from home again and wanted to limit her contacts because of covid. Patricia never declared the money she earned on her taxes. She might consider another dog walking job but has no intention of looking for other work. What would you tell Patricia?

EI \ CRB and GIS:

- People getting GIS can still qualify for EI \ CRB. Could also qualify for CERB last year.
- GIS is not deducted from EI \ CRB.
- But…

EI \ CRB \CERB And GIS: Problems

- EI, the CRBs, and CERB are taxable income that reduce GIS.
- GIS payment cycle starts in July and is based on income in previous calendar year.
- Generally, 50% of income other than OAS is deducted.
- EI, CRB, and CERB payments are now impacting GIS payment.

EI \ CRB \CERB And GIS: Solutions? Or More Problems?

- Can sometimes use an estimate of the current year's income to calculate a GIS rate instead of using prior year's tax return.
- Form 3041 – Statement of Estimated Income.
- Not publicly available. Must call Service Canada.
- Very little in the way of consistent information about CERB \ CRA.
- Appears Service Canada may use estimated income for people who got the EI Emergency Response Benefit, but not CERB through CRA?
- Hope for change now that election is over.

Terrance

Terrance is retired. In 2020 he collected CERB. Now, his GIS has been substantially reduced and he is worried how he will get by. What questions would you ask Terrance?

Terrance

Terrance says he has only ever worked as an employee, so he's pretty sure he got CERB through Service Canada, not CRA. He has no other income right now (outside of his CPP and OAS). What would you tell Terrance?

QUESTIONS?

THE LAW FOUNDATION OF BRITISH COLUMBIA

2021
PROVINCIAL ADVOCATES
TRAINING CONFERENCE

Legal Aid BC

BC Family law case law updates

Agnes Huang

Topic: Family & Children

Recordings:

- **Full Session:** https://youtu.be/ABn-gQR7tyc
- **Ch 1: Child support:** https://youtu.be/_06P8HrdDIo
- **Ch 2: Parenting time and parenting arrangement:** https://youtu.be/G0jxmCG-HDk
- **Ch 3: Imputation of income:** https://youtu.be/MY_S-20MS5Q
- **Ch 4: Without notice order:** https://youtu.be/Jn4uBl6Pv_M
- **Ch 5: Child's testimony:** https://youtu.be/et25br8_VIQ
- **Ch 6: Parental responsibilities and termination of guardianship:** https://youtu.be/jQiMM4KSfa8
- **Ch 7: Relocation:** https://youtu.be/UtQ5074qxy4
- **Ch 8: Annulment and FMEP enforcement:** https://youtu.be/nI-MW1Mg0D0

Provincial Advocates Conference

Family Law Update

October 6, 2021

Agnes Huang
Saltwater Law

Child Support

Colucci v. Colucci, 2021 SCC 24
(companion decision to *Michel v. Graydon, 2020 SCC 24)*

- The parties divorced in 1996.
- The Mother was granted sole custody of the parties' two daughters.
- The Father was required to pay child support in the sum of $115 per week.
- In 1998, the Father requested to reduce his child support obligations, but provided not financial disclosure, so no agreement was reached by the parties.
- The Father made no voluntary child support payments from that time on.
- The Father's child support obligation came to an end in 2012.
- In 2016, the Father sought to retroactively reduce child support and rescind the arrears of approximately $170,000.

Child Support

- The Ontario Superior Court of Justice retroactively decreased the child support by $41,642.
- The Ontario Court of Appeal overturned that decision and ordered the Father to pay the full amount of the arrears.

The Supreme Court of Canada dismissed the Father's appeal.

Child Support

- The SCC held that courts need a wide discretion to vary child support orders to ensure the correct amount of child support is being paid and to adapt to the enormous diversity of individual circumstances that families face.
- The Court set out the three interests that must be balanced to achieve a fair result:

Child Support

1) The child's interest in receiving the appropriate amount of support to which they are entitled;
2) The interest of the parties and the child to have certainty and predictability; and
3) The need for flexibility to ensure a just result in light of fluctuations in the payor's income.

The child's interest in fair standard of support commensurate with income is the core interest to which all rules and principles must yield.

Child Support

- The Court went on to say that any framework for decreasing child support must also account for the informational asymmetry between the parties and the resulting need for full and frank disclosure of the payor's income.
- Disclosure in the linchpin on which fair support depends and the relevant legal tests must encourage timely provision of necessary information.

Child Support

- It is the payor who knows and controls the information needed to calculate the appropriate amount of support.
- Full and frank disclosure of income by the payor lies at the foundation of the child support regime and is also a precondition to good faith negotiation.
- Without it, the parties cannot stand on equal footing required to make informed decisions and resolve child support disputes outside of court.

Child Support

- The payor's duty to disclose income information is corollary of the legal obligation to pay support commensurate with income.
- Proactive disclosure of changes in income is the first step in ensuring that child support obligations are tine to payor income as it fluctuates.

Child Support

- Once a material change is established, a presumption arises in favour of retroactively decreasing child support to the date the payor gave effective notice, up to three years before formal notice of the application to vary.
- Effective notice requires clear communication of the change in circumstances accompanied by disclosure of any available documentation to substantiate the change.
- It is not enough for the payor to merely broach the subject with the recipient.

Child Support

- In the absence of effective notice, certainty and predictability for the child are to be prioritized over the payor's interest in flexibility.
- The recipient is entitled to rely on the court order or agreement in the absence of proper communication and disclosure by the payor showing a decrease in income that is lasting and genuine.
- The payor has control over the date of notice and the date of retroactivity.

Child Support

- Even where payor gives effective notice, the period of retroactivity is presumed to extend no further than three years before the date of formal notice.
- The presumptive three-year limit allows the parties to negotiate but recognizes that the payor must commence proceedings in a timely manner to protect the certainty interests of the child and recipient.
- The court retains discretion to depart from the presumptive date of retroactivity where the result would otherwise be unfair in the circumstances.

Child Support

- The court will consider the four factors set out in *D.B.S.,* adapted to suit the retroactive decrease context:

1) Whether payor has an understandable reason for the delay in giving effective notice or formal notice. The recipient's delay in enforcing arrears is irrelevant.
2) The payor's conduct, including efforts to disclose and communicate with the recipient and to make genuine efforts to continue paying as much as the payor can.

Child Support

3) The circumstances of the child, such as if the child has experienced hardship or is currently in need. This factor militates toward a shorter period of retroactivity. Whether the recipient would be required to repay support to remedy an overpayment. It would rarely be appropriate to retroactive decrease support to a date before the recipient could have expected that the support payments might need to be repaid.

Child Support

4) Hardship to the payor if the period of retroactivity is not lengthened beyond the presumptive date. The payor must adduce evidence the establish real facts supporting a finding of hardship. Hardship carries much less weight where brought on by the payor's own unreasonable failure to make proper disclosure and give notice to the recipient. Hardship must be viewed in the context of hardship to the recipient and the child is the period is extended.

Child Support

- In terms of rescinding arrears based on current inability to pay, the only relevant factor is the payor's ongoing financial capacity.
- The payor must provide sufficient reliable evidence to enable the court to assess their current and prospective financial circumstances.

Child Support

- There is a presumption against rescinding any part of arrears.
- The presumption will only be overcome if the payor can establish on the balance of probabilities that, even with a flexible payment plan, the payor cannot and will never be able to pay the arrears.
- Recission of arrears is a last resort in exceptional cases.

Child Support

- In *Colucci*, the SCC held that the Father's deficient communication, inadequate evidence and insufficient disclosure are fatal to this application for a reduction of child support retroactively and to his application to rescind arrears.
- The Father's conduct shows bad faith efforts to evade the enforcement of the court order.

Parenting Time

A.G. v. C.A.G., 2021 BCSC 1718, Master Robertson

- Parties had an 8 year-old son. The Respondent Mother had been diagnosed with cancer. She was a proponent of homeopathic, holistic and natural remedies and therapies.
- The Father deposed that the child told him the mother made the child urinate in a jar and that she then put some of the urine in a smoothie for him to drink. Father said he found jars of urine int the bathroom.
- The Father also alleged that the Mother does not believe in COVID-19 and is an anti-masker and an anti-vaxxer.

Parenting Time

- The Mother deposed that:
- she had never used urine therapy on the child and that she had never put urine in his food or drinks.
- she gave the child a jar to pee into to monitor his lymphatic system, to check if his kidneys are filtering.
- The Father primarily only feeds the child a diet consisting of high fat, high sugar and high salt, leading her to be concerned for the child's health.
- she dumps the urine in the toilet after she lets it sit for the sediment to fall to the bottom before checking it.

Parenting Time

- Master Robertson found that both parties exaggerated in regards to the wrongdoing of the other.
- But the Court found that father's evidence was more balanced and centered on the child while the mother wan more focused on defending her health beliefs and minimizing their effects of the child.

Parenting Time

- Master Robertson noted a number of factors that undermine the Mother's credibility, including:
- independent evidence is contrary to her evidence. For example, the evidence of the child's family doctor that the child reported that there was urine being put in his food.
- her evidence in respect of her beliefs as to the health benefits of urine therapy are rife with opinions and unproven therapies.

Parenting Time

- her use of extreme language and adjectives, such as "gaslighting", "narcissistic abuse", "terrorizing" and "dictatorship" suggests exaggeration and there is often no often no factual description to support such adjectives.
- the Mother's friends swore affidavits in support of her parenting that are self-serving. There was little detail to establish that the deponents were aware of any of the allegations being made against either party and the affidavits were rife with opinions and superlatives.

Parenting Time

- Master Robertson concluded that the Mother was acting in such a way that her judgement, particularly as to health matters and the risk of urine therapy, constituted exceptional circumstances to warrant supervised parenting time.
- Court ordered that the Mother would have parenting time from Sunday at 6:00 pm until Wednesday at 6:00 pm, supervised by a professional supervisor or a third party agreed to by the parties.

Parenting Arrangements

Aujla v. Gill, 2021 BCSC 1671, MJ Shergill

- The parties had four children, ages 7 to 13 and had resided primarily with the Mother since separation.
- The Father's alcohol dependency had led to the breakdown of the marriage (in 2015), but he had been sober for almost 3 years.
- The Mother had been homeschooling the children, against the Father's wishes.
- After he became sober, the Father had parenting time supervised by the Mother.

Parenting Arrangements

- At the start of the COVID-19 pandemic, the Father had difficulty exercising his parenting time as the children became distant from him and the Mother was not actively encouraging the children's cooperation.
- Unbeknownst to the Father, the Mother moved with the children from the Lower Mainland to Kamloops in later on in 2020.

Parenting Arrangements

- A section 211 report was ordered, and the assessor (Dr. Elterman) found early stages of parental alienation.
- Dr. Elterman also concluded found that the children were several grades behind academically – they spent an hour a day on school and had not structured education plan – and had motor deficits that were not treated. He did not recommend continued homeschooling

Parenting Arrangements

- During the course of the trial, MJ Shergill made an interim order for unsupervised parenting time for the Father and also ordered the Mother to return to the Lower Mainland with the children.
- The Court found the Father to be a credible and reliable witness and the Mother to be not.
- MJ Shergill found the Mother to be woefully unequipped to homeschool the children, and that her moves were motivated by her desire not to co-parent with the Father.

Parenting Arrangements

- The Court gave little weight to the children's expressed desire not to see their Father because of the negative influence of the Mother in shaping their opinions of their Father.
- MJ Shergill found the Mother's conduct did not reach the level of parental alienation but that she was on a path to it.
- MJ Shergill found that the children's emotional well-being was better served by increasing their time with their Father, with a goal of reaching equal shared parenting.

Parenting Arrangements

- MJ Shergill concluded that the Father was better equipped to meet the children's educational and health needs and he was awarded final say in decision-making on those matters.
- The Mother consented to conduct orders, including that she encourage the children to have a good relationship with their Father and that she not talk negatively about the Father.
- MJ Shergill seized herself of the matter for one year.

Imputation of Income (1)

French v. French, 2021 BCCA 30

- The parties were involved in a family law proceeding a few years prior, in which matters of division of property and spousal support were addressed.
- The Wife now brought an appeal alleging that the judge had erred in calculating support payable to her based on imputing income to her prior to a motor vehicle injury that left her unable to work.
- The judge accepted that the Wife could not work due to her medical condition, but still attributed her pre-accident income to the Wife which reduced her entitlement to spousal support to zero.

Imputation of Income (1)

- The Court of Appeal found that the judge had erred by setting the Wife's income at her pre-accident level on the expectation that she "presumably" would be compensated for the loss of income through her ICBC claim.
- The Court held that the prospect of reimbursement at some point in the distant future does not represent proper basis for imputing income to someone who has not received that income.

The Court of Appeal allowed the Wife's appeal.

Imputation of Income (2)

M.F.W. v. M.A.H., 2021 BCSC 1581 MJ Basran

- After a trial in 2019, the Husband was ordered to pay child support and spousal support on an annual salary of $170,000, derived primarily from a company he invested in.
- The Husband had inherited several million dollars of assets a year prior to the end of the marriage.
- In December 2020, the Husband was laid off and he sought to reduce his support payments and cancel arrears

Imputation of Income (2)

- The court denied the Husband's application.
- MJ Basran noted that the Husband reported only $67,521 of annual income but stated $13,000 in monthly expenses with no corresponding increase in debt.
- In addition, the Husband gave inadequate explanation of why his assets worth several million dollars seemingly generated little income.

Imputation of Income (2)

- The Husband also failed to prove that his alleged health problems impaired his capacity to work
- The Husband had extensive experience as a heavy equipment operator and in construction.
- MJ Basran found the Husband to be deliberately under-employed.
- The Court imputed income of $125,000 to the Husband. No income was imputed to the Wife.

& Cancelling Arrears

- Regarding the arrears, the Court held that despite the significant decline in the Husband's income, it was uncertain that it would be longstanding and there was a paucity of evidence of the Husband's efforts to obtain other employment.
- Moreover, given the Husband's lack of financial disclosure, MJ Basran was not satisfied that it was grossly unfair not to cancel or reduce the arrears owing.

Without Notice Orders

P.F. v. J.T.F., 2021 BCSC 1506 Master Elwood

- The parties were married in 1998 and separated in April 2020 but remained living the family home.
- The Wife sought and was granted (by Master Scarth) an *ex parte* order for exclusive occupation of the family home, a protection order, and a financial restraining order. The police removed the Husband from the home.
- The Wife deposed to a history of family violence during the marriage, including that she had to flee to a women's shelter; the Husband was charged with uttering threats and released on undertakings.
- The Wife deposed that the physical assaults diminished after the Husband was arrested but that he found other ways to abuse her, including degrading her, spitting on her and calling her prostitute.
- The parties' eldest child, who was 20, deposed that his father had physically, verbally and mentally abused him throughout his life.

Without Notice Orders

- The matter came back on for a full hearing before Master Elwood.
- The Husband sought to set aside the orders, and the wife sought to extend the orders.
- The Court found the Husband not to be credible, and that it was highly improbable for the Wife to fabricate the detailed evidence of family violence in the affidavits.
- Master Elwood found the Husband to have very little self-awareness about his behaviour towards his family.

Without Notice Orders

- However, Master Elwood found that the Wife's application should not have been made without notice to the Husband.
- Master Elwood cited a recent decision of the Court of Appeal, in which the court described without notice orders as "an extraordinary, powerful, interlocutory remedy which is recognized as having the potential to inflame a dispute between parties in fraught situations"

Kapoor v. Makkar, 2020 BCCA 223, para. 11

Without Notice Orders

- Master Elwood stated that an application for exclusive occupancy of a family home should only be made without notice where there is urgency or a real possibility of violence if notice is given.
- The Court noted that the parties had lived separately in the same home since April 2020 and that while the Wife swore her Affidavit on April 22, 2021, she did not bring the application for exclusive occupancy and a protection order until May 4, 2021. The parties continued to live in close proximity for 12 days.

Without Notice Orders

- Master Elwood stated that the Wife had reason to be concerned about how the Husband might react if served with an application.
- However, Master Elwood went on to say that a temporary protection order prohibiting the Husband from communicating with the Wife directly about the matter until the application could be heard, would have been preferable to a without notice application.
- Master Elwood stated that, as it was, the without notice order resulted in a sudden and, no doubt, traumatic, police removal of the Husband from the home.

Without Notice Orders

- Master Elwood added that while it may have been intended to avoid further family violence, proceeding in this manner likely deepened the conflict between the parties. The Wife ought not to have applied without notice.
- In the end, Master Elwood granted the Wife exclusive occupancy of the family home, extended the protection order for one year, and continued the financial restraining order with some modifications.

Child's Testimony

T.A.O. v. D.J.M., 2021 BCSC 1690 MJ Shergill

- Parties had a 7 year old daughter (N) and a 16 year old (S), who was the step-daughter of the Respondent.
- After the parties separated, the Claimant was concerned that the Respondent had sexually abused N.
- S stated that the Respondent had touched her sexually several years prior.

Child's Testimony

- The Respondent denied the allegations.
- MCFD and RCMP were involved but no charges laid.
- A section 211 report did not raise any safety concerns about N being alone with her father.
- The Claimant sought to have S testify at trial.

Child's Testimony

- MJ Shergill allowed the application for S to testify at trial.
- The *Family Law Act* does not preclude a child from testifying or require a child to testify.
- The court would need to determine the credibility of the Respondent and of S, which would be difficult to do on the basis of hearsay statements.

Child's Testimony

- S was about to turn 17 years old and she had already provided an affidavit in the proceeding. She wished to voluntarily testify out of concern for her sister's well being.
- MJ Shergill found that, based on the material before the court, S was mature enough and old enough to understand the consequences of giving an oath to tell the truth.

Child's Testimony

- MJ Shergill did grant some testimonial accommodations to S, namely that:
- S would be permitted to testify outside the courtroom but in a courthouse or an equivalent neutral and secure location.
- S could have a support person present, but with an independent observer present to ensure S was not influenced by anyone or relying on written materials

Child's Testimony

- The Respondent, who was self-represented, was not allowed to cross-examine S.
- The Claimant was to pay $1,500 for the Respondent to retain legal counsel to conduct the cross-examination of S. Anything above that amount was to be covered by the Respondent.

Child's Testimony

- MJ Shergill concluded with: As I have said, I am very reluctant to have a child participate in the proceeding. To ensure that S is not being pressured by anyone to testify, I make this additional order. Prior to the commencement of S's testimony, she will be required to confirm to the court that her decision to testify is voluntary and instigated by her. In other words, she should not be testifying because she has been told to or asked to testify in this proceeding by any parent, any relative, friend, or legal counsel. The request to testify should be at her own instigation because she believes that this court needs to hear from her.

Parental Responsibilities

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.

Termination of Guardianship

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 engaged in 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.

Termination of Guardianship

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

- Mr. Justice Giaschi found that while the circumstances in this case were extreme, they were not so extreme that the Father should be removed as a guardian.
- If the Father were 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 their father.
- The Judge added that there is a possibility that the Father 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.

Termination of Guardianship

- The Court concluded that the compelling concern of the Mother to be free of the Father's harassing, manipulative and controlling conduct can be addressed by giving the Mother all of the parental responsibilities and by denying any parenting time to the Father.
- It was not necessary to also remove the Father as a guardian of the children at this time.

Relocation

Barendreght v. Grebliunas, 2021 BCCA 11

- The parties have two children, both under the age of 6.
- The Trial Judge allowed the Mother to move with the children from the Okanagan (West Kelowna) to the Bulkley Valley (Telkwa) – 1,000 kilometres apart: 2019 BCSC 2192.
- The two primary considerations in favour of the move were: the financial situation of the parties and their relationship with each other.
- The parties owned a family home which had a significant mortgage and required much-needed renovations; the parties had struggled to make ends meet.
- The Father worked as a carpenter and the Mother held various janitorial positions.

Relocation

- The Father appealed and sought leave to adduce new evidence about his financial circumstances.
- The Father deposed in an affidavit that he had bought out the Mother's interest in the family home, had sold one-half interest of the family home to his parents and was then able to refinance the mortgage, resulting in an $800 decrease in his monthly mortgage payment. The Father's parents also increased their line of credit to be able to cover the renovations to the house.

Relocation

- The Father was permitted to adduce new evidence and the appeal was allowed.
- The Court of Appeal held that the new evidence displaces the trial judge's concerns about the parties' financial positions and the Father's ability to remain in the family home in West Kelowna.
- The Court held that the remaining circumstances indicate that the best interests of the children were served by the children returning to the Okanagan under a shared parenting regime.

Relocation

- The Court of Appeal found the following factors favouring the children returning to the Okanagan:
- Both parents are good parents.
- The Father had a strong bond with the children and had taken "extraordinary steps" to manage his schedule so he could be engaged with the children.
- The children had always lived in the Okanagan.
- The Father's parents had moved to Kelowna.
- The Mother did not move to Telkwa to advance her career, for better educational opportunities, or because she had a new partner there. The Mother did have family in the area.

Relocation

- There was no suggestions that the Bulkley Valley provided the children with any benefits not available to them in Kelowna.
- The Trial Judge had allowed the move partly because he was concerned about the Father's past and future treatment of the Mother, and found that the Father had an overbearing personality and the Mother had been subjected to emotional abuse. The Court of Appeal noted that the Mother had not argued that the Father's hostility towards her supported her move to Telkwa. In fact, the Mother had testified that the parties were getting along better than just after separation.

Relocation

- The Court of Appeal held that:

- "… it is significant that the conclusions arrived at by the trial judge that [the Mother's] need for some emotional support and the concern over [the Father's] behaviour have generally not, on their own, supported a relocation in the case law."

- "There are virtually no decisions of this Court where a need, on the part of the moving parent, for emotional support, even with some friction between the parties, has justified a relocation."

Relocation

- The Court of Appeal concluded that "permitting the relocation was inconsistent with the object of maximizing contact between the children and both their parents. Indeed, the relocation was likely to permanently and profoundly alter the relationship of the children with their father".

The Supreme Court of Canada has granted leave to appeal the Court of Appeal's decision.

UPDATE: On December 2, 2021, the SCC allowed the mother's appeal, with reasons to follow.

New 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.

New 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 (*Nolie 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.

Annulment

Kaur v. Singh, 2021 BCCA 320

- The Wife appeals the decision of a Chambers judge to deny her an annulment on the basis of non-consummation.
- The Chambers judge held that the Wife had not established physical inability or psychological incapacity to consummate.
- The Husband had not opposed the annulment.

Annulment

- The parties delayed consummation until they could have a proper Sikh Gurdwara ceremony that, according to their culture and religion, was necessary.
- After the civil ceremony, the parties lived in the same house, but separately. They shared the house with friends. The Wife lived with her friend and the Husband lived with his friend.
- The Wife testified that the Respondent suffered from depression and many issues arose between them and they were fighting so much.
- This led the parties to separate and the Husband moved out of the house.
- The religious ceremony never took place.

Annulment

- The Court of Appeal held that the established common law concerning incapacity must be applied contextually.
- [17] … in a multi-cultural society that our nation reflects, the common law principles at issue her must be applied contextually, in accordance with the cultural norms of the parties seeking annulment. … a psychological incapacity … can arise as meaningfully from sincerely held religious and cultural beliefs as from other forms of psychological aversion, both being, contextually, a "normal, predictable reaction"…

Annulment

- The Court of Appeal held that, in these circumstances, a true aversion to consummate arising from religious beliefs established a genuine psychological incapacity.
- The Court did note that it would be helpful for any such cases in the future to have more precise evidence concerning the parties' cultural and religious norms and, importantly, the manner and extent to which those norms impacted non-consummation of the marriage.

The Court of Appeal granted the annulment.

FMEP Enforcement

B.C. (FMEP) v. B.B., 2021 BCPC 217 Judge Doulis

- An order was made against B.B. in July 2005 that he was to pay $670 per month in child support on an imputed income of $48,000.
- B.B. was incarcerated at the time.
- Over the next 16 years, the only time the Mother received child support from B.B. was when FMEP was able to garnish monies from third parties.
- FMEP doggedly attempted to collect child support from B.B.

FMEP Enforcement

- B.B. had only earned $48,000 in one year (2012).
- B.B. stated that his sporadic income was due to his intermittent incarceration, addiction issues and his poor health.
- B.B. had not worked in 4-1/2 years.
- B.B.'s only source of monies was income assistance.

FMEP Enforcement

- B.B. had multiple convictions for which he was incarcerated and also owed fines and restitution to ICBC totaling more than $120,000.
- B.B. struggled with addictions his entire adult life. He was an alcoholic; he used cocaine and then graduated to heroin.
- Due to carpal tunnel syndrome, B.B. was unable to return to work as a welder until he had surgery.

FMEP Enforcement

- B.B. owed just under $37,000 in child support, with about $13,700 being interest.
- FMEP sought to have B.B.'s income imputed to $25,000.
- FMEP sought an order that B.B. pay $400 per month towards the arrears, and…
- If B.B. failed to make a payment, he was to be incarcerated for five to 10 days for each missed payment, to be served consecutively.

FMEP Enforcement

- In her conclusion, Judge Doulis took note of the over-representation of Indigenous people in the prison system.
- Because FMEP was seeking incarceration for default, Judge Doulis said it was necessary to apply to guidelines in the *Criminal Code* and in the Supreme Court of Canada's decisions in *R. v. Gladue* and *R. v. Ipeelee* in respect of the sentencing of Indigenous people.

FMEP Enforcement

- The Court may take judicial notice of the broad and systemic factors affecting Indigenous people generally and specifically to the person subject to incarceration.
- Judge Doulis found that the systemic and background factors affecting Indigenous people in Canadian society have likely impacted B.B.
- The Judge noted that the difficulties faced by B.B. "arise at least in part from transgenerational trauma and substance abuse arising from the Indigenous peoples' involvement in colonialism, displacement and residential schools".

FMEP Enforcement

- Judge Doulis was also cognizant of the impact on B.B.'s former partner (the Mother) and their children, now adults, who are also Indigenous.
- The Judge was not convinced that imprisoning B.B. for non-payment of arrears would improve their lot in life.
- Judge Doulis noted that B.B. appeared to be on a rehabilitative path and she did not want to derail that by imposing a punitive sanction.

FMEP Enforcement

- Judge Doulis was prepared to order B.B. to pay $100 a month to FMEP on the arrears.
- Judge Doulis was not prepared to reinforce the order with a jail sentence in default.
- Judge Doulis ordered a review after four months.

Enforcement Measures

T.B. v. S.S., 2021 BCPC 159 Judge Patterson

- The Respondent Father had been found by two judges to have wrongfully denied parenting time to the Mother.
- The Father had previously been fined $1,000 for failure to complete a financial statement, which was due in December 2017. The Father did not pay that fine.

Enforcement Measures

- The Mother sought an order that the Father be jailed and pay a $5,000 fine.
- Judge Patterson found that two wrongful denials, refusal to obey a court order, and failure to pay a fine was "as close as one can come to the line of being sent to jail..."
- Judge Patterson did not imprison the Father but did impose an additional $5,000 in fines.
- *But next time… it's off to the slammer!*

Property - Wasting

Zilic v. Zilic, 2021 BCCA 107

- At trial, the parties' total net family property was determined to be just under $2 million.
- The Judge divided the property equally except that the Judge ordered the Husband to compensate the Mother $50,000 in relation to an investment certificate in a residential development and $85,000 in relation to the family contracting company, which the Judge found to have been wasted by the Husband.
- The Father appealed these orders.

Property - Wasting

- The Court of Appeal set out the general principles in relation to property division, which include that the court may order an unequal division of family property if it would be "significantly unfair" to equally divide it.
- One factor justifying unequal division is if a spouse after separation causes a significant decrease in the value of family property beyond market trends.

Property Wasting

- The Court of Appeal allowed the Husband's appeal in relation to the investment certificate and set aside the reapportionment of $50,000.
- The Court held that the investment certificate had no redeemable value at the time of trial and that it was too speculative for the judge to have found that the $175,000 face value of the certificates could have been applied to an alternate real estate development and that it was not an inference the judge could have made on the evidence.

Property Wasting

- The Court of Appeal dismissed the Husband's appeal in relation the family construction company.
- The Court found that there was no basis to interfere with the judge's finding that the Husband had the benefit of the retained earnings and the shareholders loan account, which he had depleted.
- There was evidentiary support for the judge's conclusion that the Wife should be compensated $85,000.

Inheritance

Cook v. Cook, 2021 BCCA 194

- The parties were together for 36 years and had 3 children.
- The Wife was primarily responsible for caring for the children and worked part-time with the federal government when they were young. When the youngest was 17, the Wife returned to work full-time until she retired in 2014.
- After separation, the Wife worked part-time and she received an inheritance of approximately $111,000.

Inheritance

- The Husband worked in finance with car dealerships.
- At the time of trial, the Husband was "unemployed by choice" as the judge described him.
- A few years prior to separation, the Husband received inheritances amounting to $425,000 as well as a half-interest in a cottage.

Inheritance

- An interim division of property effected by the parties, leaving the inheritances with each party, resulted in the Husband having around $550,000 more in assets than the Wife.
- The judge held that as the Husband would have almost two times the wealth as the Wife, this was a case that warranted unequal division of family property.
- The judge awarded the Wife 70% of the family property, 75% of the savings, and the Mount Baldy property.

Inheritance

- The Court of Appeal allowed the Husband's appeal.
- The Court held that the judge had erred in law by finding that it would be significantly unfair to equally divide family property because of a financial disparity arising from an inheritance, an excluded asset.
- Financial advantage alone, unrelated to the economic characteristics of a spousal relationship, does not justify departing from the standard division of property.

Inheritance

- The trial judge had held that an unequal division could be ordered to effect a lump sum payment of compensatory support.
- The Court of Appeal held that the evidence did not support the making of orders redistributing assets in order to provide the Wife with a capital sum as compensatory spousal support.
- The Court held that there was no evidence that the Wife was disadvantaged by the marriage or its dissolution.

Where to File? New Rules

A.K.B. v. A.D.W., 2021 BCPC 182 Judge Gouge

- The parties lived together in Vancouver with their young child.
- On June 30, 2021, the Mother commenced a proceeding in the Duncan Registry. That same day, she obtained a *ex parte* protection order from Judge Cutler (via telephone).
- The next day, the Mother and child left Vancouver and went to her parents' home on Vancouver Island.

Where to File? New Rules

- The Father sought to set aside the Protection Order and have the child return to Vancouver and the file transferred to Vancouver.
- Under the old *Provincial Court (Family) Rules*, a proceeding could be initiated in any Registry.
- The new *Provincial Court (Family) Rules* – which came into force May 17, 2021 – provide at Rule 7, that where there is no existing proceeding and there are child-related issues, a family law proceeding must be commenced in the registry closest to where the child resides.

Where to File? New Rules

- Rule 7(3) of the *PCFR* allows a party to seek leave of the court to file an application for a protection order in a registry other than where the child resides.
- The Mother in this case did not do so and her application should have been filed in Vancouver.
- Judge Gouge transferred the file to Vancouver for all purposes.

THE LAW FOUNDATION OF BRITISH COLUMBIA

2021
PROVINCIAL ADVOCATES
TRAINING CONFERENCE

Legal Aid BC

Best practices in child protection

Stephanie Hodgson

Topic: Child Protection & Removal; Family & Children

Recordings:

- **Full Presentation:** https://youtu.be/cGyQ0dB_C3Y
- **Ch 1: Having a trauma informed lens:** https://youtu.be/SE7LN6jTFg4
- **Ch 2: Building the support team:** https://youtu.be/_qBCoNGBp3w
- **Ch 3: Working with the legal system:** https://youtu.be/e3uc1LXwlio

Client, Advocate, Lawyer: Working Together in Child Protection Matters

Stephanie M. Hodgson
(she/her/they/them/Ms.)

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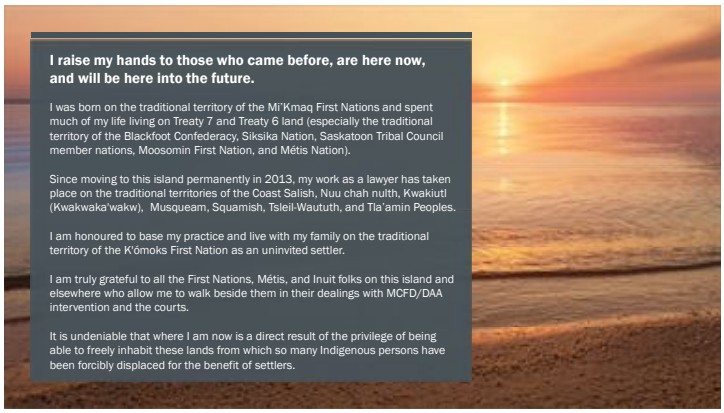


I raise my hands to those who came before, are here now, and will be here into the future.

I was born on the traditional territory of the Mi'Kmaq First Nations and spent much of my life living on Treaty 7 and Treaty 6 land (especially the traditional territory of the Blackfoot Confederacy, Siksika Nation, Saskatoon Tribal Council member nations, Moosomin First Nation, and Métis Nation).

Since moving to this island permanently in 2013, my work as a lawyer has taken place on the traditional territories of the Coast Salish, Nuu chah nulth, Kwakiutl (Kwakwaka'wakw), Musqueam, Squamish, Tsleil-Waututh, and Tla'amin Peoples.

I am honoured to base my practice and live with my family on the traditional territory of the K'ómoks First Nation as an uninvited settler.

I am truly grateful to all the First Nations, Métis, and Inuit folks on this island and elsewhere who allow me to walk beside them in their dealings with MCFD/DAA intervention and the courts.

It is undeniable that where I am now is a direct result of the privilege of being able to freely inhabit these lands from which so many Indigenous persons have been forcibly displaced for the benefit of settlers.

2021 Provincial Advocates Training Conference
Thursday, October 7, 2021
1-3pm (online)

Questions welcome
Breakout sessions throughout
Self-care/stretch break around the half-way mark
Thanks for joining us

Why best practices in child protection matters for advocates working with clients and their lawyers?

- To create a client- centred team where client is the central focus and service providers are the spokes on the wheel
- To acknowledge that the client is the expert on their own experience and history
- To explore strategies where advocates and lawyers work together to build the client's support team
- To assist lawyers and advocates in building trust relationship with mutual clients
- To define roles and possibilities within the team structure
- Acknowledge lawyers' role in building community with advocates and other client supports & community members
- An attempt to increase client satisfaction when dealing with legal proceedings, ensuring client's voice is heard
- Acknowledging the realities of the child protection (child welfare) systems clients experience

Trauma-Informed Practice

From the moment of very first contact with a client

Recognizing historic and intergenerational trauma

Cumulative effects on clients and service providers

- TIP recognizes what is not shared
- "Trauma-informed practice means integrating an understanding of past and current experiences of violence and trauma into all aspects of service delivery. The goal of trauma-informed systems is to avoid re-traumatizing individuals and support safety, choice, and control in order to promote healing."

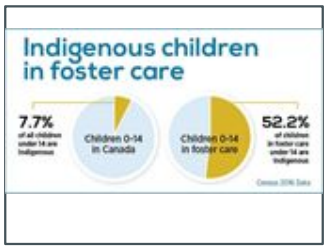
"Trauma-Informed Practice Principles", TSG (Trauma, Gender, Substance Use) Resource - Centre of Excellence for Women's Health (BC Women's Hospital)

- While very common in helping professions in 2021, many lawyers and their staff have not received any training in TIP

- **Lawyers: By Default, Problematic Officers of the (Colonial) Courts**
  Commitment to Truth and active Reconciliation every day; Reconciliation is a verb

"Reducing The Number Of Indigenous Children In Care"

Government of Canada – First Nations Child and Family Services https://tinyurl.com/yzb6jond



- "In Canada, 52.2% of children in foster care are Indigenous, but account for only 7.7% of the child population according to Census 2016. This means 14,970 out of 28,665 foster children in private homes under the age of 15 are Indigenous."
- Does not take into account families with child welfare contact
- Does not take into account children in out of care arrangements
- Statistic does not consider full picture
- Trauma-informed lens not applied
- No solutions or strategies provided

Lawyers need (and benefit from) your help

- We are the wet blankets of the professional world
- Can feel like we are the professional bearers of bad news
- Trauma-informed lawyering is awareness of effects of delivering information to clients that is legally-relevant and often trauma-invoking

Trauma-Informed Practice Principles

TSG (Trauma, Gender, Substance Use) Resource - Centre Of Excellence For Women's Health (BC Women's Hospital)

→ Often at odds with attempts at trauma-informed lawyering & a substantial opportunity to advocate for client care and support before, during, and after your client's interactions with their lawyer

- Trauma Awareness
  - Difficult to maintain, especially when working in environments where it is considered optional
- Choice, Collaboration, and Connection
  - Choices often feel non-existent
  - Collaboration often feels one-sided
  - Connection may feel contingent on client's choices
- Safety and Trustworthiness
  - Difficult to inspire safety, especially when Director has applied for permanent orders
- Strengths Based and Skill Building
  - Options for programming can be limited, especially outside of Vancouver/Victoria and in rural areas, and while effects of COVID-19 continue

Resources

- "Trauma-Informed Practice Principles", TSG (Trauma, Gender, Substance Use) Resource - Centre of Excellence for Women's Health (BC Women's Hospital)
  - https://bccewh.bc.ca/wp-content/uploads/2017/05/TIP-principles-Reflective-questions-2017.pdf
- Province of BC's Trauma Informed Practice Resources
  - https://www2.gov.bc.ca/gov/content/health/managing-your-health/mental-health-substance-use/child-teen-mental-health/trauma-informed-practice-resources
- MCFD's Trauma Informed Practice Guide (2017)
  - https://www2.gov.bc.ca/assets/gov/health/child-teen-mental-health/trauma-informed_practice_guide.pdf
- Myrna McCallum: Trauma-Informed Lawyer Podcast
  - Trauma-Informed Advocacy Strategies – October 4, 2021 Conference Session

Breakout Session #1 – Trauma-Informed Practice

Scenario: you attend a meeting with your client and their lawyer. The lawyer shares that they have done a full review of the Director's disclosure, their file notes, and all the supportive materials that you and the client have provided to them. The three of you go over the history of the court case and the client's interactions with MCFD, which began some years ago.

Before the end of the meeting, the lawyer shares that their best legal advice to the client is to consent to a Continuing Care Order (CCO), which will terminate their guardianship rights to their children.

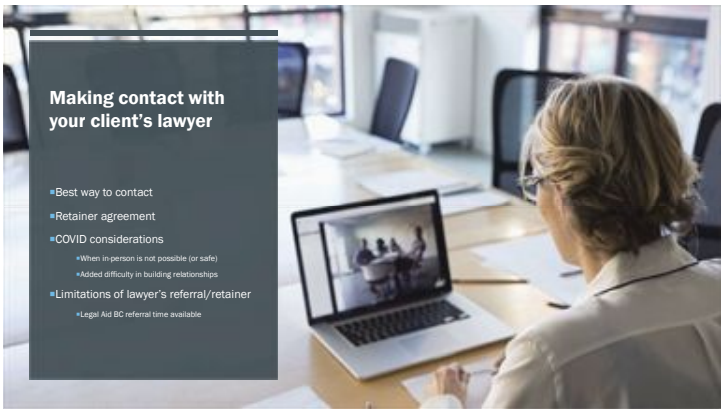
Discussion topic: in what ways can you advocate for the client in this situation while you are together with the lawyer? How can you advocate for the client following the meeting?

Consider: what could the lawyer do to increase the client's feeling of safety in the meeting? What could you do? What could the lawyer do to build trust with the client?

Should your client apply for a lawyer?

- Applying to Legal Aid BC when SW intervention occurs, or threat of removal exists (don't wait, act now)
  - Call Centre 866-577-2525
  - Local options: https://legalaid.bc.ca/legal_aid/legalAidLocations
- Proof of Income
  - Gather client's information in advance & avoid delays, if possible
- Requesting a Specific Lawyer
  - Especially helpful if the client already has a positive/trusting working relationship with a lawyer
  - Consider contacting the lawyer in advance to confirm they are available to take the referral
  - If so, ask lawyer to advocate for referral after application made
- Other options
  - Justice Access Centres and Family Justice Centres
  - Indigenous Justice Centres (local and virtual)
  - Access Pro Bono's Lawyer Referral Service
  - Duty Counsel on court days
  - Other local resources – most located in Vancouver/Victoria regions, may provide virtual service

Making contact with your client's lawyer



- Best way to contact
- Retainer agreement
- COVID considerations
  - When in-person is not possible (or safe)
  - Added difficulty in building relationships
- Limitations of lawyer's referral/retainer
  - Legal Aid BC referral time available

Breakout Session #2 – First Contact with Lawyer

Scenario: a client you have been supporting for over 18 months has been contacted by social workers and is threatening to remove their children. You know the client's history well and are aware that they have experienced significant trauma in the past. You supported the client to apply and they have been provided a referral for a Legal Aid lawyer. They are assigned a lawyer that the client has never met before and you have never worked with.

Discussion topic: explore strategies for preparing the client and yourself to make first contact with their Legal Aid lawyer.

Consider: How would your plan differ if you started working with the client two weeks ago?

When Your Client Can't Find Their Lawyer…

- Google
- LSBC Lawyer Look-Up:

https://www.lawsociety.bc.ca/lsbc/apps/lkup/mbr-search.cfm

- Legal Aid BC intake worker

Confidentiality

For Lawyers

For Advocates

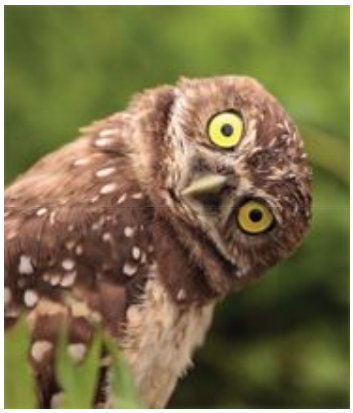
For Clients

Where is the information going?

- Importance of making sure everyone is on the same page
- Sharing information with social workers
  - What are you required to disclose?
  - To what extent?
  - What power does your client have in refusing?
- Are Consent forms necessary to release information?
  - When to complete them?
- Will you be communicating with the lawyer without the client present?
  - When this can be helpful

Asking curious questions

- What does your client want from this process?
  - What is their ultimate goal?
- What does your client want from their lawyer?
- How does your client's lawyer do things?
- What can the lawyer reasonably do?
  - What can't they do?
  - What won't they do?
- Share & obtain information
- Manage expectations on both sides



Describing your role to the lawyer

- Elevator speech
- Communicating to lawyer parameters of your role, time available, length of service
  - What can't you do?
  - How often will you be communicating with the client?
- Who else can you connect the client with?
- Where do your instructions come from?

Appointments & Phone/Video Calls with Lawyers & Others

- Communication is key
  - What should the lawyer be aware of that the client may not share?
  - What supports and services is client accessing?
  - Are there any programs that the lawyer should be aware of?
- Ensure important information is recorded and remains accessible
  - Consider your own note-taking procedure and the record-keeping policies of your employer
  - What do you retain on the client files at your office?
- Providing client's documents to lawyers
  - Court documents – past matters, concurrent matters, including seemingly unrelated matters
  - Certificates
  - Reports/Diagnoses
  - Letters of Support
- Confirm next steps

Breakout Session #3 – When the Lawyer-Client Relationship Struggles

Sometimes clients and the lawyers they are assigned simply do not get along.

Discuss:

- What are the challenges you often face when supporting your clients to begin a relationship with a lawyer
- Consider strategies during the introduction and initial relationship building
- What works?
- What doesn't work?
- Is there anything about your role that a lawyer wouldn't be aware of but should know?

Building Client Relationships With Social Workers

Benefits of Advocate participation:

- Unified front
- Squeaky wheel gets the justice
- Avoid redundancies
- Maintain communication
- Build efficiency where possible
- Lawyers may be limited in this, especially when matter is very adversarial or in geographic areas where social workers will not meet with client's lawyers without Director's Counsel present

Expanding The Client's Team: Opportunity for Advocacy

- Other support workers
- Family members
- Counsellors, mental health supports
- Life skills
- The importance of Advocates in collaborative processes
  - Mediation
  - Family Case Planning Conferences
  - Family Group Conferences
  - Namima Meetings and other cultural/community options
- Especially important where backgrounds of advocate and lawyer do not reflect the client's background

The Law: Complicated (on purpose?)

CFCSA

An Act Respecting First Nations, Inuit And Métis Children, Youth And Families

Jordan's Principle

- Separate but equal is never truly equal
  Brown vs. Board of Education – Supreme Court of the United States, 1954 (347 U.S. 483 (1954))
- Funding provided will only be meaningful if amounts provided by government get the job done and maintain new systems
- Overhaul of the CFCSA (*Child, Family and Community Service Act*) is on the way
- Waiting to see how it will incorporate principles of *Act Respecting First Nations, Inuit And Métis Children, Youth And Families* and Jordan's Principle in provincial law

Truth and Reconciliation Commission of Canada

Final report published in 2015

Calls to Action 1-5 on Child Welfare – none completed

8 Calls to Action completed in 5+ years

None completed in 2020

- 1. Reduce number of Aboriginal children in care
- 2. Prepare and publish annual reports on the number of Aboriginal children (First Nations, Inuit, and Métis) in care (compared to non-Aboriginal children)
- 3. Calls on all levels of government to fully implement Jordan's Principle
- 4. Establish national standards for Aboriginal child apprehension (and family law custody cases)
  - Including to **affirm** the right of Aboriginal governments to establish and maintain their own child-welfare agencies [emphasis mine]
- 5. Calls on all levels of government to develop culturally appropriate parenting programs for Aboriginal families
- See: Yellowhead Institute's 2020 Truth and Reconciliation Calls to Action Progress Update
- See also: Sylvia McAdam's call to dismantle the Doctrine of "Discovery" (Call to Action #46)

Breakout Session #4 – Cultural Considerations

Scenario: you are working with an Indigenous client whose children have been removed from their care and are about to be placed with caregivers who are neither family nor members of the same Indigenous community. Your client is very concerned about the placement and indicates that their lawyer has told them there is nothing that can be done to change the placement.

Discussion topics:

- What strategies could you use to advocate for your client with their lawyer?
- What strategies could you use to advocate for your client with their social worker?
- How could you work with the client and their supports to explore more options for the placement of their children?

Time Limits

ISO hearing – 10 day max after application

ICO hearing – 7 day max after removal

ICO – max length 45 days

TCO terms

Total period of temporary care - max length by age of child

Judicial discretion to extend time limits

- Can be very helpful for advocates to have information like CFCSA time limits memorized or easily accessible
- Scheduling contested Interim Custody Orders (Presentation) hearings – delay varies across BC, should be occurring on an expedited & priority basis
- Scheduling trials for Temporary and Permanent Orders – delay varies across BC
- Lawyer may recommend using delay to client's advantage
- Time limits may be extended

Supporting Clients in the Fight & Supporting Clients in the Consent

- Advocate and lawyer each have important roles in the process
- Ensuring the client's voice is heard when they are being asked to make some of the most difficult choices they will ever make as parents
- Supporting clients to make decisions they can live with

Applying to Cancel A Continuing Custody Order

- Advocacy, often without a lawyer representing client while they are doing the work
- CCO must still be in place
- Gathering documentation in support of client's application, applying to Legal Aid BC
- Two-stage court process: applying for leave, applying to overturn CCO
- Working with social workers concurrently
- Maintaining connection between clients and their children after CCO made
- Many lawyers with time remaining on referrals from Legal Aid will review the process to overturn a CCO with clients after the CCO is made and while they are waiting for the order to be filed and returned by the court registry
- Process is difficult, not impossible

Child Protection: Family Law Plus

- Separate lawyer referral through Legal Aid BC for FLA matters
- Two birds – one stone? Opportunity for creative advocacy
- Guardianship possibilities
- Expanding the parenting team
- Considerations for involving social workers in FLA planning

Effects of the Work

Secondary trauma and stress

Vicarious trauma

Burnout

- Strategies to address
- Capacity over ability
- Make time to debrief, especially when the going gets tough
- Awareness is key
- Take a break and/or take time off
- Systems, systems, systems

Take Care of Yourselves

Self care is more than bubble baths

Within your organization

Outside of your organization

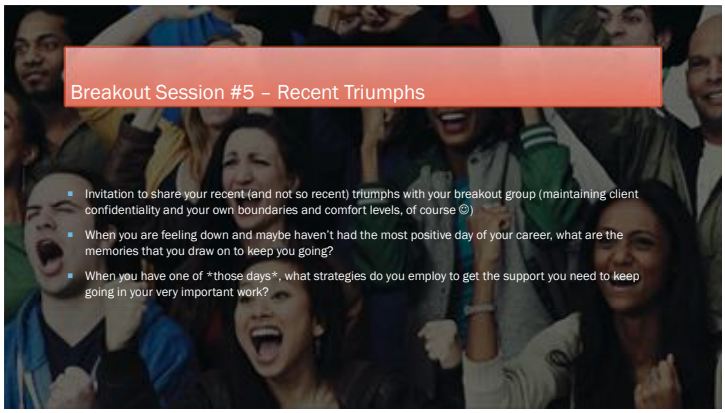
Advocating for yourself and those who share your role(s)

- Thursday, October 28 • 1:00pm - 3:00pm
  Self-Care: Approaches for Advocates
- Online Chair Yoga – Asana Conference Sessions
  - October 7 @ 3:15pm
  - October 15, @ 10am
  - October 20 @ 11am
  - October 25 @ 3pm

Celebrate Your Victories

We Are Always Stronger Together

See: British Columbia (Child, Family and Community Service) v. D.R. 2021 BCPC 152 https://canlii.ca/t/jgfp8



Thanks again for attending this session and for the great work you do. I hope you will take care of yourselves and each other.

If you would like to be in touch with me, email steph@hodgsonlaw.ca

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2021
PROVINCIAL ADVOCATES
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Legal Aid BC

Child support: retroactive support and variations for recipients

Tanya Thakur

Topic: Family & Children

Recording Link: https://youtu.be/RYBchXDiyck

Child Support: Retroactive, Variations, and Arrears

Presentation created by Magal Huberman and 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(a))

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 necessaries of life.

Divorce Act: Child of the Marriage cont. (s. 2(b))

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.

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 necessaries 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.

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

Spouse: Definition 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.

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

- 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.

- 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".

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)?

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.

"Extraordinary Expenses"

Expenses that exceed those that the requesting parent can reasonably cover, or

Expenses the court considers extraordinary taking into account

(i) the amount of the expense in relation to the income of the requesting spouse

(ii) the nature and number of educational programs and extracurricular activities

(iii) any special needs or talents of the children

(iv) the overall cost of the programs and activities

(v) any other similar factor the court considers relevant

Sharing Section 7 Expenses

Court may order or parties may agree that:

- The parents share payment of section 7 expenses proportionately, based on their respective incomes (most common approach)
- Each parent pays for a set of expenses
- One parent pays less than what is required, based on each party's income. For example each pays 50/50 although one parent ought to pay more than 50%/

Retroactive, Variations, Arrears

- Applying for Retroactive Support:
  - Asking for support for a period before an application for support/increased support was filed
- Applying for Variation & Review of Support
  - Variations and reviews are both about changing the existing amount of support
- Applying to Enforce Arrears

Retroactive Support

- Retroactive Support:
  - 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).
- Topics under Retroactive Support:
  - Retroactive Support under the *Divorce Act*
    - *S. (D.B.) v. G. (S.R.)*, (2006 SCC 37)
  - Retroactive Support under the *Family Law Act*

Retroactive Support: Divorce Act

- Although not expressly stated under s. 15.1 of the *Divorce Act*, support may be awarded retroactively (*S. (D.B.) v. G. (S.R.)*, 2006 SCC 37).
- In *S. (D.B.) v. G. (S.R.)* , the Court concluded that a court has no authority to grant a retroactive award of child support under s. 15.1 of the *Divorce Act* if the child beneficiary is no longer a "child of the marriage" at the time of the application.

S. (D.B.) v. G. (S.R.), (2006 SCC 37)

The Supreme Court of Canada in *S. (D.B.) v. G. (S.R.)* endorsed core principles that govern child support, including retroactive child support, and these were restated in *Michel v. Graydon* as (at para. 10):

1. child support is the right of the child;
2. the right to support survives the breakdown of a child's parents' marriage;
3. child support should, as much as possible, provide children with the same standard of living they enjoyed when their parents were together;
4. the specific amounts of child support owed will vary based on the income of the payor parent.
5. retroactive awards are not truly retroactive but rather hold the payor to the legal obligation they always had: to pay support commensurate with their income;
6. retroactive awards are not confined to "exceptional circumstances" or "rare cases"; and
7. a payor parent's interest in certainty must be balanced with the need for fairness and flexibility.

When is it appropriate to make a retroactive order?

The court in *S. (D.B.) v. G. (S.R.)* set out the following situations in which it may be appropriate to make a retroactive order:

1. there has already been a court order for payment of child support;
2. there has been a previous agreement between the parties; and
3. there has not already been a court order for payment of child support.

Retroactive Support: 4 Factors

1. The circumstances surrounding the delay in applying,
2. The payor parent's conduct,
3. The child's circumstances,
4. Any hardship caused by a retroactive award

(*S. (D.B.) v. G. (S.R.)*, 2006 SCC 37; *Michel v. Graydon*, 2020 SCC 24).

Retroactive Support & S.7 Expenses

The principles set out in *S. (D.B.) v. G. (S.R.)* are applicable to s. 7 expenses, and they also apply to a retroactive decrease (*W. (G.M.) v. W. (D.P.)*, 2014 BCCA 282).

Recipient parent bears the responsibility to communicate s.7 expenses to the payor parent.

In a child support case, a payor parent has knowledge of their own income and can determine the amount of child support payable. In the case of s. 7 expenses, it is the recipient parent who knows the details of the expense. If that information is not communicated, the payor is unable to meet the obligation (*Semancik v. Saunders*, 2011 BCCA 264, at para. 57).

Source: *Family Law Sourcebook for British Columbia,* CLEBC

Date of Retroactive Award: Effective Notice

- The date for the retroactive award should be the date on which the payor parent received **effective notice**.
- Effective notice
  - Legal notice not required
  - any indication by the recipient parent that child support should be paid, or if it is already being paid, that the current amount needs to be re-negotiated
  - Once that has occurred, the payor parent can no longer assume that the status quo is fair,(*S. (D.B.) v. G. (S.R.)*, 2006 SCC 37 at para. 121).

Date of Retroactive Award: Three Years

- The award should as a general rule be retroactive to the date of effective notice by the recipient parent that child support should be paid or increased, but to no more than three years in the past (*D.B.) v. G. (S.R.)*, 2006 SCC 37 at para 123).
- However, if the payor engaged in blameworthy conduct, the date when the circumstances changed materially will be the presumptive start date of the award (at para 124).
  - Not disclosing a material change in circumstance is blameworthy conduct (para 124)

Retroactive Support: Family Law Act

- Under the *Family Law Act*, support can be ordered retroactively (s. 170(b)) and changed, suspended, or terminated retroactively (s. 152(1)).
- The *S. (D.B.) v. G. (S.R.)* factors for a retroactive child support order is appropriate under the *Divorce Act* also apply to orders made under s. 170 of the *Family Law Act* and under the *Family Relations Act* (*Sampley v. Burns*, 2018 BCCA 178 at para. 47).

Variation and Review

- 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

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).

Variation under the *Divorce Act*

- Section 17(1) of the *Divorce Act* provides for retroactive variation of for a child support order
- Test: material change of circumstances of one or both parents or child (*Johnson v. Johnson,* 2011 BCCA 190)
  - Material change: one that, if the court had known of the changed circumstance at the time the challenged order was made, it is likely that the order made would have had different circumstances: Section 14 of the CSG
- A separation agreement providing for review of child support obligations, where there is no pre-existing court order respecting child support, is not an order for the purpose of variation under s. 17 (*Harras v. Lhotka*, 2016 BCCA 246). The parties can apply for an order under s. 15.1 of the *Divorce Act* and need not prove a material change in circumstances.
  - Source: Family Law Sourcebook for British Columbia, CLEBC
- If you are applying to retroactive increase support under an existing order, you would apply to vary the child support order under Section 17 of the *Divorce Act*?

Colucci v. Colucci, 2021 SCC 24

- Father failed to make payments pursuant to 1996 child support orders and owed arrears of approximately $170,000
- Father applied to vary and retroactively reduce child support under s.17 of the *Divorce Act*
- Court’s analysis is applicable in situations where payors apply to retroactively decrease child support and recipients apply to retroactively increase child support.
- Outcome: Father’s application to reduce arrears was dismissed for numerous reasons, including inadequate financial disclosure, lack of effective notice to mother, lack of voluntary payments, and hardship to children

Colucci v. Colucci, 2021 SCC 24 – Where Payor Applies

[113] To summarize, **where the payor applies under s. 17 of the *Divorce Act* to retroactively decrease child support, the following analysis applies**:

1) **The payor must meet the threshold of establishing a past material change in circumstances**. The onus is on the payor to show a material decrease in income that has some degree of continuity, and that is real and not one of choice.

(2) Once a material change in circumstances is established, **a presumption arises in favour of retroactively decreasing child support to the date the payor gave the recipient effective notice, up to three years before formal notice of the application to vary. In the decrease context, effective notice requires clear communication of the change in circumstances accompanied by the disclosure of any available documentation necessary to substantiate the change** and allow the recipient parent to meaningfully assess the situation.

(3) **Where no effective notice is given by the payor parent, child support should generally be varied back to the date of formal notice**, or a later date where the payor has delayed making complete disclosure in the course of the proceedings.

(4) **The court retains discretion to depart from the presumptive date of retroactivity where the result would otherwise be unfair. The *D.B.S.* factors (adapted to the decrease context) guide this exercise of discretion**. ...**The payor's efforts to pay what they can and to communicate and disclose income information on an ongoing basis will often be a key consideration under the factor of payor conduct**.

(5) Finally, **once the court has determined that support should be retroactively decreased to a particular date, the decrease must be quantified**. The proper amount of support for each year since the date of retroactivity must be calculated in accordance with the *Guidelines*.

Colucci v. Colucci, 2021 SCC 24 – Where Recipient Applies

[114] It is also helpful to summarize the **principles which now apply to cases in which the recipient applies under s. 17 to retroactively increase child support** :

a) **The recipient must meet the threshold of establishing a past material change in circumstances**. While the onus is on the recipient to show a material increase in income, any failure by the payor to disclose relevant financial information allows the court to impute income, strike pleadings, draw adverse inferences, and award costs. There is no need for the recipient to make multiple court applications for disclosure before a court has these powers.

b) Once a material change in circumstances is established, **a presumption arises in favour of retroactively increasing child support to the date the recipient gave the payor effective notice of the request for an increase, up to three years before formal notice of the application to vary. In the increase context, because of informational asymmetry, effective notice requires only that the recipient broached the subject of an increase with the payor** .

c) **Where no effective notice is given by the recipient parent, child support should generally be increased back to the date of formal notice.**

d) **The court retains discretion to depart from the presumptive date of retroactivity where the result would otherwise be unfair. The *D.B.S.* factors continue to guide this exercise of discretion, as described in *Michel.*** If the payor has failed to disclose a material increase in income, that failure qualifies as blameworthy conduct and the date of retroactivity will generally be the date of the increase in income.

e) **Once the court has determined that support should be retroactively increased to a particular date, the increase must be quantified**. The proper amount of support for each year since the date of retroactivity must be calculated in accordance with the *Guidelines*

Variation under the *Family Law Act*

Under section 152 of the *Family Law Act*, on application, a court may change, suspend or terminate an order respecting child support, and may do so prospectively or retroactively.

An order may be changed if at least one of the following exists:

- a change in circumstances, as provided for in the Child Support Guidelines, has occurred since the order respecting child support was made;
- evidence of a substantial nature that was not available during the previous hearing has become available; and lastly,
- evidence of a lack of financial disclosure by a party was discovered after the last order was made.

Michel v. Graydon, 2020 SCC 24

Facts:

- The mother and father had a child in 1991. They separated in 1994.
- After separation, the father started paying the mother $341 a month in child support based on his disclosed income of approximately $40,000 a year. These child support arrangements became part of a consent order in 2001
- In 2012, the parties consented to an order terminating the father's child support obligations.
- In 2015, the mother started proceedings under *FLA* to compel the father to pay child support he ought to have paid based on his income from 2001 to 2012.
- The BC Supreme Court ordered the father to pay arrears. The father appealed to the BC Court of Appeal, who granted the appeal on the basis that the child was no longer '"child of marriage" at the time of the application.
- The mother appealed to the Supreme Court of Canada.

Michel v. Graydon, 2020 SCC 24

The majority judgement held that:

1. *D.B.S* did not decide the issue of variation orders under s.17 of the *Divorce Act* (para 15);

2. Whether a court has jurisdiction to award historical child support where the child is no longer a child of marriage depends on the wording of the applicable statute (para 16);

3. There is nothing in the wording of section 152 of the *FLA* that prevents the court from awarding historical child support where the child is no longer a dependent at the time of the application.

Review of Child Support

- No specific provision for review of child support under the *Family Law Act* or the *Divorce Act*.
- A review hearing is a hearing *de novo* (new hearing) and it is not necessary to establish a material change in circumstances (*Morck v. Morck.*, 2013 BCCA 186). Source: *Family Law Sourcebook of British Columbia,* CLEBC.
  - *De novo* means that the application is treated as an initial application.
- A review is created by a previous court order or agreement.

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.

Applications for Reducing or Cancelling Arrears

- Arrears: outstanding amounts from existing order or written agreement.
- A payor may apply to reduce or cancel arrears under an existing order or agreement.
- *Divorce Act*: Payor may bring application under section 17.
  - An application to cancel arrears is different than an application to vary or reduce child support under section 17
- *Family Law Act* – Payor may bring application under section 174.
- The test remains whether it would be "grossly unfair" not to reduce or cancel the arrears under both *Divorce Act* and the *Family Law Act*: *Kular v. Kular,* 2018 BCSC 1715.

Reducing or Cancelling Arrears – Substantial Unfairness

- The test remains whether it would be "grossly unfair" not to reduce or cancel the arrears under both *Divorce Act* and the *Family Law Act*: *Kular v. Kular,* 2018 BCSC 1715.
- In *Semancik v. Saunders*, 2011 BCCA 264, the court held that there are two requirements for a successful application to reduce or cancel arrears (para 25):
  - There must be a material change in circumstances, which is significant and long lasting and,
  - It would be grossly unfair not to cancel the arrears (*Earle v. Earle,* 1999 BCSC 23).

Generally, arrears will be cancelled only if the applicant can show that there is an inability to pay now or in the future.

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).

Applying for Retroactive or Variation of 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?

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Legal Aid BC

Financial statements and orders to enforce disclosure

Vicky Law; Haley Hrymak

Topic: Legal Systems & Court; Family & Children

Recording Link: https://youtu.be/Dk8UmZWevog

Financial Statements and Orders to Enforce Disclosure

Rise WOMEN'S LEGAL CENTRE

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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Overview

- Financial Disclosure Requirements
- Orders to enforce in FLA
- Orders to Enforce Financial Disclosure in BCSC Rules
- Orders to enforce in BCPC
  - Case Management Orders (s.61-65) – Form 10
  - Orders to enforce (S. 131 - 137) – Form 29
- Case Law *Colucci*
  - *Michel v. Graydon*
- Questions

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Who needs to complete a Financial Statement?

- Anytime there are claims relating to $$, a financial statement is necessary.
- Complete a financial statement if the following are at issue:
  - Child support (including s. 7 expenses);
  - Spousal support; or
  - Division of property and/or debts.
  - Exception: if a party is claiming only child support but no s. 7 expenses, they may not be required to complete F8
- Rule 5-1 in BCSC Family Rules
- Rule 3, 25, 28, and 34 in BCPC Family Rules

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Financial Statement not required in some situations

- Financial statements are not necessary when:
  - Client is only seeking child support for children under 19 and children are not stepchildren *and* children are living with applicant 60% or more of the time
  - Client is only claiming for divorce
  - Seeking orders re: parenting arrangements that will not affect child support (i.e. there is not a change in the 60/40 shared time)
  - Seeking conduct or protection orders only
- Depending on what is being claimed, not all portions of financial statements are required
  - Both financial statements has clear instructions at the beginning

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When must a Financial Statement be completed in BC Supreme Court

- SCFR Rule 5.1(11)
  - If a party is making a claim that requires them to complete F8, then F8 needs to be filed and served within 30 days after the service of the document in which claim is made
- Financial statements are a lot of work and may be difficult to meet 30-day timeline. Ensure clients are aware of timeline and urgency
- If not possible to complete F8 within timeline, best to notify opposing party/counsel
- Do everything possible to file and serve F8 before court appearances

Practice tip: file Notice of Family Claim/Application and F8 at the same time

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When must a Financial Statement be completed in BC Provincial Court

- PCFR Rules:
  - 25 – when submitting an *Application about a Family Law Matter* (Form 3) re: child or spousal support
  - 28 – when submitting a *Reply to an Application About a Family Law Matter (with Counter Application)* (Form 6) re: child or spousal support
  - 34 – when submitting *Reply to a Counter Application* (Form 8) re: child or spousal support
- Financial Statement must be filed with any of the 3 situations above

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How to Start?

- Clients are often overwhelmed when they see the form
- Give instructions so clients understand the following:
  - Purpose of completing F8
  - Deadline (if any)
  - Documents they should provide
    - At the very minimum, they'll need last 3 years of Notices of Assessments and Tax Returns and most recent paystub or receipt of assistance
- If clients do not have necessary documents, complete Parts 2 (Expenses) and Part 3 (Property & Debts) first
- Part 1 (Income) is more complicated

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Financial Statement is an Affidavit

- Remind client that a financial statement is a sworn/affirmed document and needs to be true to the best of their ability
- Information will and can change over time, and clients will have the opportunity to update it if/when necessary
- But most importantly, they must be truthful and not hide any information on the financial statement

- I'll be reviewing the BCSC F8 but same principles for BCPC Financial Statement Form 4

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Tools to request financial disclosure

- *Family Law Act,* s. 212 (orders for disclosure) and s. 213 (enforcing orders re: disclosure)
- BCSC Family Rules: 5- 1 and 9-1
- BCPC Family Rules

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Family Law Act, s. 212

Orders respecting disclosure

- Allows the Courts to make an order to disclose information in accordance with BC SCFR or BC PCFR
- If order is made, the Court can also order a party to pay, to the other party or to another person, all or part of the expenses reasonably and necessarily incurred in complying with an order
- Person must not disclose information obtained under this order except what is necessary to resolve family law dispute and in accordance with the order

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Family Law Act, s. 213

Enforcing orders respecting disclosure

- If a party fails to comply with an order for disclosure under s. 212 or a requirement to disclose information set set out by the rules or they provide information that is incomplete, false or misleading
- The court can:
  - Make an order under s. 212
  - Draw negative inference, including imputing income
  - Require party to give security
  - Fine the person for non-compliance for up to $5000
  - Require the individual to pay all or part of expenses for non-disclosure incurred by the requesting party
  - An amount of up to $5000 to the party affected by nondisclosure
  - Any other orders the Court deems appropriate

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BC SCFR 5-1 Financial Disclosure

- 5-1 – defines "applicable income documents"
  - Includes last 3 years of Tax Returns and Notices of Assessments or Reassessments
  - Most recent paystub
  - If individual is receiving income assistance, then documentary evidence that individual is receiving social assistance
  - Documents pertaining to individuals who are self-employed
- 5-1 (13) – particulars may be demanded when F8 lacks sufficient information
- 5-1(15) information must be kept current
  - Written statement setting out changes in financial statement
  - Revised Form F8
- 5-1 (14) – court may order particulars or new F8 be completed if party fails to provide particulars 7 days after receipt of demand

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Forms required to enforce in BC Supreme Court

- Notice of Application (Form F31)
  - Pursuant to section 212 of the *Family Law Act* and the *BC Supreme Court Rules 5-1*, an order that the Respondent shall, by 30 days of the Order, file and serve the following documents:
    - Financial Statement and all the applicable income documents as per Rule 5-1.
- Affidavit (Form F30)
  - List out the history of the litigation
  - Provide details of any requests made to the opposing party for financial disclosure

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Orders to Enforce in BCPC

- Case Management Orders (s.61-65)
- Form 10 – Application for Case Management Order
- Form 29 – Preparing an Application about Enforcement (Form 29)

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Case Management Orders

- Case Management Orders (Rules 61-65 of the BC Prov. Court Rules)
- Rule 61- Case management orders can be made at anytime
- Rule 62- A judge can order: m)respecting the conduct of a party or management of a case, including pre-trial and trial process and evidence disclosure, as set out in rule 112 (1) (i) *[what happens at trial preparation conference]* of these rules;

NOT LEGAL ADVICE

Preparing an Application for Case Management Order

- Form 10
- Provincial Court Family Rules: https://www2.gov.bc.ca/gov/content/justice/courthouse-services/documents-forms-records/court-forms/prov-family-forms

NOT LEGAL ADVICE

Application for Case Management Orders (Form 10)

- can be used to apply for 1 or more of the following (adjourning a court appearance; transferring the court file to another registry; requiring a parentage test; setting a specified period for the filing and exchanging of information. Etc. etc. etc.

NOT LEGAL ADVICE

Form 29: Preparing an Application About Enforcement

- When parents or guardians don't follow written agreements, court orders or a determination of a parenting coordinator – you can apply for an enforcement of the order.
- If you have a written agreement, or a court under from another jurisdiction that is filed in BCPC under the *Family Law Act* you can enforce it using this form.
- If person receives notice of a foreign order from BCPC – you can request to set it aside- must do so within 30 days after receiving the registration (Still form 29). If applying to set aside the registration of a foreign order, must give notice to the designated authority who will notify the other party of the application

NOT LEGAL ADVICE

Rule 135 guides Form 29

Applying for orders about enforcement

135 A party who is applying for an order about any of the following must file and serve on each other party, at least 7 days before the date referred to in the application for the court appearance, an application about enforcement in Form 29 *[Application About Enforcement]*, including a copy of the agreement, determination or order to be enforced:

(a)enforcing a filed written agreement or order, including enforcing the written agreement or order through a court order under any of the following sections of the *Family Law Act*:

(i)section 61 *[denial of parenting time or contact]*;

(ii)section 63 *[failure to exercise parenting time or contact]*;

(iii)section 228 [enforcing orders respecting conduct];

(iv)section 230 [enforcing orders generally];

(v)section 231 [extraordinary *remedies]*;

(b)enforcing, changing or setting aside a filed determination of a parenting coordinator;

(c)setting reasonable and necessarily incurred expenses under any of the following sections of the *Family Law Act*:

(i)section 61 *[denial of parenting time or contact]*;

(ii)section 63 *[failure to exercise parenting time or contact]*;

(iii)section 212 [orders respecting disclosure];

(iv)section 213 [enforcing orders respecting disclosure];

(v)section 228 [enforcing orders respecting conduct];

(vi)section 230 [extraordinary *remedies]*;

(d)determining whether arrears are owing under a support order or agreement made under the *Family Law Act* and, if so, the amount of the arrears.

[am. B.C. Reg. 236/2020, Sch. 2, s. 7.]

NOT LEGAL ADVICE

Rule 136 also guide Form 29

136

(1)In this rule, **"designated authority"** has the same meaning as in the *Interjurisdictional Support Orders Act*.

(2)A party who is applying for an order under section 19 (3) *[foreign orders after registration]* of the *Interjurisdictional Support Orders Act* to set aside the registration of a foreign order under that Act must file and serve on the designated authority, by registered mail at least 30 days before the date referred to in the application for the court appearance, an application about enforcement in Form 29 *[Application About Enforcement]*, including a copy of the foreign order to be enforced.

(3)The adult who serves an application under subrule (2) must

(a)complete a certificate of service in Form 7 *[Certificate of Service]*, and

(b)file the certificate at least 10 days before the date referred to in the application for the court appearance.

NOT LEGAL ADVICE

Additional Forms for Enforcing Orders

Form 26- Request to File an Agreement

→to ***file*** a written agreement for enforcement in Provincial Court

Form 27- Request to File a Determination of Parenting Coordinator

→ to file a determination for enforcement in Provincial Court

Form 28- Request to File an Order

→to file an order from the ***BCSC*** for enforcement in BCPC

NOT LEGAL ADVICE

Preparing Forms for Filing

1) Prepare 3 copies (1 for client, 1 for Court, one for OP)→ Staple together→ Bring all copies to the court registry for filing or send by mail or if sending by fax use Form 52- Fax Filing Cover Page
2) File at a Provincial Court Registry

(where the existing Provincial Court case with the same parties is filed or nearest to where the child lives most of the time, if the case involves a child-related issue, or nearest to where you live, if the case does not involve a child-related issue)

3) Serve the OP at least 7 days notice of the date and time of the court appearance (unless otherwise ordered). 7 clear days between service date and court date. The date will be scheduled with the registry when you file the form.

NOT LEGAL ADVICE

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

[18] While I am of the view that the failure to pay child support will not often constitute an act of family violence, when the failure is the result of a determined decision not to pay, knowing the impact it would have on Ms. B., who had limited income, and my rejection of Mr. P.'s explanation for failing to pay, I have concluded that this was **designed to inflict psychological and emotional trauma** to Ms. B. and is therefore an act of family violence. [emphasis added]

- The Honorable Judge Merrick

NOT LEGAL ADVICE

Colucci v. Colucci 2021 SCC 24

[52]…Courts and legislatures have also implemented various mechanisms to incentivize and even require regular ongoing disclosure of updated income information by the payor, along with tools to move proceedings forward in the face of non-disclosure. Those mechanisms include imputing income to payors who have failed to make adequate disclosure, striking pleadings, drawing adverse inferences, and awarding costs. By encouraging timely disclosure, these tools reduce the likelihood that the recipient will be forced to apply to court multiple times to secure disclosure.

NOT LEGAL ADVICE

THANK YOU!

Questions?

Contact:
Rise Women's Legal Centre
https://womenslegalcentre.ca/
Twitter: @RiseWomensLegal
Instagram: https://www.instagram.com/risewomenslegal/
Facebook: https://www.facebook.com/RiseWomensLegalCtr

Haley Hrymak
hhrymak@womenslegalcentre.ca
Twitter/Instagram:@HaleyHrymak
www.haleyhrymak.com

Vicky Law
vlaw@womenslegalcentre.ca

NOT LEGAL ADVICE

Form F31 (Rule 10-6(3) and 10-9(1))

Court File No.: _#######__
Court Registry:

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

Donald Trump

CLAIMANT

AND:

Ruth Bader Ginsburg

Respondent

NOTICE OF APPLICATION

Name of Applicant: Ruth Bader Ginsburg

WITH NOTICE TO: Donald Trump DOB: January 1, 1950
Address for service: 123 Non-Disclosure Street
City: Won't Tell You City Province: Fake News Postal Code: ### ###
Phone: _____ Email: _____

FROM: Ruth Bader Ginsburg DOB: January 2, 19##
Address for service: 123 Awesome Street
City: Women Rock Province: Supreme Court Postal Code: ### ###
Phone: _____ Email: ruthbaderginsburg@awesome.com

TAKE NOTICE that an application will be made by the applicant to the presiding judge or master at the courthouse at **[INSERT ADDRESS FOR COURTHOUSE]** at **[INSERT TIME]** on **[INSERT DATE],** for the order(s) set out in Part 1 below.

Part 1: Orders Sought

1. Pursuant to section 212 of the *Family Law Act* and the *BC Supreme Court Family Rules* (the "*Rules*") 5-1(13) – (14), 5-1(19), 9-1(1) and 9-1(15) of the *Supreme Court Family Rules*, an Order that Mr. Donald Trump shall, by 4:00p.m. on DATE /30 days after the date of this Order, electronically disclose by email to ruthbaderginsburg@awesome.com, the following:
   a. Conveyance/Land Title documents for all real property under Mr. Donald Trump's name
   b. Government issued assessments for all real property under Mr. Donald Trump's names, including land outside British Columbia;
   c. Any real property appraisals, as well as appraisal of tools, vehicles, inventory and equipment;
   d. Purchase documents and financing documents for the purchase of any real property or assets acquired from [INSERT DATE] to the date of the Order;

Commented [VL1]: Typically, client should receive the documents at least 30 days prior to trial date or if no trial date scheduled, 30 days after date of Order

Commented [VL2]: This is usually date of separation but can be earlier or later depending on facts

e. Applications for loans, mortgages and other forms of credit, including but not limited to the complete mortgage applications through BANK #1 and Mortgage Lender #1;
f. Mortgage documents for all properties owned by Mr. Donald Trump, including the current balance owing, and all mortgage statements from [INSERT DATE] to the date of the Order;
g. Property tax notices for all properties under Mr. Donald Trump's name from [INSERT DATE] to the date of the Order;
h. Black book values for vehicles, recreational vehicles, trailers and boats;
i. Copies of any chattel mortgage;
j. Appraisals for any collections or jewelry or works of art;
k. List of contents of any safety deposit box;
l. A list of any debts that are held jointly or separately by Mr. Donald Trump;
m. Proof of any expenses deducted from the gross earnings of Mr. Donald Trump from [INSERT DATE] to the date of the Order;
n. Information relating to any interest or shares held in corporations;
o. Corporate ledger reports from [INSERT DATE] to the date of the Order;
p. Authorizations to speak to the Mr. Donald Trump's accountant or company lawyer;
q. Particulars of past and ongoing contracts of all businesses of Mr. Donald Trump, from [INSERT DATE] to the date of the Order;
r. All invoices issued by Mr. Donald Trump or his businesses from [INSERT DATE] to the date of the Order;
s. Particulars of payments to subtrades and contractors from [INSERT DATE] to the date of the Order;
t. Financial statements of all businesses of Mr. Donald Trump, from [INSERT DATE] to the date of the Order;
u. Unredacted bank and credit card statements for accounts in the name of any proprietorships and businesses held by Mr. Donald Trump from [INSERT DATE] to the date of the Order;
v. Breakdown of all earnings and expenses relating to any unincorporated or incorporated businesses held by Mr. Donald Trump from [INSERT DATE] to the date of the Order;
w. Explanation for how the travel expenses claimed by Mr. Donald Trump relate to his business expenses;
x. All invoices for self-employment income from [INSERT DATE] to the date of the Order;
y. Unredacted Personal and Business bank account statements for all accounts whether personally held or jointly held by Mr. Donald Trump, including but not limited to the two bank accounts listed in Mr. Donald Trump's F8 Financial Statement, ########## and ################, including any accounts in overdraft, records of cancelled cheques, and records of wire and bank transfers from [INSERT DATE] to the date of the Order;
z. Statements from investment accounts including stock portfolios, GICs and term deposits from [INSERT DATE] to the date of the Order;
aa. All unredacted credit card statements including personal and corporate credit cards from [INSERT DATE] to the date of the Order;
bb. Ownership documents for any assets owned from [INSERT DATE] to the date of the Order
cc. RRSP account statements from [INSERT DATE] to the date of the Order;
dd. Pension statements including Canada Pension Plan Statements;
ee. Beneficiary Information for any Pension and/or RRSP;

ff. Copies of Life Insurance Policies and any beneficiary designation and value;
gg. Copies of any trust agreements relating to property;
hh. Lines of Credit Statements, and all loan documents, including the current balance owing, from [INSERT DATE] to the date of the Order;
ii. Promissory notes on personal loans from [INSERT DATE] to the date of the Order;
jj. Documents showing repayment of loans from [INSERT DATE] to the date of the Order;
kk. Utility statements, including but not limited to hydro, phone, cable, property taxes, water and sewage bills, from [INSERT DATE] to the date of the Order;

2. Pursuant to Rule 5-1(28)(a) of the *Rules,* an Order that, Mr. Donald Trump's Form F8 financial statement and all applicable income documents as per Rule 5-1(1), including, but not limited to:
   a. A copy of every personal income tax return filed by Mr. Donald Trump for each of the 3 most recent taxation years;
   b. A copy of every notice of income tax assessment or reassessment issued to Mr. Donald Trump for each of the 3 most recent taxation years;
   c. The financial statements of Mr. Donald Trump's businesses; and
   d. 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 Mr. Donald Trump does not deal at arm's length.

3. Pursuant to Rule 5-1(28)(d) of the *Rules,* this Court shall proceed under Rule 21-7 to punish Mr. Donald Trump for contempt of court for failing to comply with the [INSERT DATE] Order made by the Honourable Mr. Justice Scalia.

Commented [VL3]: This should only be applied for if opposing party has continuously ignored court orders.

4. Pursuant to section 213(2)(d)(iii) of the *Family Law Act* and Rules 5-1(28)(e) and 21-7(1), an Order that Mr. Donald Trump shall, for failing to comply with the Order made by the Honourable Mr. Justice Scalia on [INSERT DATE], pay to Ms. Ruth Bader Ginsburg within two weeks of this Order being made:
   a. all 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 family dispute resolution; and

   b. $5,000 to or for the benefit of Ms. Ruth Bader Ginsburg, whose interests were affected by the non-disclosure of information and the incomplete, false or misleading disclosure of Mr. Donald Trump.

5. Pursuant to section 213(2)(c) of the *Family Law Act*, an Order that Mr. Donald Trump shall give security in the amount of $5000 to the Court for the purposes of enforcing this Order.

6. Pursuant to Rules 5-1(28)(h) and 16-1(14) of the *Supreme Court Family Rules*, an Order for Costs.

Part 2: Factual Basis

1. [INSERT FACTS].
2. Did your client ask for these documents before?
   a. If yes, when, how, and remember to include a copy of communication as exhibit
3. Have there been any court orders for opposing party to disclose financial documents?
   a. If yes, outline order(s).
4. Has opposing party provided any financial statements?

a. If yes, when?
b. Provide reasons for why you need updated financial statements

5. Has opposing party complied with your request and/or court order(s)?
   a. Provide information about court orders if any.

Part 3: Legal Basis

1. Pursuant to section 212 of the *Family Law Act,* a court may, at any stage of a proceeding,
   (1) make an order to disclosure information in accordance with the *Supreme Court Family Rules*.
   (2) If an order is made under subsection (1), the court may order a party to pay, to the other party or to another person, all or part of the expenses reasonably and necessarily incurred in complying with the order.

2. Pursuant to section 213 of the *Family Law Act,*
   (1) This section applies if a person
      (a) Failed to comply with:
         (i) an order for disclosure made under section 212, or
         (ii) a requirement to disclose information in accordance with the *Supreme Court Family Rules*, within the time or in the manner required by the Rules, or
      (b) provides information that is incomplete, false or misleading.

   - Mr. Donald Trump did not comply with the Order made by the Honourable Mr. Justice Scalia on [INSERT DATE], respecting the disclosure of Mr. Donald Trump's financial documents.

   (2) In the circumstances set out in subsection section 213, subsection (1), the Court may do one or more of the following:
      (a) Make an order under section 212;
      (b) Require a party to give security in any form that the court directs;
      (c) Make an order requiring the person described in subsection (1) 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 family 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; or
         (iii) A fine not exceeding $5,000;
      (d) Make any other order the court considers appropriate.

3. Pursuant to Rule 5-1(13), if a Form 8 financial statement lacks sufficient information, the other party may demand particulars.

4. Pursuant to Rule 5-1(14), if the party from whom particulars are demanded under subrule (13) fails to provide those particulars within 7 days after receipt of the demand, the court may, on terms it considers appropriate, make any order it considers will further the object of these *Supreme Court Family Rules,* including:

(a) An order that particulars be served within a specified time, or
(b) An order that a new Form F8 financial statement be served within a specified time.

- Mr. Donald Trump did not produce documents or particulars in accordance with the disclosure request made by Ms. Ruth Bader Ginsburg on [INSERT DATE]

5. Pursuant to Rule 5-1(19), if a party discloses business or corporate interests in a Form F8 statement served under this rule, the party receiving the Form F8 financial statement may, in writing, request the disclosing party to produce for inspection and copying specified documents or classes of documents in the disclosing party's possession or control that might reasonably be required to verify the valuation of the disclosing party's interest or to determine the disclosing party's income.

6. Pursuant to Rule 5-1(28)(a), (d), (e), and (h), the Court may:

(a) Order that the Form F8 financial statement, applicable income document or particulars, as the case may be, be filed or served or both on terms the court considers appropriate;
(d) Proceed under Rule 21-7 to punish the party for contempt of court;
(e) impose a fine under section 213(2)(d)(iii) of the *Family Law Act;*
(h) make an order as to costs.

7. Pursuant to Rule 9 – 1(1), unless all parties consent or the court otherwise orders, each party to a family law case must:

(a) Prepare a list of documents in Form F20 that lists
(i) all documents that are or have been in the party's possession or control and that could, if available be used by any party at trial to prove or disprove a material facts, and
(ii) all other documents to which the party intends to refer at trial.

8. Pursuant to Rule 9-1(15), if a document is in the possession or control of a person who is not a party, the court, on an application under Part 10 brought on notice to the person and the parties, may make an order for one or both of the following:
(a) production, inspection, and copying of the documents;
(b) preparation if a certified copy that may be used instead of the original.

9. Pursuant to Rule 16 – 1(14)(b), the Court may award costs that relate to some particular application, step or matter in or related to the family law case, and in awarding those costs, the court may fix the amount of costs, including the amount of disbursements.

10. Pursuant to Rule 21-7(1), the power of the court to punish contempt of court must be exercised by an order of committal or by imposition of a fine or both.

11. In *Colucci v Colucci,* 2021 SCC 24, the Supreme Court of Canada emphasized the importance of full financial disclosure. With specific regards to paragraph 51:

> Full and frank disclosure is also a precondition to good faith negotiations. Without it, the parties cannot stand on the equal footing required to make informed decisions and resolved child support disputes outside of court. Promoting proactive payor disclosure thus advances the objectives – found in s. 1 of the *Guideline*s – of reducing conflict between the parties and encouraging settlement.

Part 4: Material to be Relied Upon

1. Affidavit #1 of Ruth Bader Ginsburg, affirmed on [INSERT DATE].
2. Financial Statement of Donald Trump, made [INSERT DATE].

The applicant estimates that the application will take 30 minutes.

[X] This matter is within the jurisdiction of a master.

[ ] This matter is not within the jurisdiction of a master.

Responding to Application

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to the application, you must, within the time for response to application described below,

(a) file an Application Response in Form F32;
(b) file the original of every affidavit, and of every other document, that
  (i) you intend to refer to at the hearing of this application, and
  (ii) has not already been filed in the family law case; and,
(c) serve on the applicant 2 copies, and on every other party one copy, of the following
  (i) a copy of the filed Application Response,
  (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person, and
  (iii) if this application is brought under Rule 11-3, any notice that you are required to give under Rule 11-3(9).

Time for Response to Application

The documents referred to in paragraph (c) above must be served in accordance with that paragraph,

(a) unless one of the following paragraphs applies, within 5 business days after service of this Notice of Application;
(b) if this application is brought under Rule 11-3, within 8 business days after service of this Notice of Application; and,
(c) if this application is brought to rescind, change or suspend a final order, within 14 business days after service of this Notice of Application.

Date:

_____
RUTH BADER GINSBURG, RESPONDENT

To be completed by the court only

Order made:

[ ] on the terms requested in paragraphs _____ of Part 1 of this Notice of Application

[ ] with the following variations and additional terms

_____
_____
_____
_____
_____
_____
_____
_____

Date: _____ _____
Signature of [ ] Judge [ ] Master

Appendix

THIS APPLICATION INVOLVES THE FOLLOWING:

- [**x**] document discovery: comply with demand for documents
- [**x**] document discovery: production of additional documents
- [**x**] document discovery: other matters concerning document discovery
- [ ] oral discovery: extend oral discovery
- [ ] oral discovery: other matter concerning oral discovery
- [ ] amend pleadings
- [ ] add/change parties
- [ ] summary judgment
- [ ] summary trial
- [ ] service
- [ ] interim order
- [ ] change order
- [ ] adjournments
- [ ] proceedings at trial
- [ ] experts: appointment of additional expert(s): financial matters
- [ ] experts: other matters concerning experts

THE LAW FOUNDATION OF BRITISH COLUMBIA

2021
PROVINCIAL ADVOCATES
TRAINING CONFERENCE

Legal Aid BC

Orders for preserving property in family law cases

Patrick Grayer

Topic: Family & Children

Recording Link: https://youtu.be/QMEb_BXQmzo

2021 Provincial Advocates Training Conference

Patrick Grayer – Grayer Law Office

Family Law: Preserving Property

Certificates of Pending Litigation

- Must file a Notice of Family Claim in BCSC Form 3 claiming an interest in the property and pleading a CPL, as well as a CPL in *Land Title Act* (LTA) Form 33, both with the Supreme Court.
- Filed using LTA Form 17C with the Land Title Office online at MyLTSA (ltsa.ca) under section 215 of the LTA. The forms are all auto fillable and reasonably easy to use. Filing requires an LTSA account and a Juricert electronic signature so you will need a lawyer, notary, or agent to do it. You may still be able to file a paper copy at the Land Title Office with an appointment.

- CPL lets a prospective buyer or lending institution know the property is subject to a family law claim. Title to a property cannot be transferred nor can a property be refinanced with a CPL in place.
- Once filed the LTO will mail a copy of the CPL to all registered owners of the property.
- The registered owner or a party with an interest in the property can apply to the court to have a CPL removed under sections 252 to 256 of the LTA if no steps have been taken in the action for a year, the action has been discontinued or dismissed, or if the continued registration of the CPL will cause hardship or inconvenience to the owner.

Land (Spousal Protection) Act

- An entry can be filed against a family "homestead" under section 2 of the Act on application of a spouse (married or common law) in Form B and supported by an affidavit in Form C. This is not automatically provided to the owner spouse. These Forms are then filed with the LTSA using LTA Form 17.
- An application for entry can be made while the spouse is still resident in the homestead, even if they are separated, or for one year after the spouse moves out. Resident does not necessarily mean the spouse is occupying the homestead at all times.
- Property registered other than in the name of one spouse only is not a homestead, for example held in joint tenancy.

- Where an entry has been made, any sale or transfer of the homestead by the owner spouse is void for all purposes without the written consent of the spouse.
- An owner spouse who claims that land is not a homestead, or advances any other reason the entry should not have been made, may apply to the court to have the spouse show cause why the entry should not be discharged.
- An entry may be cancelled on application where the spouse has died, or the marriage of the spouses is annulled or dissolved.
- The Act ceases to apply when the property issues between the spouses are settled under the FLA.

Section 91 *Family Law Act*

- **91** (1) On application by a spouse, the Supreme Court must make an order restraining the other spouse from disposing of any property at issue under this Part or Part 6 *[Pension Division]* until or unless the other spouse establishes that a claim made under this Part or Part 6 will not be defeated or adversely affected by the disposal of the property.
- (2) The Supreme Court may make one or more of the following orders:
- (a) for the possession, delivery, safekeeping and preservation of property;
- (b) for the purpose of protecting the applicant's interest in property from being defeated or adversely affected,
- (i) prohibiting the other spouse from disposing of, transferring, converting, or exchanging into another form, property in which the applicant may have an interest, or
- (ii) vesting all or a portion of property in, or in trust for, the applicant.
- (3) The Supreme Court may make an order under this section before notice of the application is served on the other spouse, or may order that notice of the application be served on the other spouse.

- A party can bring an Application to the court to "freeze" assets in the other party's name so they cannot dispose of them prior to settlement or court order. This is usually done without notice to the other party on an urgent basis under Rule 10-8. Evidence is required in affidavit form those assets are at risk. A Notice of Family Claim needs to be filed prior if a proceeding has not already been commenced.
- Generally, you need not know specific account numbers but only the institution name and branch address.
- A court is unlikely to make an order to restrain a party from disposing of family assets or property at issue when the party and the property are outside the jurisdiction, although an exception is sometimes made when a spouse has attorned to the jurisdiction of the court.
- The court will generally not restrain the assets of a third party, including a corporation, except when the party is the sole or majority shareholder or the directing mind of the corporation.

Content for Part 1: Orders Sought in the Notice of Application:

pursuant to s. 91 of the *Family Law Act*, s. 39 of the *Law and Equity Act*, and Rules 12-4 and 12-1 of the Supreme Court Family Rules,

(1) the respondent be restrained and enjoined from disposing of, encumbering, assigning, or in any similar manner dealing with family property, or of any property in which the claimant has, or may have, an interest, pending final determination of this action, without the consent in writing of the claimant or without further order of this Court;

(2) the *[party or whomever]* deliver up to *[the registrar, a party, or whomever]* all items set out in Schedule A attached to this notice of application;

Content for Affidavit:

- (1) clear identification of assets
- (2) present location of assets
- (3) ownership of assets/contributions to preservation or acquisition of assets
- (4) actions or statements of respondent which indicate that they might dispose of items
- (5) reasonable apprehension that the property will be disposed of and that they cannot be replaced or compensation for any loss be paid out of the remaining property
- (6) where an order is being sought that certain assets be delivered to the applicant, the registrar, or some other person, there must also be some evidence that the respondent is not inclined to obey court orders or agreements to restrict disposition or encumbering of assets.

Content for draft order:

- THIS COURT ORDERS that:
- 1. all family property be preserved until further order of this court, and that neither the *[party]* nor the *[party]* may transfer, sell, encumber, or deal in any way with any family property, including but not limited to *[list of assets]*, which either party has in their possession or control as of the date of this order.
- *[OR]*
- THIS COURT ORDERS that:
- 1. the *[party]*, is restrained from transferring, selling, converting, disposing of or encumbering any family property pending final determination of this proceeding without the consent in writing of the *[party]* or further court order, and in particular, without restricting the generality of the foregoing, the following property:
- (a) the Registered Savings Plan with *[name of financial institution]* registered in the name of the *[party]* under plan number *[number]* and any other Registered Retirement Savings Plans registered in the name of the *[party]*;

- (b) the mutual funds account with *[name of financial institution]* registered in the name of the *[party]* under account number *[number]* and any other investment account registered in the name of the *[party]*;
- (c) the *[description of vehicle, including year, make model]* registered in the name of the *[party]*;
- (d) household goods currently located at *[address]*;
- (e) the *[party's]* pension arising out of their employment with *[name of pension administrator]*; and
- (f) *[any other specific property sought to be protected or preserved].*
- 2. The *[party]* and the *[party]* are further hereby restrained and enjoined from doing anything which has or may have the effect of depreciating or dissipating the value of any corporate or business asset in the name of either of them which may be family property or which the *[party]* or the *[party]* has an interest, except in the ordinary course of business, without the consent in writing of the other party or further order of this Court.
- 3. For the purposes of this Order, the "ordinary course of business" expressly excludes transfers of capital between corporations, except on 10 days' written notice being given to the other party or their counsel, with liberty to apply to the Court for directions.

July 4, 2021

BY FAX: 1 (888) 555-5555

Toronto Dominion Bank
[branch address]
Toronto, Ontario, MXX XXX

Dear Madam or Sir:

Re: [name of client]

And: *Name v Name*, BCSC Vancouver Registry, Court File No. xxx

Please be advised that our client, [full name], has obtained an "Order Made After Application" (enclosed) in BC Supreme Court in Vancouver on June 28, 2021 restraining the disposal of assets by your client, [full name], birthdate [dob].

As per the Order, we are allowing Mr. XX to have one open chequing account for the purposes of day-to-day expenses and receiving his paycheques. We have been advised by his legal counsel that he intends to use his TD Chequing Account #4xxxx for this purpose. We are therefore allowing this account to remain open, but any other accounts that Mr. XX has with TD shall be frozen.

Yours truly,

Encl.

Fact Pattern

- Jianmin (he/him) and Stephanie (she/her) have been married for 10 years and have two children. They separated August 2021 and Jianmin moved out of the family home into an apartment in Yaletown. The parties own a house located at 666 E. 6th Ave, Vancouver, but only Jianmin is on title and on the mortgage, which is held by TD.
- Jianmin is employed as an electrician and has an annual salary of $120,000. Stephanie is employed part time as an administrator with the VSB and has an annual salary of $40,000 Stephanie's salary is auto-deposited into their one RBC joint account. Jianmin's salary is deposited into an account solely in his name
- Jianmin then transfers funds into the joint account on the last day of each month to cover expenses, including a monthly mortgage payment of $2,400 due on the first day of each month. The parties also have a joint RBC credit card which is auto-withdrawn from the joint account on the 27th of each month typically in the amount of $2,000 to $3,000.

- The family has one vehicle, a 2006 Honda Odyssey, which Stephanie drives, as Jianmin has use of a company vehicle. The Honda is insured until next April.
- Stephanie has no other bank or investment accounts nor another credit card. Stephanie knows Jianmin has other bank accounts and investments, as she has copies of old statements and access to some of them on the family computer.
- From the joint account and access to Jianmin's accounts she has established:
  - Jianmin did not deposit funds into the RBC joint account in September.
  - The TD mortgage payment due October 1 was not made.
  - The RBC joint credit card withdrawal on September 27 put the RBC joint account into overdraft.

- Jianmin had a sole TD credit card bill of $17,652 in September when typically his bills have been $400 to $500 each month. Charges have included:
  - Insurance on a vehicle.
  - Jewelry.
  - A luxury resort in the Bahamas.
  - Expensive restaurants.
  - Holt Renfrew.
- Jianmin withdrew $70,000 from a TD RRSP on September 26.
- Jianmin withdrew $120,000 from a TD Line of Credit secured against the family home.
- Stephanie has not seen Jianmin for a few weeks but swears she saw him getting in the driver's door of a new Tesla when she drove by his worlplace the other day.

Legal Remedies

- What are Stephanie's legal options for preserving property?
- What are Stephanie's BEST legal options?

- Jianmin (he/him) and Stephanie (she/her) have been married for 10 years and have two children. They separated August 2021 and Jianmin moved out of the family home into an apartment in Yaletown. The parties own a house located at 666 E. 6th Ave, Vancouver, but only Jianmin is on title and on the mortgage, which is held by TD.
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-

-
- What are Stephanie's legal options for preserving property?
- What are Stephanie's BEST legal options?

NOTICE OF APPLICATION—SUPREME COURT FAMILY RULES, FORM F31

Form F31 (Rule 10-6(3))

No. *[File number is not required if initiating the file]*
[Location] Registry

NOTICE OF APPLICATION

In the Supreme Court of British Columbia

Claimant: *[Surname; First Name; Second Name; Third Name] [Add AKA/DBA] [Add Legal Rep.]*

Respondent: *[Surname; First Name; Second Name; Third Name] [Add AKA/DBA] [Add Legal Rep.]*

[Rule 21-1 of the Supreme Court Family Rules applies to all forms.]

Name(s) of applicant(s): *[name(s)]*

To: *[name(s) of party(ies) or person(s) affected]*

TAKE NOTICE that an application will be made by the applicant(s) to the presiding judge or master at the *[address of registry in which the family law case is being conducted]* on *[dd/mmm/yyyy]* at *[time of day HH:MM AM/PM]* for the order(s) set out in Part 1 below.

Part 1: ORDER(S) SOUGHT

[Using numbered paragraphs, set out the order(s) that will be sought at the application and indicate against which party(ies) the order(s) is(are) sought.]

1. _____

2. _____

Part 2: FACTUAL BASIS

[Using numbered paragraphs, set out a brief summary of the facts supporting the application.]

1. _____

2. _____

[If any party sues or is sued in a representative capacity, identify the party and describe the representative capacity.]

Part 3: LEGAL BASIS

[Using numbered paragraphs, specify any rule or other enactment relied on and provide a brief summary of any other legal arguments on which the applicant(s) intend(s) to rely in support of the orders sought.]

1. _____

2. _____

Part 4: MATERIAL TO BE RELIED ON

*[Using numbered paragraphs, list the affidavits served with the notice of application and any other affidavits and other documents already in the court file on which the applicant(s) will rely. Each affidavit included on the list must be identified as follows: "*Affidavit *[sequential number, if any, recorded in the top right hand corner of the affidavit]* of *[name],* made *[dd/mmm/yyyy]".]*

1. Affidavit # _____ of _____ made _____

2. Affidavit # _____ of _____ made _____

3. Affidavit # _____ of _____ made _____

4. Financial Statement:

Estimated time

The applicant(s) estimate(s) that the application will take: _ hours _____ minutes.

[Check the correct box.]

[ ] This matter is within the jurisdiction of a master.

[ ] This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within the time for response to application described below,

(a) file an application response in Form F32,

(b) file the original of every affidavit, and of every other document, that

(i) you intend to refer to at the hearing of this application, and

(ii) has not already been filed in the family law case, and

(c) serve on the applicant 2 copies of the following, and on every other party one copy of the following:

(i) a copy of the filed application response;

(ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;

(iii) if this application is brought under Rule 11-3, any notice that you are required to give under Rule 11-3(9).

Time for response to application

The documents referred to in paragraph (c) above must be served in accordance with that paragraph,

(a) unless one of the following paragraphs applies, within 5 business days after service of this notice of application,

(b) if this application is brought under Rule 11-3, within 8 business days after service of this notice of application, and

(c) if this application is brought to change, suspend or terminate a final order, within 14 business days after service of this notice of application.

Date: *[dd/mmm/yyyy]*.

_____

Signature
[ ] applicant [ ] lawyer for applicant(s)

[type or print name]

To be completed by the court only:

Order made

[ ] in the terms requested in paragraphs *[number]* of Part 1 of this notice of application

[ ] with the following variations and additional terms:

_____

_____

_____

Date:_____ _____

Signature of
[ ] Judge [ ] Master

Appendix

[The following information is provided for data collection purposes only and is of no legal effect.]

THIS APPLICATION INVOLVES THE FOLLOWING:

[Check the box(es) below for the application type(s) included in this application.]

[ ] discovery: comply with demand for documents

[ ] discovery: production of additional documents

[ ] other matters concerning document discovery

[ ] extend oral discovery

[ ] other matter concerning oral discovery

[ ] amend pleadings

[ ] add/change parties

[ ] summary judgment

[ ] summary trial

[ ] service

[ ] interim order

[ ] change order

[ ] adjournments

[ ] proceedings at trial

[ ] appointment of additional expert(s): financial matters

[ ] other matters concerning experts

The following certificate must be completed by each party to a divorce claim.

PARTY'S CERTIFICATE (*Divorce Act* (Canada), s. 7.6)

[ ] By checking this box, I *[name of party]*, certify that I am aware of my duties under sections 7.1 to 7.5 of the *Divorce Act* (Canada), which say:

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.

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.

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.

7.4 A party to a proceeding under this Act or a person who is subject to an order made under this Act shall provide complete, accurate and up-to-date information if required to do so under this Act.

7.5 For greater certainty, a person who is subject to an order made under this Act shall comply with the order until it is no longer in effect.

The following certificate must be completed for each party to a divorce claim who is represented by a legal adviser.

LEGAL ADVISER'S CERTIFICATE (*Divorce Act* (Canada), s. 7.7(3))

[ ] By checking this box, I *[full name]*, legal adviser for *[name of party]*, certify that I have complied with section 7.7 of the *Divorce Act* (Canada), which says:

7.7 (1) Unless the circumstances of the case are of such a nature that it would clearly not be appropriate to do so, it is the duty of every legal adviser who undertakes to act on a spouse's behalf in a divorce proceeding

(a) to draw to the attention of the spouse the provisions of this Act that have as their object the reconciliation of spouses; and

(b) to discuss with the spouse the possibility of the reconciliation of the spouses and to inform the spouse of the marriage counselling or guidance facilities known to the legal adviser that might be able to assist the spouses to achieve a reconciliation.

(2) It is also the duty of every legal adviser who undertakes to act on a person's behalf in any proceeding under this Act

(a) to encourage the person to attempt to resolve the matters that may be the subject of an order under this Act through a family dispute resolution process, unless the circumstances of the case are of such a nature that it would clearly not be appropriate to do so;

(b) to inform the person of the family justice services known to the legal adviser that might assist the person

(i) in resolving the matters that may be the subject of an order under this Act, and

(ii) in complying with any order or decision made under this Act; and

(c) to inform the person of the parties' duties under this Act.

AFFIDAVIT—APPLICATION FOR ENTRY—LAND (SPOUSE PROTECTION) ACT—FORMS REGULATION, FORM A

Form A

I, *[name]*, of *[address]*, in the Province of British Columbia, make oath and say:

(1) That my spouse, *[name]*, of *[address]*, is the registered owner of all and singular *[legal description]*.

Or

(1) That I, *[name]*, of *[address]*, am the registered owner of all and singular *[legal description]*.

(2) That I am the lawful spouse of *[name]*, of *[address]*.

(3) That on the land there is a dwelling occupied by *[name]* and myself as our residence.

Or

(3) That on the land there is a dwelling that was last occupied by *[name]* and myself as our residence on *[month, day, year]*.

SWORN BEFORE ME at *[location]*, in the Province of British Columbia, *[month, day, year]*	)	
_____	)	_____
A Commissioner for taking affidavits for British Columbia	)	*[signature]*

[Apply stamp, or type or legibly print name of commissioner.]

APPLICATION FOR ENTRY—LAND (SPOUSE PROTECTION) ACT—FORMS REGULATION, FORM B

Form B

Application for Entry

Date *[month, day, year]*

I, *[name]*, solemnly declare that I am *[in case of solicitor* (solicitor for *[name]* and that)*] [in case of agent* (of the full age of 19 years, that I reside in the Province of British Columbia, and that I am the authorized agent of *[name]*, and that)] *[in case the spouse in whose name the homestead is registered makes the entry on the other spouse's behalf* (the spouse of *[name]* and that)] *[name]* is entitled to an entry on the title to the land hereunder described, and make application under the *Land (Spouse Protection) Act* for entry.

The full name, address and occupation of the person entitled is: *[name], [address], [occupation]*.

[Description of homestead]

[Documents in support]

And I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath and the *Canada Evidence Act*.

Declared before me *[month, day, year]* at *[location]*, British Columbia	)	
_____	)	_____
A Commissioner for taking affidavits for British Columbia	)	*[signature]*

[Apply stamp, or type or legibly print name of commissioner and full postal address.]

Land Title Act

FORM 33 (*Family Law Act*)

(section 215(6))

NATURE OF INTEREST: CHARGE: certificate of pending litigation

HEREWITH FEE OF $

LEGAL DESCRIPTION AND PARCEL IDENTIFIER NO.(S): *[specify]*

Address of person entitled to register this certificate of pending litigation:

[specify]

Full name, address, telephone number of person presenting application:

[specify]

I certify that the title to an estate or interest in the land above mentioned could change as an outcome of the proceeding mentioned below.

SIGNATURE OF APPLICANT, OR
SOLICITOR OR AUTHORIZED AGENT

No.: *[specify]*
[specify] REGISTRY

IN THE *[specify]* COURT OF *[specify]*

BETWEEN:

PLAINTIFF/PETITIONER

AND:

DEFENDANT/RESPONDENT

CERTIFICATE OF PENDING LITIGATION

I CERTIFY that this proceeding claims for an order under the *Family Law Act* respecting the division of property. Subject to Rule 22-8 of the Supreme Court Family Rules, a copy of the document by which the claim is made may be obtained from the Court Registry.

Given under my hand and the seal of the court at *[specify]*, British Columbia, this *[specify]* day of *[specify]*, 20*[specify]*.

_____

REGISTRAR

FORM_17C_V15

LAND TITLE ACT BRITISH COLUMBIA
FORM 17 CHARGE, NOTATION OR FILING
LAND TITLE AND SURVEY AUTHORITY

- Your electronic signature is a representation by you that:
  - you are a subscriber; and
  - you have incorporated your electronic signature into
    - this electronic application, and
    - the imaged copy of each supporting document attached to this electronic application,

  and have done so in accordance with Sections 168.3 and 168.41(4) of the *Land Title Act*, RSBC 1996, C.250.
- Your electronic signature is a declaration by you under Section 168.41 of the *Land Title Act* in respect of each supporting document required in conjunction with this electronic application that:
  - the supporting document is identified in the imaged copy of it attached to this electronic application;
  - the original of the supporting document is in your possession; and
  - the material facts of the supporting document are set out in the imaged copy of it attached to this electronic application.

Each term used in the representation and declaration set out above is to be given the meaning ascribed to it in Part 10.1 of the *Land Title Act.*

1. APPLICANT: (Name, address, phone number of applicant, applicant's solicitor or agent)

Patrick Grayer
Grayer Law Corporation
103-1416 Commercial Drive
Vancouver BC V5L 3X9

Deduct LTSA Fees? Yes ☑

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:
[PID] [legal description]

SEE SCHEDULE

STC? YES ☐

3. NATURE OF CHARGE, NOTATION, OR FILING: AFFECTED CHARGE OR NOTATION NO:

CERTIFICATE OF PENDING LITIGATION

ADDITIONAL INFORMATION:

NATURE OF CHARGE, NOTATION, OR FILING: AFFECTED CHARGE OR NOTATION NO:

ADDITIONAL INFORMATION:

4. PERSON TO BE REGISTERED AS CHARGE OWNER: (including occupation(s), postal address(es) and postal code(s))

STEPHANIE BROWN, ADMINSTRATOR

C/O 103-1416 COMMERCIAL DRIVE
VANCOUVER BRITISH COLUMBIA
V5L 3X9 CANADA

FORM_E2_V15

ADDITIONAL PARCEL INFORMATION PAGE 2 OF 2 PAGES

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:
[PID] [LEGAL DESCRIPTION]

012-638-200 **LOT 3 BLOCK 137 PLAN VAP706 DISTRICT LOT 264A LAND DISTRICT 36 OF LOT A & PL 1771**

STC? YES ☐

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:
[PID] [LEGAL DESCRIPTION]

STC? YES ☐

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:
[PID] [LEGAL DESCRIPTION]

STC? YES ☐

THE LAW FOUNDATION OF BRITISH COLUMBIA

2021
PROVINCIAL ADVOCATES
TRAINING CONFERENCE

Legal Aid BC

Helping clients work effectively with a legal aid lawyer

Andrea Bryson

Topic: Families & Children

Helping clients work effectively with a legal aid lawyer

Andrea Bryson
Case Manager
intake@womenslegalcentre.ca

Rise WOMEN'S LEGAL CENTRE

"There is a misconception that law flows from everything that's good and beautiful and wonderful in the world, and that can be true, but law also flows from conflict, it flows from great indecency, where we need ways to be able to at least manage for the moment those challenges so that we can try to put our lives together in more productive ways"

- Dr. John Borrows, Anishinaabe, Canada Research Chair in Indigenous Law, University of Victoria.

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

The scenic tour...

- How do we understand the legal system
- How can we communicate the legal system to clients
- How we can work with clients to get and maintain relationships with lawyers
- The nuts and bolts of preparing clients to meet with the lawyer and a few strategies to keep that relationship going forward

NOT LEGAL ADVICE

2-minute National Legal Aid history lesson

"At its inception over 40 years ago, the federal government envisioned establishing "a coast-to-coast federally funded legal aid system that would cover both civil and criminal cases" modeled on the Canadian medicare system. This vision was never met."

-From "What Do We Want? Canada's Future Legal Aid System" CBA

NOT LEGAL ADVICE

Clients seeking justice in a legal system

- The legal system is a terrible place to seek justice.
  - Especially for: women, Indigenous folx, racialized folx, trans/gender diverse folx, LGBQ folx, folx with accessibility needs
  - The legal system – generally - is not a safe place for many people
    - Policing, child protection, income assistance, and past experience with family law
- The legal system is designed by and for judges.

- It is also the only system we have.
- It is the only system that can grant enforceable orders.
- It is the only hope for many of our clients

What is justice?

- Aristotle said "that justice consists of righteousness, or complete virtue in relation to one's neighbour", "a state of character, a cultivated set of dispositions, attitudes and good habits" Hurlbert & Mulvale

What is Justice?

"Well, justice is doing the right thing, that is really what justice is. It is not any more complicated than that, doing the right thing.

Where Aboriginal people are concerned, we are not doing the right thing. All of the statistics and all of the studies we know about have all come to that conclusion. What is the right thing? Well, we have to learn that. It's not going to be the same for our friends in Maniwaki as it is for our friends in Moose Factory.

It is not going to be the same for the Ojibways in Roseau River, as it will be for the Crees in Lac l'Orange.

It will not be the same for the people in the Blood Reservation in Alberta, as it will be for the west coast [Indigenous peoples] in British Columbia, or the people of the Northwest Territories, or our Inuit brothers and sisters in Inuvik. They will all have different solutions based upon their understanding of how to do things, because process is just as important as results. We must never forget that.

The process each will follow will reflect who they are. The results will be the same I think, for all of us if we let that happen."

Sen. Murray Sinclair

What is Law?

- The process of creating statutes and regulations – our political system
- The statutes & regulations that our political system creates
- The processes developed to engage with the legal system (rules and the court)
- The administration of those processes, including procedural fairness

- Is there space in here for those who need to access the legal system?

What are clients seeking

- Most clients would say they want someone to solve their *problems*
- Some clients are seeking justice
- Usually clients are seeking control over their lives
- The court cannot provide justice, but they can provide remedies
- Remedies are usually defined by statute – by law
- We can help clients navigate the law to get remedies to try to have control over their lives

Be precise with language

- Avoid terms like fairness and justice
  - Fairness is subjective and open to interpretation
  - The legal system has proven that it does not offer justice

- Use terms like remedies and 'having more control over her life'
  - Court can provide remedies under the law
  - Court remedies can help someone have more control over their lives

Be clear about the limits of law

- Remedy: 1) A remedy is a successful way of dealing with a problem. 2) A remedy is something that is intended to cure you when you are ill or in pain. 3) If you remedy something that is wrong or harmful, you correct it or improve it. (Collins Dictionary)
- A remedy is not a time machine, it cannot undo the harm caused, but only to create a path forward.
- We want to ensure that clients know what to expect so that when they speak with lawyers or others in the legal system, they can get results to help them have control over their lives.

Be clear about the problems of law

- Law is archaic
- Law is slow
- Law is not holistic (wholelistic)
- Law hates trees
- Law is everywhere, but is only a tiny part of our lives
- Law changes at a glacial pace

Clients seeking justice in a legal system

- How can we do justice in a system that does not?
- How can we untangle the words our clients use into boxes of “legal system” and “not legal system”?
- How can we have conversations of hope and goals?
- How can we focus on what the client needs to have control over their lives?
  - If this were to change to a better situation, what would it look like?

There is hope

- A lot has changed in my 15 years of A2J work
- Advocates are a thing
- Law has improved
- The Judiciary is changing
- Law education is changing
- You are here.

- Don’t let perfect be the enemy of good.

NOT LEGAL ADVICE

Now we can get your client a lawyer

- Before each meeting – are we going in with a clear purpose
- What issues does she have
  - What is legal
    - Is it in the scope of the legal aid retainer
  - What is not legal or not in the scope
    - How can we be useful with these items so she can focus on the legal issues, ideally ones covered under the legal aid retainer
- Use this session to map out the synopsis and gather questions
  - Is there information she needs to make the best use of this information or to keep up in a conversation?

NOT LEGAL ADVICE

Legal Aid Limitations

- Lawyers have time constraints. LSS grants certain general prep time:
  - 35 hours for Provincial Court Family matters;
  - 45 for Supreme Court Family matters;
  - 8 for Limited Representation Contracts
  - 9 for Humanitarian and Compassionate Immigration applications; and
  - 16 for Refugee Applications
  - Other hours depending on the tariff

- LSS does not mandate or expect that the lawyer help the client obtain final orders
- Legal Aid can approve extended hours, but those are limited and require a lawyer to use their existing general prep hours to write the request for extended hours

NOT LEGAL ADVICE

Ensuring your client understands legal aid

- What type of retainer does she have
- What does this legal aid retainer cover
- What does this legal aid retainer not cover
  - Does she need a different retainer?
- Does she have some issues not covered by legal aid
  - Maybe issues that aren't even family law…

NOT LEGAL ADVICE

Pen to paper – what can you do?

- Make sure that you are drawing out the map of her issues
  - What is the starting place
  - What is her goal
  - What remedies will get her close to her goal
- What hiccups do you see
  - What can you do to support her through those
- The other stuff
- Check in regularly about where you are and where you think she is going and that it's still accurate

NOT LEGAL ADVICE

Preparing your client to find a lawyer

- Using the list from legal aid, or unbundling.ca create a list of 2-3 names of lawyers that the client thinks might be a good fit.
- Create a 30 word plain language synopsis of what the client is looking for.
- Ask the lawyer if they can have a short 5-10 minute conversation about fit (do not ask, and will not receive advice)
- If the lawyer isn't the right fit, they can ask if the lawyer knows someone who might be a better fit.

NOT LEGAL ADVICE

Finding fit – a lawyer is like a bus driver

- You want to find someone going in the same direction your client is
  - Just like with buses, we may not have a direct route – are they going into a direction that will take you to the skytrain or a bus loop?
- You want to find someone the client feels safe with
  - This has to be your clients feelings and clients call
- You want to find someone who has space to sit
  - Sometimes when we are running late we will squeeze in the backdoors to make it to work
- You don't want a cranky bus driver
  - It's best to have someone you can talk to or bring important things to their attention, but we've all sat on a bus with cranky driver

How to help the lawyer find the fit

- Lawyers are invested in having a good fit.
- They want to know what legal issues are they there to solve? Are they the right person
- The like a good summary – they really like a good short relevant summary
- Tell them what you can do, how far you'll go, what it means to you
- The whole history - they will find it out, be upfront. They hate discovering cobwebs…

NOT LEGAL ADVICE

Preparing for the first meeting

- Help them write out questions before they meet with the lawyer.
- Write a MAXIMUM 1 page summary about what she currently needs help with.
- Gather paperwork and organize in a file ahead of time
- Spend time with the client to set expectations and purpose
- If attending, be clear about your role to the lawyer and tell them that you are there for emotional support and to take notes
- Your questions should be limited to ensuring that your client is heard or to ensure that your client is hearing the lawyer.

NOT LEGAL ADVICE

Lawyers are technicians – how to help them help your client

- How can we address clients needs or concerns
- Can you explain why it is helpful or unhelpful to pursue this path?
- What documents do you need?
- Is there anything that I can do specifically to help with this process?
  - Any forms (especially for immigration files)
  - Any dates to plan for
- Be very clear about you and your role if necessary

NOT LEGAL ADVICE

Assume the best of legal aid lawyers

- Unless you have multiple data points – assume the best of the lawyer
- If the lawyer is not meeting expectations – ask another lawyer
  - Review your notes
  - Collect dates
- Give the lawyer the benefit of the doubt
  - how might their actions make sense
- Make a plan to talk with them about concerns
  - A different lawyer is not always a better lawyer
- Assume the best unless/until you might be making an ass of me.

NOT LEGAL ADVICE

The ongoing relationship

- Try to avoid talking to the lawyer on your clients time
- Check in with the lawyer independently if possible (see above)
- Check in with the client after every meeting
- Always assess if you are making an influence in how things are done

NOT LEGAL ADVICE

A little more on your role

- Law is scary, but it is actually all around us
  - Our role is to make law more approachable
- How can we provide emotional support to women through the process?
- How can we work alongside the client and her lawyer to find ways to reduce the stress or improve communication?
- Law is not designed for our clients, it is not trauma-informed, it is not client-centred, it is not gentle
  - Witness her resistance to this
  - Help her to feel less alone

NOT LEGAL ADVICE

To recap

- We have an obligation to make legal aid the best version of itself – that means maintaining the historical analysis, but also how it is that legal aid operates.
- We need to recognize that the legal system may not be a safe place for clients and we need to maintain reasonable expectations for clients
  - It is okay to say that the legal system is a terrible place to seek justice
  - It is not okay to take away hope though – this is the ONLY system we have right now and it may be the only place for your client to get their needs met.
- Figure out what justice means to you and how you promote justice in your work – and remember that it may not be in the legal work you do.

NOT LEGAL ADVICE

To recap

- Help your client find language – preciseness of language is liberatory – remedies and control over her life instead of justice and fairness
  - Help them understand what is law, what are its limitations
  - What is able to be dealt with in the legal system, what cannot be dealt with in the legal system
- Prepare your client every meeting to ensure that we have a plan to make the best use of the lawyer
- If you are not already – get well versed on legal aid time limitations and policies – then make sure your client is too!
- Be like the best wait staff you've ever had a restaurant – completely attentive, but almost invisible, always anticipating what is needed so that everyone at the table can focus on the other stuff.

NOT LEGAL ADVICE

Questions?

Andrea Bryson
intake@womenslegalcentre.ca
(if you want to chat by phone,
send me an email to coordinate –
I'm terrible to play phone tag with)

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THE LAW FOUNDATION OF BRITISH COLUMBIA

2021
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Legal Aid BC

Collaborative family law, mediation and arbitration in family law matters

Karen Tse

Topic: Families & Children

Recording Link: https://youtu.be/ql4nUj2R4YY

Collaborative Family Law, Mediation and Arbitration in Family Law Matters

Presented by Karen Tse
Partner, Family Lawyer & Family Law Mediator
Rockies Law Corporation – Fernie, BC

I acknowledge my respect for and share my deepest gratitude to the Ktunaxa peoples on whose homelands I am honoured to live and work.

Agenda

1. *Overview of Alternate Dispute Resolution Options*
2. *Collaborative Family Law*
3. *When to choose Collaborative Family Law*
4. *Mediation – Overview and Steps*
5. *Arbitration*
6. *Preparing clients for mediation*
7. *Preparing clients for arbitration*
8. *When is Mediation or Mediation Arbitration appropriate?*

Alternate Dispute Resolution Options

- Collaborative Separation (BC Collaborative Roster Society)
- Private mediation or mediation-arbitration (med-arb)
- Family Justice Counsellors
- Dispute resolution through the court system:
  - Judicial Case Conferences
  - Family Case Conferences / Settlement Conferences
  - CFCSA Rule 2 Case Conferences
  - Child Protection Mediation

Collaborative Family Law

- Each spouse hires a lawyer who practices in Collaborative Family Law
- BC Collaborative Roster Society
- Agreement is signed promising to work together
- Goal is to settle case fairly without court
- If process does not work, lawyers withdraw from case

Why Choose Collaborative Family Law?

- Focus on needs of parties and children
- Not meant to be adversarial
- Make sincere effort to understand each other's concerns
- Prompt disclosure of relevant information
- Communicate with honesty and respect
- Lawyers meet to find settlement that is right for both parties
- Skilled team of caring professionals
  - Divorce coaches, financial specialists, child specialists

Divorce Coach & Specialists

- Divorce Coaches
  - Explore emotions / Communication skills
  - Co-parent strategies / Build co-parenting plans
- Financial Specialists
  - Usually certified financial planners
  - Gather financial information / Provide financial knowledge
  - Identify tax issues, create budgets and debt repayment plans
- Child Specialists
  - Focuses exclusively on children / Assess children's needs and concerns
  - Create co-parenting plan / Give children tools to navigate transition

When is it appropriate?

- Both parties must be willing to work together with honesty and respect
- Being high conflict is not a bar to participation, however, both parties must be willing to engage in process in good faith
- Cost – will need to seek out professionals and ascertain if fee structures are feasible
  - May overall be less expensive than traditional litigation
  - However, may still be out of reach for many families

Mediation in Family Law

- A managed process in which two (or more) parties work with a neutral third party to reach an agreement
- Negotiation process with assistance of mediator
- Intended to help resolve disputes without going to court
- Parties motivated to work together
- There will be some 'give and take'

Why Mediation?

- Less expensive than court
- Less acrimonious than litigation
- More expeditious
- Allows for re-building of relationships
- Allows room to rebuild trust

Who are Mediators?

- Mediators – trained professionals
- Lawyers who are family law mediators are specially accredited by the Law Society of British Columbia

When can we mediate?

- Available any time during a process
- Before litigation begins
- During litigation
- Any time prior to a trial
- Can be compelled
  - *Family Law Act* s. 61(2), 222, 224, 227
  - Court can compel participation in family dispute resolution

What is the outcome of mediation?

- Typically, a Consent Order or a Separation Agreement

Who can be at a mediation?

- Typically the parties
- Can also include:
  - Their lawyers
  - Social workers
  - Other important people

What is the role of a mediator?

- Facilitates negotiations
- Provides third party perspective
- Ensure settlement is reasonable and fair
- Cannot provide legal advice
- This is the role of the lawyer for each party
- Could discuss whether or not a party is being realistic about their expectations

How does the mediation process work?

- Optional step: party engages a lawyer who might help them with the mediation to get initial advice
- Parties select the mediator
- Pre mediation meeting
  - Mediator will meet with parties separately
  - Screen for family violence
  - Discuss expectations
  - Get to know the parties
  - Get to know the issues

Next Steps in Mediation Process

- Set framework
  - Decide on scheduling
  - Set rules
  - Set goals
  - Decide on location
  - Decide on method
    - In person? By video conferencing? In the same room? Shuttle mediation?

Next Steps in Mediation Process

- Exchange of information
  - Financial statements
  - Other reports (accountants, counsellors, psychologists, etc.)
- Exchange mediation briefs
  - Often prepared by lawyers or advocates
  - Summaries of key facts
  - Parties' positions
  - Application of law

What happens during the mediation?

- Welcome
- Sign Mediation Agreement
  - Without prejudice discussions
  - Payment of mediation services
- Set agenda and discussion topics
- Parties take turns to give overview and share thoughts
- Parties may be in the same room or separate rooms (shuttle mediation)

During the Mediation

- Mediator helps parties express and share their concerns
- Discuss interests (underlying needs) rather than positions (specific outcomes)
- Explore the “Why” question
- Maintain a respectful discussion
- Prepare Minutes of Settlement describing how an issue is resolved

Typical topics covered under a Family Law Mediation

- Guardianship
- Parental Responsibilities
- Parenting Time
- Child Support
- Spousal Support
- Property Division
  - Family Residence, real property
  - Vehicles
  - Pensions
  - RRSPs, bank accounts

Tips for a successful mediation

- Express interests in a productive and respectful way
- Openness to ideas
- Be mindful of whether your emotions are getting the better of you
- Avoid threats and personal attacks
- Full and frank financial disclosure
- Discuss ‘best’ and ‘worst’ case scenarios with your lawyer beforehand
- Don’t interrupt
- Ask for time to consider or a break if necessary
- Be honest and empathetic

What is Arbitration?

- Arbitrators play a private judge-like role
- A family law arbitrator will make binding decisions to resolve family law issues out of court (in lieu of a traditional trial)
- Parties are asking the Arbitrator to make the decisions after hearing both sides

What is Mediation Arbitration or Med-Arb?

Med-Arb allows the mediator of an unresolved dispute to assume the role of arbitrator in relation to all or particular issues that remain in dispute between the parties

Advantages

- Time and cost effective, especially in assize system
- Scheduling is very flexible
- Private
- Can pick the mediator arbitrator
- More buy-in from parties

How to design a Med-Arb

- Process can be streamlined and crafted with assistance of mediator arbitrator
- Closed (shuttle between rooms) or open session (parties all in the same room and can hear the evidence of all)
- Multiday vs. single day
- Exchange of information after mediation fails (Expert Reports / Financial Statements)
- Traditional (taking the stand type) vs. Summary (affidavits only)
  - Presentation by affidavits only, with deponents available for cross examination

Preparing Clients for Mediation / Med-Arb

- Explain process to client
- Screening for family violence
  - Safety concerns
  - Open vs. shuttle mediation
- Experts or support people being available
  - Family members, accountants, counsellor by phone
- Reports
  - Property Valuations / s. 211 Views of the Child Report
- Witness statements & Mediation Briefs
- Property and Debts Division Schedule
  - Editable version ready in electronic form
- Support Guidelines calculations
  - (best, mid and worst-case scenarios)
- Draft orders or draft separation agreements

25

Preparing Clients for Mediation / Med-Arb

- Mediation can still occur even if parties are high conflict or there are power imbalances
  - Just need to modify process
- Run cost benefit analysis
- Explore clients' interests and work with them to look beyond their positions
- Discuss emotional, verbal and/or physical triggers for each party

26

Preparing Clients for Mediation / Med-Arb

- Explore workable solutions outside of what a court may order
  - Not the necessarily the scripted options of court but rather what works best for their family
- Encourage clients to be creative
- Create plans with longevity
- With financial issues: come with business-hat on, so they can have some control over the outcome
- Get pre-approvals from bank and tax advice

27

Preparing Clients for Mediation / Med-Arb

- Facilitative or Evaluative approach (evaluative offers views and suggestion / weighs in on issues)
- Great mediators poke holes in each party's position
- Mediator can telegraph possible outcomes or strength of the case to each side
  - Especially helpful with difficult clients
  - If the client is difficult / not hearing your advice, mediator can help client see weaknesses and options

28

Preparing Clients for Mediation / Med-Arb

- Briefs will be read by all
  - A highly adversarial approach is likely not helpful
- Can be effective to include goals that might be important to client
- Clients should be told how the mediator's fees will be paid
- Litigation Risk: clients should have a true understanding of the merits/risks of their case
- Discussion of range of quantum of damages
- Litigation Costs: math based on the tariff – typically not all costs are reimbursed

29

PREPARING CLIENTS FOR ARBITRATION

- Last best offer vs. arbitrator decides based on evidence
- Last Best Offer / Baseball Arbitration
  - Limits an arbitrator to choosing the final offer made by one of the parties / both sides make a pitch and arbitrator decides between the two
  - Arbitrator selects one of the parties' proposed settlements instead of calculating the award
- Nighttime Baseball Arbitration – arbitrator comes up with decision independently, then gets to see both final offers and selects the one closest to it

30

Why Mediation?

From the Honourable Justice Kent & Justice Mahoney

- Ultimate objective is achievement of a judicious outcome that all parties can live with, put behind them and move on
- Parties may be persuaded to resolve the dispute once the weaknesses in their own case is revealed to them, given the uncertainties of litigation
- Having a qualified and experienced mediator outline the strengths and weaknesses of each party's case may cause parties to modify their settlement positions
- Creative payment solutions
- Even if the parties are unable to reach a settlement
  - May be able to narrow down or agree on some issues
  - At the very least, getting together to refine the legal issues and plan the next court steps results in cost savings
- See: Matsqui First Nation v. Canada (Attorney General), 2015 BCSC 1409 & IBM Canada Limited v. Kossovan, 2011 ABQB 621

31

Why Mediation?

From the Honourable Justice Kent

- The beauty of mediation lies in its confidentiality and flexibility
- Parties are free to speak to each other directly and to frankly express their concerns and interests without fear of prejudicing the litigation should the matter not settle
- Empathy and apology can play a powerful role
- Creative remedies not available to the court can be forged to bridge differences
- Important relationships can be repaired

32

Why Choose Mediation?

- Without prejudice
- Parties control the process, the outcome and the settlement
  - Making your own settlement
- Choice of decision maker
- Process is shaped by the parties and not dictated by a trial or application judge
- Can create outcomes that is not dictated by case-law and can work in trades
- Possibility of transformative experience, forgiveness and apologies
  - An apology can form part of a mediated settlement and this can be a key point in achieving resolution

33

Why choose Mediation?

- A venue to air emotions (including some that would be inappropriate at trial), then moving past them
  - Venue to express more personal points of view
- Sometimes concerns that may be irrelevant from a formal court perspective, or evidence that may be inadmissible (hearsay) can be voiced and discussed
- Addressing fears that are not legal but clearly need to be resolved to move the matter to settlement

34

Why choose Mediation?

- Clients want faster and less expensive resolution
- Sacrificing on some things to make other more long-term solutions work
- Client may be a bad witness on the stand
  - "Alternate business endeavors" or practices
- Client is closed to offers
- Bad evidence
- High net worth and high risk
- Want privacy for some issues
- Don't want competition, shareholders, employees to be aware of certain facts

35

Why choose Med-Arb?

- Guaranteed conclusion and result
  - Med-Arb produces definitive result over just mediation
  - Less expensive than trial after mediation
- Can reserve guaranteed time slot
- Can be limited to arbitrate the one issue that can't be resolved
- Can customize the process more than court

36

Questions & Thank you

THE LAW FOUNDATION OF BRITISH COLUMBIA

2021
PROVINCIAL ADVOCATES TRAINING CONFERENCE

Legal Aid BC

Help clients read a financial and business statements

Vicky Law

Topic: Legal Help & Lawyers; Families & Children

Recording Link: https://youtu.be/56AiI3IxcSI

FINANCIAL STATEMENT—PROVINCIAL COURT FAMILY RULES, FORM 4

Registry location: *[location]*
Court File Number: *[number]*

FINANCIAL STATEMENT

FORM 4
Provincial Court Family Rules
Rules 3, 25, 28 and 172

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

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 expense and debts, in Part 2

[ ] my assets, in Part 3

[ ] income of other person(s) in my household, in Part 4

[ ] undue hardship, in Part 5

Sworn or affirmed before me)
at *[city]* in British Columbia)
on *[date]*)
)
)
_____)
A commissioner for taking affidavits in) _____
British Columbia *[print name or affix*) Signature
stamp of commissioner])

Commented [VL1]: Review the guide on the BCPC PDF form. There is a chart that identifies which part to complete depending on what is being claimed.

If only basic child support is claimed, the payor only completes Part 1

If s. 7 is being claimed, parts 1, 2 and 3 need to be completed by both recipient and payor.

Split or shared parenting – both parties must complete parts 1, 2 and 3

Part 4 is only required if either party is making a claim for undue hardship

Part 5 is only required of the affiant is making a claim for undue hardship

Commented [VL2]: Remember that the financial statement is an affidavit so client must provide true and accurate information to the best of their ability

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

Commented [VL3]: These documents must be attached.

If client has not filed taxes for the previous year or for a few years, that must be the first step before completing financial statement.

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).

Commented [VL4]: Remember to use *gross* amounts (not net amount)

Often times, client will calculate their income differently than what is provided in their tax returns, notices of assessments, paystubs or T4 slips.

Remember to double check their math against these documents.

[ ] employment income of $*[amount]* from *[employer]*

[ ] employment insurance benefits of $*[amount]*

[ ] workers compensation benefits of $*[amount]*

[ ] interest and investment income of $*[amount]*

[ ] pension income of $*[amount]*

[ ] government assistance income of $*[amount]* from *[source]*

[ ] self-employment income of $*[amount]*

[ ] trust income of $*[amount]*

[ ] other income of $*[amount]* from *[source]*

Commented [VL5]: Including rental income

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

[ ] confirmation of income and draw from, and capital in, a partnership, for the three most recent taxation years

[ ] corporate 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)*:

4. Income Summary:

Use gross annual amounts (before taxes or deductions) except where the word "net" appears

Total income before adjustments		
1	My total income last year as indicated on my *[year]* tax return was	$*[amount]*
Adjustments to total income (use annual amounts)		
2	Taxable child support received	$*[amount]*
3	Spousal support received	$*[amount]*
4	Universal child care benefit (UCCB) lump-sum payment	$*[amount]*
5	Split-pension amount	$*[amount]*
6	Employment expenses	$*[amount]*
7	Social assistance received for other members of your household	$*[amount]*
8	Excess portion of dividends from taxable Canadian corporations	$*[amount]*
9	Actual business investment losses	$*[amount]*
10	Carrying charges	$*[amount]*
11	Net partnership or sole proprietorship income *(any amount included in your income that is required by the partnership or sole proprietorship for capitalization purposes)*	$*[amount]*
12	**Total deductions from income** *(add lines 2 through 11)*	$*[amount]*
Additions		
13	Capital gains and capital losses *(if zero or less, indicate "0" on this line)*	$*[amount]*
14	Net self-employment income	$*[amount]*

Commented [VL6]: This line asks for the income reported on tax return (line 150 or 15000)

Please note that this is different than BCSC F8

Commented [VL7]: Please note that on DivorceMate Cloud version this says "Canada Child Benefit". The version on DivorceMate Cloud is wrong.

Only include the **lump sum Universal Child Care Benefit** on this line. If it is not lump sum, do not include here.

UCCB has now been replaced by Canada Child Benefit (CCB). CCB should not go into line 4

Please note that UCCB is not included in the calculation of income for the purposes of s. 7 expenses.

15	Capital cost allowance for property	$*[amount]*
16	Employee stock options with Canadian-controlled private corporation	$*[amount]*
17	**Total additions to income** *(add lines 13 through 16)*	$*[amount]*
18	**Annual income for support purposes** *(line 1 minus line 12 plus line 17)*	$*[amount]*

	Adjustments to income		
19	Subtract union and professional dues	–	
20	Adjustments in accordance with Schedule III of the Child Support Guidelines	+ –	
21	**Child Support Guidelines income for basic child support (line 18 as adjusted by lines 19 and 20)**	=	
	CHILD SUPPORT GUIDELINE INCOME TO DETERMINE SPECIAL EXPENSES		
	Child Support Guidelines income (from line 21 of this table)		
22	Add spousal support received from the other party to this family law case	+	
23	Subtract spousal support paid to the other party to this family law case	–	
24	Add Canada Child Benefit relating to children for whom special or extraordinary expenses are sought	+	
25	**Child Support Guidelines income to determine special expenses (line 21 as adjusted by lines 22, 23 and 24)**	=	

	INCOME TO BE INCLUDED FOR SPOUSAL SUPPORT CLAIM		
	Child Support Guidelines income (from line 21 of this table)		
26	Total child support received	+	
27	Income assistance received for other members of household	+	
28	Canada Child Benefit and BC Family Bonus	+	

Commented [VL8]: Lines 19 to 29 are not in the original BCPC form but this is something I have inserted to correct the mistakes on the current BCPC Form 4

Lines 19 to 29 are taken from BCSC Form F8, lines 9 to 19

Commented [VL9]: Adjustments won't show up on tax return that provides client's line 15000. Will need to look elsewhere to determine this information

Commented [VL10]: Line 19: union and professionals dues, look at client's T4 or paystub

Commented [VL11]: Line 20: Employment expenses that can be deducted from income

Review Schedule III of the *Federal Child Support Guidelines*

Usually for individuals who are self-employed:
1. the Gross business income is line 13499
2. The Net business income is line 13500
3. Total income is line 15000 (could be same as 13500 if no other sources of income)
4.Net income is line 23600 (after deductions for CPP contributions)
5.Taxable income is line 260000 (should be same as 23600 if no other sources of deductions)

Commented [VL12]: Line 24 is where you add CCB so that it can be included when calculating s. 7 expenses

Commented [VL13]: To calculate the income used for s. 7 expenses, you take the individual's income after adjustments (line 21), amount received for spousal support, deduct amount paid to other party for spousal support and CCB

29	**Total income to be used for a spousal support claim (line 21 plus lines 26, 27 and 28)**	=	

Commented [VL14]: To calculate income for spousal support purposes, you take the individual's income after adjustments (line 21), add child support received, add income assistance received for other members in household, add CCB

5. *Select whichever option is correct and complete any required information*

[ ] I do not expect any significant changes to the **total income** on my tax return this year

[ ] I expect my **total income** on my tax return this year to be $*[amount]* because:

[specify]

Commented [VL15]: Address any significant changes to income here. Note that this space is only allowed for changes to the income.

Do they anticipate any income changes?
Will they be changing jobs?
Did clients work more overtime last year and therefore there was an increase in income?
Did they get an increase in income this year?

PART 2—Personal expenses and debts

Expenses

An expense is the amount of money you spend on something.

Estimate how much you pay in a month and a year for each of the expenses listed below. Note: You may be asked to provide the court with proof of an amount or a breakdown of how you came to the estimate.

Expenses			**Monthly**	**Yearly**
Housing	**Monthly**	**Yearly**	$*[amount]*	$*[amount]*
Rent/mortgage				
Property taxes and strata fees				
Utilities including electricity, gas, water, waste, home phone, and internet				
Homeowner/renter's insurance				
Home maintenance and repair				
Other				
Housing Subtotal:	$*[amount]*	$*[amount]* →		
Food & Household Supplies			$*[amount]*	$*[amount]*
	Monthly	**Yearly**		
Groceries				
Eating out				
Household supplies such as cleaning supplies, lightbulbs, batteries, toilet paper and laundry detergent				
Other				
Food & Household Supplies Subtotal:	$*[amount]*	$*[amount]* →		
Transportation				
	Monthly	**Yearly**	$*[amount]*	$*[amount]*
Car insurance and car loan payments				
Fuel				
Maintenance and repairs				
Public transit, taxis and parking				

Commented [VL16]: Tip: recommend clients to look at their bank statements, credit card statements, bills and receipts for the last 3 months or so to help determine average monthly expenses (some months may be higher than others, i.e. summer or winter holidays)

Commented [VL17]: This financial statement for BCPC does not allow for the client to provide potential significant changes to expenses or other financial information. (The space above, page 5 #5, is only for income)

Will client need to incur expenses to attend school or update their qualifications?
Will there be any additional costs for childcare in the near future?
Are there any expenses for the children that they need to incur but are currently unable to? (e.g. orthodontics)

If yes to above, put [expected] next to the line item.
If more space is required, add lines to the table. Good practice is to have one item per line.

Commented [VL18]: Do they intend to move in the next few months? If so, will their housing or other expenses change? If they are staying with family/friends, will they be expected to pay rent in the future?

Commented [VL19]: Don't be afraid to use the "other" sections throughout this section to list expenses that are not on the financial statement

Other Transportation Subtotal:	$*[amount]*	$*[amount]* →		
Clothing & Self-care include clothing, hair dresser/barber and cosmetics			$*[amount]*	$*[amount]*
Health & Medical include regular dental care, orthodontics, medicine, eye glasses or contact lenses			$*[amount]*	$*[amount]*
Children include school activities, extracurricular activities, tuition/school fees, camps, babysitting, allowances and daycare			$*[amount]*	$*[amount]*
Miscellaneous/Other include gifts & donations, alcohol, tobacco & cannabis, entertainment & recreation, cell phone, cable, subscription services, pet expenses and vacations			$*[amount]*	$*[amount]*
Premiums, Contributions and Debt Repayment include life or term insurance premiums, RRSP or other contributions, debt repayment (for expenses not itemized above)			$*[amount]*	$*[amount]*
Other *(specify)*:			$*[amount]*	$*[amount]*
Total:			$*[amount]*	$*[amount]*

Commented [VL20]: If client can't afford certain expenses, they should still be listed with a note that says they are unable to afford this expense at this time

Particularly important when claiming child and spousal support

Part of the assessment the court makes when determining whether spousal support should be granted and the quantum of support is the needs of the recipient and the standard of living they enjoyed during relationship

Commented [VL21]: Double check your math!

Debts

Commented [VL22]: clients must list *all* debts, even if there is no value
e.g. credit card with 0 balance must still be listed

A debt is an amount of money you owe someone that you have a duty to pay.

Identify any outstanding debts. Do NOT record the monthly payment for mortgage, car loans, credit card payments or other debts included in the expenses section above, just the total balance owing.

Name of creditor *(name of bank, finance, company, person, etc.)*	**Reason for borrowing** *(for example, mortgage, car loan, school)*	**Balance owing**
	Total	

PART 3—Assets

Complete this part only if you are required to provide information about assets. See the chart in the instructions for this form to determine if this part applies to your situation.

An asset is something of value that you own or that belongs to you.

List all your assets in the table below, provide a brief description and how much the asset is currently worth (the value)

Asset	Description of asset	Current value of asset
Real Estate	*Street address*	*Market value*
Cars/Boats/Vehicles	*Make, model, year*	*Market value*
Cash assets—including cash and bank accounts	*Type of cash asset (for example cash, savings account, chequing account)*	*Current balance*
Investments—including TFSAs, RRSPs, stocks and bonds, pensions	*Type of investment*	*Current balance*
Loans and Credit *(money owing to me)*	*Name of borrower*	*Amount owing*
Other—including precious metals, art, jewellery or other items of high value	*Brief description*	*Market value*
	Total	

DISPOSITION OF ASSETS

I have sold or disposed of an asset(s) in the last two years

[ ] yes

[ ] no

If yes, please describe the asset(s) you sold or disposed of and indicate how much you made from the sale or disposal

[specify]

Commented [VL23]: Similarly, clients must list *all* assets, even if there is no value
e.g. savings accounts with 0 balance must still be listed

Commented [VL24]: Each bank account/credit facility should be listed separately. Remember to indicate:
- Name of financial institution
- Account number
- Name of the owner of account (solely by a party or jointly by parties, or new spouse)

Again, one line per item

PART 4—Income of Other Persons in Household

Commented [VL25]: Do not need to complete this unless the client or the opposing party is making a claim for undue hardship

Complete this part only if you or the other party has made a claim for undue hardship in a child support claim.

Complete all sections that apply to your circumstances. You may leave a section blank.

1. [ ] I live alone

2. [ ] I am living with *[full name of person I am married to or cohabitating with]*. They have an annual income of $*[amount]*

3. [ ] I/we live with the following other adult(s):

Full name of adult	Annual income

4. [ ] I/we have *[number of children]* child(ren) who live(s) in the home

5. My spouse/partner or other adult(s) residing in the home contributes about $*[amount]* per *[frequency of contribution(s)]* towards the household expenses

PART 5—Undue Hardship

Commented [VL26]: Do not need to complete this unless client is making a claim for undue hardship

Complete this part only if you have made a claim for undue hardship in a child support claim.

Complete all sections that apply to your circumstances. You may leave a section blank.

1. [ ] I have an unusual or excessive amount of debt I incurred to support the family prior to separation or to earn a living as follows:

Name of creditor and reason for borrowing *(name of bank, finance company, etc.)*	Balance owing	Annual debt repayment

2. [ ] I have unusually high expenses to exercise parenting time or contact with the child(ren)

   Specify below what expenses you have

   [specify]

3. [ ] I have a legal duty to support another person, such as a person who is ill or disabled or a former spouse

Full name of adult you support	Monthly amount paid for support	Annual amount paid for support

4. [ ] I have a legal duty to support a dependent child from another relationship

Full name of dependent you support	Monthly amount paid for support	Annual amount paid for support

5. [ ] other undue hardship circumstances *(specify)*:

[specify]

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T1 Income Tax and Benefit Return 2020

Before you start:
If you are filling out this return for a **deceased person**, make sure you enter **their information** in all the boxes in Step 1.

Step 1 – Identification and other information

BC 8

Identification

Print your name and address below.

First name and initial
Ginevra

Last name
Weasley

Mailing address: Apt No. – Street No. Street name
123 Diagon Alley

PO Box	RR

City	Prov./Terr.	Postal code
London		

Email address

By providing an email address, you are **registering** to receive email notifications from the CRA and **agree** to the **Terms of use** under Step 1 in the guide.

Enter an email address: gweasley@wizard.ca

Information about your residence

Enter your province or territory of residence on **December 31, 2020**:

Enter the province or territory where you **currently** reside if it is not the same as your mailing address above:

If you were self-employed in 2020, enter the province or territory where your business had a permanent establishment:

If you **became** or **ceased** to be a **resident of Canada** for income tax purposes **in 2020**, enter the date of:

entry Month Day or **departure** Month Day

Information about you

Enter your social insurance number (SIN): 1 1 1 1 1 1 1 1 1

Enter your date of birth: Year 1 9 8 0 Month 0 1 Day 0 1

Your language of correspondence: English ☑ Français ☐
Votre langue de correspondance :

Is this return for a deceased person?

Ensure the **SIN** information above is for the deceased person.

If this **return** is for a **deceased person**, enter the date of death: Year Month Day

Marital status

Tick the box that applies to your marital status on December 31, 2020:

1 ☐ Married 2 ☐ Living common-law 3 ☐ Widowed
4 ☐ Divorced 5 ☑ Separated 6 ☐ Single

Information about your spouse or common-law partner (if you ticked box 1 or 2 above)

Enter their SIN:

Enter their first name:

Enter their net income for 2020 to claim certain credits:

Enter the amount of universal child care benefit (UCCB) from line 11700 of their return:

Enter the amount of UCCB repayment from line 21300 of their return:

Tick this box if they were self-employed in 2020: 1 ☐

Do not use this area					

Residency information for tax administration agreements

Did you reside on **Nisga'a Lands** on December 31, 2020? Yes ☐ 1 No ☑ 2

If **yes**, are you a citizen of the **Nisga'a Nation**? Yes ☐ 1 No ☑ 2

Do not use this area	17200					17100				

Protected B when completed

Step 1 – Identification and other information (continued)

Please answer the following questions.

Elections Canada (For more information, see "Elections Canada" under Step 1, in the guide.)

A) Do you have Canadian citizenship? Yes ☑ 1 No ☐ 2

If yes, go to question B. If no, skip question B.

B) As a Canadian citizen, do you authorize the Canada Revenue Agency to give your name, address, date of birth, and citizenship to Elections Canada to update the National Register of Electors or, if you are aged 14 to 17, to update the Register of Future Electors? Yes ☑ 1 No ☐ 2

Your authorization is valid until you file your next tax return. Your information will only be used for purposes permitted under the Canada Elections Act, which include sharing lists of electors produced from the National Register of Electors with provincial and territorial electoral agencies, members of Parliament, registered and eligible political parties, and candidates at election time.

Your information in the Register of Future Electors will be included in the National Register of Electors once you turn 18 and your eligibility is confirmed. Information from the Register of Future Electors can be shared only with provincial and territorial electoral agencies that are allowed to collect future elector information. In addition, Elections Canada can use information in the Register of Future Electors to provide youth with educational information about the electoral process.

Indian Act – Exempt income

Tick this box if you have any income that is exempt under the Indian Act.
For more information on this type of income, go to **canada.ca/taxes-aboriginal-peoples**. 1 ☐

If you **tick** the box, complete Form T90, Income Exempt From Tax Under the Indian Act. Complete this form so that the CRA can calculate your Canada training credit limit for the 2021 tax year. The information you provide may also be used to calculate your Canada workers benefit for the 2020 tax year, if applicable. It also may be used to calculate your family's provincial or territorial benefits.

Foreign property

Did you own or hold specified foreign property where the total cost amount of all such property, at any time in 2020, was more than CAN$100,000? 26600 Yes ☐ 1 No ☐ 2

If **yes**, complete Form T1135, Foreign Income Verification Statement. There are substantial penalties for not completing and filing Form T1135 by the due date. For more information, see Form T1135.

Protected B when completed

Attach only the documents (schedules, information slips, forms, or receipts) **requested** to support any claim or deduction. Keep all other supporting documents.
If a line does not apply, leave it blank unless instructed otherwise.

Step 2 – Total income

As a resident of Canada, you have to report your income from all sources both inside and outside Canada. The Income Tax and Benefit Guide may have additional information for certain lines.

Employment income (box 14 of all T4 slips)					10100			1
Tax-exempt income for emergency services volunteers (see line 10100 in the guide)	10105							
Commissions included on line 1 (box 42 of all T4 slips)	10120							
Wage-loss replacement contributions (see line 10100 in the guide)	10130							
Other employment income					10400	+		2
Old age security pension (box 18 of the T4A(OAS) slip)					11300	+		3
CPP or QPP benefits (box 20 of the T4A(P) slip)					11400	+		4
Disability benefits included on line 4 (box 16 of the T4A(P) slip)	11410							
Other pensions and superannuation (see line 11500 in the guide and complete line 31400 in the Worksheet for the return)					11500	+		5
Elected split-pension amount (complete Form T1032)					11600	+		6
Universal child care benefit (UCCB) (go to canada.ca/line-11700) (see the RC62 slip)					11700	+		7
UCCB amount designated to a dependant	11701							
Employment insurance and other benefits (box 14 of the T4E slip)					11900	+		8
Employment insurance maternity and parental benefits and provincial parental insurance plan benefits	11905							
Taxable amount of dividends (eligible **and** other than eligible) from taxable Canadian corporations (complete the Worksheet for the return)					12000	+		9
Taxable amount of dividends other than eligible dividends, included on line 9, from taxable Canadian corporations (complete the Worksheet for the return)	12010							
Interest and other investment income (complete the Worksheet for the return)					12100	+		10
Net partnership income: limited or non-active partners only					12200	+		11
Registered disability savings plan income (box 131 of the T4A slip)					12500	+		12
Rental income (see Guide T4036)	Gross	12599		Net	12600	+		13
Taxable capital gains (complete Schedule 3)					12700	+		14
Support payments received (see Guide P102)	Total	12799		Taxable amount	12800	+		15
RRSP income (from all T4RSP slips)					12900	+		16
Other income	Specify:				13000	+		17
Taxable scholarship, fellowships, bursaries, and artists' project grants					13010	+		18
Self-employment income (see Guide T4002)								
Business income	Gross	13499	50,000 00	Net	13500	+	25,000 00	19
Professional income	Gross	13699		Net	13700	+		20
Commission income	Gross	13899		Net	13900	+		21
Farming income	Gross	14099		Net	14100	+		22
Fishing income	Gross	14299		Net	14300	+		23
Workers' compensation benefits (box 10 of the T5007 slip)		14400					24	
Social assistance payments		14500	+				25	
Net federal supplements (box 21 of the T4A(OAS) slip)		14600	+				26	
Add lines 24 to 26 (see line 54 in Step 4).		14700	=		▶	+		27
Add lines 1 to 23 and 27.	This is your **total income.**				15000	=	25,000 00	28

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Step 3 – Net income

Enter your **total income** from line 28 from the previous page.			15000	25,000 00	29
Pension adjustment (box 52 of all T4 slips and box 034 of all T4A slips)	20600				
Registered pension plan deduction (box 20 of all T4 slips and box 032 of all T4A slips)	20700				30
RRSP deduction (see Schedule 7 and **attach** receipts)	20800	+			31
Pooled registered pension plan (PRPP) **employer** contributions (amount from your PRPP contribution receipts)	20810				
Deduction for elected split-pension amount (complete Form T1032)	21000	+			32
Annual union, professional, or like dues (receipts and box 44 of all T4 slips)	21200	+			33
Universal child care benefit repayment (box 12 of all RC62 slips)	21300	+			34
Child care expenses (complete Form T778)	21400	+			35
Disability supports deduction (complete Form T929)	21500	+			36
Business investment loss (see Guide T4037) Gross 21699	Allowable deduction	21700	+		37
Moving expenses (complete Form T1-M)	21900	+			38
Support payments made (see Guide P102) Total 21999	Allowable deduction	22000	+		39
Carrying charges and interest expenses (complete the Worksheet for the return)	22100	+			40
Deduction for CPP or QPP contributions on self-employment and other earnings (complete Schedule 8 or Form RC381, whichever applies)	22200	+	1,000 00		•41
Deduction for CPP or QPP enhanced contributions on employment income (complete Schedule 8 or Form RC381, whichever applies) **(maximum $165.60)**	22215	+			•42
Exploration and development expenses (go to canada.ca/line-22400) (complete Form T1229)	22400	+			43
Other employment expenses (see Guide T4044)	22900	+			44
Clergy residence deduction (complete Form T1223)	23100	+			45
Other deductions Specify:	23200	+			46
Add lines 30 to 46.	23300	=	1,000 00	▶ – 1,000 00	47
Line 29 minus line 47 (if negative, enter "0") This is your **net income before adjustments.**			23400	= 24,000 00	48
Social benefits repayment (If you reported income at line 8 and the amount at line 48 is **more than $67,750**, see the repayment chart on the back of your T4E slip. If you reported income on lines 3 or 26, and the amount at line 48 is **more than $79,054**, or you have an amount at code 202 on your T4A slip, and the amount at line 48 is **more than $38,000**, complete the chart for line 23500 on the Worksheet for the return. Otherwise, enter "0")			23500	–	•49
Line 48 minus line 49 (if negative, enter "0") This is your **net income.**			23600	=	50

Protected B when completed

Step 4 – Taxable income

Enter your **net income** from line 50 on the previous page.			23600			51
Canadian Forces personnel and police deduction (box 43 of all T4 slips)	24400			52		
Security options deductions (boxes 39 and 41 of T4 slips or see Form T1212)	24900	+		53		
Other payments deduction (claim the amount from line 27, unless it includes an amount at line 26. If so, see line 25000 in the guide)	25000	+		54		
Limited partnership losses of other years (go to canada.ca/line-25100)	25100	+		55		
Non-capital losses of other years (go to canada.ca/line-25200)	25200	+		56		
Net capital losses of other years	25300	+		57		
Capital gains deduction (complete Form T657)	25400	+		58		
Northern residents deductions (complete Form T2222)	25500	+		59		
Additional deductions Specify:	25600	+		60		
Add lines 52 to 60.	25700	=		▶	–	61
Line 51 minus line 61 (if negative, enter "0") This is your **taxable income.**			26000	=	24,000 00	62

Step 5 – Federal tax

Part A – Federal tax on taxable income

Enter your **taxable income** from line 62.					24,000 00	63

Complete the appropriate column depending on the amount on line 63.	Line 63 is **$48,535** or less	Line 63 is more than **$48,535** but not more than **$97,069**	Line 63 is more than **$97,069** but not more than **$150,473**	Line 63 is more than **$150,473** but not more than **$214,368**	Line 63 is more than **$214,368**	
Enter the amount from line 63.	24,000 00					64
Line 64 minus line 65 (cannot be negative)	– 0 00	– 48,535 00	– 97,069 00	– 150,473 00	– 214,368 00	65
	=	=	=	=	=	66
Multiply line 66 by line 67.	× 15%	× 20.5%	× 26%	× 29%	× 33%	67
	=	=	=	=	=	68
Add lines 68 and 69.	+ 0 00	+ 7,280 25	+ 17,229 72	+ 31,114 76	+ 49,644 31	69
Enter this amount on line 108 on page 7 of this return	=	=	=	=	=	70

Part B – Federal non-refundable tax credits

If your net income at line 23600 is **$150,473 or less**, enter $13,229 on line 30000. If your net income is **$214,368 or more**, enter $12,298. Otherwise, complete the calculation using the Worksheet for the return to determine how much to claim on line 30000.

Basic personal amount **(maximum $13,229)**			30000			71
Age amount (if you were born in 1955 or earlier) (complete the Worksheet for the return) **(maximum $7,637)**			30100	+		72
Spouse or common-law partner amount (complete Schedule 5)			30300	+		73
Amount for an eligible dependant (complete Schedule 5)			30400	+		74
Canada caregiver amount for spouse or common-law partner, or eligible dependant age 18 or older (complete Schedule 5)			30425	+		75
Canada caregiver amount for other infirm dependants age 18 or older (complete Schedule 5)			30450	+		76
Canada caregiver amount for infirm children under 18 years of age (go to canada.ca/lines-30499-30500) Enter the number of children for whom you are claiming this amount.	30499	× $2,273 =	30500	+		77
Add lines 71 to 77. **Subtotal**					=	78

Continue on the next page

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Part B – Federal non-refundable tax credits (continued)

Enter the **subtotal** amount from line 78 on the previous page.				79
Base CPP or QPP contributions: through employment income (complete Schedule 8 or Form RC381, whichever applies)		30800 +		•80
on self-employment and other earnings (complete Schedule 8 or Form RC381, whichever applies)		31000 +		•81
Employment insurance premiums: through employment from box 18 and box 55 of all T4 slips	**(maximum $856.36)**	31200 +		•82
on self-employment and other eligible earnings (complete Schedule 13)		31217 +		•83
Volunteer firefighters' amount (go to **canada.ca/lines-31220-31240**)		31220 +		84
Search and rescue volunteers' amount (go to **canada.ca/lines-31220-31240**)		31240 +		85
Canada employment amount (enter $1,245 or the total of your employment income you reported on lines 1 and 2, **whichever is less**)		31260 +		86
Home buyers' amount (go to **canada.ca/line-31270**)		31270 +		87
Home accessibility expenses (**go to canada.ca/line-31285**) (complete the Worksheet for the return)	**(maximum $10,000)**	31285 +		88
Adoption expenses (go to **canada.ca/line-31300**)		31300 +		89
Digital news subscription expenses	**(maximum $500)**	31350 +		90
Pension income amount (complete the Worksheet for the return)	**(maximum $2,000)**	31400 +		91
Disability amount (for self) (claim $8,576 or if you were under 18 years of age, complete the Worksheet for the return)		31600 +		92
Disability amount transferred from a dependant (complete the Worksheet for the return)		31800 +		93
Interest paid on your student loans (see Guide P105)		31900 +		94
Your tuition, education, and textbook amounts (complete Schedule 11)		32300 +		95
Tuition amount transferred from a child		32400 +		96
Amounts transferred from your spouse or common-law partner (complete Schedule 2)		32600 +		97
Medical expenses for **self, spouse or common-law partner, and your dependent children born in 2003 or later**	33099			98
Enter $2,397 or 3% of line 50, **whichever is less.**		–		99
Line 98 minus line 99 (if negative, enter "0")		=		100
Allowable amount of medical expenses for **other dependants** (complete the Worksheet for the return)	33199 +			101
Add lines 100 and 101.	33200 =		► +	102
Add lines 79 to 97, and line 102.		33500 =		103
Federal non-refundable tax credit rate			× 15%	104
Multiply line 103 by line 104.		33800 =		105
Donations and gifts (complete Schedule 9)		34900 +		106
Add lines 105 and 106. Enter this amount on line 111 on the next page	**Total federal non-refundable tax credits**	35000 =		107

Protected B when completed

Part C – Net federal tax

Enter the amount from line 70.					108
Federal tax on split income (complete Form T1206)	40424	+		•	109
Add lines 108 and 109.	40400	=		►	110
Enter your total federal non-refundable tax credits from line 107 on the previous page.	35000				111
Federal dividend tax credit (see line 40425 in the guide)	40425	+		•	112
Minimum tax carryover (go to canada.ca/line-40427) (complete Form T691)	40427	+		•	113
Add lines 111 to 113.		=		► –	114
Line 110 minus line 114 (if negative, enter "0")			**Basic federal tax** 42900	=	115
Federal foreign tax credit (complete Form T2209)			40500	–	116
Line 115 minus line 116 (if negative, enter "0")			**Federal tax** 40600	=	117
Total federal political contributions (**attach** receipts) 40900					118
Federal political contribution tax credit (complete the Worksheet for the return) **(maximum $650)**	41000			•	119
Investment tax credit (complete Form T2038(IND))	41200	+		•	120
Labour-sponsored funds tax credit (see lines 41300 and 41400 in the guide)					
Net cost of shares of a provincially registered fund 41300 — Allowable credit	41400	+		•	121
Add lines 119 to 121.	41600	=		► –	122
Line 117 minus line 122 (if negative, enter "0")			41700	=	123
Canada workers benefit advance payments received (box 10 of the RC210 slip)			41500	+	• 124
Special taxes (see line 41800 in the guide)			41800	+	125
Add lines 123 to 125. Enter this amount on line 127 below.			**Net federal tax** 42000	=	126

Step 6 – Provincial or territorial tax

Complete and attach Form 428 to calculate your provincial or territorial tax.

Step 7 – Refund or balance owing

Net federal tax: enter the amount from line 126.	42000			127
CPP contributions payable on self-employment and other earnings (complete Schedule 8 or Form RC381, whichever applies)	42100	+	•	128
Employment insurance premiums payable on self-employment and other eligible earnings (complete Schedule 13)	42120	+		129
Social benefits repayment (amount from line 49)	42200	+		130
Provincial or territorial tax (attach Form 428, even if the result is "0")	42800	+		131
Add lines 127 to 131. This is your **total payable.**	43500	=	•	132

Continue on the next page

Protected B when completed

Step 7 – Refund or balance owing (continued)

Enter the **total payable** amount from line 132 on the previous page			43500	133
Total income tax deducted (amounts from all Canadian slips)	43700			•134
Refundable Quebec abatement (see line 44000 in the guide)	44000	+		•135
CPP overpayment (see line 30800 in the guide)	44800	+		•136
Employment insurance overpayment (see line 45000 in the guide)	45000	+		•137
Refundable medical expense supplement (complete the Worksheet for the return)	45200	+		•138
Canada workers benefit (CWB) (complete Schedule 6)	45300	+		•139
Canada training credit (CTC) (complete Schedule 11)	45350	+		•140
Refund of investment tax credit (complete Form T2038(IND))	45400	+		•141
Part XII.2 trust tax credit (box 38 of all T3 slips and box 209 of all T5013 slips)	45600	+		•142
Employee and partner GST/HST rebate (complete Form GST370)	45700	+		•143
Eligible educator school supply tax credit Supplies expenses **(maximum $1,000)** 46800 × 15% =	46900	+		•144
Canadian journalism labour tax credit (box 236 of all T5013 slips)	47555	+		•145
Tax **paid** by instalments	47600	+		•146
Provincial or territorial credits (complete Form 479, if it applies)	47900	+		•147
Add lines 134 to 147. These are your **total credits.**	48200	=	► –	148
Line 133 minus line 148 This is your **refund** or **balance owing.**			=	149

If the result is negative, you have a **refund**. If the result is positive, you have a **balance owing**.

Enter the amount below on whichever line applies.

Generally, we do not charge or refund a difference of $2 or less.

Refund 48400 •

For more information on how to enrol for direct deposit, go to **canada.ca/cra-direct-deposit**.

Balance owing 48500 •

For more information on how to make your payment, go to **canada.ca/payments**. Your balance owing is due no later than April 30, 2021.

I certify that the information given on this return and in any documents attached is correct and complete and fully discloses all my income.

Sign here _____

It is a serious offence to make a false return.

Telephone number: _____

Date: _____

If this return was completed by a tax professional, tick the applicable box and provide the following information:

49000 Was a fee charged? Yes ☐ 1 No ☐ 2

48900 EFILE number (if applicable):

Name of tax professional:

Telephone number:

Personal information (including the SIN) is collected for the purposes of the administration or enforcement of the Income Tax Act and related programs and activities including administering tax, benefits, audit, compliance, and collection. The information collected may be used or disclosed for purposes of other federal acts that provide for the imposition and collection of a tax or duty. It may also be disclosed to other federal, provincial, territorial, or foreign government institutions to the extent authorized by law. Failure to provide this information may result in interest payable, penalties, or other actions. Under the Privacy Act, individuals have a right of protection, access to and correction of their personal information, or to file a complaint with the Privacy Commissioner of Canada regarding the handling of their personal information. Refer to Personal Information Bank CRA PPU 005 on Info Source at **canada.ca/cra-info-source**.

Do not use this area	48700 ☐ 48800 ☐	• 48600 •

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Statement of Business or Professional Activities

- Use this form to calculate your self-employment business and professional income.
- For each business or profession, fill in a **separate** Form T2125.
- Fill in this form and send it with your income tax and benefit return.
- For more information on how to fill in this form, see Guide T4002, Self-employed Business, Professional, Commission, Farming, and Fishing Income.

Part 1 – Identification

Your name **Ginevra Weasley**	Your social insurance number 1 1 1 1 1 1 1 1 1
Business name **Weasley Magic's Limited**	Business number

Business address	City	Prov./Terr.	Postal code

Fiscal period	Date (YYYYMMDD) From 2 0 2 0 0 1 0 1	Date (YYYYMMDD) to 2 0 2 0 1 2 3 1

Was this your last year of business? ☐ Yes ☑ No

Main product or service	Industry code (see the appendix in Guide T4002)

Accounting method (commission only) ☐ Cash ☐ Accrual	Tax shelter identification number	Partnership business number	Your percentage of the partnership %

Name and address of the person or firm preparing this form

Part 2 – Internet business activities

If your web pages or websites generate business or professional income, fill in this part of the form.

How many Internet web pages and websites does your business earn income from? Enter "0" if none . . . . . _____

Provide up to five main web page or website addresses, also known as uniform resource locator (URL):

http:// _____

http:// _____

http:// _____

http:// _____

http:// _____

Percentage of your gross income generated from the web pages and websites.
(If no gross income was generated from the Internet, enter "0".) . . . . . _____ %

Protected B when completed

Part 3A – Business income

Fill in this part **only** if you have business income. If you have professional income, leave this part blank and fill in Part 3B.
If you have both business and professional income, you have to fill out a separate Form T2125 for each.

Part 3B – Professional income

Fill in this part **only** if you have professional income. If you have business income, leave this part blank and fill in Part 3A.
If you have both business and professional income, you have to fill out a separate Form T2125 for each.

Note: New rules allow you to include your work in progress (WIP) progressively if you elected to use billed basis accounting for the last tax year that started before March 22, 2017. Generally, for the first tax year that starts after March 21, 2017, you must include 20% of the lesser of the cost and the fair market value of WIP. The inclusion rate increases to 40% in the second tax year that starts after March 21, 2017, 60% in the third year, 80% in the fourth year, and 100% in the fifth and all subsequent tax years. For more information, see Chapter 2 of Guide T4002.

Part 3A – Business income

Gross sales, commissions, or fees (include GST/HST collected or collectible)		50,000.00 3A
GST/HST, provincial sales tax, returns, allowances, discounts, and GST/HST adjustments (included in amount 3A)		3B
Subtotal: Amount 3A **minus** amount 3B		50,000.00 3C
If you are using the quick method for GST/HST – Government assistance calculated as follows: GST/HST collected or collectible on sales, commissions and fees eligible for the quick method	3D	
GST/HST remitted, (sales, commissions, and fees eligible for the quick method **plus** GST/HST collected or collectible) **multiplied** by the applicable quick method remittance rate	3E	
Subtotal: Amount 3D **minus** amount 3E		3F
Adjusted gross sales: Amount 3C **plus** amount 3F (enter on line 8000 of Part 3C)		50,000.00 3G

Part 3B – Professional income

Gross professional fees including work-in-progress (WIP) and GST/HST collected or collectible		3H
GST/HST, provincial sales tax, returns, allowances, discounts, and GST/HST adjustments (included in amount 3H) and any WIP at the end of the year you elected to exclude		3I
Subtotal: Amount 3H **minus** amount 3I		3J
If you are using the quick method for GST/HST – Government assistance calculated as follows: GST/HST collected or collectible on professional fees eligible for the quick method	3K	
GST/HST remitted, (professional fees eligible for the quick method **plus** GST/HST collected or collectible) **multiplied** by the applicable quick method remittance rate	3L	
Subtotal: Amount 3K **minus** amount 3L		3M
Work-in-progress (WIP), start of the year, per election to exclude WIP (see Guide T4002, Chapter 2)		3N
Adjusted professional fees: Amount 3J **plus** amount 3M **plus** amount 3N (enter on line 8000 of Part 3C)		3O

Part 3C – Gross business or professional income

Adjusted gross sales (amount 3G) or adjusted professional fees (amount 3O)		8000	50,000.00
Reserves deducted last year	8290		
Other income (specify)*:			
	8230		
Subtotal: Line 8290 **plus** line 8230		▶	3P
Gross business or professional income: Line 8000 **plus** amount 3P		8299	50,000.00

Report the gross business or professional income from line 8299 on the applicable line of your income tax and benefit return as indicated below:

- business income on line 13499
- professional income on line 13699
- commission income on line 13899

* You may have received assistance from COVID-related measures from the federal, provincial or territorial governments. For more information, go to **canada.ca/cra-coronavirus**.

For Parts 3D, 4 and 5, if GST/HST has been remitted or an input tax credit has been claimed, do not include GST/HST when you calculate the cost of goods sold, expenses, or net income (loss).

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Part 3D – Cost of goods sold and gross profit

If you have business income, fill in this part. Enter only the business part of the costs.

Gross business income (line 8299 of Part 3C)				3Q
Opening inventory (include raw materials, goods in process, and finished goods)	8300		3R	
Purchases during the year (net of returns, allowances, and discounts)	8320		3S	
Direct wage costs	8340		3T	
Subcontracts	8360		3U	
Other costs	8450		3V	
Subtotal: Add amounts 3R to 3V			3W	
Closing inventory (include raw materials, goods in process, and finished goods)	8500			
Cost of goods sold: Amount 3W **minus** line 8500	8518		▶	
Gross profit (or loss): Amount 3Q **minus** line 8518			8519	

Part 4 – Net income (loss) before adjustments

Gross business or professional income (line 8299 of Part 3C) or **Gross profit** (line 8519 of Part 3D)				4A
Expenses (enter only the business part)				
Advertising	8521	1,000.00	4B	
Meals and entertainment	8523	3,000.00	4C	
Bad debts	8590		4D	
Insurance	8690	2,000.00	4E	
Interest and bank charges	8710	1,000.00	4F	
Business taxes, licences, and memberships	8760		4G	
Office expenses	8810		4H	
Office stationery and supplies	8811	1,000.00	4I	
Professional fees (includes legal and accounting fees)	8860		4J	
Management and administration fees	8871		4K	
Rent	8910	12,000.00	4L	
Repairs and maintenance	8960		4M	
Salaries, wages, and benefits (including employer's contributions)	9060		4N	
Property taxes	9180		4O	
Travel expenses	9200	5,000.00	4P	
Utilities	9220		4Q	
Fuel costs (except for motor vehicles)	9224		4R	
Delivery, freight, and express	9275		4S	
Motor vehicle expenses (not including CCA) (amount 16 of Chart A)	9281		4T	
Capital cost allowance (CCA). Enter amount i of Area A **minus** any personal part and any CCA for business-use-of-home expenses	9936		4U	
Other expenses (specify): _____	9270		4V	
Total expenses: Total of amounts 4B to 4V	9368	25,000.00	▶	
Net income (loss) before adjustments: Amount 4A **minus** line 9368			9369	25,000.00

Part 5 – Your net income (loss)

Your share of line 9369 or the amount from your T5013 slip, Statement of Partnership Income		25,000.00	5A	
GST/HST rebate for partners received in the year	9974			
Total: Amount 5A **plus** line 9974		25,000.00	▶	25,000.00 5B
Other amounts deductible from your share of net partnership income (loss) (amount 6F)			9943	
Net income (loss) after adjustments: Amount 5B **minus** line 9943				25,000.00 5C
Business-use-of-home expenses (amount 7P)			9945	
Your net income (loss): Amount 5C **minus** line 9945			9946	25,000.00

Report the net income amount from line 9946 on the applicable line of your income tax and benefit return as indicated below:

- business income on line 13500
- professional income on line 13700
- commission income on line 13900

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Part 6 – Other amounts deductible from your share of net partnership income (loss)

Claim expenses you incurred that were not included in the partnership statement of income and expenses, and for which the partnership did not reimburse you. These claims must not be included in the claims already calculated for the partnership.

List details of expenses:	**Expense amounts**	
		6A
		6B
		6C
		6D
		6E
Total other amounts deductible from your share of the net partnership income (loss): Add amounts 6A to 6E (enter this on line 9943 of Part 5)		6F

Part 7 – Calculating business-use-of-home expenses

Heat		7A
Electricity		7B
Insurance		7C
Maintenance		7D
Mortgage interest		7E
Property taxes		7F
Other expenses (specify):		7G
Subtotal: Add amounts 7A to 7G		7H
Personal-use part of the business-use-of-home expenses		7I
Subtotal: Amount 7H **minus** amount 7I		7J
Capital cost allowance (business part only), which means amount i of Area A **minus** any portion of CCA that is for personal use or entered on line 9936 of Part 4		7K
Amount carried forward from previous year		7L
Subtotal: Add amounts 7J to 7L		7M
Net income (loss) after adjustments (amount 5C) (if negative, enter "0")		7N
Business-use-of-home expenses available to carry forward: Amount 7M **minus** amount 7N (if negative, enter "0")		7O
Allowable claim: Amount 7M or 7N above, whichever is less (enter your share of this amount on line 9945 of Part 5)		7P

Part 8 – Details of other partners

Do not fill in this chart if you must file a partnership information return.

Name of partner				
Address	Prov./Terr.	Postal code	Share of net income or (loss)	Percentage of partnership
			$	%
Name of partner				
Address	Prov./Terr.	Postal code	Share of net income or (loss)	Percentage of partnership
			$	%
Name of partner				
Address	Prov./Terr.	Postal code	Share of net income or (loss)	Percentage of partnership
			$	%
Name of partner				
Address	Prov./Terr.	Postal code	Share of net income or (loss)	Percentage of partnership
			$	%

Part 9 – Details of equity

Total business liabilities	9931	
Drawings in the current year	9932	
Capital contributions in the current year	9933	

Area A – Calculation of capital cost allowance (CCA) claim

1 Class number	2 Undepreciated capital cost (UCC) at the start of the year	3 Cost of additions in the year (see Areas B and C below)	4 Cost of additions from column 3 which are AIIP or zero-emission vehicles (ZEV) (property must be available for use in the year) Note 1	5 Proceeds of dispositions in the year (see Areas D and E below)	6* UCC after additions and dispositions (col. 2 **plus** col. 3 **minus** col. 5)	7 Proceeds of dispositions available to reduce additions of AIIP and ZEV (col. 5 **minus** col. 3 **plus** col. 4). If negative, enter "0" Note 2	8 UCC adjustment for current-year additions of AIIP and ZEV (col. 4 **minus** col. 7) **multiplied** by the relevant factor. If negative, enter "0" Note 3	9 Adjustment for current-year additions subject to the half-year rule 1/2 **multiplied** by (col. 3 **minus** col. 4 **minus** col. 5). If negative, enter "0"	10 Base amount for CCA (col. 6 **plus** col. **8 minus** col. 9)	11 CCA rate %	12 CCA for the year (col. 10 **multiplied** by col. 11 or a lower amount)	13 UCC at the end of the year (col. 6 **minus** col. 12)

Total CCA claim for the year: Total of column 12 (enter the amount on line 9936 of Part 4, amount i **minus** any personal part and any CCA for business-use-of-home expenses**) ▶ i

* If you have a negative amount in column 6, add it to income as a recapture in Part 3C on line 8230. If no property is left in the class and there is a positive amount in the column, deduct the amount from income as a terminal loss in Part 4 on line 9270. Recapture and terminal loss do not apply to a Class 10.1 property. For more information, read Chapter 3 of Guide T4002.

** For information on CCA for "Calculating business-use-of-home expenses," see "Special situations" in Chapter 4 of Guide T4002. To help you calculate the capital cost allowance claim, see the calculation charts in Areas B to F.

Note 1: Columns 4, 7, and 8 apply only to accelerated investment incentive properties (AIIPs) (see Regulation 1104(4) of the Income Tax Regulations for the definition), zero-emission vehicles, zero-emission passenger vehicles and, under proposed legislation, other eligible zero-emission automotive equipment and vehicles that become available for use in the year. In this chart, ZEV represents zero-emission vehicles, zero-emission passenger vehicles and other eligible zero-emission automotive equipment and vehicles. An AIIP is a property (other than ZEV) that you acquired after November 20, 2018, and became available for use before 2028. A ZEV is a motor vehicle included in Class 54 or 55 that you acquired after March 18, 2019, and became available for use before 2028, or eligible zero-emission automotive equipment and vehicles included in Class 56 acquired after March 1, 2020, and that became available for use before 2028. For more information, see Guide T4002.

Note 2: The proceeds of disposition of a zero-emission passenger vehicle (ZEPV) that has been included in Class 54 and that is subject to the $55,000 capital cost limit will be adjusted based on a factor equal to the capital cost limit of $55,000 as a proportion of the actual cost of the vehicle. For dispositions after July 29, 2019, the government proposes that the actual cost of the vehicle be adjusted for any payments or repayments of government assistance that you may have received or repaid in respect of the vehicle. For more information on proceeds of disposition, read "Class 54 (30%)" in Guide T4002.

Note 3: The relevant factors for properties available for use before 2024 are 2 1/3 (Classes 43.1, 54 and 56), 1 1/2 (Class 55), 1 (Classes 43.2 and 53), 0 (Classes 12, 13, 14, 15), and 1/2 for the remaining accelerated investment incentive properties.

For more information on accelerated investment incentive properties, see Guide T4002 or go to canada.ca/taxes-accelerated-investment-income.

Area B – Equipment additions in the year

1 Class number	2 Property description	3 Total cost	4 Personal part (if applicable)	5 Business part (column 3 **minus** column 4)
	Total equipment additions in the year: Total of column 5 9925			

Area C – Building additions in the year

1 Class number	2 Property description	3 Total cost	4 Personal part (if applicable)	5 Business part (column 3 **minus** column 4)
	Total building additions in the year: Total of column 5 9927			

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Area D – Equipment dispositions in the year

1 Class number	2 Property description	3 Proceeds of disposition (should not be more than the capital cost)	4 Personal part (if applicable)	5 Business part (column 3 **minus** column 4)
			Total equipment dispositions in the year: Total of column 5 9926	

Note: If you disposed of property in the year, see Chapter 3 of Guide T4002 for information about your proceeds of disposition.

Area E – Building dispositions in the year

1 Class number	2 Property description	3 Proceeds of disposition (should not be more than the capital cost)	4 Personal part (if applicable)	5 Business part (column 3 **minus** column 4)
			Total building dispositions in the year: Total of column 5 9928	

Note: If you disposed of property in the year, see Chapter 3 of Guide T4002 for information about your proceeds of disposition.

Area F – Land additions and dispositions in the year

Total cost of all land additions in the year	9923	
Total proceeds from all land dispositions in the year	9924	

Note: You cannot claim capital cost allowance on land. For more information, see Chapter 3 of Guide T4002.

Chart A – Motor vehicle expenses

Kilometres you drove in the fiscal period that was part of earning business income		1
Total kilometres you drove in the fiscal period		2
Fuel and oil		3
Interest (use Chart B below)		4
Insurance		5
Licence and registration		6
Maintenance and repairs		7
Leasing (use Chart C below)		8
Electricity for zero-emission vehicles		9
Other expenses (specify):		10
		11
Total motor vehicle expenses: Add amounts 3 to 11		12

Business use part: (amount 1: / amount 2:) × amount 12: _____ = _____ 13

Business parking fees		14
Supplementary business insurance		15
Allowable motor vehicle expenses: Add amounts 13, 14, and 15 (enter this total on line 9281 of Part 4)		16

Note: You can claim CCA on motor vehicles in Area A.

Chart B – Available interest expense for passenger vehicles and zero-emission passenger vehicles

Total interest payable (accrual method) or paid (cash method) in the fiscal period		17
$10* × the number of days in the fiscal period for which interest was payable (accrual method) or paid (cash method)	=	18
Available interest expense: Amount 17 or 18, whichever is less (include this in amount 4 of Chart A above)		19

* For passenger vehicles bought after 2000.

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Chart C – Eligible leasing cost for passenger vehicles**

Total lease charges incurred in your current fiscal period for the vehicle 20

Total lease payments deducted before your current fiscal period for the vehicle 21

Total number of days the vehicle was leased in your current and previous fiscal periods 22

Manufacturer's list price 23

Use a GST rate of 5% or HST rate applicable to your province.

Amount 23 or ($35,294 + GST and PST, or HST on $35,294), whichever is more ▶ _____ × 85% = _____ 24

[($800 + GST and PST, or $800 + HST) × amount 22] / 30 ▶ _____ – amount 21: _____ = _____ 25

[($30,000 + GST and PST, or $30,000 + HST) × amount 20] / amount 24 . . . . . = _____ 26

Eligible leasing cost: Amount 25 or 26, whichever is less (enter in amount 8 of Chart A above) 27

** Includes a vehicle that would qualify as a zero-emission passenger vehicle if you owned it.

See the privacy notice on your return.

THE LAW FOUNDATION OF BRITISH COLUMBIA

2021
PROVINCIAL ADVOCATES
TRAINING CONFERENCE

Legal Aid BC

Vaccination law: issues in family law cases

Chandan Sabharwal

Topic: Families & Children

Recording Link: https://youtu.be/AYI1wMK-sZY

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Vincent v. Roche-Vincent,*
2012 BCSC 1233

Date: 20120816
Docket: E093215
Registry: Vancouver

Between:

Michael Sean Vincent

Plaintiff

And

Gráinne Roche-Vincent

Defendant

Before: The Honourable Mr. Justice Affleck

Reasons for Judgment

Counsel for the Plaintiff:	C. Linde
Counsel for the Defendant:	M. J. Cochrane
Place and Date of Trial:	Vancouver, B.C. July 3 - 6 and 9 - 13, 2012
Place and Date of Judgment:	Vancouver, B.C. August 16, 2012

The Issue Addressed in these Reasons

[1] This proceeding was commenced on October 9, 2009, which was a few days after the parties separated. The relief sought included an equal division of family assets, but the issue which featured most prominently in the statement of claim was the custody and guardianship of the child of the marriage, A, who was then four years old.

[2] The plaintiff, who I will refer to as the claimant, sought an order for joint custody and guardianship and an order that the child "remain resident on the lower mainland of British Columbia". The claimant did not seek a divorce.

[3] The defendant, who I will refer to as the respondent, filed a counterclaim in which she sought:

a) a divorce;

b) "a declaration under section 57 [sic: section 67 of the *Family Relations Act*, R.S.B.C. 1996, c. 128] that neither party shall dispose of any assets within their control without the express permission of the other party" and

c) "an order that, if the defendant [sic: the plaintiff now the claimant] fails to return the child to the custody of the defendant following access" the child may be apprehended by a peace officer.

[4] In his trial brief filed in March 2012 the claimant continued to seek an equal division of family assets, but the dominant theme remained the equal parenting of A and joint custody. The claimant specifically proposed A attend a Waldorf school in Courtenay known as Salt Water School.

[5] The respondent, in her trial brief, agrees to joint custody. She proposes A reside primarily with her and that he continue to attend Airport Elementary School in Comox. The respondent seeks spousal support and an unequal division of family assets in her favour.

[6] The trial reflected the dominant theme found in the pleadings, and in the trial briefs, which has been parenting of A.

[7] After several days of trial, and with constraints on the time available for argument of the financial issues, and the concern of both parties that the arrangements in respect of A be known as soon as possible, they agreed that only issues relating to A would be addressed now, with argument on financial issues left to a later date. At the end of these reasons I grant a divorce order.

The Marriage

[8] Notwithstanding the only issues to be addressed now are the custody, access and guardianship arrangements for A, the relationship between the parties must be addressed because it has had, and continues to have, a profound impact on A.

[9] The claimant is 49 years old and was born and brought up in Ontario. He has lived in British Columbia since 1990. The respondent, who is 48, was born and brought up in Ireland. Neither has family members living in British Columbia.

[10] The claimant worked in the film industry in British Columbia. In 2001 he went to Ireland to work for several months. In Ireland, the parties met and were immediately attracted to each other and began living together. After a few weeks the claimant returned to British Columbia and the respondent followed shortly thereafter. They lived in North Vancouver. In 2003 they returned to Ireland for a "Celtic wedding" and this was followed by a further wedding ceremony in North Vancouver on June 28, 2003.

[11] The respondent had a previous brief marriage, which ended in a divorce. This was distressing for her. She also learned that she was infertile, which added to her distress. The claimant was aware of the respondent's infertility before their marriage in 2003.

[12] When the parties met, neither had expectations of children. However, this changed shortly after their wedding, particularly for the respondent. They decided to

seek medical advice and undergo the necessary procedures to achieve in vitro fertilization.

[13] The parties attended a clinic in Seattle and had early success. Their child, A, was born in July 2005. I have no doubt that the birth of A was a joyous event for both parents. This is true for most parents, but for the parties the significance was beyond the ordinary. The claimant, as he moved into his 40s unmarried and childless, seems to have been reasonably content and busy with his work. On the other hand, the respondent had long attempted in vain to overcome her infertility and felt the absence of a child very keenly. For the respondent, who had not expected to be a mother, the birth of A brought great pleasure and satisfaction into her life. Her love for him, and her pleasure in watching him grow, brought a dimension to her life which has had immense effects, not all of which have been desirable.

[14] These remarks are not intended to deprecate the claimant's pleasure in having a son. I am satisfied both parents love their child and have his best interests at heart. However, their differing approaches to child rearing have unfortunately been a source of friction between them and this has contributed to the collapse of the marriage.

[15] The marriage effectively ended in October 2009 when the claimant left the matrimonial home at the request of the respondent. The respondent testified that over several years she had become increasingly concerned about the claimant. She described him as controlling, abusive and manipulative. She characterized the marriage as "coercive".

[16] Her evidence is that the claimant sought to control her during her pregnancy by, for example, monitoring her diet. While he remained aloof to a considerable extent from both her and A, he tried to control the timing and extent of her breastfeeding of A, who was not weaned until he was about four years old.

[17] The respondent describes the claimant as a man who is somewhat obsessed with his own health but avoids conventional medical care. This latter characteristic,

the respondent says, is revealed by the claimant's refusal to have A immunized against the usual childhood diseases. Furthermore, the respondent testifies that the claimant has instilled in A an anxiety about food to such an extent that A reads labels on food containers when they go shopping in grocery stores.

[18] The claimant denies this characterization of him by the respondent. He, for example, denies that he avoids medical care and says that he attends a dentist regularly and is presently undergoing physiotherapy. I accept that the respondent has reason to believe the claimant's views on some medical topics, particularly those involving immunization, are unconventional, but there is no reason to believe he avoids medical care altogether. I accept that he may seem more scrupulous than most with what he eats, but I do not believe he has been irresponsible with A.

[19] The respondent testified the claimant is an angry man who, as the marriage began to deteriorate, was increasingly abusive to her. She was not able to describe in any detail the nature of the abuse but gave the example that when she came into a room the claimant would immediately leave. The claimant denies any such event. The parties have different temperaments. The claimant is a restrained man of controlled emotions. The respondent has intense emotions that she longs to express. I believe these differences explain, at least in part, the respondent's very adverse reaction to the claimant in the time leading up to the separation.

[20] The respondent also asserts she was abused by what she describes as the excessive involvement of Robert Mitchell in the life of her family. Mr. Mitchell is a somewhat eccentric man who gave evidence at the trial. There were extended periods of time when Mr. Mitchell, and a woman with whom Mr. Mitchell has some form of relationship not fully described in the evidence, lived with the parties after A's birth.

[21] Mr. Mitchell is undoubtedly an unusual man but he gave his evidence at the trial in a straightforward and honest fashion. It is apparent that he has a large store of wisdom which he wishes to impart to those willing to listen. The respondent was

not one of the willing. It is not difficult to understand how the presence of Mr. Mitchell in the matrimonial home became annoying for the respondent.

[22] Mr. Mitchell's eccentricity notwithstanding, he was even handed when giving his evidence. He considers himself to be a friend of the claimant and, while he is critical of the way the respondent deals with A, he was measured and restrained in his evidence. His criticism of the respondent is, in part, that she tends to treat situations in which she is involved as "dramas". I accept this as a reasonable observation. As I have already remarked, the respondent is a person of intense emotions. This was at times reflected in her testimony at the trial. During her evidence in chief, she had a number of episodes of almost uncontrollable sobbing as she recounted the events of her marriage and her perceived difficulties with the claimant.

[23] It is not irrelevant that during her cross-examination she refrained from any tears or sobbing. There is truth in Mr. Mitchell's observation that the respondent sees her role in life as a drama. She is no doubt not alone in doing so, but I believe it has caused her to react to some events in a way that is more extreme than has been justified. I am also satisfied that her reactions have caused damage to her relationship with the claimant and with A.

The Separation

[24] The respondent went to Ireland to see her family on a number of occasions throughout the marriage. Some of these visits did not involve the claimant. She would take A. Her evidence is that on those occasions when the claimant had not accompanied her to Ireland, when she returned to British Columbia, she did so with reluctance because of her concerns about the claimant's behaviour towards her and towards A on their return. The claimant commented on the change in the respondent's behaviour when she had been to Ireland.

[25] In mid-September 2009 the respondent returned to British Columbia from one of her periodic visits to Ireland. She testified that A had been more relaxed in Ireland

and was less aggressive towards her than when they were living in British Columbia. I will comment later on A's aggressive behaviour towards his mother.

[26] The respondent was concerned about A's welfare when she returned from Ireland in September 2009 because "[the claimant] was cruel and aggressive towards me". She testified that by that time there was "nothing between us" and that the claimant was drinking heavily and taking drugs. The respondent expressed her fears to her family doctor and was given the telephone number of a women's shelter. She contacted the shelter. On October 2, 2009 the respondent told the claimant that she wanted him to leave the matrimonial home.

[27] The respondent testified that she did not ask the claimant to leave but told him only that she needed some "space". The respondent testified that she did not actually want the claimant to leave. I accept that the respondent requested the claimant to leave, which he did the next day.

[28] The respondent testified that after the claimant left the matrimonial home she heard nothing from him for about six or seven days until he texted her to say that he was coming home. In cross-examination the respondent retracted this evidence and accepted that the claimant had texted her on October 7, 2009 with a request to be able to speak with A. The messages were polite and benign.

[29] In the few days after the claimant left the matrimonial home, the respondent booked tickets for her and A to fly to Ireland. The claimant learned of this, sought legal advice and commenced these proceedings to seek an order preventing the respondent from traveling to Ireland. When the respondent was served with the statement of claim she cancelled the tickets.

[30] The respondent testified that when the claimant advised that he intended to return to the matrimonial home, she was too afraid to stay there herself and went to the women's shelter in Comox with A for a week. This fear contrasts with her response to a message from the claimant on October 7 2009 requesting an

opportunity for a "video chat" with A. The respondent's reply was "sure what time would you like. He's asking for you".

[31] The respondent's sisters came from Ireland and they stayed in a hotel for a further two weeks until she moved with A into a basement suite. They now live in a rented apartment in Comox.

[32] The respondent testified that she believed the claimant intended to take A away from her unless she "learned to please him". She further testified that before she asked him to leave their home, he had already been planning to do so. There is no evidence of this. She gave evidence that A had on occasion witnessed the claimant's abuse of the respondent, and she described the marriage as a "dictatorship". As a result of her view that A has witnessed abuse, she arranged for him to attend counselling. In an affidavit sworn November 9, 2009, which was put to the respondent on cross-examination, she deposed that the claimant was angry "all the time" and that the "slightest thing would set off a torrent of rage". She also deposed that the claimant's actions made her very fearful of leaving A with him alone. There was no rational basis on the evidence for this fear.

[33] In an affidavit sworn August 23, 2010, also put to the respondent in cross-examination, she gave evidence that when the claimant texted her in October 2009, stating that he intended to return home, her "terror began to build ... I didn't know what the claimant would be like or what he would do to punish me for telling the truth about our relationship and the way he had treated me". Further, she deposed that when she stayed with a friend after the claimant said he was coming home, she was "terrified for myself and the ... family" with whom she was living temporarily. She called the police to "tell them where I was and that I was afraid for my safety...".

[34] In the same affidavit, the respondent's evidence was that A "has been witness to psychological battery of his mother since he was born, and he has been subjected to his own psychological battery and physical intimidation [by] the claimant". She believes that when A, returns from a visit with the claimant, he becomes angry with her "because, I believe, that he sees me as not protecting him from the claimant".

[35] In the affidavit of August 23, 2010 the respondent observed that she "knew immediately" when the claimant left in October 2009 that he would go to be with Mr. Mitchell and Mr. Mitchell's companion because "they work as a threesome". She further deposed that "the fact he didn't stay in Courtenay or make one single attempt to talk to me means to me that he was plotting all this beforehand". She does not refer to the text messages from the claimant. Later in the affidavit the respondent deposes that "I always had the feeling that this was planned from way back. I imagine he had retained his lawyer long ago and was waiting for his chance". She goes on to say "the claimant was not a good husband or father. I was abused and battered by him emotionally until I was afraid for my life. The claimant is a violent man". In my opinion, this language reveals a paranoia to which the respondent is prone or at worst was a fabrication. I do not accept it accurately describes the claimant or his conduct.

The Respondents' Diary/Journals

[36] This very disturbing picture of the marriage, and of the respondent's relationship with the claimant generally, and with A, must be contrasted with the journals kept by the respondent. I note that Dr. Larry Waterman, who had in 2009 prepared a report pursuant to s. 15 of the *Family Relations Act*, opined that when considering A's best interests, too much emphasis has been placed on the journals. I agree with Dr. Waterman that the journals are only one of several sources of information that are relevant to the determination of the appropriate custody, access and guardianship arrangements for A. Nevertheless, the journals are important, in my opinion, because I am satisfied they accurately reveal the respondent's view of the marriage, and of the claimant at the time of writing.

[37] The documents which were variously described as a journal, a diary or, in part, a "baby book", were written by the respondent over several years. They are not carefully dated nor is the exhibit (16), which contains those that can be described as a journal, in consecutive order. They are not all of a single style, nor do they appear to have a single purpose. The "baby book" is a record of A's development. I have largely ignored it. The respondent sometimes described all these writings as a "baby

book". In part they were a "baby book", but in part they are more accurately described as a journal or diary. I will refer to them as journals.

[38] The respondent's evidence was that the journals were not meant entirely to be a record of events; rather, at least part of them came from a creative writing course. Other portions, and these are extensive, the respondent testified were written with the intention the claimant would read, and be influenced by, them. She hoped the claimant would see the idealized portrait of the marriage, and of their relationship to each other, and to A, and would absorb that idealism and ameliorate his otherwise obnoxious behaviour. The journals were left in the kitchen so that the claimant would be able to find them easily.

[39] One entry from August 23, 2007 will suffice to demonstrate the portrayal of the relationships in this small family in the journals:

> Our marriage will keep growing stronger. Our love deeper. We will grow in maturity and respect for each other. Our passion for one another will grow in intensity and will remain vital and exciting. We will be good parents to our beautiful [A] and we will burst with joy and pride watching him grow and learn. He will know how loved he is. We will be patient calm with him and each other.
>
> ... create a peace and harmony ...
>
> We will become increasingly self-sustaining, grow our own vegetables and be more kind to the earth.
>
> ...

[40] The respondent used rather equivocal language when challenged about the meaning of the journals. She vacillated between accepting that they were true, at least in some sense not described, and asserting they were the creation of a fantasy she expected the claimant to read.

[41] Dr. Waterman was asked his opinion of their meaning. He acknowledged he has no expertise in deciphering the meaning of diaries or journals, in the context presented at this trial, but disagreed with the suggestion put to him by the respondent that they are representative of someone "coming out of a coercive

dynamic". Dr. Waterman agreed the journals could suggest the respondent when she wrote them "was in denial".

[42] There is no evidence that the claimant actually read the journals until after the separation in October 2009. He then found them and they were eventually given to Dr. Waterman. The respondent's evidence was that she had not seen the claimant read the journals.

[43] The importance of the journals is that, if they are a true reflection of the respondent's thoughts about her marriage, and of the relationships between herself, the claimant and A, then the picture she painted at the trial of a coercive, dictatorial husband and father who was in a constant rage and who she feared may at any time resort to violence, is itself a fantasy. I do not accept that the respondent was likely to have kept a journal over several years sustaining a fictional view of her idyllic marriage, if in reality it was filled with coercion and abuse. No other witness who was in a position to observe the parties testified to such coercion or abuse.

[44] Both Robert Mitchell, who knows both parties well, and Karen Alexandre, who lives in Courtenay and knows the claimant well and has seen him with the respondent, have a high regard for him. Mrs. Alexandre impressed me as an intelligent, thoughtful and observant woman who would have been alert to abusive conduct. I believe also that Mr. Mitchell would have been very critical of abuse if he had observed it in any of its possible forms.

The Respondent's Concerns about the Claimant's Propensity to Violence

[45] The respondent gave evidence that the claimant was often a heavy drinker of alcohol and that he used illegal drugs, principally marihuana. The claimant denies drinking anything more than two beers on a single occasion and denies any marihuana use. Mr. Mitchell, who was in a position to know, denied ever seeing the claimant smoke marihuana. Mrs. Alexandre has praise for the claimant's qualities as a parent. She describes him treating A with respect but imposing what she believed was appropriate discipline. She characterized the claimant as a "very engaged" parent. I do not accept that the claimant has been a heavy drinker nor that he has

the habit of using illegal drugs. Nor do I accept that he is in a "constant rage" or is prone to violence.

[46] There are nevertheless three events involving the claimant which entailed violence. Two surrounded serious difficulties with a neighbour when the parties lived in Deep Cove prior to moving to Vancouver Island. The respondent described an altercation between the claimant and the neighbour in which the respondent says the claimant threw a stone at the neighbour. This event appeared to dismay the respondent and may have influenced her increasing concerns about the claimant. However, in cross-examination she agreed her evidence that the claimant had thrown a stone was wrong. It was the neighbour who threw the stone hitting the claimant in the chest. The respondent also referred to an incident in which the claimant was placed in the back of a police car and proceeded to kick out the window. This incident is acknowledged by the claimant. It no doubt shocked the respondent. It is not surprising it would have caused her some anxiety about him.

[47] The claimant's explanation for this second incident is that it happened just after one of several serious arguments with the very difficult neighbour who then called the police. The police arrived and took no immediate steps to intervene but moments later a further dispute with the neighbour led the police to confine the claimant in the back of a police van. He kicked the window out.

[48] The third incident was from a time well before the parties were married which led to the claimant being convicted of mischief. The respondent characterized the event at the trial as an assault. She was not present at the event. The claimant testified that it happened when he had returned home to find his then girlfriend in bed with another man. The claimant became angry and on leaving the room broke some picture frames. The claimant may have minimized his conduct which led to a criminal conviction but I doubt it had any influence on the respondent's opinion of the claimant. Nevertheless, it has been used as a further means to attempt to impugn his character.

[49] The only one of these incidents I treat with any seriousness in the context of these reasons is the one involving the police car. The claimant says he suffers from claustrophobia. He testified that when he was placed in the back of the police car he had no recollection of kicking out the window. It was only when one of the policeman remarked "now we have something to arrest you for" that he realized what had happened. I have no reason to disbelieve the claimant about this event.

[50] The claimant is a restrained and somewhat conservative man who normally keeps his emotions under control. His answers at the trial were often brief, and even laconic, denials of misconduct with little attempt at elaboration. The description of him by Mr. Mitchell and Mrs. Alexandre is of a thoughtful and measured man who treats others with respect. I accept that characterization.

[51] An episode involving both parties and A should be related. The claimant described the respondent returning from Ireland with A and shortly thereafter they all went to a restaurant. This was in the autumn of 2009, shortly before their separation. At the restaurant A behaved badly and the claimant told him he could not have any dessert from the buffet. The respondent nevertheless gave A a plate of chocolate and the claimant objected. The next day they went to another restaurant and A again misbehaved. The claimant told A he could not have ice cream. They left shortly afterwards and began to drive home. The respondent told the claimant to stop the car and when he did she got out, taking A with her, and began to walk away. The claimant says he did not know what to do but decided to drive home. Soon the respondent arrived with A who had chocolate on his face.

[52] The claimant viewed this event as a complete departure from the way in which both he and the respondent had been dealing with the discipline of A until then. I accept the claimant's evidence about what happened. It tends to show the marked inconsistency in discipline and the respondent's indulgence of A.

Dr. Waterman's Section 15 Report of November 2009

[53] Dr. Waterman conducted extensive interviews with the parties, and with others who knew them. He also administered psychological tests. Dr. Waterman had

the following comments on the Minnesota multiphasic personality inventory-2 administered to the respondent:

> An evaluation of the validity and reliability scales indicated that [the respondent] made an extreme effort to present herself as being free of any psychological or emotional problems. Individuals who receive such scores are usually consciously distorting their responses to the test items to create the impression that they are extremely moral, virtuous and have no personal difficulties. It is very important to such individuals that they appear to be responsible and in control of their lives. While some distortion of the test results is not uncommon in evaluations involving the custody and access of children, the results obtained by [the respondent] are much more extreme than would normally be expected.
>
> ...
>
> Individuals with this profile typically as being spontaneous and make a good first impression. While she may appear warm and charming, her relationships are probably somewhat superficial and she may be somewhat manipulative in those relationships. Such individuals have a strong need to be around others and are quite outgoing and sociable. She enjoys the attention she receives from others and her social behaviour is not likely to change over time.
>
> In evaluating these results, it must be remembered that [the respondent] made an extremely strong effort to present herself in as positive manner as possible. If she had answered in a more open and forthright way, some of her scores including her score on Scale Nine may have been considerable higher than was obtained. If this had happened, there would be more concern raised about mood fluctuations and self-centered behaviour based on a need for personal gratification ...

[54] The corresponding test for the claimant led Dr. Waterman to comment:

> An evaluation of the validity and reliability scales indicate that [the claimant] produced a valid clinical profile. His results suggest that he cooperated with the assessment enough to provide useful interpretive information. The resulting clinical profile is probably a reasonable indication of his current personality functioning. While he was somewhat inconsistent in some of his responses to the test items, this was not enough to invalidate his profile.
>
> [The claimant] obtained significance on one of the clinical scales which was Scale Six and two of his other scores approached significance. This pattern of scores is typically obtained by individuals who are overly sensitive and easily hurt. As a result, they tend to remain somewhat detached and aloof in their relationships as a way of protecting themselves. Such individuals can be concerned that others might take advantage of them. Because he has a low level of trust, he may present occasionally as being touchy and argumentative and somewhat moralistic and rigid in how he approaches his life. ...
>
> ... Under stress, he may become oppositional and may carry grudges for a considerable time. His difficulty in committing to a relationship may make

> marital situations difficult. At times, he may tend to be argumentative and find it difficult to forgive and forget.

[55] On the Millon Clinical Multiaxial Inventory III administered to the respondent Dr. Waterman observed:

> ... [The respondent] again tried to present herself in a socially acceptable manner which could indicate a need for social approval and to be seen in as favorable a light as possible. It can also indicate a general naïveté about emotional matters.
>
> The pattern of results obtained by [the respondent] on this test indicates that she will actively seek out attention and praise to fulfill her need for affection and security. She probably has a fairly high fear of abandonment which results in her seeking support and nurturance from others by being very obliging and perhaps even seductive at times. ...
>
> ...
>
> ... In terms of impacting on her ability to parent, [the respondent] will probably do quite well as long as [A] is young and dependent upon her for support and for meeting his needs. However, as he gets older and more independent, conflict could arise between [A] and his mother particularly in his adolescent years when children tend to be more self-focused and less concerned about meeting the needs of their parents.

[56] With the same test administered to the claimant, Dr. Waterman commented:

> ... His need for public recognition and approval may constantly contrast with his low sense of self-esteem and dependency which he represses to the best of his ability. Over time, he may come to resent those people to whom he conforms and submits which may result in periodic eruptions of negative comments and less than desirable behaviours.
>
> In terms of parenting, such individuals can become more concerned about their own needs than the needs of their child. It is important to them that they receive the positive feedback that they crave from others, particularly under periods of prolonged stress which can lead to conflicts between their needs and the best decisions as far as their child is concerned. When the child is younger, this does not present a significant problem. However, as the child grows older and more independent, significant differences of opinion can surface which can result in problematic situations developing.

[57] Dr. Waterman undertook an assessment at the respondent's home in Comox in November 2009 over approximately two hours. A was then about four and a half years old. There has been no follow-up report.

[58] Perhaps the most striking feature of Dr. Waterman's report from that assessment is the aggressive conduct of A towards his mother. Others gave evidence of the same conduct. It included kicking, punching and biting. Dr. Waterman observed that it was associated with the respondent's attempts "to get close to her son and cuddle him for a period of time". The respondent acknowledges this behaviour but said it has diminished over time although it continues to happen on occasion.

[59] Dr. Waterman found A's behaviour surprising. A was at times loving towards his mother and then became angry, "wanting to hurt her". The respondent would coax A into cooperation but he offered no sign of an apology for his aggressive behaviour towards his mother.

[60] A home assessment was also undertaken when A was with his father in Courtenay. Dr. Waterman noted one very brief example of "defiance" which lasted a couple of seconds. Despite that moment of defiance "A appeared to be quite responsive to being held by his father". However, when A was asked to put his books away he "curled up in a ball" and tried to kick his father. Dr. Waterman commented that the claimant used appropriate discipline in response to A's behaviour and the defiance ended.

[61] Dr. Waterman's final paragraph in describing his observations of the claimant with A during the home assessment begins with the following sentences:

> Overall, [A] and his father appeared to have a very close and loving relationship. During the course of the two-hour home assessment there were no signs of the rigidity and controlling behaviour that [the respondent] had described about [the claimant] during her clinical interview. [The claimant] did follow through with a couple of consequences but these were done in a very gentle and caring manner. ...

[62] Later in his report Dr. Waterman made these remarks about the respondent:

> During her interviews, [the respondent] described [the claimant] as being "full of conspiracy theories" and being "quite paranoid". She reported that [the claimant] kept moving them around from place to place which resulted in their remaining "quite isolated". As was seen when [the claimant]'s psychological

> test results were presented, [the respondent]'s observations were not confirmed by the results that were obtained from [the claimant].

[63] When asked about these observations during the course of his evidence, Dr. Waterman agreed that the respondent was reacting to the claimant's "sensitivities", and that she was prone to exaggeration. Dr. Waterman contrasted the respondent's criticisms of the claimant during the course of her interview with Dr. Waterman, and what she had written in her journals. I reproduce Dr. Waterman's paragraph as follows:

> Further on in her fi[r]st interview, [the respondent] talked about how [the claimant] was not physically violent with her although he would push her around sometimes. She states however, that he was very manipulative psychologically and could systematically break her down. She states that there was a lot of verbal and emotional abuse that took place within their relationship but no love or affection between them. She reported that if she said anything, she was always afraid that [the claimant] would explode. Once again, this is very much at odds with what [the respondent] was writing in her diary/journal. Until the last few months in her diary/journal, [the respondent] made numerous comments about how happy she was with [the claimant], what a wonderful husband and father he was, how he went out of his way to do things for her and how lucky she felt to be with him. Once again, one has to question why [the respondent] was writing such remarks in her diary/journal, over the course of a number of years but is now making very different remarks during the assessment process.

[64] Neither the respondent, nor any other witness, gave evidence of the claimant's physical abuse of her or of A.

[65] In cross-examination, over the objections of Mr. Cochrane, Mr. Linde asked Dr. Waterman to assume the accuracy of eight "factors" and to give his opinion on the custody, access and guardianship arrangements for A if the factors were true. The factors put to Dr. Waterman were:

1) the child/mother relationship is dysfunctional;

2) the mother puts her emotional needs ahead of the child;

3) the mother has a distorted view of the father;

4) the mother is using abuse counselling for the child as a means of getting her own way;

5) the child has too much control over the mother;

6) the mother's failure to discipline the child;

7) the child receives more discipline from the father; and

8) the child needs consistent discipline.

[66] Dr. Waterman's answer was that, on the assumption those factors were true, he would recommend the father have sole custody and a parenting coordinator be appointed.

[67] I do not find the relationship between the respondent and her son is "dysfunctional". That has become a fashionable "buzz word" that may convey meaning or may simply be a term of abuse. I accept that there is much in the relationship between the respondent and her son which is satisfactory. She is a loving mother attempting to deal with an active and intelligent boy when both the parents and the child find themselves in difficult circumstances. However, I believe the other assumptions put to Dr. Waterman have at least some substance.

[68] First, I find A is used by the respondent on occasion as an emotional support rather than providing emotional support and the effect on him appears to be damaging. Second, I accept the respondent has a distorted view of the claimant. The intensity of her feelings for him has turned from measureless love to irrational hostility. Her examination for discovery transcript was put to her in which she was pressed to think of any positive quality possessed by the claimant. She could think of nothing. This is blind hostility. Third, A does not receive consistent discipline from his parents and I accept the submission of the claimant that the respondent often fails to provide appropriate discipline for A. The claimant has been more effective in doing so. Fourth, the characterization of the marriage as "coercive", and "a dictatorship" is

false. It follows that I accept the claimant's submission that the abuse counselling A attends is not only unnecessary it is damaging to A.

[69] Dr. Waterman made the following extensive recommendations in 2009:

> i) It is recommended that [the respondent] and [the claimant] share Joint Custody of [A] based on a "week on - week off" rotation
>
> ii) It is recommended that [A] be exchanged between his parents at approximately 3:00 p.m. on Sunday afternoons at a mutually acceptable place. Hopefully in the future, [A] will be able to be brought to each of his parents' homes by the parent in whose care he is in but at this time that is not seen as being reasonable.
>
> iii) It is recommended that [the respondent] and [the claimant] share Joint Guardianship of [A]. This includes all the rights and responsibilities typically included in such an Order. Since the Court has several such models available to use, I will not outline what that encompasses but am willing to do so if necessary.
>
> iv) It is recommended that [the respondent] and [the claimant] attend a parenting therapist and develop an acceptable, cooperative parenting strategy for [A]. It is very important for young children in particular to have clear boundaries, consistent expectations, well-defined consequences and to be brought up in as cooperative situation as possible when the child's parents have separated and divorced. If [the respondent] and [the claimant] are unable to come up with appropriate procedures and consequences, then they should be ordered to accept the recommendations of the parenting therapist.
>
> v) If [the respondent] and [the claimant] are unable or unwilling to make a Joint Custodial parenting arrangement work, then it is recommended that a Parenting Coordinator be appointed by the Court to assist them in making decisions that are in [A]'s best interest.
>
> vi) It is recommended that [the respondent] be allowed back into the family home under supervision to gather her personal belongings and some of the belongings for [A]. This could be done through a mutually acceptable friend, acquaintance or an off-duty police officer. If there is any cost associated with the supervision, it is to be shared equally between both parents.
>
> vii) It is recommended that either parent be allowed to take [A] out of the province or country for trips to visit family and elsewhere for a period not to exceed fourteen days. Any attempt on either parent's part not to return [A] to the home of the other parents at the end of the fourteen days, would be considered grounds for that parent to apply for sole custody of [A].
>
> viii) It is recommended that if possible, a Worldwide Police Enforcement clause be included in any Court Order to ensure that each parent complies with the Court's decisions as expected.
>
> ix) It is recommended that [A] spend his birthday with whichever parent he is scheduled to be with at the time. Over the years, this will work out approximately equally for each parent.

x) It is recommended that [A] spend the afternoon and overnight with each of his parents on that parent's birthday whether that birthday lands on a weekend or during the week. [A] would be returned to school the next morning by the parent whose birthday it is or if it happens on a weekend, he would be returned to the other parent's home no later than 10:00 a.m.

xi) It is recommended that each parent cooperate in allowing [A] to take part in family celebrations such as relatives coming to visit or other such celebratory occasions. These visits could last up to two full days but they must be made up for at other times in order to compensate the parent who is giving up [A] for that time.

xii) It is recommended that Christmas, March break and summer holidays be divided approximately equally. At Christmas, [A] could spend Christmas Eve day and Christmas Day until 1:30 p.m. with one parent and then be taken to the home of the other parent. He would then spend the rest of Christmas Day and all of Boxing Day with the second parent. The rest of the holiday would be divided approximately equally between the two parents. March break can either be divided in half with the parents rotating who gets [A] for the first half of each March break and who gets him the second half. The other alternative is for one parent to have [A] for the whole March break one year and the other parent to have him the whole March break the next year. Summer holidays can be divided approximately equally in periods of two weeks with each parent. This will provide time for each parent to do various vacation activities with [A] but for him not to be away from the other parent for an extensive period of time. Once [A] reaches ten years of age, this would change and he could spend one month with one parent and the other month with the other parent on an alternating basis.

xiii) It is recommended that each parent choose one activity for [A] to be involved in so that he always has involvement in two activities. Each parent would be responsible for any costs involved for whatever activity is chosen.

xiv) It is strongly recommended that before returning to Court to settle any differences between them, [the respondent] and [the claimant] consider mediation as an alternative dispute resolution process.

[70] The last recommendation has been overtaken by events.

[71] The claimant submits the court ought to order the following:

1) joint guardianship on the Master Horne Model;

2) the claimant have sole custody of A;

3) the abuse counselling A attends cease forthwith;

4) The claimant have authority to take A to a professional counsellor, with notice to the respondent. The counselling sessions would be privileged occasions so that A will understand they are to remain confidential;

5) A attend Salt Water School beginning in September 2012;

6) The respondent have access to A during the school year every other weekend after school on Friday until school resumes on Monday. If either Friday or Monday, or both, are not school days the respondent have access from Thursday at the end of the school day until the beginning of the school day on Monday or Tuesday, as the case may be;

7) Christmas holidays be spent by A with each parent in alternate years and the same apply to his school spring break;

8) the claimant hold A's Canadian and Irish passports;

9) the respondent be restrained from taking A out of British Columbia without the claimant's written consent, not to be unreasonably withheld.

[72] The respondent requests the following order:

a) joint guardianship and custody with A residing primarily with her on a nine day/five day access schedule. She prefers the Master Joyce model;

b) A continue to attend Airport Elementary School in Comox; and

c) the respondent have primary responsibility for A's medical care, including decisions about his immunization.

Conclusions

[73] The only consideration this Court may have is A's best interests. While the *Family Relations Act* provides that the best interests of the child are paramount, the *Divorce Act* requires the Court to take into consideration only the best interests of the child.

[74] The claimant will have primary custody of A, at least for the immediate future. This is in the best interest of A to permit consistent parenting to the extent possible. The claimant is in a better position at present to provide consistency.

[75] There will be joint guardianship of A and the order will provide as follows.

1) in the event of the death of either of the parties the remaining parent will be the sole guardian of A;

2) the claimant will inform the respondent of any significant matter affecting A's well being. This provision is necessarily vague and its efficacy relies on the good sense of the claimant;

3) the claimant will discuss with the respondent in advance any significant decision about A including medical attention. This provision does not apply to emergencies;

4) if the parties cannot agree on a major decision concerning A the claimant has the right to make the decision. The respondent will have liberty to apply to the court if the claimant makes a major decision concerning A's general welfare without consultation with the respondent or with which the respondent disagrees;

5) both the claimant and the respondent will have the right to obtain information about A from others including teachers, counsellors and medical professionals. The claimant will facilitate this part of the order if necessary.

[76] The respondent will have access to A from 4:00 p.m. on Friday until 4:00 p.m. on Sunday on alternative weekends. If it becomes necessary a neutral person should be engaged to allow A to move between his parents without acrimony. If that fails either party may apply.

[77] The respondent will have access for three weeks in either July or August each year. The dates are to be agreed between the parties. The claimant will make arrangements to make A available to accommodate the desire of the respondent to take A to Ireland.

[78] A will forthwith cease attending an abuse counsellor.

[79] The claimant, on written notice to the respondent, is entitled to have A attend counselling and those sessions will be privileged and confidential. If the respondent objects to the choice of counsellor she will have liberty to apply.

[80] The claimant is entitled to enrol A in Salt Water School beginning in September 2012. The claimant will be responsible for all costs associated with that enrolment. I make this order because, while the claimant has primary custody, it will be convenient for A to attend Salt Water School in Courtenay. The respondent's objections to Salt Water School I find do not have substance, and are largely driven by her unjustified animosity towards the claimant.

[81] A's passports will be held by the claimant. If the respondent advises the claimant that she intends to travel to Ireland with A the claimant will provide the passports to the respondent forthwith when requested. Either party may apply if there are difficulties in agreeing on A's travel out of British Columbia. I make no worldwide police order.

[82] As soon as reasonably practicable the claimant and the respondent will attend a parenting therapist for the purpose of developing a cooperative and responsible strategy. The cost of that therapy will be borne equally. If either parent declines to attend, or there is no agreement on a parenting therapist, either party will have liberty to apply and the court will make the appropriate order.

[83] A will spend alternative birthdays, including overnight after a birthday party, with one or other of the parties beginning in 2013 with the respondent.

[84] Christmas and New Year's holidays from the end of school in December until the resumption of school in January will alternate annually beginning in 2012 with the respondent.

[85] Spring breaks will alternate from the end of school at 4:00 p.m. at the beginning of that break until 4:00 p.m. on the last day of the break. This will begin in 2013 with the respondent.

Immunization

[86] A source of disagreement between the parties has been A's immunization. The claimant believes, at least in some instances, the risks are excessive. The respondent takes the more orthodox view that the benefits outweigh the risks.

[87] In *M.J.T. v. D.M.D.*, 2012 BCSC 863, Wedge J. considered whether the best interests of the child in that case would be better obtained if the court directed immunization on medical advice. Evidence was given by a leading expert on pediatric infectious diseases and immunization. The expert gave his opinion on the risks and benefits of immunization for the child in that case, and on the risks and benefits of immunization generally for children. The expert concluded the risks were extremely low and the benefits "significantly outweighed the theoretical risks." The learned trial judge accepted that opinion.

[88] I am not bound by the decision of Wedge J. in the case before her, that immunization was appropriate. However, nor should I ignore the judge's finding. I take into account the concern of the respondent, which I accept is reasonable, that, like all children, A is at risk from childhood diseases. Further, I take into account the evidence of the claimant that he is not adamantly opposed to immunization in all circumstances.

[89] The claimant will consult A's family doctor and will accept the medical advice of that doctor on the question of immunization.

[90] The order in the above conclusions found in paragraphs 74 and following will remain in force for 18 months from the date of these reasons at which time it will be subject to review if requested by either party.

[91] The parties will be divorced effective 31 days from the date of these reasons.

"Affleck J."

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***M.J.T. v. D.M.D.,***
2012 BCSC 863

Date: 20120612
Docket: E092409
Registry: Vancouver

Between:

M.J.T.

Claimant

And

D.M.D.

Respondent

Before: The Honourable Madam Justice Wedge

Reasons for Judgment

Appearing on his own behalf:	M.J.T.
Appearing on her own behalf:	D.M.D.
Place and Date of Trial:	Vancouver, B.C. February 20-24, 27-29, 2012 March 1,2,5, and 6, 2012
Place and Date of Judgment:	Vancouver, B.C. June 12, 2012

I. INTRODUCTION

[1] Mr. T. and Ms. D. separated in 2008 after a three-year marriage. They have a son, V., who was two years of age at the time of separation. The parties' widely divergent views concerning the parenting of V. contributed significantly to the conflict that characterized their brief marriage.

[2] The custody and guardianship of V. is the central issue. Mr. T. sought joint custody and guardianship with equal parenting time and shared decision-making authority. Ms. D. sought sole custody (or, alternatively, joint custody with primary residency) and joint guardianship with final decision-making authority concerning V.'s health care and other significant issues.

[3] A central matter of contention between the parties is whether V. should be vaccinated against common childhood infectious diseases. V., now 5 years of age, has not received any vaccinations. Ms. D. has had authority on an interim basis since separation to decide all matters concerning V.'s health care, and she has refused to permit him to have any vaccinations. Mr. T. believes that V. should receive the series of vaccinations recommended by provincial health care authorities for children, and asks to be granted the requisite decision-making authority concerning this issue.

[4] The remaining issues were child and spousal support and the division of family assets and debts.

II. FACTS

The parties

[5] Mr. T. is 55 years of age. He was born in Richmond, B.C. and was raised there. He obtained a degree in graphic design from Kwantlen College after completing a two-year program. Mr. T. worked on commercial fishing boats to fund post-graduate education, and attended the Art Centre College of Design in Los

Angeles from 1978 to 1982. Thereafter, he worked in Los Angeles for about 18 months. He then returned to Vancouver where he worked as a graphic design artist. He also became involved in theatre productions, first as a backdrop designer and then as an actor.

[6] In 1995, Mr. T. lived in New York for two years to study figurative painting at the National Academy of Design. He continued to work as a freelance graphic artist when he returned to Vancouver, supplementing his income with work as an actor in theatre and television productions. He pursued visual art and carpentry as other interests.

[7] Ms. D. is 41 years of age. She was born in southern Ontario and was raised there. She attended Carleton University in Ottawa, graduating from the School of Architecture with great distinction at the age of 22. Following graduation, she worked in Turin, Italy for six months. She then accepted a position with a firm of architects in Barrie, Ontario, where she worked for four years. In 1994, Ms. D. moved to Toronto and worked for an architectural firm there for three years.

[8] In 1997, Ms. D. moved to Vancouver with her common law partner with whom she had lived for several years. She had been in Vancouver only a few days when her brother, who was living and working in Victoria, became very ill as a result of a brain aneurysm. Over the next four years, he suffered periodic seizures. Ms. D. took care of her brother during these episodes. At the same time, Ms. D. was hired by a Vancouver exhibit design firm to assist with their marketing in Europe.

[9] After a year or so with the firm, Ms. D. began performing exhibit design work for the firm. She was involved in the design of a number of large projects in British Columbia and abroad. Ms. D.'s work included the design of interactive and multi-media exhibits as well as overseeing the construction and project management of the exhibits.

Background to the relationship

[10] Mr. T. and Ms. D. were introduced to each other in 2003 by a mutual acquaintance. Mr. T. was living in a small rental apartment on West 3rd Avenue in the Kitsilano area of Vancouver. Ms. D. lived in an apartment on East 8th Avenue, which she owned. They began a relationship, but did not cohabit until after their marriage.

[11] The parties married in September 2005. Ms. D. had renovated and sold her apartment shortly before the marriage. She moved into Mr. T.'s apartment following the marriage.

[12] The marriage was the first for both parties. When they married, Mr. T. was 49 years of age; Ms. D. was 35. Ms. D. had been in a common law relationship previously. Mr. T. led no evidence concerning any prior relationships.

[13] From the outset of their marriage, Mr. T. and Ms. D. kept their finances entirely separate. They did not establish a joint bank account or obtain any joint credit cards. Throughout the marriage, they did not discuss their respective financial circumstances.

[14] At the time of the marriage, Ms. D. had approximately $90,000 in savings from her exhibit design work and the profit from the sale of her apartment. She kept those savings in her own bank account. She also had two credit cards, one with CIBC and the other with RBC. At some point during the marriage, Ms. D. obtained several more credit cards. She did not discuss her finances with Mr. T., nor did she show him her banking statements or credit card statements.

[15] Ms. D.'s income prior to the marriage fluctuated with the projects she obtained and the number of hours she worked on individual projects. She had worked on a contract basis with the Vancouver exhibit design firm. One year she earned a net income in the range of $55,000 as a result of the long hours of work she performed on an exhibit design project in Dubai. Other years her gross income was in the $40,000 to $45,000 range (Ms. D. described her income in terms of net

income, which she said was $30,000 on average). Ms. D. could bill up to $100 per hour, depending on the nature and scope of the project, but projects were usually based on contracts with fixed prices which meant that the actual hourly rate was often much less.

[16] Mr. T.'s income several years before the marriage was derived primarily from his work as a graphic artist. He had obtained some work as an actor in the 1990s, but very little acting work was available in Vancouver after that time. Mr. T. earned a gross income in the range of $40,000 to $50,000. He worked from his apartment, but from time to time he rented modest office space to work on his freelance projects.

[17] Mr. T. had accumulated significant credit card debt in the mid-1990s when studying in New York. As a result of the ensuing financial difficulties and poor credit rating, he went without a credit card for several years. At the time of the marriage, he had one credit card with a $500 limit. He used that credit card throughout the marriage.

[18] Mr. T.'s one-bedroom Kitsilano apartment was 590 square feet in size. His rent was $875 per month. Ms. D.'s understanding was that the couple would look for a more spacious apartment following their marriage and that each would obtain a small office outside the home for their work. Mr. T. was willing to explore the possibility of moving to larger accommodation, but was concerned that the cost would put a strain on the couple's financial resources.

The relationship following V.'s birth

[19] Ms. D. became pregnant soon after the parties married. It was apparent from the evidence of both Ms. D. and Mr. T. that the pregnancy occurred before they had an opportunity to establish their relationship. What little foundation there was in the relationship began to erode soon after Ms. D. became pregnant.

[20] V. was born July 27, 2006. He was posterior prior to birth, and Ms. D. experienced a prolonged and very difficult labour as a result. Ms. D.'s mother, who

had worked for many years as a registered nurse, was present for the home birth and assisted the midwife.

[21] V. was the first child for both Mr. T. and Ms. D.

[22] Conflict between the parties began almost immediately. Mr. T. was of the view that Ms. D. and her mother took over the care of V. without regard to his role as V.'s father and his ability to parent his son. Ms. D.'s perspective was that Mr. T. was not capable of providing safe and proper care for V.

[23] Unfortunately, the initial disagreement concerning V.'s care intensified as time went on.

[24] Both parties advanced a great deal of evidence at trial concerning the conflicts that developed between them in the ensuing two years. Much of it had little bearing on the issues in the litigation. Suffice to say the parties' marital relationship quickly deteriorated. Ms. D.'s focus was V. She established herself as V.'s primary caregiver and arbiter of all decisions concerning V.'s day-to-day care.

[25] Mr. T. was resentful of the fact that V. was now Ms. D.'s focus. He felt that Ms. D. left little room for their relationship, and even less room for his participation as a parent. In his words, he was "sidelined" as V.'s father. Ms. D.'s view was that Mr. T. simply abdicated any responsibility for V.'s care.

[26] The resulting dynamic became more complicated over time. Ms. D. began looking to Mr. T. for assistance in V.'s care as he progressed from infant to toddler, but on her terms. She had specific views concerning V.'s nutrition, clothing and safety. Ms. D. believed that V.'s daily routine required structure and stability. She insisted on a sugar-free diet for V. Mr. T. wanted to be involved in V.'s care, but disagreed with Ms. D.'s views as to what was best for V. He resented the control that Ms. D. insisted on exerting over every aspect of their son's care. Mr. T. wanted to be spontaneous about his time and activities with V., and tended to ignore the routines and dietary restrictions established by Ms. D.

[27] In short, the parties found as little common ground in their parenting of V. as they did in the other aspects of their relationship.

[28] Mr. T. rented small temporary office space in Kitsilano a few blocks from the family's apartment and worked from there on his graphic design projects. He obtained most of his work from land development companies, who retained him to design logos, brochures and websites for their real estate developments.

[29] From time to time for approximately two years before the marriage, Mr. T. performed graphic design work for a company involved in a real estate development on the Sunshine Coast near Pender Harbour. In the first four or five months after the marriage, Mr. T. did more work on the project and completed it. The developer did not have the funds available at the time to pay Mr. T. for his work. Instead, Mr. T. agreed to accept one of the Pender Harbour lots in the development as payment of $100,000 for the work. Title to the lot was transferred to Mr. T. in 2007, approximately a year after he had finished the work. The lot was bare at the time, and remains bare; no improvements of any kind have been made. The parties visited the lot a few times. During one visit, Ms. D. drew a few sketches of a building structure that might suit the lot.

[30] Mr. T. placed all of his income in his account, but paid the rent on the apartment and bore the cost of the utilities. All of his income went toward the cost of living expenses and purchases of household items for the family.

[31] During the first year after V.'s birth, Ms. D. devoted her time to the infant's care. She had gained a great deal of weight during the pregnancy, and began a workout regimen at a local gym a few months after V. was born. Ms. D. would routinely go to the gym in the morning. Mr. T.'s work schedule was flexible, which permitted him to take care of V. in the mornings until about 10 a.m. when Ms. D. returned from the gym. According to Mr. T., he routinely cared for V. in the mornings while Ms. D. was at the gym. According to Ms. D., Mr. T. did care for V. some of the time. However, she said that her sister assumed responsibility of V. on many of those mornings.

[32] At some point in 2007, Ms. D. was asked by a former colleague to take on an exhibit design project for a residential development called Rivergreen in Richmond, B.C. She accepted the project work, which involved an intensive six-week work schedule. According to Ms. D., Mr. T. was not willing to take over V.'s care during the project. Instead, Ms. D. paid for her mother to travel to Vancouver to assist with child care. Ms. D.'s sister also helped with the care of V.

[33] Ms. D. received approximately $20,000 for her work on the Rivergreen project. She also received payments from time to time from a client who owed her $17,000 for work she had performed for him in 2005 and early 2006.

[34] Ms. D. placed the money she received from her projects in her personal accounts. However, she paid for groceries, clothing and necessities for V. and other household expenses. She also contributed to the rent when necessary.

The condominium purchase

[35] Ms. D. was not comfortable with the cramped living space in Mr. T.'s apartment, and she began looking for a two-bedroom apartment in the area. She could find nothing suitable within the family's budget. She decided to buy an apartment with a view to renovating it. She had enjoyed renovating her apartment on East 8th Avenue before the marriage, and had made a profit on its sale. Ms. D.'s father had made his living as a building contractor and was willing to come to Vancouver to help with renovations on a new place. Ms. D. knew that Mr. T. was a talented carpenter who was capable of performing some of the finishing work. In the fall of 2007, she found a small two-bedroom condominium for sale just a few blocks from the family's apartment which she thought would be suitable to buy.

[36] Property values in Vancouver had peaked at that time. Ms. D. was one of several buyers interested in the condominium, and paid over the asking price to obtain it. Mr. T. was of the view that they could not afford the expense, but Ms. D. proceeded with the purchase on her own. She made a small down payment from her

savings. The mortgage, together with strata fees, totalled approximately $2,900 per month.

[37] At the outset, Ms. D.'s plan was to renovate the condominium and then live in it. She was concerned about the toxic nature of the paints and various building materials required to renovate the place, and wanted the renovations completed before the family moved in. The purchase of the apartment completed in November 2007. Ms. D. and Mr. T. continued to live in the family apartment in the meantime. As a result, they continued to pay $875 per month in rent as well as mortgage payments on the condominium.

[38] Ms. D. designed the interior improvements to the condominium. Her father and brother travelled to Vancouver from Ontario to help with the renovations. Mr. T. did some painting and carpentry work. However, the renovation was much more costly and time-consuming than Ms. D. had anticipated.

[39] The renovations were not completed by the spring of 2008. The cost of the mortgage and rental payments placed a significant strain on the parties' finances. Mr. T. took a $50,000 mortgage on the Pender Harbour property; from those funds he paid the mortgage and strata fees for approximately six months. The balance of the money was used for other family expenses. In May 2008, Mr. T. stopped doing graphic design work and spent six weeks working full-time on the renovations in an effort to move the project along.

[40] When Mr. T. returned to his graphic design work, he discovered there were very few projects available. Most of his clients had been affected by the downturn in the real estate market and did not require Mr. T.'s services. Mr. T. decided to start doing carpentry work instead. He has earned his living primarily as a carpenter since that time.

[41] In June or July 2008 Mr. T. told Ms. D. he would not continue to pay the mortgage and other expenses on the condominium. As a result, Ms. D. used her personal savings to meet the monthly expenses for the condominium and to pay for

the renovations. She stopped contributing to the rent and utilities for the family apartment, but continued to pay for food.

[42] One of Ms. D.'s sisters lived in the condominium for a few months in 2008, but the place otherwise remained unoccupied for most of the year. The financial burden created by the project placed increasing strain on an already troubled marriage.

The breakdown of the marriage

[43] A constant source of conflict between the parties was the parenting of their son. Ms. D. became increasingly inflexible in matters concerning V. Mr. T. responded with impulsive and immature behavior. During one of their arguments, Mr. T. tore up the couple's marriage certificate and V.'s birth certificate. On another occasion, he punched a hole in the apartment wall. He upended the living room furniture on a third occasion. On a few occasions Mr. T. left the apartment for a day or two.

[44] One of the fundamental disagreements that developed between Mr. T. and Ms. D. concerned the matter of whether to immunize V. Ms. D. was fundamentally opposed to all childhood vaccinations recommended by the provincial health authorities. Ms. D.'s opposition to the vaccination program was deep-rooted. As a child, she suffered from a number of medical conditions, including seizures, which occurred immediately after receiving routine childhood vaccinations. Her more recent experience dealing with her brother's seizure disorder magnified her fear of the possible consequences for V. should he receive the routine childhood vaccinations.

[45] Initially, Mr. T. acquiesced to Ms. D.'s wishes on the issue of vaccinations. However, as Mr. T. discussed the matter with others and did some reading on the issue, he became convinced that V. should receive the government-recommended vaccinations. Ms. D. remained steadfast in her refusal to consider immunization.

[46] Toward the end of 2008, the parties sought marriage counselling but after three or four sessions Ms. D. decided to take some time away from the relationship. In December 2008 she moved into the condominium with V. Mr. T., who was very unhappy with Ms. D.'s move, remained in the apartment.

V.'s care following separation

[47] During the early months of the separation, Mr. T. saw V. for an hour or two each day. V. attended toddler play classes at the Dunbar Community Centre, and Mr. T. was working on a home renovation project in the area. Mr. T. met Ms. D. and V. at the Centre during his lunch break in order to play with V. Mr. T. also had V. for six hours each Sunday while Ms. D. attended an acting seminar, a continuation of the parenting arrangement in place before their separation.

[48] Ms. D. would not permit V. to stay overnight with Mr. T. Her rationale for denying overnight visits included V.'s breastfeeding regimen. V. was 2 ½ years of age at the time of the couple's separation. He was still breastfeeding and, according to Ms. D., fed several times during the night.

[49] After living apart from Mr. T. for a few months, Ms. D. decided she wanted a divorce. She told Mr. T. of her decision in late March 2009. The animosity between the parties intensified. Ms. D.'s refusal to permit V. overnight visits with Mr. T. became a flashpoint. On two occasions, Mr. T. resisted bringing V. back to Ms. D.'s apartment at the agreed time. On both occasions, he told Ms. D. that V. wanted to sleep at his apartment. On the first occasion, Ms. D. went to Mr. T.'s apartment and took V. On the second occasion, Ms. D. phoned Mr. T.'s mother to advise her of the situation. Mr. T.'s mother called Mr. T. and persuaded him to return V. to Ms. D.

[50] In early April 2009 Ms. D. applied to the Provincial Court for sole custody of V. The parties attended a Judicial Case Conference on April 15, 2009. A consent order was reached on the following terms (among others):

- the completion of a Custody and Access Report;

- pending the completion of the Custody and Access Report, interim sole custody of V. by Ms. D. on a without prejudice basis;

- joint guardianship (Joyce Model) of V., with Ms. D. having final decision-making authority, until further court order;

- child support payable by Mr. T. in the amount of $388 per month (based on a Guideline Income of $42,000) commencing April 1, 2009 until further court order, with the issue of retroactive support deferred to the trial of the matter.

[51] On April 18, 2009, Mr. T. and Ms. D. agreed on an interim access schedule which gave Mr. T. approximately three hours of parenting time six days each week. During his access times on weekdays, Mr. T. took V. to toddler classes offered by community centres in the area.

[52] Mr. T. soon came to regret that he had consented to Ms. D. having interim sole custody of V.

[53] After a few months, Ms. D. decided that V.'s transition from one parent to the other six days per week was too much for him. She believed that the transitions were tiring V. and causing him stress. She asked Mr. T. to reduce the days of access, but Mr. T. refused. Ms. D. then unilaterally reduced Mr. T.'s access to three days per week.

[54] Mr. T. and Ms. D. participated in mediation with the Hon. Ross Collver between June and August 2009. The central issue was the parenting arrangements for V.

The sale of the condominium

[55] In June 2009 Ms. D. told Mr. T. that she could no longer afford to keep the condominium in which she and V. were living unless Mr. T. contributed to the monthly expenses. Mr. T. told Ms. D. that he could not afford to help her with the

expenses. Ms. D.'s response was that she would be forced to sell the condominium unless he gave her some financial assistance with it. Mr. T. told Ms. D. that he did not agree to the sale of the condominium because he believed he was entitled to an interest in it, but said she was "on her own" and should "do whatever she needed to do".

[56] Ms. D. then listed the condominium for sale. It was not an optimal time in the Vancouver real estate market to list a property, and Ms. D. did not receive any offers that came even close to the listing price.

[57] In August 2009, while the parties were still in mediation, Mr. T. retained legal counsel and filed proceedings in this Court seeking divorce, joint custody and guardianship and property division. At the same time, he filed a Certificate of Pending Litigation on the condominium which was as yet unsold.

[58] In late August, 2009 Ms. D. received an offer on the condominium (after reducing the listing price three times) with a closing date of September 30. She advised Mr. T. of the offer, but he refused to have the lien removed at that time. Ms. D. found an apartment in the Kerrisdale area of Vancouver. She told Mr. T. that she would be moving once the condominium was sold, but would not agree to provide Mr. T. with her new address because she felt that he had been harassing her at the condominium.

The ex parte order

[59] According to Mr. T., Ms. D. had, on several occasions, expressed her desire to return to Ontario so that she and V. could live in close proximity to her family. Mr. T.'s counsel wrote to then counsel for Ms. D. seeking assurances that Ms. D. would not leave the jurisdiction with V. unless she obtained Mr. T.'s consent. Ms. D.'s counsel provided those assurances but sought Mr. T.'s consent to V.'s travel with Ms. D. to Ontario for a family visit.

[60] Mr. T. proceeded with his *ex parte* application and, on September 21, 2009 succeeded in obtaining an order for interim joint custody and terms restricting Ms. D.

from travelling outside the province or choosing a residence that was not within the boundaries of the City of Vancouver. The order also gave Mr. T. the additional access time he was seeking, but it did not address overnight access.

[61] Mr. T.'s evidence was that he decided to seek the order without notice to Ms. D. because he believed she was a flight risk. I heard a great deal of evidence from both parties about the circumstances surrounding the *ex parte* application. While I am satisfied Ms. D. was not a flight risk, it is not possible to determine whether Mr. T. lacked *bona fides* when making the *ex parte* application. The relationship of the parties was extremely volatile and the distrust was high. Ms. D.'s refusal to permit Mr. T. overnight access to V. was at the root of much of the conflict. The more Mr. T.'s attempts to gain overnight access were met with refusal, the more Mr. T. acted impulsively and aggressively. His behavior in turn prompted Ms. D. to conceal the address of her new residence from Mr. T., which created suspicion on his part that Ms. D. would go to even greater lengths to prevent his access to V. The judge hearing the *ex parte* application heard only Mr. T.'s suspicions and lacked the benefit of Ms. D.'s perspective on the issues between the parties. That, of course, is the danger of hearing applications and granting orders concerning custody and access without notice to one of the parties to the dispute.

[62] In any event, the order remained in place until September 2, 2011 when Ms. D. successfully applied to have it removed. Mr. Justice Crawford set the order aside and ordered that Mr. T. pay Ms. D.'s costs. Ms. D. sought special and punitive damages but no damages were awarded.

[63] In the two years between September 2009 and September 2011, while the *ex parte* order was in effect, the parties shared custody of V.

[64] Once he obtained the *ex parte* order, Mr. T. removed the CPL from the condominium. That occurred a few days before the sale of the condo closed. Ms. D. lost approximately $100,000 on the purchase, renovation and sale of the property.

V.'s dental care

[65] The *ex parte* order gave Mr. T. interim joint custody and additional access time to V., but it did not provide for overnight access or give Mr. T. authority to make decisions about V.'s medical care. Ms. D. continued to refuse overnight access on the basis that V. continued to breastfeed at night, and needed to breastfeed in order to maintain his health and emotional stability.

[66] When V. was 3 ½ years of age, his teeth began to show signs of serious decay. He had not yet had his first visit to a dentist. Mr. T. sought the opinion of Dr. Robert Patton, a dentist who performs extensive pediatric dentistry. Dr. Patton recommended that V. have his teeth capped. Mr. T. told Ms. D. that he would like Dr. Patton to perform the dental work. Ms. D. obtained opinions from two other dentists specializing in pediatric dentistry, both of whom were of the view that V. must undergo extensive and invasive dental surgery. Dr. Patton's recommended treatment was much less invasive. Ms. D. eventually authorized Dr. Patton to provide dental treatment to V.

[67] Mr. T. believed that breastfeeding was the cause of V.'s extensive tooth decay. Ms. D. blamed other factors. Neither party led evidence from Dr. Patton or expert opinion evidence concerning the likely cause of the problem. In any event, Dr. Patton provided extensive dental care to V. and the problem has been effectively addressed.

The Custody and Access Reports

[68] In late 2009, in accordance with the April 2009 order of Ehrcke P.C.J. concerning the Custody and Access Report, a Family Justice Counsellor with the Custody and Access Team, Nancy Jean Mussellam, began interviewing the parties. She observed V. with each of his parents in their respective homes, and interviewed third parties to obtain collateral information. Ms. Mussellam completed her first Custody and Access Report on February 15, 2010.

[69] In the section of her report entitled “Summary and Recommendations”, Ms. Mussellam wrote the following:

> [Mr. T.] and [Ms. D.] are both very committed to V. and each provides enriching experiences for him. V. is an articulate and bright toddler who is benefitting from the influence of both parents’ nurturing and involvement. [Mr. T.] wants to be a caregiver to V. and to have a more significant parental role. [Ms. D.] has trepidation about V. being overnight with [Mr. T.] due to her perception that [Mr. T.] will not be able to adequately nurture V. Further, it is her belief [Mr. T.] does not keep V.’s best interests in focus. She acknowledged, however, that overnights are soon likely to occur.
>
> [Mr. T.] and [Ms. D.]’s different parenting beliefs and styles have caused a great deal of tension between them. [Mr. T.] appears spontaneous and provides balance to [Ms. D.]’s well-motivated yet more protective ways. [Ms. D.] is resistant to let go of V.’s care, however with time and gradual change, hopefully [Mr. T.] can take a larger role and more responsibility for V. For [Mr. T.] to become a caregiver, he needs the opportunity to participate in V.’s overall care, including how to nurture him overnight. V. clearly has strong connections to both parents and he needs to feel that both parents are unified in his presence. With the support and commitment of both parents through this transition, the potential exists for trust to be established.

[70] At the time the report was written, Mr. T. had access visits with V. for two to three hours most weekdays, and from 10:30 to 6:00 on Sundays. Ms. D did not yet agree to overnight access, which continued to be a matter of significant contention.

[71] Among other things, the writer recommended that V. have two overnight visits per week with Mr. T. The recommendation was as follows:

> The current arrangement has frequent transitions and V. would be better served with more stability. I recommend that [Ms. D.] retain primary residence of V. and that V. begin a transition to overnight visits with [Mr. T.]. I recommend that [Mr. T.] have V. on Sunday at 10:00 a.m. until Monday at 12:00 noon and on Thursdays at 10:00 a.m. until Friday at noon. This plan could be expanded as V. grows and feels secure with staying for longer periods at his dad’s.

[72] Ms. D. did not accept the recommendations. She was of the view that V. would have difficulty coping with overnights, and the Mr. T. could not properly care for V. A hearing date was set to determine the access schedule.

[73] On the day of the hearing, Ms. D. agreed to the recommendations. V. had his first overnight visit with his father in April 2010. Although Ms. D. was of the view that

V. was usually exhausted after his overnights with Mr. T. and arrived home in a hyperactive state, the evidence as a whole supports the conclusion that V. settled in well to the overnight access regimen.

[74] In accordance with the recommendations of Ms. Mussellam, Mr. T. attended several workshops on parenting.

[75] In July 2010 Mr. T. asked for more extended overnight access. Ms. D. refused. In August, the parties agreed to ask Ms. Mussellam for an updated Custody and Access Report. Ms. Mussellam once again conducted meetings and interviews, and published the updated report on February 22, 2011.

[76] In her report, Ms. Mussellam observed that while V. had adjusted well to the new access regimen, the parents continued to struggle with their co-parenting relationship. Mr. T. told Ms. Mussellam that he wanted more time with V. and better opportunities to be fully involved as a parent. It was his perspective that Ms. D. was attempting to preclude any sort of equitable parenting arrangement. Ms. D.'s perspective, as she reported it, was that V. had only recently adjusted to the current access regimen. It was her belief that Mr. T. did not focus sufficiently on V.'s physical, emotional and psychological well-being.

[77] Ms. Mussellam reported the following with respect to the parties' different parenting styles:

> In home visits and observations at each home, it was clear each parent has a different parenting style and communication style with V. [Ms. D.]'s role was clearly a parenting role where she set clear boundaries and expectations about V.'s behavior. [Mr. T.] focussed more on play and spontaneity, creating an environment where V. was making choices about what would happen next.
>
> ... During my time there, there was spontaneous affection between V. and [Mr. T.], with V. often climbing into his dad's arms and hugging him. It was a close and loving relationship.

[78] The differing strengths and weaknesses of each parent was summarized in the report as follows:

> [Mr. T.] is a nurturing and capable parent to V. [Mr. T.] is spontaneous and creative in his behavior with V. and he is able to take care of V.'s needs. ... [Mr. T.] could use some education around developmental stages and the importance of routines. To have more parenting time would necessitate that [Mr. T.] be cognizant of regular mealtimes and bedtime. This will only develop if [Mr. T.] is given more of an extended opportunity to be a parent.
>
> [Ms. D.] is a responsible and loving parent who strives to protect V.'s well-being. She provides structure and boundaries for V. effectively. She tends to be hyper-vigilant as a response to what she sees as [Mr. T.]'s inability to adequately care for V. and respond to his needs.

[79] Ms. Mussellam summarized her observations as follows:

> [Mr. T.] and [Ms. D.] are well-intentioned and loving parents. Both want the best for V. as demonstrated by their strong commitment and unwavering desire to do what is best. V. is a bright and healthy little boy. He needs to be freed of the anxiety that arises from his parents' ongoing power struggle. V. needs to feel the freedom to love and spend time with both parents, including extended family on both sides.
>
> V. can benefit from two styles of parenting, as long as both parents support the other in V.'s presence and allow V. to value both. [Ms. D.] and [Mr. T.] provide balance because of [Ms. D.]'s structured and consistent routine for V. and [Mr. T.]'s creative and spontaneous style. It would help V. if [Ms. D.] could focus [on] the positive aspects of V.'s time with his father and with gradual steps, expanding and allowing [Mr. T.] more time with V. With support, [Mr. T.] can develop a consistent and appropriate routine in his home related to meals and bedtime, especially as V. prepares for the [consistency] and routine of attending school.
>
> It would be helpful if [Mr. T.] could expand his knowledge and parenting skills through parenting courses and child development education. This will assist him to understand important aspects of child development related to consistency and routine. [Ms. D.] needs to recognize the positive aspects of V.'s exposure to different experiences through his father, and the potential for V. to be enriched by increased involvement with him.

[80] In the result, Ms. Mussellam recommended an expansion of Mr. T.'s parenting time to an alternating two-week schedule of three days one week and four days the next. Specifically, she recommended that Mr. T. have V. from Thursday after school to Sunday at 4 p.m. the first week, and from Thursday after school until Saturday at noon the second week.

[81] The report also included recommendations that summer vacations, spring break and Christmas holidays be shared. Further, the report recommended that travel to Ontario (where Ms. D.'s extended family resides) and Vancouver Island

(where Mr. T.'s extended family resides) be encouraged "to allow V. the involvement of his extended family". Finally, Ms. Mussellam recommended the following:

> If the parents remain in nearby geographical locations, and as V. gets further along in elementary school, consideration of a schedule where each parent has a greater stretch of the week and alternate weekends could be explored.

[82] By the time the updated Custody and Access Report was issued, V. was approaching his fifth birthday.

[83] Ms. D. did not accept Ms. Mussellam's recommendations and refused to permit any changes to the access schedule.

[84] Access was not the only matter of contention. The parties continued to disagree on the issue of immunization for V. Mr. T. arranged a meeting for himself and Ms. D. with Dr. Simon Dobson, a pediatrician at B.C. Children's Hospital with extensive experience in pediatric immunization. Ms. D. asked Dr. Dobson whether he could guarantee that V. would not suffer any adverse reaction to the pediatric vaccinations given as part of the immunization program at the hospital. Dr. Dobson advised that no physician could give such a guarantee. Accordingly, Ms. D. refused to consider having V. vaccinated against any of the common childhood infectious diseases.

[85] In May 2011, Mr. T. filed an application in this Court seeking, among other things, implementation of the access recommendations of Ms. Mussellam and authority to make decisions concerning V.'s health care. The application was heard in June 2011 by Madam Justice Holmes who ordered, among other things, that the access recommendations be implemented forthwith on an interim basis pending trial, and that all other issues concerning custody and guardianship be addressed at trial. She also ordered that the parties seek a medical opinion concerning the issue of V.'s immunization and, if necessary, address that issue at trial as well.

[86] The access schedule recommended by Ms. Mussellam has been in place since the June 2011 order. Mr. T. has routinely had the care of V. from Thursday

after school to Sunday at 4 p.m. the first week, and from Thursday after school until Saturday at noon the second week.

[87] Although there was an initial disagreement between the parties concerning the choice of kindergarten/elementary school for V., they eventually agreed that V. should be enrolled in French Immersion at Trafalgar Elementary School. The school is located approximately half way between the residences of Ms. D. and Mr. T.

The Evidence concerning the Question of Immunization

[88] Mr. T. sought the opinion of Dr. David Scheifele, a Professor of Pediatric Medicine at the University of British Columbia and practicing physician at B.C. Children's Hospital. Dr. Scheifele is recognized as a leading expert in pediatric infectious diseases and immunization. He was appointed to the Sauder Family Chair in Pediatric Infectious Diseases (UBC) in 1995. He was the founding chair of the Canadian Association for Immunization Research and Evaluation in 2000.

[89] Dr. Scheifele has had a career-long special interest in vaccines and immunization. He chaired the Infectious Diseases and Immunization Committee of the Canadian Paediatric Society from 1981 to 1988. He chaired the National Advisory Committee on Immunization from 1993 to 1997, having previously served for 10 years as a committee member. He was the principal author of the 1998 edition of the Canadian Immunization Guide. Since 1988 he has been the director of the Vaccine Evaluation Center (VEC) at B.C. Children's Hospital. The VEC was the first academic vaccine testing centre in Canada and remains one of the country's largest and most active centres. He has been involved in over 200 vaccine-related studies and publications.

[90] Dr. Scheifele has a particular interest in vaccine safety. In 1992 he helped establish a nationwide surveillance network among twelve pediatric centres known as the Canadian Immunization Monitoring Program, Active (IMPACT). This program is federally funded and managed by the Canadian Paediatric Society. The purpose of the program is to identify children hospitalized with adverse events following

immunization or with potentially vaccine-preventable infections. He has overseen the data centre for this program for the past 20 years and has co-authored a number of reports on vaccine safety. He has given dozens of lectures on childhood immunization at local and national conferences. He served as the Distinguished Lecturer at the 2010 Canadian Immunization Conference.

[91] A familiar task for Dr. Scheifele is the evaluation of children prior to vaccination. He is frequently asked to advise about vaccinations for children with unusual conditions such as possible allergies or previous adverse reactions following vaccination.

[92] Dr. Scheifele examined V. at B.C. Children's Hospital on September 22, 2011. He reviewed V.'s medical history along with that of Mr. T., who accompanied V. at the appointment.

[93] Dr. Scheifele met separately with Ms. D. on October 21, 2011, to obtain from her a detailed personal and family medical history and to conduct an additional review of V.'s medical history. Ms. D. told Dr. Scheifele of her opposition to V.'s immunization, which has two bases. First, Ms. D. suffered significant adverse reactions after receiving several vaccinations as a child, including high fevers and seizures, and other members of her family have suffered similar reactions. Second, she has great concern that the aluminum adjuvant present in some childhood vaccines is unsafe for children. She has read, for example, that aluminum adjuvants can cause neurological disorders such as autism.

[94] Dr. Scheifele prepared a written opinion for the Court concerning the question of the risks and benefits of V.'s immunization. He also addressed the question of the benefits and risks of childhood immunization generally, and the risks facing an unvaccinated child in Vancouver. Dr. Scheifele was called as a witness by Mr. T. to speak to his qualifications and opinion, and to answer questions in cross-examination by Ms. D.

[95] In response to Ms. D.'s questioning, Dr. Scheifele explained that aluminum adjuvants are important components of some vaccines because they enhance the immune response to the vaccine. He noted that researchers at the United States Food and Drug Administration recently modelled carefully the amounts of aluminum in infants after infant vaccinations using the best available human data. They found that the amount of aluminum in infants' bodies from vaccines and diet was significantly less than the levels determined to be safe. The researchers concluded that episodic exposures to vaccines containing aluminum adjuvants continue to present an extremely low risk to infants, and that the benefits of using those vaccines outweighed any theoretical risks.

[96] Ms. D. asked Dr. Scheifele whether he could guarantee that V. would not suffer any adverse reaction to any of the vaccinations recommended for children. Dr. Scheifele was clear in his response: medical science can never offer such a guarantee. He reiterated his opinion that the risk of V. suffering an adverse reaction is extremely low, and the benefits to V. of receiving the vaccinations significantly outweighed the theoretical risks.

[97] Addressing Ms. D.'s concern that vaccinations may cause autism, Dr. Scheifele said that studies have convincingly shown that autism does not result from immunization. In any event, autism becomes evident during early childhood; this is no longer a concern for V., who is developmentally normal.

[98] Dr. Scheifele also addressed Ms. D.'s concerns about the fevers and seizures she and her siblings suffered following vaccinations as children. He said the following:

> The "baby shot" formulation used at that time contained the first generation pertussis vaccine which consisted of whole, killed organisms. About 50% of children had fever shortly after this vaccination so such a history is not surprising. Since 1992 Canada has used a second generation (acellular) pertussis vaccine as part of the "baby shot," which causes fever in fewer children (15%), with less likelihood of high fever [less than 5%]. Thus V. is unlikely to react to the modern vaccine as his mother and her siblings did to the older vaccine.

> ... [T]he first generation pertussis vaccine sometimes caused high fever, sufficient to trigger convulsions in seizure-prone individuals. Children can be seizure-prone from a variety of causes but the most common is "benign familial febrile convulsions." This condition occurs in about 5% of the population and is expressed only during early childhood, triggered by fever. The condition is outgrown by mid-childhood and does not progress to epilepsy or result in neuro-developmental impairment ... Parent to child inheritance of this trait does occur but is expressed in a minority of offspring.

[99] Dr. Scheifele pointed out that at the age of 5, V. has passed beyond the peak risk period for benign febrile convulsions without showing any indication of proneness to seizures. The colds, ear infections and cough illnesses he had already experienced did not trigger seizures, thus it was unlikely that vaccination-related fevers would do so. Dr. Scheifele went on to say that in the largest study to date (Huang WT *et al*., Pediatrics 2010), no increased risk of febrile seizures was detected after immunization with modern pertussis vaccines administered to young children. Further:

> The increased risk of febrile seizures after measles-mumps-rubella vaccine given during the second year of life was estimated to be between 2.5 and 3.4 per 10,000 children ... The risk with first doses of measles-containing vaccine given at 5 years of age has not been measured but will be lower than in infancy because of 90% of children have outgrown their proneness to febrile convulsions by this age ...

[100] After reviewing all of the information provided to him by Ms. D. and Mr. T., Dr. Scheifele stated that he would not hesitate to immunize V., who is a normal, healthy child. According to Dr. Scheifele, nothing in V.'s personal or family history poses a contraindication to routine childhood immunizations or presents any greater risk than that faced by other healthy children. In fact, the risk of giving vaccines at V.'s age -- 5 years -- is lower than with vaccinations in the first two years of life.

[101] Dr. Scheifele is of the opinion that there are certain risks facing an unvaccinated child in Vancouver. On that issue, he stated the following:

> Unimmunized children, as with V., typically avoid vaccine-preventable infections like measles and whooping cough because most children around them in school or in the community are immune following immunization. With high levels of population protection, contagious diseases cannot readily circulate. However, this so-called herd immunity or indirect protection has limits. A study in Colorado, where childhood immunization rates resembled

> those in BC, showed that unimmunized children were 22 times more likely than immunized children to develop measles and 6 times more likely to develop pertussis/whooping cough ... Such observations reflect the highly contagious nature of common childhood infections. If overall vaccination rates slip, infections previously held at bay can return to cause outbreaks among susceptible children and adults. Given that childhood vaccination rates in BC are suboptimal (70%-80%), one can predict that periodic outbreaks of some vaccine-preventable infections will occur and could involve V. If he is an adolescent at the time, the course of measles or chickenpox illness is likely to be more severe than in infancy, with greater risk of complications and hospitalization. Travel can also increase risk of exposure. V.'s mother spoke of possibly travelling with him to California, likely unaware that the state is experiencing the largest epidemic of pertussis since 1958, with over 9,000 cases in 2010 and over 2,000 cases in 2011. Under-immunized children were contributors to the situation.

[102] Dr. Scheifele addressed in his opinion the risks of each vaccine-preventable infectious disease against which children in British Columbia are routinely vaccinated. There are 14 such diseases. Six of them -- tetanus, diphtheria, pertussis (commonly known as whooping cough), polio, *haemophilus influenzae b* invasive infections (such as meningitis) and hepatitis B -- are included in a "six-in-one" vaccine given to infants. Meningococcal C and pneumococcal 13-valent vaccines are also given to infants. Measles, mumps, rubella and chickenpox vaccines are given in the second year of life. Apart from booster doses, adolescents are offered hepatitis B vaccine (if not previously given), human papillomavirus vaccine (administered to girls only) and 4-valent meningococcal vaccine. Young children are also offered influenza vaccine.

[103] It is Dr. Scheifele's opinion than none of the vaccinations given for these 14 infectious diseases poses any greater risk of significant adverse effects to V. than to any other child his age. All of the vaccines are well-tolerated by children. Most importantly, it is his view that the benefits of securing V.'s protection from each of the 14 diseases far outweigh the limited risks of vaccine side effects.

[104] Dr. Scheifele observed that the actual immunization schedule for children starting at V.'s age is shorter than the early childhood schedule because of maturation of immune responsiveness. Waiting until a local outbreak occurs to immunize him is not ideal because protective responses take weeks (as with

measles) or months (as with pertussis) to develop, during which time risk of exposure continues. Further, as V. lives in Vancouver, some thought must be given to earthquake preparedness. An unimmunized person who is injured in such circumstances is at serious risk because tetanus prevention may not be available during disruptions of health care and transportation.

[105] Ms. D. sought the opinion of Christopher Shaw, Ph.D., a neurobiology researcher and Professor in the Department of Ophthalmology at UBC. Mr. Shaw is not a medical doctor and has no expertise in pediatric infectious diseases or pediatric immunization. His research area is neurological disorders such as ALS and Parkinson's.

[106] Mr. Shaw has recently become interested in examining the question of whether adverse reactions, including possible neurological disabilities, can be caused by aluminum adjuvants in vaccines. He has published articles in which he advances the hypothesis that aluminum adjuvants contained in vaccines are neurotoxins which possibly contribute to autism in children.

[107] Ms. D. called Mr. Shaw as a witness and sought to file two reports authored by him. The first was a one-page report in which he expressed certain views concerning the question of whether V. should be vaccinated. The second was advanced as a rebuttal to Dr. Scheifele's report. Upon an initial review of Mr. Shaw's *curriculum vitae* and after hearing his evidence on the *voir dire* concerning his educational background and work experience, I advised Ms. D. that I had significant doubts as to Mr. Shaw's qualifications to express an opinion on issues concerning pediatric infectious diseases and immunization. I was also doubtful, even if Mr. Shaw was properly qualified, that the second report was proper rebuttal. I allowed Ms. D. to file the reports with the proviso that after reviewing Mr. Shaw's *curriculum vitae* in detail, I may ultimately rule either that he was not qualified to express the opinions advanced or that his qualifications were such that I could give only limited weight to his opinions.

[108] I have now had an opportunity to carefully review Mr. Shaw's *curriculum vitae*, including the publications he listed in, and appended to, his *curriculum vitae.* On the basis of my review, I have concluded that Mr. Shaw is a distinguished basic research scientist in the field of neurobiology but he is not qualified to express an opinion concerning the risks and benefits of immunization from infectious diseases of children generally or V. specifically.

[109] In any event, the opinion advanced by Mr. Shaw was that "the possibility of negative consequences for V. from some combination of pediatric vaccines cannot be discounted". Dr. Scheifele's opinion, although expressed slightly differently, was similar in effect. Medical science can never rule out the *possibility* of an adverse reaction. However, the risk of adverse reaction is very low, and the benefits of immunization greatly outweigh the risks to children should they contract any of the infectious diseases against which the vaccinations protect.

The Parties' Parenting Abilities

[110] The s. 15 reports were filed at trial by agreement. Neither called the author of the reports.

[111] Both parties testified at length about their parenting of V. and about the challenges of shared parenting. Mr. T. was considerably more optimistic than Ms. D. about the prospects of successfully sharing the parenting of V. on an equal basis. Mr. T. pointed to the fact that the parties have managed to agree on fundamental issues such as V.'s education. While acknowledging that he is not quite as exacting as Ms. D. about V.'s dietary needs, Mr. T. said he is quite fastidious about providing V. with the healthiest of foods. Although the parties disagree on the issue of immunization, they have otherwise agreed on V.'s dental and medical care. Mr. T. is of the view that, overall, V. benefits greatly from the differing interests and parenting styles of the parties.

[112] Ms. D. does not believe the parties are capable of having equal parenting authority or that V. should spend equal time with each parent. She described the

parties' relationship generally as one of high conflict. She agreed that Mr. T.'s approach to V.'s diet has improved significantly over time, but believes that he still allows V. to eat too many sugary foods. She is concerned about V.'s safety, and about his ability to obtain the necessary rest, while in Mr. T.'s care.

[113] The parties testified at length about the conflicts that arose about V.'s care during the marriage and immediately after separation. I have no doubt the conflicts were numerous and intense during those times, particularly during the time after separation when the parties were struggling with the question of Mr. T.'s overnight access to V. As time went by, Mr. T. gradually gained more access, and that access gave him the opportunity to experience parenting of V. and learn from that experience. Unfortunately, Ms. D. continued to hold the firm belief that Mr. T. was not capable of properly parenting V., and the conflict continued.

[114] The parties required s. 15 reports and numerous applications to court in order to achieve a more equitable parenting arrangement. However, I infer from the evidence as a whole that once the shared parenting regime was finally settled, and Ms. D. came to realize that V.'s health and safety was not threatened (or even compromised), the conflict lessened significantly.

[115] Both parties led evidence from third parties, who testified to their observations of the parties' parenting of V.

[116] The evidence advanced by Ms. D. focussed, in the main, on the period of time during and shortly after the marriage. She led evidence from her sister, who helped care for V. during the marriage and immediately following the parties' separation. She testified that during the marriage, Mr. T. was resentful of her participation in V.'s care and her presence in the family residence generally. She described Mr. T. as short-tempered, impulsive and self-indulgent. Ms. D.'s sister was critical of Mr. T.'s parenting abilities as she observed them during the marriage and immediately after the parties separated, but gave no evidence about Mr. T.'s current parenting.

[117] Ms. D. also led evidence from V.'s preschool teacher, an employee at Dunbar Community Centre, who attested to Ms. D.'s devotion to V. and her outstanding qualities as a parent. She observed that immediately following the parties' separation, V. appeared to be having a difficult time adjusting. He seemed more unsettled and excitable when he arrived at preschool after having spent an overnight with Mr. T. She thought V. played more roughly and engaged in imaginary gun play after being with Mr. T.

[118] The preschool teacher testified that she was uncomfortable with Mr. T.'s behavior on several occasions when he dropped V. off at the community centre. She said that Mr. T., instead of leaving or simply observing, would get down on the floor and climb around with the children in their play house. She found this disruptive and upsetting to some of the other parents. The preschool teacher also testified to two incidents shortly after the parties' separation where Mr. T. displayed angry behavior toward Ms. D. in the presence of V. and others in the community centre lobby.

[119] Despite her misgivings about Mr. T.'s play with the children, the preschool teacher at no time addressed those misgivings with Mr. T. She acknowledged that Mr. T. routinely asked about V.'s progress and well-being, and that although they spoke at the beginning of every class she did not tell Mr. T. that he should not play with the children. She said she was not comfortable raising her concerns with Mr. T.

[120] The preschool teacher did not make any observations about Mr. T.'s interactions with V.

[121] In response to a question from the Court about V.'s current functioning, the preschool teacher said that V. now appeared to be a "fairly typical five-year-old boy".

[122] Mr. T. called evidence from four witnesses who have spent time with him and V. All attested to Mr. T.'s devotion to V. and his strong parenting abilities. One witness, the father of a girl who is approximately the same age as V., testified that he and Mr. T. often took their children on outings together. He observed that Mr. T. was always meticulous about matters such as the children's safety and nutrition. He

never hesitates to send his daughter with Mr. T. and V. on boating, hiking and camping trips, often for quite extensive periods of time.

[123] Another witness, to whom I will refer as Ms. M., is the mother of two boys, one of whom was slightly older than V. and the other somewhat younger. She has known both Ms. D. and Mr. T. for many years. Ms. M. testified that during the parties' marriage, her friendship was primarily with Ms. D. She observed that before the parties separated, Mr. T. habitually deferred to Ms. D. in matters concerning V., and abdicated most parenting responsibilities to her. However, over the past three years she has observed -- with some surprise -- a remarkable evolution in Mr. T.'s parenting. She said she considered herself to be a thoughtful and attentive parent, but that Mr. T. has gradually become an even better parent. Ms. M. described Mr. T. as vigilant about V.'s safety in his sports activities. She said Mr. T. ensures that V. eats healthy foods and encourages him to make healthy choices. According to Ms. M., Mr. T. displays patience with his son which exceeds that of most parents she knows (including herself).

[124] Ms. M. described both parties as exceptional parents who are equally capable of providing excellent care to V.

[125] A third witness called by Mr. T. has known Mr. T. for many years through the theatre community and has spent significant amounts of time in the company of Mr. T. and V. He testified that Mr. T. fostered V.'s interest and participation in the arts. Mr. T. takes V. to art classes, plays, museums and galleries. He engages in art projects with V. This witness, too, said that he had observed Mr. T. evolve over time into a parent who is engaged in every aspect of his son's life and is dedicated to his well-being.

[126] The witnesses called by Mr. T. attested to the fact that while in their presence, Mr. T. spoke to V. about his mother only in positive terms and appeared to respect and encourage V.'s relationship with Ms. D.

Family Assets and Debts

[127] As noted earlier, the parties kept their finances separate throughout their brief marriage. They had no shared bank accounts or common credit cards. As Mr. T. put it, the parties "lived like islands" during the marriage. Any income the parties earned, they placed in their respective bank accounts. They did not exchange any information about their respective finances.

[128] One of the few significant assets of Mr. T. was the bare lot located near Pender Harbour on the Sunshine Coast as payment for work he performed for a developer over a period of about three years. He performed a considerable amount of the work in the first five months of the marriage. Mr. T. and the developer agreed the lot was worth $100,000 at the time. The parties visited the lot briefly two or three times during the marriage, but did not use the property of make improvements to it.

[129] Both parties filed reports concerning the value of the lot. The lot has recently been assessed by the municipality at $140,000 for municipal tax purposes. The report filed by Mr. T. indicated a value of $95,000 in 2011 but a slight reduction in vale by 2012. The report filed by Ms. D. set the value at $125,000. Mr. T. obtained a $50,000 mortgage on the property during the marriage to pay family expenses and contribute for several months to the mortgage on the condominium. He obtained another $10,000 loan against the property following the parties' separation in order to pay lawyers' fees related to this litigation.

[130] Mr. T. has owned a cabin on Cypress (Hollyburn) Mountain for approximately twenty years. He purchased it for $14,000. The cabin, which is very rustic, is situated on leased land. For municipal property tax purposes, the cabin was recently valued at approximately $39,000. The parties did not use it for recreational purposes or make any improvements to it. Ms. D. visited the property about a half dozen times during the marriage.

[131] The only other asset acquired during the marriage was the condominium. As noted earlier, the condominium was sold in 2009 after the parties separated. The net

proceeds of sale were in the amount of $17,500. Ms. D. received $7,000 by court order following separation. The remaining funds are in a solicitor's trust account.

[132] The parties went into the marriage only with their respective savings. Ms. D. had approximately $90,000 in savings as a result of the sale at the time of the marriage of her apartment on East 8th. Mr. T. received a $25,000 payment from a client for some graphic art work he completed at about the time the parties married. He gave the cheque to Ms. D., who cashed it and put the funds in a safe in the apartment; she disbursed the money over time to meet family expenses. Ms. D. had credit cards with several financial institutions and used them extensively. Mr. T. paid for family items with cash he earned from his projects.

[133] During the marriage, Mr. T. received a monthly draw from a family trust fund in the amount of $390 per month. The trust was established from the estate of Mr. T.'s grandfather for several members of the family, including Mr. T.'s father and sister. The monthly payments received by the various family members consist of both interest and capital from the trust fund; accordingly, the payments are diminishing over time and will cease within a few years. Mr. T. currently receives $275 per month from the trust.

[134] Ms. D. was the designated recipient of the monthly allowance cheque to which the family was entitled after V.'s birth. Mr. T. acknowledged that for the first six months after the family began receiving the payments, he took the cheques from the family mailbox without Ms. D.'s knowledge. He opened a Registered Education Savings Plan in V.'s name and placed the monthly allowance funds, which totalled about $600, in the RESP. Ms. D. was not aware of the RESP. Mr. T. placed an additional $1,500 in the RESP which he obtained by selling company shares that he had purchased at Ms. D.'s request. Ms. D. was not aware of the sale of the shares.

[135] Ms. D.'s position at trial was that Mr. T. had fraudulently appropriated the funds, which belonged to her, and that she was entitled to repayment of the $2,100. She argued in the alternative that she should be given signing authority over the RESP.

[136] The parties were involved in two small ventures during the marriage. The first involved the harvesting of kelp from beaches on the west coast of Vancouver Island to sell as garden fertilizer. In the summer of 2007, Mr. T. spent five weeks near Sooke, B.C. trying to develop a method for the collection and sale of kelp. He had received $15,000 for a carpentry job, which he used to take the time off from work and continue to pay family expenses. Ms. D. contributed approximately $3,200 to the venture, which she viewed as a loan to Mr. T. Mr. T. agreed that he understood the money advanced by Ms. D. to be a loan. He used $2,200 to purchase a truck and camper for living accommodations and $1,000 to purchase a skiff to collect the kelp.

[137] Mr. T. paid two graphic artists a total of $5,000 to help him market the kelp once it was a product capable of sale as fertilizer. However, nothing came of the venture.

[138] Ms. D. sought repayment of the $3,200. She also argued that she was entitled to half the current value of the skiff and the truck and camper unit. Mr. T. testified that the skiff and the camper are both sitting in a field exposed to the elements. He described them as rusted and useless. The evidence concerning the truck was not clear. It seems that the truck was over twenty years old when purchased and was, even then, of nominal value. It is no longer operational.

[139] The second venture involved the making of lip balm with a view to marketing it commercially. The idea grew from a recipe Ms. D. used to make homemade lip balm for the family. A significant ingredient of the lip balm was beeswax. As part of the venture, the parties purchased a large quantity of beeswax for $15,000. The lip balm was never made, but the beeswax is in storage with Mr. T. The parties agree the beeswax has retained its value and could be easily sold.

[140] Mr. T. owned a Volkswagen van at the time of the marriage. The parties used the van during the marriage for transportation and camping. After the parties separated, Mr. T. sold the van for $8,900 and kept the proceeds of the sale.

[141] Ms. D. incurred significant credit card debt during the marriage. She provided the statements of account for each of the credit cards. The total debt is approximately $75,000, which Ms. D. says was incurred on behalf of the family. Accordingly, she seeks reimbursement from Mr. T. for half the indebtedness.

[142] I have reviewed the voluminous credit card statements produced by Ms. D., who filed them as exhibits at trial. She provided very little evidence concerning the hundreds of transactions reflected in the statements. It is apparent that a significant portion of the credit card debt relates to costs incurred during the renovation of the condominium described earlier in these reasons. Ms. D. also used the credit cards to fund projects unrelated to the family, such as her sister's attendance at acting classes. It is evident that Ms. D. was spending far more money each month than the parties were earning. It was not unusual for Ms. D. to make purchases of $8,000 to $10,000 per month on credit.

[143] Mr. T. did not receive copies of the credit card statements during the marriage. Ms. D. did not dispute Mr. T.'s assertion that he was not consulted about the expenditures and was unaware of the majority of them. I accept that Mr. T. was not aware of the extent to which Ms. D. was spending beyond the parties' means. As I noted earlier, the parties had an informal arrangement whereby Mr. T. paid the rent and utility costs while Ms. D. paid for groceries and day-to-day household supplies, but they did not otherwise pool their resources or share information about their finances.

III. DECISION AND ORDERS

A. Custody/Residency of V.

[144] The *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.) directs the Court to consider only the best interests of the child when determining the issue of custody. Section 16(8) stipulates the following:

> In making an order under this section, the court shall take into consideration only the best interests of the child of the marriage as determined by reference to the condition, means, needs and other circumstances of the child.

[145] The Court cannot take past conduct of a person into consideration when making a custody order unless the conduct is relevant to the person's ability to act as a parent of a child: s. 16(9).

[146] Further, when making a custody order, the Court must give effect to the principle that a child should have as much contact with each parent as is consistent with the child's best interests, and must take into consideration the willingness of each parent to facilitate contact with the child: s. 16(10).

[147] Section 24 of the *Family Relations Act*, R.S.B.C. 1996, c. 128 echoes these principles. It describes additional factors the Court ought to consider when determining the child's best interests, including (i) the health and emotional well-being of the child; (ii) the love, affection and other ties that exist between the child and other persons; and (iii) the child's education and training.

[148] I do not accept Ms. D.'s argument that the previous conflict between the parties precludes an order for joint custody of V. and shared access on an equitable basis. Both parties contributed to the conflict. Ms. D. refused to accept the reality that V. has two parents. She mistakenly assumed that because Mr. T. abdicated parenting responsibility during the marriage (which I conclude he did at least in part because Ms. D. would not allow him to be involved in V.'s care in a significant way) that he would accept a minor role in V.'s life once the parties separated. Mr. T. often acted in an immature and impulsive way. On some of those occasions, he was reacting to Ms. D.'s need to control every aspect of V.'s care.

[149] Each of the parties gave evidence over several days. I am satisfied, having listened to their evidence, that neither understood the eccentricities of the other when they decided to marry. Their differences were only accentuated once V. was born and they attempted to parent him. They shared little common ground concerning V.'s care. Mr. T. reacted to Ms. D.'s cautious and structured approach to V.'s activities and care by being more adventurous and unstructured. Ms. D. viewed Mr. T. as reckless; Mr. T. viewed Ms. D. as smothering.

[150] Ms. D.'s refusal to give Mr. T. overnight access to V. was shortsighted and ill-advised, as was Mr. T.'s decision to bring the *ex parte* application against Ms. D. Their actions set up a recurring cycle of unfortunate reactions which continued well into the second year of the parties' separation.

[151] And yet, despite their differences, it is clear that both parties are devoted, loving and considered parents. Ms. Mussellam accurately described the parenting dialectic in her reports. As noted earlier in these reasons, she reported that both Mr. T. and Ms. D. were well-intentioned and loving parents who were strongly committed to do what was best for V. She also reported that V. would benefit from both of their styles of parenting, so long as the parents supported each other and allowed V. to value both.

[152] I am satisfied the evidence overwhelmingly supports the conclusion that V.'s best interests require the equal participation of both parents in his life. Both Ms. D. and Mr. T. are excellent parents. They bring different strengths to his parenting and diverse interests to his life, and for that very reason his best interests require the involvement of both.

[153] I do not share Ms. D.'s lack of optimism about the ability of the parties to share parenting of V. Her outlook has been influenced by the parties' obvious incompatibility as life partners and the corrosive effect on their relationship of the events that occurred immediately after separation. Mr. T.'s behavior toward Ms. D. has been greatly attenuated over the past year by his increased access to V. I have no doubt that Mr. T. can safely and effectively parent V., and that V.'s life would be much the poorer without his equal involvement in it.

[154] The parties, for all their differences, share a deep commitment to V.'s well-being. That commitment will enable them to share his parenting. I conclude the parties should have joint custody of V.

[155] I turn now to the access regime.

[156] V. has spent extensive periods of time with both parents. Under the current parenting regime, he spends more than half his time with his mother. As noted earlier in these reasons, he spends four days one week and three days the next with his father, and the balance of each week with his mother. There is no evidence to suggest that the increased amount of time he has spent with his father since the order of Holmes J. in June 2011 has posed a problem for him.

[157] Mr. T. now seeks to have his access to V. increased to alternating weeks. Ms. D. asks to have the current access regime maintained for a few more years.

[158] V. is approaching six years of age. He is established in elementary school. He has thrived on the access regime to date. Ms. Mussellam, the author of the s. 15 report, recognized the benefits to V. of having as much contact as possible with each parent. In my view, there is no reason to maintain an unequal access regime.

[159] V. is entitled to uninterrupted weekend time with both parents, as both Ms. D. and Mr. T. work during the week and V. attends school Monday through Friday. Not surprisingly, both parents desire the opportunity to have full weekends with their son. Further, both agree that it is in V.'s best interests to have fewer transitions between his parents' homes.

[160] For all of these reasons, I have concluded that V. should spend alternating weeks with each parent.

[161] Specifically, V. should spend the first week of every month with Ms. D., commencing Tuesday of each week. Designating Tuesday as the exchange day will preclude arguments about access during long weekends and weeks in which school is in recess due to teachers' Professional Development Days. V. will be taken to school by the parent whose access week is ending and taken home at the end of the school day by the parent whose access week is commencing.

[162] With the same considerations in mind, V. will spend an equal amount of time with his parents during summer holidays, as well as during the school spring break and Christmas break. The weekly access schedule will continue for the summer

holidays, with the exception that V. is entitled to spend two uninterrupted weeks with each parent in order to accommodate his parents' vacation plans that might include travel.

[163] Neither parent will restrict the other parent from travelling outside of the Lower Mainland during their respective parenting times so long as a travel itinerary and contact information is provided. Each parent will provide the necessary written permission for travel with the other.

[164] On family occasions involving weddings, birthdays, memorial services or other such special events, V. is entitled to attend with the parent involved in the event notwithstanding the regular access schedule.

[165] The parent having access will facilitate reasonable telephone contact between V. and the other parent.

[166] I will leave to the parties the responsibility to specify pick up and drop off times when the exchange is other than during the school week, and to reach agreement on access during other special days such as Mother's and Father's Day. In the unlikely event that the parties cannot agree on such matters, they may contact me through the Registry by letter or email of no more than three paragraphs (less than one page) in length, and I will make the determination based on the written information provided by the parties. I encourage the parties to reach a consensus on these matters; I do not intend to entertain lengthy submissions on any of these issues, and will be making my decisions on a summary basis.

B. Guardianship of V.

[167] The current guardianship regime is that contained in the interim order issued by the Provincial Court in April 2009. Under that order, which is based on the "Joyce" guardianship model, the ultimate decision-making authority concerning significant matters such as V.'s heath care (except decisions that must be made on an emergent basis), education, and religious instruction have been granted to Ms. D.

The parties are obligated to discuss these matters fully and reach agreement if at all possible.

[168] In fact, the parties have managed to reach agreement on most significant matters concerning V.'s welfare. The exception is health care, and, in particular, the question of V.'s immunization.

[169] I have concluded that it is in V.'s best interests to grant equal decision-making authority to both Ms. D. and Mr. T. on all significant matters concerning V.'s welfare. In the particular circumstances of this case, which I have already addressed, I am satisfied that both parents should be equally involved in these decisions. Each parent brings a particular perspective and life experience that is necessary to ensure V.'s best interests are served. If the parties cannot reach agreement on a significant issue concerning V.'s welfare, then a third party in possession of all the necessary information should make the decision.

[170] Once again, as I am familiar with the background and circumstances, I will remain seized in order to provide assistance to the parties on an expeditious basis. However, should the parties prefer, they may retain a parenting coordinator to assist them.

[171] The existing terms of the guardianship order will otherwise remain the same. To be clear (as there was some argument about this matter), there will be a term in the order to the effect that in the event of the death of either parent, the remaining parent will be the sole guardian of V.

[172] I will turn now to the contentious issue of whether V. should be immunized in accordance with the recommendations of the provincial heath authorities.

[173] I have summarized in some detail the evidence provided at trial by Dr. Scheifele, both oral and written, because the issue is one of such fundamental importance to the parties. As noted earlier in these reasons, Dr. Scheifele gave evidence pursuant to the order of Madam Justice Holmes. The Court was fortunate to receive the opinion of an independent expert such as Dr. Scheifele, who is

acknowledged to be one of the most knowledgeable physicians in the field of child immunology. I am satisfied that Dr. Scheifele testified as a truly independent witness with a view to providing the Court with the information necessary to make an important medical decision on V.'s behalf because his parents cannot reach agreement on the issue.

[174] Dr. Scheifele's view, based on the evidence I summarized earlier, is that the benefits of immunization to V. far outweigh any risk that may be associated with possible side effects from the immunization. While there is a risk of side effects, it is minimal. Further, most known side effects are short-lived and clinically minimal in nature. It is Dr. Scheifele's opinion that V., like all children of his age in this province, is at risk of contracting a number of the infectious diseases covered by the vaccinations particularly if he travels to other countries with his parents.

[175] Dr. Scheifele's opinion is based not only on his own clinical experience and research, as well as his review and analysis of the medical research literature worldwide, but also on his specific knowledge of the medical histories of V.'s parents (based on interviews with them) and his medical examination of V.

[176] In short, no stone has been left unturned on this issue. I accept Dr. Scheifele's opinion that the benefits of immunization to V. significantly outweigh any risk of side effects. For that reason, I conclude that Mr. T. is entitled to make the decision concerning V.'s immunization.

C. Division of Family Assets and Debts

[177] This was a three-year marriage, during which the parties accumulated little in the way of assets.

[178] Both parties have expended much of their time, energy and resources over the past three years engaged in this litigation.

[179] The assets the parties accumulated during the marriage include the condominium, the Pender Harbour property, the skiff, boat and trailer and the truck

and camper. Mr. T. came into the marriage with his cabin on Cypress and a share in his family trust. There are also debts. Ms. D. left the marriage with $75,000 in credit card debt. Mr. T. obtained a $50,000 mortgage on the Pender Harbour property in order to obtain additional funds for use within the family. He also obtained an additional $10,000 to pay a small fraction of the legal bills he accumulated in the course of this litigation.

Legal principles governing apportionment

[180] The apportionment of family assets is governed by s. 65 of the *Family Relations Act.* Section 65 does not require the Court to award each spouse a share directly proportionate to the contribution of each spouse to the asset: *Elsom v. Elsom*, [1989] 1 S.C.R. 1367. The *Family Relations Act* calls for division of family assets on a presumptively equal basis. However, s. 65(1) describes a number of factors the presence of which may render an equal division *unfair:*

a) the duration of the marriage;

b) the duration of time since separation of the parties;

c) the date when property was acquired or disposed of;

d) the extent to which the property was acquired by one spouse by inheritance or gift;

e) the needs of each spouse to become or remain economically independent and self-sufficient; and

f) any other circumstances relating to the acquisition, preservation, improvement or use of the property, or the capacity or liabilities of a spouse.

[181] Where a debt has been incurred by one spouse for use within the family unit, it is appropriate to reapportion assets to account for that debt. However, the

presence of debt is only one factor to consider under s. 65: *Stein v. Stein*, 2008 SCC 35.

Application of the legal principles

(a) The condominium

[182] Ms. D. sought total reapportionment of the proceeds of sale from the condominium. In the event that the proceeds are divided equally, she seeks to have Mr. T. pay a proportionate amount of the debt she incurred to renovate the property.

[183] Ms. D. initially purchased the condominium for the family home. She used some of the funds she brought into the marriage to finance the down payment and pay for renovations. From my review of her credit card statements, I conclude that a significant portion of the credit card debt she was left with at the time of the parties' separation was the result of using credit to complete the renovations.

[184] Mr. T. contributed several months of mortgage and strata fees, which were $3,000 per month. Ms. D. otherwise made those payments for over a year. Ms. D.'s sister lived in the condominium for a few months while it was being renovated. By the time the renovations were completed, the marriage had broken down. Ms. D. lived there for some months with V. after the parties separated, and then put the property on the market. Ms. D. received $7,000 from the net proceeds of sale by court order during the litigation. The remaining $10,500 of the net proceeds was placed in counsel's trust account and has remained there.

[185] On the basis of considerations relevant to decisions concerning apportionment of the assets and debts as a whole (which decisions follow), I have concluded that the proceeds of sale from the condominium -- that is, the $17,500 -- should be reapportioned entirely to Ms. D.

[186] Accordingly, Ms. D. is entitled to receive the funds currently held in trust. As a result however (and as Ms. D. acknowledged in argument), she is also responsible

for the debt incurred to renovate the condominium. I will address the matter of the family's indebtedness in more detail in due course.

(b) The Pender Harbour property

[187] Mr. T. obtained the Pender Harbour property a few months after the parties were married, as payment for work he had over a period of approximately two years before the marriage and, more intensively, for five or six months after the marriage. The most recent property assessment, for municipal taxation purposes, valued the property at $140,000. Neither valuation obtained by the parties was that high. The assessment filed by an assessor retained by Mr. T. placed the property at a value of $95,000 in 2011, with a decrease in value to $85,000 in early 2012. Ms. D. obtained a Comparative Market Analysis which indicated a range of $97,000 to $150,000, and recommended a sale price of $125,000.

[188] Based on the municipal assessment and the information contained in the valuations obtained by the parties, I have concluded that the property should be valued for purposes of this action at $110,000. The property is currently encumbered by the $50,000 mortgage taken by Mr. T. during the marriage and the $10,000 mortgage taken subsequently to pay for legal bills.

[189] The parties visited the property on a couple of occasions to view it during the marriage, but did not use it or improve it. However, it was acquired during the marriage and at least in part as payment for Mr. T.'s work during the marriage. In my view, it is a family asset.

[190] For purposes of division of property under the *Family Relations Act,* the $50,000 is properly taken into account when determining the net value of the property for apportionment purposes but the $10,000 encumbrance is not. For purposes of apportionment, the property's equity is in the amount of $60,000.

[191] When determining apportionment of the property, I have taken into account the factors enumerated in s. 65(1) of the *Family Relations Act,* including the length of the marriage, and the date on which the property was acquired and the

circumstances underlying its acquisition. I have also taken into account apportionment of the remaining assets, which I will address in due course. Finally, I have taken into account the family debt, which I will address in due course. On those bases, I conclude that the parties are entitled to an equal division of the property.

[192] Mr. T. may elect to buy out Ms. D.'s 50% interest for $30,000 and retain responsibility for the mortgages. Should he elect not to buy out Ms. D.'s interest, he will take all necessary steps to place the property in both the parties' names as tenants in common. In that case, the parties will bear equally the cost of the $50,000 mortgage, and Mr. T. will bear entirely the cost of the $10,000 mortgage.

(c) Mr. T.'s entitlement under the family trust

[193] Mr. T. inherited his share in the family trust. In light of the brief duration of the marriage, and the fact of inheritance, as well as the reapportionments described above, I have concluded that Mr. T. is entitled to reapportionment of his entire share in the family trust.

(d) The Beeswax

[194] The parties purchased a large amount of beeswax during the marriage for their lip balm venture at a cost of $15,000. The beeswax was never used. Mr. T. is currently storing the product. The parties agreed that it has likely maintained its value and that it is a marketable commodity. I conclude that the parties ought to share equally the proceeds of the sale of the beeswax. Ms. D. has the option of conducting the sale. In the event that she does not wish to do so, Mr. T. will be responsible for the sale.

(e) The Volkswagen Van

[195] Mr. T. owned the Volkswagen van for several years before the parties married. It was used by the family during the marriage. Mr. T. sold it for $8,900 following the parties' separation. While the evidence was not clear, it appears Mr. T. then purchased a truck which is now valued at $3,000.

[196] Ms. D. has retained the Ford Taurus she used during the marriage.

[197] In my view, fairness dictates that the parties retain their respective vehicles. Mr. T. is entitled to retain the proceeds of sale from the Volkswagen van.

(f) The Cypress Cabin

[198] The cabin sits on leased land. It is very rustic. Mr. T. purchased it for $14,000 in 1994. Recently the cabin was assessed at $39,000 for municipal tax purposes, but there was no evidence concerning its resale value, if any. The parties visited the cabin four or five times during the marriage. They did not make any improvements to it or otherwise expend any funds on it. I conclude that the cabin should be reapportioned entirely to Mr. T.

(g) The Skiff and Truck/Camper

[199] There was no evidence concerning the present value of these assets, which were purchased for $3,200 in 2007. They were purchased, already used, to advance the failed kelp venture. The truck was over twenty years old at the time. Mr. T.'s evidence, which I accept, is that the truck is not functional and the camper and skiff are rusting in a field. I attribute no value to these assets.

(h) Ms. D.'s Credit Card Debt

[200] At the time of separation, Ms. D. had accumulated $75,000 in credit card debt. As noted earlier, much of that debt is attributable to the renovation of the condominium. Other expenditures, such as the tuition for her sister's enrolment in acting classes, were not properly included as family debt. Ms. D. made no submissions concerning any of the expenditures.

[201] I have reviewed all of the credit card statements. On the basis of that review, I conclude that $25,000 is attributable to family-related expenditures such as food, clothing and household necessities. Accordingly, Mr. T.'s share of the family debt is $12,500.

[202] However, I have taken the $12,500 owed by Mr. T. for the family debt into account when concluding that Ms. D. is entitled to a 50% interest in the Pender Harbour Property. Accordingly, Mr. T. is not required to remit payment of any of this amount to Ms. D.

D. Child Support

[203] This was a marriage of three years' duration. Both parties were well into their adult lives when they married. Both had established careers and have continued to work in their chosen fields of work. Each brought some minimal assets and/or cash into the marriage.

[204] Ms. D. has a degree in architecture and has become a highly-regarded exhibit designer. Currently, she has chosen to establish a small private practice with a few other architects/exhibit designers. She earned no income for approximately a year following V.'s birth; thereafter, she earned approximately $20,000 by completing a couple of projects on a part-time basis. Ms. D.'s income remained in the $21,000 range after separation as a result of her decision to set up a private practice instead of working for a large established firm. The firm is gradually building a clientele, and Ms. D. can expect to earn much more than her current income as the firm grows. With her education, background and experience, she is capable of earning at least in the $45,000 to $50,000 range.

[205] Mr. T. is a graphic designer and talented carpenter. He is currently working as a carpenter but has the choice of returning to work as a graphic designer. Mr. T.'s income over the past few years had been in the $42,000 range. I conclude based on his evidence that he is capable of earning in at least the $45,000 to $50,000 range as well.

[206] Mr. T. has been paying child support since April 2009 in the amount of $388 per month based on a Guideline income of $42,000 per year. He continues to pay that amount.

[207] Ms. D. sought retroactive child support on the basis that Mr. T. ought to have been paying at least $388 per month commencing in December 2008 when the parties separated. I accept that Mr. T. owes Ms. D. four months of retroactive child support. Based on a monthly payment of $388, Mr. T. must pay Ms. D. $1,552.

[208] I have reviewed Mr. T.'s income tax returns for the past three years. I am satisfied that his Guideline income remains, on average, $42,000 per year. Mr. T. will continue to pay child support based on a Guideline income of $42,000.

[209] Going forward, V. will be living with each parent 50% of the time. Accordingly, Mr. T.'s ongoing child support obligations will be adjusted to take into account Ms. D.'s Guideline income. Based on the financial information Ms. D. filed at trial, I am prepared to accept that she has been earning, on average, $21,000 per annum (excluding the approximate amount of $4,800 she is currently receiving from Mr. T. for child support). A person earning that annual income is required under the Guidelines to pay $190 per month for child support. The difference between Mr. T.'s amount of $399 and Ms. D.'s amount of $190 is $209.

[210] Accordingly, going forward, Mr. T. will pay to Ms. D. $209 for basic child support. However, Ms. D. is capable of earning a significantly greater income than she earns at present. Her income is currently low because she is in the process of building a small private business. That level of income should not continue. If it does, Ms. D. will in all likelihood be required to seek employment elsewhere or have a higher income imputed to her. I am prepared to accept that for the next year, her income will remain at $21,000 for child support purposes (bearing in mind that she will receive, in addition, approximately $2,400 per annum in child support payments from Mr. T.). Thereafter, Ms. D. runs the risk of having a higher income imputed to her if her income remains at its current level.

[211] The parties will exchange income tax returns and assessments by June 30 of next year (and each year thereafter), and child support for V. may be adjusted in accordance with that information by agreement or by application by either party to vary the amount.

[212] The parties will bear equally all expenses relating to V.'s medical and dental care and all other health care expenses. They will also bear equally all expenses for ongoing activities such as swimming and soccer.

[213] Each party will bear the expense of any other extracurricular programs in which he or she chooses to enrol V. unless the parties otherwise agree.

E. Spousal Support

[214] Ms. D. sought retroactive spousal support, and spousal support going forward.

[215] I am not persuaded that this is an appropriate case for spousal support either retroactive or prospective.

[216] Under the federal *Spousal Support Advisory Guidelines,* a spouse earning $42,000 per year and paying $388 in child support may be obligated to pay $0 to $50 per month to a spouse earning $21,000 per year and receiving $388 in child support.

[217] Ms. D. was a mature adult with a degree in architecture and considerable work experience when she met Mr. T. She suffered no economic disadvantage from the marriage as that term is used in the case law. Ms. D. is as capable now, and was capable during the marriage, of pursuing work in her chosen field. She did so in fact. With her education and work experience, she is capable prospectively of enjoying an income level comparable to that of Mr. T. Further, Ms. D. can expect to earn income for a significantly longer period of time than Mr. T. Ms. D. is 41; Mr. T. is 55.

[218] Any economic hardship suffered as a result of the breakdown of the marriage is one suffered by Ms. D. and Mr. T. equally. The proceeds of the sale of the condominium have been reapportioned entirely to Ms. D. She has received an equal interest in the only other significant asset of the parties, the Pender Harbour property.

[219] Ms. D.'s claim for spousal support is dismissed.

F. Miscellaneous Claims

[220] Ms. D. made two additional claims. The first is for damages she alleges she suffered as a direct result of the *ex parte* order Mr. T. obtained in September 2009. The second is for the return of $2,100 in family funds taken surreptitiously by Mr. T. to start an RESP account for V. I will deal with these claims in turn.

[221] I have already recounted the circumstances which culminated in Mr. T.'s *ex parte* application in 2009. The parties had reached a stand-off concerning Mr. T.'s desire to have V. for overnight access. V. was three years of age. Ms. D. refused overnight access on the basis that V. was still breastfeeding and, for various other reasons, would not cope well. Mr. T.'s frustration level was high, and, as a result, he began acting in impulsive and immature ways. Ms. D. moved residences and, due to Mr. T.'s behaviour, refused to disclose her new address. It appears that Mr. T. convinced himself that Ms. D. was about to flee the province with V.

[222] Having heard all of the evidence concerning the circumstances existing at the time, I have little doubt that the *ex parte* application was ill-advised. In retrospect, it is evident that Mr. T. and his counsel showed poor judgment. However, I cannot conclude that Mr. T. acted in bad faith or misled the judge who issued the *ex parte* order.

[223] More importantly, Ms. D. advanced her arguments for damages to Crawford J. when she successfully applied to have the *ex parte* order set aside. Mr. Justice Crawford awarded her costs but did not see fit to make an award of damages.

[224] Ms. D. is not entitled to an award of damages with respect to the *ex parte* order.

[225] I will now address the matter of the RESP. I do not accept Ms. D.'s argument that Mr. T. acted fraudulently when he took family funds and applied them to an RESP for V. Both parents were entitled to the funds. Mr. T. misled Ms. D. but his conduct was not fraudulent.

[226] The RESP has been in place now for approximately four years. Under the plan, the federal government contributes an amount equal to 20% of the parents' contribution. It is in V.'s best interests that the fund continue to exist. Mr. T. receives the annual statements concerning the fund and has signing authority over it.

[227] I am prepared to accede to Ms. D.'s request to this extent: Ms. D. and Mr. T., as joint guardians of V., are both entitled to receive the annual statements and both are entitled to make contributions to the RESP if they so wish. The RESP will otherwise remain unchanged.

IV. SUMMARY OF ORDERS

[228] The following is a summary of the orders resulting from these reasons:

1) The parties shall have joint custody of V., including a shared parenting arrangement under which V. will spent alternating weeks with each party commencing the Tuesday of each week, and equal time with each parent during school vacation and significant holidays;

2) The parties shall have joint guardianship of V. with equal decision-making authority concerning all significant matters involving V.'s heath, education and general welfare;

3) Mr. T. shall have ultimate decision-making authority on the issue of V.'s immunization;

4) Child support for V. shall be payable on the basis of the following Guideline incomes: Mr. T.: $42,000; Ms. D.: $21,000. The parties are at liberty to apply for a variance of child support after exchanging the requisite financial information on June 30, 2013 and at the same time each year thereafter;

5) The application by Ms. D. for spousal support is dismissed.

[229] As the parties are self-represented, they are at liberty to request clarification and directions from me concerning these reasons for judgment. The parties may reach me by email correspondence through the Registry.

[230] I will remain seized of this matter for the time being.

[231] As success has been divided, the parties will bear their own costs.

The Honourable Madam Justice C.A. Wedge

Citation: ☼D.R.B. v. D.A.T.
2019 BCPC 334

Date: ☼20191231
File No: 17182
Registry: Salmon Arm

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

IN THE MATTER OF
THE *FAMILY LAW ACT*, S.B.C. 2011 c. 25

BETWEEN:

D.R.B.

APPLICANT

AND:

D.A.T.

RESPONDENT

REASONS FOR JUDGMENT
OF THE
HONOURABLE JUDGE S.D. FRAME

Counsel for the Applicant:	C. Ferguson
Appearing on her own behalf:	D.A.T.
Place of Hearing:	Salmon Arm, B.C.
Date of Hearing:	November 18, 2019
Date of Judgment:	December 31, 2019

[1] This is an application by D.R.B. for an order that the children of the relationship be vaccinated; and an order to compel the children to attend periodic medical and dental appointments and to comply with all reasonable medical and dental recommendations.

[2] D.A.T. is not entirely opposed to the children being vaccinated or to having the children comply with reasonable medical and dental recommendations. Her issue is that she does not want unnecessary inoculations from medical and dental treatments.

[3] D.R.B. and D.A.T. met in 2012 and were in a relationship for just over five years. From that relationship, they have two children. Those children are A.J.B., born [omitted for publication] and C.D.B., born [omitted for publication]. Both of the boys are healthy, have no immunity problems and no ailments that would otherwise make them ineligible for live vaccines. In other words, there are no health presentations in either child that would cause their doctor to recommend against vaccinations.

[4] D.R.B. has requested on numerous occasions that D.A.T. consent to the children being vaccinated. He said this was from the time she was first pregnant with the first child until as recently as a week before the hearing.

[5] In addition, D.A.T. is also opposed to having x-rays done at the dentist office. The dentist recommends the x-rays to ensure cavities are not worse than they appear. In C.D.B.'s case, he had to have a root canal, a cavity filled and teeth pulled because D.A.T. did not consent to the x-rays which may have prevented these additional and dramatic steps. D.R.B. said that multiple dentists at the dentist office had recommended that they do those x-rays.

[6] C.D.B. is now in Grade 1 and A.J.B. is in daycare. They both play soccer, are in swimming lessons and take karate. They are very social children. D.R.B. himself travels for work, coming in contact with people throughout Canada and the United States. He wants the children vaccinated in accordance with the immunization schedules issued by Immunize BC.

[7] D.A.T. does not want the children vaccinated for diseases that no longer exist in Canada, saying they have been eradicated. She also does not want the children to be vaccinated if they already carry immunity to the specific illness targeted. She wants to have them tested for these immunities before any determination is made about vaccinations.

[8] The concern is more imminent now for D.R.B. not only because of the recent measles outbreaks in this country and the United States, where he travels, but also because of a notice issued by the school district. That notice is with respect to vaccination status reporting pursuant to a regulation passed by the Province of British Columbia. If a child has not been vaccinated, the school sends home a notice that the child may not be permitted to attend school in the event of an outbreak of any one of the listed illnesses.

[9] D.R.B. has also received a letter from Interior Health advising that D.A.T. has a documented refusal on file, confirming there are no medical contraindications to vaccinations noted in C.D.B.'s medical records, and recommending that C.D.B. be given age-appropriate immunizations according to the BC Centre for Disease Control Schedule.

[10] The letter concludes with the following:

> Immunizations play a central role in the prevention of infectious diseases in children and the severe complications that can result. In addition, immunized children contribute to a herd immunity effect that protects the community as a whole. In particular, children who travel abroad should be up to date with the immunization schedule.

[11] Because of D.A.T.'s refusal, the medical health officer requires that D.R.B. obtain a letter with D.A.T.'s agreement to vaccinate, a copy of a custody order showing he has the sole authority to make medical decisions for the child, or an order from a judge giving him the right to have the children immunized.

[12] The immunization schedules specified which immunization should occur at each of two months, four months, six months, 12 months, 18 months, four years, Grade 6 and

Grade 9. Those immunizations include the Chickenpox or Varicella vaccine; Diphtheria; Tetanus; Pertussis; Hepatitis B; Polio; and Haemophilus influenza Type B (DTaP-HB-IPV-Hib); Hepatitis A; Inactivated influenza vaccine; Measles, Mumps or Rubella (MMR vaccine); Meningococcal C Conjugate (Men-C) vaccine; Pneumococcal (PCV 13); Rotavirus vaccine; Human Papillomavirus (HPV) vaccine; Quadrivalent vaccine; and the variations of them, both for boosters and initial vaccinations. There is specific information provided in the Immunize BC schedule which advises parents when their children need not only to have the vaccine but whether or not it is necessary in each circumstance.

[13] D.R.B. said that he has spoken to Dr. Grieve, being the children's general physician, in D.A.T.'s presence. However, he said D.A.T. never wanted to talk about the vaccinations with the doctor because she felt pressured.

[14] D.A.T. said that she has never been a "fan" of the flu vaccine. She worked at a health centre and was having discussions with various people about what was happening around these flu vaccines. She acknowledged that Dr. Grieve felt it was "tragic" that people did not vaccinate. She also went to see a naturopathic doctor, Dr. Spooner, who was not opposed to vaccines but did speak with her about adverse reactions. That practitioner recommended a protocol one week prior to the vaccinations. The children's Vitamin A and iodine levels needed to be up in order to withstand the vaccine. D.A.T. wondered why the medical profession did not tell people this before their children were vaccinated. D.A.T. asked Dr. Spooner whether there was a test for adverse reactions and Dr. Spooner said there was, but it cost money. D.A.T. said this is when she became uncomfortable with vaccinations.

[15] D.A.T. said she has been doing research and has determined that there are adverse reactions to vaccinations. She said there are tests that can be done and steps that can be taken to prevent adverse reactions. She seeks titer tests to show if her sons already have antibodies for the childhood diseases. She would like this done before the children are vaccinated. However, she does not have the money for it and would like D.R.B. to pay. D.R.B. is not prepared to pay for it.

[16] D.A.T. would also like to have both of the boys gene tested for the MTHFR gene. She wants allergy and food sensitivity testing done as well. This will ostensibly remove harm from the children being vaccinated. There is no reliable evidence before me that supports any connection between the MTHFR gene, vaccines and autoimmune diseases. There is no clear path linking the benefits of allergy and food sensitivity to vaccines either.

[17] D.A.T. would also like A.J.B. tested for Giardia because he contracted it at his daycare. He was successfully treated with an antibiotic successfully but she would like him tested for any residual infection. She wants to ensure that he is in his best possible health before he is immunized.

[18] D.R.B. is not only opposed to paying for the testing but feels it is unnecessary as well. He has refused outright to have this testing done.

[19] D.A.T. purported to offer the expert report of Dr. Toni Lynn Bark. This report, while delivered to D.R.B. at a pre-trial conference, was not properly proffered as an expert report. Not only is the report with respect to an entirely different child (the report was offered by the mother to assist D.A.T. in this litigation), but the attachments referred to in the report are not attached to the copy provided. In other words, all of the supporting documentation that Dr. Bark refers to and relies upon is not available for review by D.R.B. or his counsel. Nor is Dr. Bark present for cross examination. Finally, there are considerable concerns about the foundation of the contents of this report.

[20] In her qualifications and expertise, Dr. Bark says that she has no conflict of interest but has co-produced a documentary and appeared in others which highlight the conflicts of interest in vaccine policies. She believes there is no conflict for her because she has received no pay for her work and has received no money directly or indirectly from the sale for distribution of the films. That is not determinative of her expertise, though. What Dr. Bark’s involvement in this industry lacks is balance. There is no evidence of any expertise or clinical review that meets this challenge of evident conflict.

[21] Dr. Bark also said that she provided expert testimony in relation to vaccinations in numerous family law cases in several countries and for the National Vaccine Injury Compensation Program. However, there is nothing identifying these cases or whether her expert testimony was accepted in the judgments that followed.

[22] Dr. Bark bases her opinion on her expertise in vaccination and vaccine targeted infectious diseases from both her formal medical training and from her experience in pediatric emergency as well as her private medical practice. She links to these anecdotal experiences of unexpectedly high numbers of patients who have been vaccinated and then suffered serious reactions, as well as patients she has found to be suffering chronic disorders such as autoimmune and neurological damage with a strong temporal link to vaccination. There is no supporting documentation in the copy of the report. It is difficult to tell whether this is purely anecdotal or whether there is a proper testing environment done to reach these conclusions. It lacks the proper foundations of an expert opinion.

[23] Dr. Bark maintains that her fields of expertise include vaccine adversomics, which she acknowledges is a new, emerging research field. It is the study of vaccine adverse reactions including their frequencies and mechanisms of causality. She acknowledges at paragraph 6 of her report:

> Vaccine adversomics is not yet covered in any formal medical training. Hence qualifying in such fields as immunology, epidemiology, pediatrics or genetics (or gaining membership of any associated societies) does not involve or require any study of risks of vaccines relative to their benefits, in relation to determining either population averages or any individual variations in susceptibilities. Formal medical education is supported by funding from the vaccine industry, which has no beneficial interest in sponsoring any field of study that might lead to a reduction in vaccine uptake.

[24] In other words, Dr. Bark purports to be an expert in a field that has not been recognized by her industry, and for which she has received no training. Dr. Bark continues at paragraph 7:

> The development of expertise in vaccine adversomics requires extensive study of relevant medical research. Some of that study I have demonstrated by way of the Notes and References in my report. It is augmented by my substantial clinical experience in this area, as stated in paragraph 4.b above.

[25] The difficulty with this is that vaccine adversomics is not a recognized field, none of the references she referred to are attached to the report, and it is difficult to know whether or not this is junk science or a recognized emerging field. Presented as it is in her report, her theory or opinion sounds like a conspiracy theory.

[26] Perhaps what is most damaging to the reliability of this report is that Dr. Bark does not have any stated expertise in immunology, virology, epidemiology, genetics or any other field that might lend strength to her stated opinions. Indeed, she appears to lack any expertise other than anecdotal experiences. Anecdotal experiences cannot form the foundation for an expert opinion since such anecdotes could be obtained from any parent, teacher, medical office assistant, or indeed any other member of the community where immunizations and illness have been experienced. There are none of the usual clinical controls or trials expected in reports with solid foundations.

[27] Dr. Bark proceeds to premise her report not on anything specific to the child she was preparing the report for but on what appears to be her position that targeted infectious diseases pose very low risk to the population; there are very high rates of adverse effects reported from vaccine clinical trials; clinical trials indicate higher true rates of adverse effects; and very high rates of adverse effects are evident from government surveillance, among others.

[28] One of the diseases that she claimed is very low risk to contract is measles. That is simply not the case. She also identifies tuberculosis which is also not eradicated in some parts of Canadian communities. She believes these vaccinations are unnecessary because the identified or targeted diseases have essentially disappeared from developed countries. She overlooks the higher risk of contacts derived from traveling in foreign countries.

[29] In short, without a proper examination of the veracity of Dr. Bark's findings subjected to cross examination, the report cannot provide the assistance D.A.T. believes it provides.

[30] In contrast, D.R.B. has produced two binding Supreme Court decisions, excerpts from UN Foundations Measles Initiative, excerpts from World Health Organization Measles Key Facts, excerpts from Health Link BC, and excerpts from the Centre for Disease Control, BC Centre. D.R.B. also provided an article from the Telegraph purporting to be an opinion from England's top doctor blaming social media fake news for the low MMR vaccine take uptake. For the same reasons that I do not find Dr. Bark's report reliable, I must disregard this news article. It does not indicate to me what Dr. Sally Davies' qualifications are, what clinical studies or evidence she has relied upon or otherwise. While it would appear that she certainly comes from a more likely background for reliability, none of that evidence is before me for consideration.

[31] However, I can and do accept the facts laid out in the balance of the materials provided by D.R.B. I find them reliable resources upon which we as a community rely in order to make important medical decisions not only for ourselves but for our community as a whole.

[32] The BC Centre for Disease Control in its Measles Vaccine circular says that serology testing to establish immunity to measles is not routinely recommended before or after vaccination. It then goes on to discuss how adults may have acquired immunity to measles from natural infection if born before January 1, 1970. Born thereafter, individuals require laboratory evidence of immunity or documentation to that effect. In other words, both C.D.B. and A.J.B. must either be able to establish immunity through serology or by documentation. At this point, they can do neither.

[33] Not everyone is recommended to get the immunizations. The correspondence provided to the parents in this case specifies certain people who should not receive the vaccine. These boys do not fall into that category. In addition, the US Department of Health and Human Services Centre for Disease Control and Prevention also recommend against vaccination for those who have had a prior life threatening allergic

reaction to a dose of MMR or any part of the vaccine. The vaccine components are available on request. It recommends against vaccinating pregnant women, vaccinating people with weakened immune systems due to disease such as cancer or HIV/Aids or who are undergoing such treatments as radiation, immunotherapy, steroids or chemotherapy. It also recommends against vaccinating people with parents, brothers or sisters with a history of immune system problems or people who have a condition that make them bruise or bleed easily. In other words, not everyone should be vaccinated. These are the people protected by herd immunity rather than vaccine. These boys do not fall in those categories.

[34] In a 2012 decision of Wedge J. in *M.J.T. v. D.M.D.*, 2012 B.C.S.C. 863, Justice Wedge was tasked with assessing the question of immunization and had this to say:

> [88] Mr. T. sought the opinion of Dr. David Scheifele, a Professor of Pediatric Medicine at the University of British Columbia and practicing physician at B.C. Children's Hospital. Dr. Scheifele is recognized as a leading expert in pediatric infectious diseases and immunization. He was appointed to the Sauder Family Chair in Pediatric Infectious Diseases (UBC) in 1995. He was the founding chair of the Canadian Association for Immunization Research and Evaluation in 2000.
>
> [89] Dr. Scheifele has had a career-long special interest in vaccines and immunization. He chaired the Infectious Diseases and Immunization Committee of the Canadian Paediatric Society from 1981 to 1988. He chaired the National Advisory Committee on Immunization from 1993 to 1997, having previously served for 10 years as a committee member. He was the principal author of the 1998 edition of the Canadian Immunization Guide. Since 1988 he has been the director of the Vaccine Evaluation Center (VEC) at B.C. Children's Hospital. The VEC was the first academic vaccine testing centre in Canada and remains one of the country's largest and most active centres. He has been involved in over 200 vaccine-related studies and publications.
>
> [90] Dr. Scheifele has a particular interest in vaccine safety. In 1992 he helped establish a nationwide surveillance network among twelve pediatric centres known as the Canadian Immunization Monitoring Program, Active (IMPACT). This program is federally funded and managed by the Canadian Paediatric Society. The purpose of the program is to identify children hospitalized with adverse events following immunization or with potentially vaccine-preventable infections. He has overseen the data centre for this program for the past 20 years and has co-authored a number of reports on vaccine safety. He has given dozens

of lectures on childhood immunization at local and national conferences. He served as the Distinguished Lecturer at the 2010 Canadian Immunization Conference.

[91] A familiar task for Dr. Scheifele is the evaluation of children prior to vaccination. He is frequently asked to advise about vaccinations for children with unusual conditions such as possible allergies or previous adverse reactions following vaccination …

[94] Dr. Scheifele prepared a written opinion for the Court concerning the question of the risks and benefits of V.'s immunization. He also addressed the question of the benefits and risks of childhood immunization generally, and the risks facing an unvaccinated child in Vancouver. Dr. Scheifele was called as a witness by Mr. T. to speak to his qualifications and opinion, and to answer questions in cross-examination by Ms. D.

[95] In response to Ms. D.'s questioning, Dr. Scheifele explained that aluminum adjuvants are important components of some vaccines because they enhance the immune response to the vaccine. He noted that researchers at the United States Food and Drug Administration recently modelled carefully the amounts of aluminum in infants after infant vaccinations using the best available human data. They found that the amount of aluminum in infants' bodies from vaccines and diet was significantly less than the levels determined to be safe. The researchers concluded that episodic exposures to vaccines containing aluminum adjuvants continue to present an extremely low risk to infants, and that the benefits of using those vaccines outweighed any theoretical risks.

[96] Ms. D. asked Dr. Scheifele whether he could guarantee that V. would not suffer any adverse reaction to any of the vaccinations recommended for children. Dr. Scheifele was clear in his response: medical science can never offer such a guarantee. He reiterated his opinion that the risk of V. suffering an adverse reaction is extremely low, and the benefits to V. of receiving the vaccinations significantly outweighed the theoretical risks.

[97] Addressing Ms. D.'s concern that vaccinations may cause autism, Dr. Scheifele said that studies have convincingly shown that autism does not result from immunization. In any event, autism becomes evident during early childhood; this is no longer a concern for V., who is developmentally normal.

[98] Dr. Scheifele also addressed Ms. D.'s concerns about the fevers and seizures she and her siblings suffered following vaccinations as children. He said the following:

> The "baby shot" formulation used at that time contained the first generation pertussis vaccine which consisted of whole, killed organisms. About 50% of children had fever shortly after this

> vaccination so such a history is not surprising. Since 1992 Canada has used a second generation (acellular) pertussis vaccine as part of the "baby shot," which causes fever in fewer children (15%), with less likelihood of high fever [less than 5%]. Thus V. is unlikely to react to the modern vaccine as his mother and her siblings did to the older vaccine.
>
> ... [T]he first generation pertussis vaccine sometimes caused high fever, sufficient to trigger convulsions in seizure-prone individuals. Children can be seizure-prone from a variety of causes but the most common is "benign familial febrile convulsions." This condition occurs in about 5% of the population and is expressed only during early childhood, triggered by fever. The condition is outgrown by mid-childhood and does not progress to epilepsy or result in neuro-developmental impairment ... Parent to child inheritance of this trait does occur but is expressed in a minority of offspring.

[35] Dr. Scheifele also pointed out that since the child in question in his case had never had seizures resulting from colds, ear infections and cough illnesses, it was unlikely that vaccine related fevers would do so either. Such is the case here before me.

[36] Wedge, J. also considered Dr. Scheifele's opinion with respect to risks facing unvaccinated children:

> [101] Dr. Scheifele is of the opinion that there are certain risks facing an unvaccinated child in Vancouver. On that issue, he stated the following:
>
> > Unimmunized children, as with V., typically avoid vaccine-preventable infections like measles and whooping cough because most children around them in school or in the community are immune following immunization. With high levels of population protection, contagious diseases cannot readily circulate. However, this so-called herd immunity or indirect protection has limits. A study in Colorado, where childhood immunization rates resembled those in BC, showed that unimmunized children were 22 times more likely than immunized children to develop measles and 6 times more likely to develop pertussis/whooping cough ... Such observations reflect the highly contagious nature of common childhood infections. If overall vaccination rates slip, infections previously held at bay can return to cause outbreaks among susceptible children and adults. Given that childhood vaccination rates in BC are suboptimal (70%-80%), one can predict that periodic outbreaks of some vaccine-preventable infections will occur and could involve V. If he is an adolescent at the time, the course of measles or chickenpox illness is likely to be more severe than in infancy, with greater risk of complications and

> hospitalization. Travel can also increase risk of exposure. V.'s mother spoke of possibly travelling with him to California, likely unaware that the state is experiencing the largest epidemic of pertussis since 1958, with over 9,000 cases in 2010 and over 2,000 cases in 2011. Under-immunized children were contributors to the situation.
>
> [102] Dr. Scheifele addressed in his opinion the risks of each vaccine-preventable infectious disease against which children in British Columbia are routinely vaccinated. There are 14 such diseases. Six of them -- tetanus, diphtheria, pertussis (commonly known as whooping cough), polio, *haemophilus influenzae b* invasive infections (such as meningitis) and hepatitis B -- are included in a "six-in-one" vaccine given to infants. Meningococcal C and pneumococcal 13-valent vaccines are also given to infants. Measles, mumps, rubella and chickenpox vaccines are given in the second year of life. Apart from booster doses, adolescents are offered hepatitis B vaccine (if not previously given), human papillomavirus vaccine (administered to girls only) and 4-valent meningococcal vaccine. Young children are also offered influenza vaccine.
>
> [103] It is Dr. Scheifele's opinion than none of the vaccinations given for these 14 infectious diseases poses any greater risk of significant adverse effects to V. than to any other child his age. All of the vaccines are well-tolerated by children. Most importantly, it is his view that the benefits of securing V.'s protection from each of the 14 diseases far outweigh the limited risks of vaccine side effects.

[37] Wedge, J. contrasted this to the evidence of Dr. Christopher Shaw, a neurobiologist researcher and professor at the Department of Ophthalmology at UBC. He was not a medical doctor and had no expertise in pediatric infectious diseases or pediatric immunization. He had become interested in examining the question of whether adverse reactions, including possible neurological disabilities, could be caused by aluminium adjuvants in vaccines. As in the case before me, Dr. Shaw had no expertise to provide the opinions he presented to Wedge, J. She rejected Dr. Shaw's qualifications and opinion.

[38] This decision was considered by Affleck, J. in another 2012 Supreme Court decision *Vincent v. Roche-Vincent*, 2012 B.C.S.C. 1233. Affleck, J. relied upon Wedge, J.'s findings in *M.J.T. v. D.M.D.* and reached the same conclusion that the risks with a vaccination were extremely low and the benefits significantly outweighed them. I reach the same conclusion absent any properly qualified expert evidence to the contrary subsequent to 2012. There is no such evidence before me.

[39] That does not mean to say that parents should blindly follow whatever medical advice they are given. Errors - sometimes catastrophic ones - can be made by the pharmaceutical and medical industries. It remains the responsibility of the parents to hear the advice, ask the questions, do the research and reach the appropriate decision for their children.

[40] It may well be that vaccine adversomics will gain some traction and some credibility over time, just as diseases and illnesses such as depression, fibromyalgia, and lupus are now recognized, and are no longer dismissed - sometimes derisively. The reliability and credibility of such a field of study must derive from thorough study, balanced expertise and objectivity.

[41] The current best evidence is that vaccination is preferable to non-vaccination, that it is required in order to protect those who cannot be vaccinated as well as to protect ourselves, and that any adverse reaction the person may have from the vaccine is largely outweighed by the risk of contracting the targeted disease. Both boys are considered to be in good health and have no contraindications in their medical records that would suggest they should not be vaccinated. They are active, social and connected children. They are exposed in their home and social environment to the risk of these diseases and should be vaccinated to be protected against them.

[42] I am also concerned that D.A.T.'s unsupported concerns regarding x-rays have led to unnecessary and painful dental procedures for at least one of these boys. This is not in their best interests.

[43] I am satisfied on the evidence that the parental responsibility for the medical and dental treatments for both boys should lie solely with D.R.B. I order that C.D.B. and A.J.B. be vaccinated in accordance with Immunization BC's immunization schedule and the recommendations of their family doctor. I further order that D.R.B. have full parental responsibility for the medical and dental treatment of C.D.B. and A.J.B. going forward. However, D.R.B. is required to advise D.A.T. of any medical appointments, recommended treatment, and course of action with respect to the medical or dental treatment of these boys.

[44] I make two exceptions. If either child presents with a medical emergency and D.A.T. is unable to contact D.R.B. in a timely manner, then she may authorize such emergency treatment as may be necessary. Secondly, if D.A.T. wishes to proceed at her own cost with no contribution from D.R.B. with having gene testing and titer testing done of her sons, then she has liberty to make those arrangements. She must provide D.R.B. with any appointments for such testing, provide the results to D.R.B., and copy him with any reports from any practitioners performing those tests. To be clear, only D.R.B. may decide after reviewing those reports and in consultation with his own medical practitioner whether any further vaccination should take place. This is solely for D.A.T.'s peace of mind and I make the exception only because it is not contrary to the best interests of the children – even though the testing is not specifically and positively in their best interests. There is to be no delay in obtaining vaccinations while D.A.T. makes those arrangements.

[45] Mr. Ferguson shall prepare the order. D.A.T.'s signature is not required.

_____

S.D. Frame
Provincial Court Judge

THE LAW FOUNDATION OF BRITISH COLUMBIA

2021
PROVINCIAL ADVOCATES
TRAINING CONFERENCE

Legal Aid BC

Update on housing issues

Rob Patterson; Zuzana Modrovic

Topic: Housing & Tenancy

Recording Link: https://youtu.be/WA9UQZ6J-7Q

Housing Law Update, 2021

Recent Developments in Residential Tenancy Law

Robert Patterson & Zuzana Modrovic, TRAC

Changes to the *Residential Tenancy Act* and *Regulation*

Email service - effective March 1, 2021

Residential Tenancy Regulation

Part 8 — Giving and Serving Documents

Other means of giving or serving documents

43 (1)For the purposes of section 88 (j) [how to give or serve documents generally] of the Act, the documents described in section 88 of the Act may be given to or served on a person by emailing a copy to an email address provided as an address for service by the person.

(2)For the purposes of section 89 (1) (f) [special rules for certain documents] of the Act, the documents described in section 89 (1) of the Act may be given to a person by emailing a copy to an email address provided as an address for service by the person.

(3)For the purposes of section 89 (2) (f) of the Act, the documents described in section 89 (2) of the Act may be given to a tenant by emailing a copy to an email address provided as an address for service by the tenant.

When documents are considered to be received

44 A document given or served by email in accordance with section 43, unless earlier received, is deemed to be received on the third day after it is emailed.

Email service ctd

Section 89 of the RTA

Both 89(1) and 89(2) have been amended to add a section that allows the documents referred to in section 89 to be served "by any other means of service provided for in the regulations."

This essentially means that these documents can be served by email in accordance with sections 43 and 44 of the Regulation.

Expanding the Scope of Admin Penalties - effective March 25, 2021

Administrative penalties

87.3 (1) Subject to the regulations, the director may order a person to pay a monetary penalty if the director is satisfied on a balance of probabilities that the person has

(a) contravened a provision of this Act or the regulations, or

(b) failed to comply with a decision or order of the director.

Administrative penalties

87.3 (1) Subject to the regulations, the director may order a person to pay a monetary penalty if the director is satisfied on a balance of probabilities that the person has

(a) contravened a provision of this Act or the regulations,

(b) failed to comply with a decision or order of the director, or a demand issued by the director for production of records, or

(c) given false or misleading information in a dispute resolution proceeding or an investigation.

Rent Increase Freeze - effective March 25, 2021

Notice of rent increase has no effect

43.1 (1) For the purposes of this section, a date that applies under section 90 (a), (b), (c) or (d), or that is prescribed under section 97 (2) (p), as the date a notice is deemed to be received is the date that applies regardless of whether the notice is received earlier or later than that date.

(2) A notice given under this Part for an increase based on a calculation made under section 43 (1) (a) has no effect if the notice

(a) is received before September 30, 2021, as determined under subsection (1) of this section, and

(b) has an effective date that is after March 30, 2020 and before January 1, 2022.

Additional Rent Increases for Capital Expenditures - effective July 1, 2021

***RTA* s. 97 Power to Make Regulations**

- Updated s. 97(2)(o) so that the Lieutenant Governor in Council can make regulations regarding additional rent increases for capital expenditures (and perhaps other future reasons for additional rent increases), how they are to be calculated, and how they are to be applied

Regulation Part 4 - Rent Increases

S. 21.1
New section that provides definitions for all of Part 4

- Eg:
  - **"major component"** in relation to a residential property means (a) a component of the residential property that is integral to the residential property, or (b) a significant component of a major system
  - **"major system"** in relation to a residential property, means an electrical system, mechanical system, structural system or similar system that is integral (a) to the residential property or (b) to providing services to the tenants and occupants of the residential property

Additional Rent Increase for Capital Expenditures ctd.

- Landlords can apply for additional rent increase for capital expenditures that were incurred in the 18-month period preceding the application
- If the landlord gets an additional rent increase for capital expenditures, they can't make another application for additional rent increase for capital expenditures for at least 18 months after the previous application
- Landlords have to make a single application for all units that they intend to impose the additional rent increase on

Additional Rent Increase for Capital Expenditures ctd.

- RTB **must** grant the application for the portion of the capital expenditure for which the **landlord establishes** that:
  - The capital expenditures were incurred for any of a prescribed list of repairs/replacements/installations, for example, "the installation, repair or replacement of a major system or major component that has failed or is malfunctioning or inoperative or that is close to the end of its useful life;"
  - The capital expenditure was incurred within 18 months preceding the application
  - The capital expenditures are not expected to be incurred again for at least 5 years.

Additional Rent Increase for Capital Expenditures ctd.

- The RTB **must not** grant the application for a portion of a capital expenditure for which the **tenant establishes** that the capital expenditures were incurred
  - for repairs or replacement required because of inadequate repair or maintenance on the part of the landlord, or
  - for which the landlord has been paid, or is entitled to be paid, from another source.
- According to s. 21.1, "'another source' includes a grant scheme or similar scheme, an insurance plan and a settlement of a claim;"

Additional Rent Increase for Capital Expenditures ctd.

Determining the Amount

- After the RTB determines which of the claimed capital expenditures are eligible for additional rent increase, the amount of additional rent increase for capital expenditures is determined in accordance with s. 23.2 of the Regulation
- There are 2 calculations - one under section 23.2(2) and another under section 23.2(3). The amount of additional rent increase permitted by s. 23.2(4) is the lower of the 2 calculated amounts.

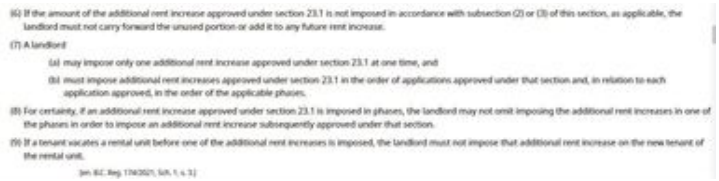
Additional Rent Increase for Capital Expenditures ctd.

How additional rent increases for capital expenditures are imposed:

- The rules for when a landlord can impose an additional rent increase for capital expenditures are set out in 23.3 of the Regulation
- Imposed in the first 12 months in which it may be imposed to comply with timing and notice requirements (s. 23.3(2)), or it may be imposed over three phases as set out in ss. 23.3(1) and 23.3(3)
  - Which it is depends on whether the amount of the increase determined in s. 23.2(4) was higher or lower than the calculation in 23.2(2)

Fact Sheet: https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/information-sheets/rtb151.pdf

Additional Rent Increase for Capital Expenditures ctd.



(6) If the amount of the additional rent increase approved under section 23.1 is not imposed in accordance with subsection (2) or (3) of this section, as applicable, the landlord must not carry forward the unused portion or add it to any future rent increase.

(7) A landlord

(a) may impose only one additional rent increase approved under section 23.1 at one time, and

(b) must impose additional rent increases approved under section 23.1 in the order of applications approved under that section and, in relation to each application approved, in the order of the applicable phases.

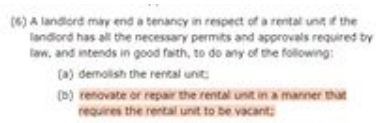
(8) For certainty, if an additional rent increase approved under section 23.1 is imposed in phases, the landlord may not omit imposing the additional rent increases in one of the phases in order to impose an additional rent increase subsequently approved under that section.

(9) If a tenant vacates a rental unit before one of the additional rent increases is imposed, the landlord must not impose that additional rent increase on the new tenant of the rental unit.

[en. B.C. Reg. 174/2021, Sch. 1, s. 3.]

Ending a Tenancy for Renovations/Repairs - effective July 1, 2021

- Section 49(6)(b) of the RTA that previously allowed landlords to serve 4 month notices to end tenancy for renovations or repairs is now repealed

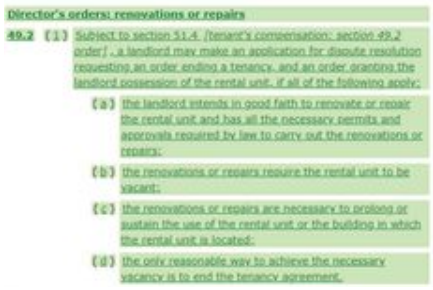


(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

(a) demolish the rental unit;

(b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;

Ending a Tenancy for Renovations/Repairs - effective July 1, 2021



Director's orders: renovations or repairs

49.2 (1) Subject to section 51.4 *[tenant's compensation: section 49.2 order]*, a landlord may make an application for dispute resolution requesting an order ending a tenancy, and an order granting the landlord possession of the rental unit, if all of the following apply:

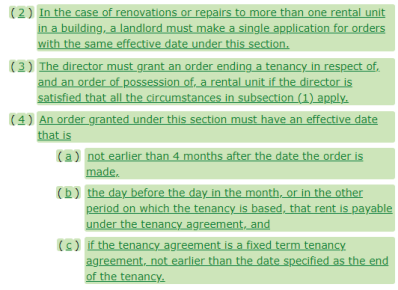
(a) the landlord intends in good faith to renovate or repair the rental unit and has all the necessary permits and approvals required by law to carry out the renovations or repairs;

(b) the renovations or repairs require the rental unit to be vacant;

(c) the renovations or repairs are necessary to prolong or sustain the use of the rental unit or the building in which the rental unit is located;

(d) the only reasonable way to achieve the necessary vacancy is to end the tenancy agreement.

Ending a Tenancy for Renovations/Repairs - effective July 1, 2021



(2) In the case of renovations or repairs to more than one rental unit in a building, a landlord must make a single application for orders with the same effective date under this section.

(3) The director must grant an order ending a tenancy in respect of, and an order of possession of, a rental unit if the director is satisfied that all the circumstances in subsection (1) apply.

(4) An order granted under this section must have an effective date that is

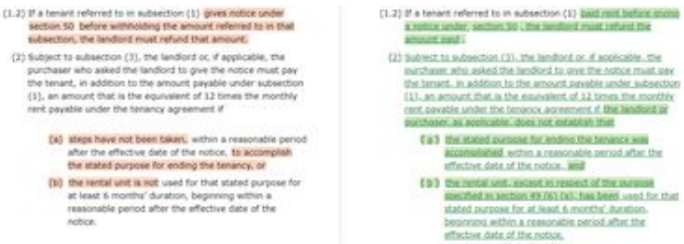
(a) not earlier than 4 months after the date the order is made,

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

Compensation for Ending a Tenancy - effective July 1, 2021

Changes to section 51:



(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

(1.2) If a tenant referred to in subsection (1) paid rent before giving a notice under section 50 , the landlord must refund the amount paid.

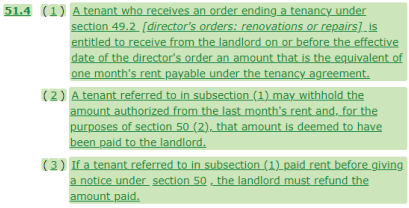
(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord or purchaser, as applicable, does not establish that

(a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and

(b) the rental unit, except in respect of the purpose specified in section 49.1(1)(a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Compensation for Ending a Tenancy - effective July 1, 2021

New section 51.4



51.4 (1) A tenant who receives an order ending a tenancy under section 49.2 *[director's orders: renovations or repairs]* is entitled to receive from the landlord on or before the effective date of the director's order an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(2) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(3) If a tenant referred to in subsection (1) paid rent before giving a notice under section 50 , the landlord must refund the amount paid.

51.4 ctd.

(4) Subject to subsection (5), the landlord must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord does not establish that the renovations or repairs have been accomplished within a reasonable period after the effective date of the order.

(5) The director may excuse the landlord from paying the tenant the amount required under subsection (4) if, in the director's opinion, extenuating circumstances prevented the landlord from accomplishing the renovations or repairs within a reasonable period after the effective date of the order.

Changes to the *MHPTA* and *Regulation*

MHPTA s.32

Park rules

32 (1) In accordance with the regulations, a park committee, or, if there is no park committee, the landlord may establish, change or repeal rules for governing the operation of the manufactured home park.

(2) Rules referred to in subsection (1) must not be inconsistent with this Act or the regulations or any other enactment that applies to a manufactured home park.

(3) Rules established in accordance with this section apply in the manufactured home park of the park committee or landlord, as applicable.

(4) If a park rule established under this section is inconsistent or conflicts with a term, other than a standard term or other material term, in a tenancy agreement that was entered into before the rule was established, the park rule prevails to the extent of the inconsistency or conflict.

MHPTA s.36.1

Notice of rent increase has no effect

36.1 (1) For the purposes of this section, a date that applies under section 83 (a), (b), (c) or (d), or that is prescribed under section 89 (2) (r), as the date a notice is deemed to be received is the date that applies regardless of whether the notice is received earlier or later than that date.

(2) A notice given under this Part for an increase based on a calculation made under section 36 (1) (a) has no effect if the notice

(a) is received before September 30, 2021, as determined under subsection (1) of this section, and

(b) has an effective date that is after March 30, 2020 and before January 1, 2022.

MHPTA s.48

Order of possession for the landlord

48 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the manufactured home site if

(a) the landlord's notice to end tenancy complies with section 45 *[form and content of notice to end tenancy]*, and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 39 *[landlord's notice: non-payment of rent]*, and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

MHPTA s.80.3

Administrative penalties

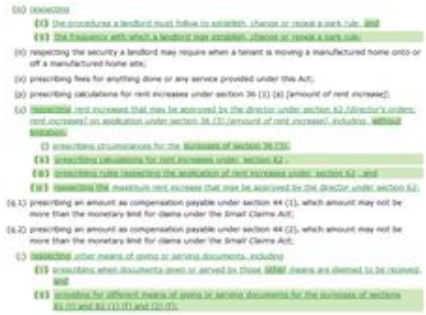
80.3 (1) Subject to the regulations, the director may order a person to pay a monetary penalty if the director is satisfied on a balance of probabilities that the person has

(a) contravened a provision of this Act or the regulations,

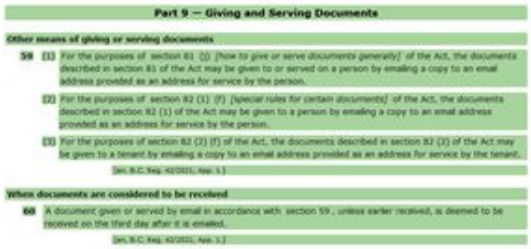
(b) failed to comply with a decision or order of the director, or a demand issued by the director for production of records, or

(c) given false or misleading information in a dispute resolution proceeding or an investigation.

MHPTA s.89 - Power to make regulations



MHPTA Regulation: Part 9



Part 9 — Giving and Serving Documents

Other means of giving or serving documents

59 (1) For the purposes of section 81 (1) *[how to give or serve documents generally]* of the Act, the documents described in section 81 of the Act may be given to or served on a person by emailing a copy to an email address provided as an address for service by the person.

(2) For the purposes of section 82 (1) (f) *[special rules for certain documents]* of the Act, the documents described in section 82 (1) of the Act may be given to a person by emailing a copy to an email address provided as an address for service by the person.

(3) For the purposes of section 82 (2) (f) of the Act, the documents described in section 82 (2) of the Act may be given to a tenant by emailing a copy to an email address provided as an address for service by the tenant.

[en. B.C. Reg. 42/2021, App. 1.]

When documents are considered to be received

60 A document given or served by email in accordance with section 59 , unless earlier received, is deemed to be received on the third day after it is emailed.

[en. B.C. Reg. 42/2021, App. 1.]

Changes to RTB Policy Guidelines

Policy Guidelines 2A & 2B

- Both updated to reflect the change to s.51(2): the burden is on the landlord in 12 month rent claims
- Policy Guideline 2B updated to reflect the change to s.49(6) re:renovictions
  - "Necessary to Prolong or Sustain Use of Rental Unit/Building"
    - Three examples given: seismic upgrades; updating wiring to code; installing or replacing sprinkler system to meet fire code
  - "Only Reasonable Way to Achieve Vacancy"
    - If repairs take 45 days or fewer, and tenant is willing to make alternative living arrangements for the period of vacancy and provide necessary access, then tenancy does not have to end. If longer than 45 days, then it may be unreasonable for tenancy to continue, but will depend on how much longer it is - the longer, the more likely it's unreasonable

Policy Guideline 3: Claims for Rent and Damages for Loss of Rent

- Clarifies that landlord's claims for compensation are to put them in the same position as if the tenant had complied with the legislation and the tenancy agreement.
- Updated to reflect new s.55(1.1)
  - if an Arbitrator upholds a Non-Payment Notice to End Tenancy, they must grant the landlord a monetary order for the unpaid rent, but cannot grant a monetary order for loss of rent due to overholding
  - An Arbitrator must determine when the tenancy ended:
    - if the tenant moved out, then the tenancy ended on the date of abandonment
    - if the tenant did not dispute the Notice or pay the amount demanded, then the tenancy ended on the effective date of the notice
    - if the tenant disputed the Notice but was unsuccessful at the hearing, then the tenancy ends on the date of the hearing
  - An Arbitrator must only award a monetary order for any unpaid rent that accrued up until the date the tenancy ended. A landlord must make a separate application for a monetary order to claim any loss of rent due to overholding for time the tenant stayed at the unit past the date the tenancy ended.

Policy Guideline 12: Service Provisions

- Canada Mail Express Post with signature option is now considered registered mail for the purpose of service
- Updated to reflect changes to *RTA* & *RTR* regarding email service
  - Parties can provide an email address for service purposes; if they provide one and then change emails, burden is on them to update the other side. If they do not, the other party can apply for a substituted service order (Form RTB-13) to ask to be allowed to serve by email and will need to provide evidence of a history of communication between them by email.
  - Proof of email evidence can include a screenshot of the sent email that shows the destination email address and the date and time it was sent

Policy Guideline 39: Direct Requests and Policy Guideline 49: Tenant's Direct Requests also updated to cover how relevant documents can be served if email has been provided as an address for service.

Policy Guideline 27: Jurisdiction

- Section B: updated to extend exception on monetary order limit to s.51.4, which is the new section that covers 12 month rent claims where a landlord ends a tenancy for renovations under s.49.2.

Policy Guideline 37: Rent Increases

- Significant re-write to cover the new Additional Rent Increase for Capital Expenditures formula
  - Must be to install, repair, or replace a major system or major component as required or permitted;
  - Be expected not to reoccur for 5 years;
  - Goes into detail about eligibility of specific capital expenditures;
  - Talks more about how the amount of increase is calculated and applied over the three years;

Policy Guideline 50: Compensation for Ending a Tenancy

- Updated to reflect changes to RTA s.51 and additions of ss. 49.2 and 51.4
  - Landlords now bear the burden of proof in s.51(2) compensation claims for 12 months of rent where the landlord does not use the rental unit for the stated purpose within a reasonable period of time and/or for at least 6 months
  - Clarifies that the 6 month requirement does not apply to s.49.2 renovictions
  - Still a notable grey area about “Reasonable Period” for accomplishing the purpose for ending the tenancy

Caselaw Update

Belmont v. Swan, 2021 BCCA 265

Landlord served a One Month Notice on the Tenant, Ms. Swan, for breach of material term. The Tenant disputed the Notice and an Arbitrator set it aside. The Landlord filed for Judicial Review and was successful, and the matter was remitted back to the RTB. The Tenant appealed.

BCCA held that the decision was patently unreasonable because the Arbitrator did not follow the basic principles of contractual interpretation.

Ratio: arbitrators must follow the basic principles of contractual interpretation

Para 29, citing *Cannacord Genuity Corp. v. Reservoir Minerals Inc.*, 2019 BCCA 278:

“The overriding concern is to determine “the intent of the parties and the scope of their understanding”. To do so, a decision-maker must read the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract. Consideration of the surrounding circumstances recognizes that ascertaining contractual intention can be difficult when looking at words on their own, because words alone do not have an immutable or absolute meaning”

Belmont v. Swan, 2021 BCCA 265

(1) When interpreting a contract, the court aims to determine the intentions of the parties in accordance with the language used in the written document and presumes that the parties have intended what they have said.

(2) The court construes the contract as a whole, in a manner that gives meaning to all of its terms, and avoids an interpretation that would render one or more of its terms ineffective.

(3) In interpreting the contract, the court may have regard to the objective evidence of the “factual matrix” or context underlying the negotiation of the contract, but not the subjective evidence of the intention of the parties.

(4) The court should interpret the contract so as to accord with sound commercial principles and good business sense, and avoid commercial absurdity.

(5) If the court finds that the contract is ambiguous, it may then resort to extrinsic evidence to clear up the ambiguity.

(6) While the factual matrix can be used to clarify the intention of the parties, it cannot be used to contradict that intention or create an ambiguity where one did not previously exist.

Flynn v. Pemberton Holmes Ltd., 2021 BCSC 1143

A dispute arose between the Tenants and their Landlord over whether they were entitled to use the crawlspace and shed on the rental property under their agreement - the Tenants thought they were, the Landlords did not.

The Landlord testified that they told the Tenants they were not included, and neither crawlspace nor shed were included in the move-in inspection form; the Tenancy Agreement did not say anything about either, and the Tenants testified that the Landlord never told them they weren’t included.

The Arbitrator found that the shed and crawlspace were not included:

“Although the tenants are correct that under the *Act* and legislative framework they would have exclusive use possession of the rental space, I am not satisfied that the two storage areas were included as part of the rental space. In light of the disputed testimony that the agents had verbally informed the tenants that these two spaces were not included, I have considered the undisputed facts such as the fact that neither the written tenancy agreement nor the move-in inspection include these two spaces as part of the tenancy agreement. As stated above, the burden of proof is on the applicants, and I am not satisfied that the tenants had provided sufficient evidence to support that the landlord had included these areas as part of the tenancy.” [Para 8]

Flynn v. Pemberton Holmes Ltd., 2021 BCSC 1143

The Tenants applied for Judicial Review of the decision and were successful. The Court found that the case turned on the Agreement.

This was in part because the Arbitrator did not make any findings of fact about what the Landlord's employees actually said to the Tenants. The Court also said that statements made after the tenancy began could not be properly used alter the meaning of the Agreement.

Ratio: the presumption is that a tenancy agreement is for the entire rental unit & property, barring any specific exclusions

"In my view, the Arbitrator made a patently unreasonable error in concluding that the Agreement was not sufficient to discharge the Tenants' burden of proof to establish that the Owners had included the Shed and Crawlspace as part of the rental unit. The Tenants entered into the Agreement to rent the Property, described by its residential address, in its entirety. The Agreement contained no terms which would have excluded the Shed or the Crawlspace. The Agreement, on its face, was sufficient to establish that there were no relevant exclusions from the Property. It was not necessary for the Agreement to list the Shed and Crawlspace explicitly as part of the rental unit, any more than it would have been necessary to state the detached garage, lawn and garden were included. The entire Property at the relevant residential address constituted the rental unit."[Para 29, emphasis added]

Chishuan Housing Society v. Silver, 2021 BCSC 1074

Judicial Review of RTB decision granting an order that the LL comply with the RTA

Held: RTB Decision was set aside for lack of procedural fairness, and inadequate reasons

Facts:

- CHS is a nonprofit LL, JS is a tenant receiving subsidy
- The agreement between CHS and JS contains a term that says that "If the tenant is eligible for a rent subsidy and if the tenant is absent from the residential premises for one consecutive month or longer without the prior written consent of the landlord, the landlord may end the tenancy, even if the rent is paid for the period"
- JS applied to the RTB seeking an order that the above term is unconscionable
- Neither party raised the issue of quiet enjoyment under s. 28 of the RTA
- The Arbitrator did not make a determination on unconscionability, instead found that the term was contrary to section 28(c) of the RTA

Procedural Fairness

[59] I am satisfied that CHS was denied its right to procedural fairness by the Arbitrator's consideration of quiet enjoyment under s. 28(c) and the fact she ultimately based her decision on that. I do not agree with Ms. Silver's position that CHS put s. 28(c) in issue through its general submissions regarding the *Act*. While CHS's statements were broad, they cannot reasonably be read as an invitation or a challenge to the Arbitrator scour the whole *Act* in search of a provision that might prove CHS wrong.

Chishuan Housing Society v. Silver, 2021 BCSC 1074

PF ctd.

[60] Ms. Silver clearly put in issue the question of whether clause 17 is unconscionable in light of her own circumstances and whether it is unfair in light of the BC Housing precedent. Those were the issues advanced in the arbitration. Despite the informality of the proceeding and the fact that Ms. Silver generally asserted that clause 17 is an unreasonable restriction, I find that this was not sufficiently specific to put CHS on notice that it would need to address s. 28(c).

[61] I accept the arbitration process is an informal one where participants are often unrepresented. Even if they may rely to some extent on guidance from the RTB or even arbitrators, this does not give arbitrators licence to decide issues that were not argued before them without giving the parties a chance to be heard on those points.

Inadequate Reasons:

- The judge in this case found that it is not obvious on the face of section 28(c) that a right to QE would include a right to extended absences, and the arbitrator failed to explain why they found that it does:

[78] The Arbitrator's finding on this point begins with this statement:

> I find that clause 17 of the tenancy agreement seeks to limit the tenant's right to quiet enjoyment under section 28(c) of the *Act* by limiting her right to exclusive possession of the subject rental property. [emphasis added].

The underlined passage simply restates the wording of s. 28(c). It does not explain how or why the restriction on extended absences falls within that wording.

Chang v. Jiazheng, 2021 BCCRT 1032

Roommate dispute about security deposit

Held: LC was awarded double the security deposit.

Facts

- Respondent roommate LJ rented a room in a shared unit from applicant roommate LC
- LJ rented the whole unit from the landlord, who was not a party to this dispute
- LC and LJ made a written roommate agreement using the standard RTB form, which incorporated aspects of the RTA, including the provisions respecting security deposits
- LC paid a security deposit of $625 to LJ
- LJ did not return the security deposit and did not apply to the RTB (or the CRT) to be permitted to keep all or a portion of it
- LC applied to the CRT for double the security deposit

Interesting Findings:

- LJ argued that he did not apply to the RTB to keep the deposit within 15 days (which the roommate agreement required) because he learned that the RTB did not have jurisdiction. The implication was that LJ wanted the adjudicator to find that the term requiring him to apply to the RTB within 15 days to retain the deposit was unenforceable. The adjudicator disagreed, and wrote:
- " I find that Mr. Jiazheng could have complied with the contract by applying for dispute resolution at the CRT instead of the RTB, as discussed in the non-binding but persuasive CRT decision in *Sood v. Williamson*, 2019 BCCRT 1035. However, Mr. Jiazheng, did not file a CRT dispute or counterclaim within the 15-day deadline."

THE LAW FOUNDATION OF BRITISH COLUMBIA

2021
PROVINCIAL ADVOCATES
TRAINING CONFERENCE

Legal Aid BC

Non-profit housing issues

Danielle Sabelli, Lasse Hvitved

Topic: Housing & Tenancy

Recording Link: https://youtu.be/i21kJAbf5IU

Non-Profit Housing Issues

LASSE HVITVED, TENANT RESOURCE AND ADVISORY CENTRE (TRAC)
DANIELLE SABELLI, COMMUNITY LEGAL ASSISTANCE SOCIETY (CLAS)

OCTOBER 14, 2021

"Fundamentally, the petitioner has not provided any justification of why tenants who are being given a social benefit of below market housing, in an effort to try and stabilize their living situation, ought to be given less legal rights than tenants paying market rates in a residential building operated by a commercial entity."

Madame Justice Sharma
PHS Community Services Society v Swait,
2018 BCSC 824 at para 56

What the RTA Does Not Apply to

- Pursuant to s 4 of the *RTA*, the *RTA* does not apply to the following:
  - Cooperative Housing;
  - Living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation;
  - emergency shelter;
  - transitional housing; and
  - a housing based health facility that provides hospitality support services and personal health care, or is made available in the course of providing rehabilitative or therapeutic treatment or services.

Housing Based Health Facility

- Pursuant to s 4 of the *RTA*, the *RTA* does not apply to:
  - (g)(v) a housing based health facility that provides hospitality support services and personal health care or
  - (g)(vi) that is made available in the course of providing rehabilitative or therapeutic treatment or services,
- *PHS Community Services Society v Swait, 2018 BCSC 824 (Swait)*
  - The term "housing based health facility" is not defined in the legislation.
    - [74] First, that correspondence is from the very agency (BC Housing) that owns the Facility and under which the Agreements were entered into. To the extent Vancouver Island Health holds the view that the Facility is a "housing based health facility", it presumably could do so in relation to the services it provides, but that view cannot be expected to represent the view of BC Housing.

Housing Based Health Facility

- In the RTB decision that was reviewed in *Swait*, the arbitrator found the housing accommodation was not a "housing based health facility" for the following reasons:
  - Operator agreement does not specify that the accommodation was intended to be a health facility;
  - The intention of government was to provide supported housing—Government was responding to a housing crisis not a health crisis;
  - Medical supports were optional, and tenants not required to participate in any services or course of treatment; and
  - Nothing in the tenancy agreement to suggest the housing accommodation was exempt from the *RTA*.

Housing Based Health Facility

- When considering s 4(g)(v) and s 4(g)(vi) *RTA* exemptions, the RTB has generally found the exemption does not apply in the following circumstances:
  - Despite providing hospitality services, the housing provider explicitly states they are not responsible for the physical and mental health of the tenants (not a "housing based health facility");
  - Tenants are not obligated to participate in the services or access the supports;
  - Length of tenancy not restricted or limited to a recovery period;
  - Parties contracted into a residential tenancy agreement, despite calling tenants "licencees";
  - Housing provider does not identify as a nursing home in their promotional material;
  - Housing provider only provides hospitality support services, not personal health care.

Housing Based Health Facility

- When considering s 4(g)(v) and s 4(g)(vi) *RTA* exemptions, the RTB has generally found the exemption does apply in the following circumstances:
  - Home support staff (24 hour), care aides and mental health workers on-site;
  - Embedded clinic in the building;
  - Meals, housekeeping and laundry service provided;
  - Emergency response call bell;
  - Retirement community;
  - Strict noise restrictions; and
  - Rules around installing life support equipment and oxygen machines.

Transitional Housing

- Pursuant to s 4 (f) of the *RTA*, the *RTA* does not apply to a living accommodation provided for emergency shelter or transitional housing,
- Pursuant to s 1 of the *Residential Tenancy Regulation* "transitional housing" includes:
  - (a) living accommodation provided on a temporary basis;
  - (b) by a person or organization that receives funding from a local government or the government of British Columbia or of Canada for the purpose of providing that accommodation, and;
  - (c) together with programs intended to assist tenants to become better able to live independently.

Transitional Housing

- Pursuant to RTB Policy Guideline # 46: "Emergency Shelters, Transitional Housing, Supportive Housing", transitional housing is defined as follows:
  - Transitional housing is often a next step toward independent living. An individual in transitional housing may be moving from homelessness, an emergency shelter, a health or correctional facility or from an unsafe housing situation. Transitional housing is intended to include at least a general plan as to how the person residing in this type of housing will transition to more permanent accommodation. Individuals in transitional housing may have a more moderate need for support services, and may transition to supportive housing or to independent living. Residents may be required to sign a transitional housing agreement.
  - Living accommodation must meet all of the criteria in the definition of "transitional housing" under section 1 of the Regulation in order to be excluded from the Act, even if a transitional housing agreement has been signed.

Supportive Housing

- Pursuant to RTB Policy Guideline # 46: "Emergency Shelters, Transitional Housing, Supportive Housing," Supportive Housing is defined as follows:
  - Supportive housing is long-term or permanent living accommodation for individuals who need support services to live independently. The Residential Tenancy Act applies to supportive housing, unlike emergency shelters and transitional housing which are excluded from the Act.
  - Under section 5 of the *RTA*, landlords and tenants cannot avoid or contract out of the Act or regulations, so any policies put in place by supportive housing providers must be consistent with the Act and regulations.

Tenancy Agreements

- A tenancy Agreement can be written or verbal.
- Pursuant to s 12 of the *RTA*, a landlord must ensure that a tenancy agreement contains the standard terms (found in the Schedule of the *Residential Tenancy Regulation*):
  - The terms may not contradict or change any right or obligation under the *Residential Tenancy Act* or a regulation made under that Act, or any standard term. If a term of this tenancy agreement does contradict or change such a right, obligation or standard term, the term of the tenancy agreement is void.
    - Pursuant to s 14 of the *RTA*, a Tenancy Agreement cannot be changed to remove a standard term; other terms besides standard terms can be amended if both parties consent (this does not apply to rent increases, restrictions, or W/D of services or facilities or an RTB order).
  - Any change or addition to this tenancy agreement must be agreed to in writing and initialed by both the landlord and the tenant. If a change is not agreed to in writing, is not initialed by both the landlord and the tenant or is unconscionable, it is not enforceable.

Program Agreements

- Section 5 of the *RTA* states that landlords and tenants may not avoid or contract out of the *RTA* or Regulations. Any attempt to do so is of no effect.
- The RTA or the Regulations may still apply even if the program agreement says it does not.
- Indicia of a tenancy agreement (the more it resembles a tenancy agreement, the more likely it is one, especially if the term is one-sided an beneficial to the landlord):
  - Duration: is it temporary? Is there an option to stay permanently?
  - Rent: is the tenant paying rent? Did the tenant pay a security deposit?
  - Are there supports and services being offered? Are they mandatory?

Health, Safety & Housing Standards—Case Law

- Pursuant to s 32 (1) of the *RTA*, a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and(having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Health, Safety & Housing Standards—Case Law

- In *Rutherfoord v. Neighbourhood Housing Society, 2012 BCSC 2177*:
- Bruce J stated the following:
  - It appears that the arbitrator, in violation of this provision of the Act, attached a proviso simillar to that contained in s. 32 relating to the provision of decoration and repair of premises, that the right varies with the nature and character and location of the rental unit. In my view, that is a patently unreasonable interpretation of the Act and, on the face of the record, it appears rather discriminatory against the tenant. A tenant who has limited resources and is therefore forced into a neighbourhood that may have problems with neighbours is entitled to the same standard, according to s. 28 of the *Residential Tenancy Act*, that is accorded to all other tenants. It seems to me that the arbitrator, if he in fact interpreted s. 28 in this fashion, has engaged in patently unreasonable reasoning. More likely, it is apparent from the lack of reference to s. 28 and a reference to the right to be free from unreasonable disturbance that the arbitrator failed to consider s. 28 at all.

Guest Restrictions—Legislation

- Tenants' rights to access is protected.
- Pursuant to s 30 of the *RTA*, a landlord must not unreasonably restrict access to the residential property by the tenant or a guest of the tenant:
- **Tenant's right of access protected**
  - **30** (1) A landlord must not unreasonably restrict access to residential property by
    - (a) the tenant of a rental unit that is part of the residential property, or
    - (b) a person permitted on the residential property by that tenant.
- (2) A landlord must not unreasonably restrict access to residential property by
  - (a) a candidate seeking election to the Parliament of Canada, the Legislative Assembly or an office in an election under the *Local Government Act*, the *School Act* or the *Vancouver Charter*, or
  - (b) the authorized representative of such a person who is canvassing electors or distributing election material.

Guest Restrictions—Legislation

- Pursuant to s 9 of the *Residential Tenancy Regulation*, a landlord cannot prevent a tenant from having guests under reasonable circumstances.
- **Occupants and guests**
  - **9** (1) The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit.
  - (2) The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.
  - (2.1) Despite subsection (2) of this section but subject to section 27 of the Act *[terminating or restricting services or facilities]*, the landlord may impose reasonable restrictions on guests' use of common areas of the residential property.
  - (3) If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved by applying for dispute resolution under the *Residential Tenancy Act*.

Guest Restrictions—Case Law

- Noteworthy BC Supreme Court cases:
- *Atira Property Management v. Richardson*, 2015 BCSC 751:
  - [39] The Arbitrator clearly rejected the notion that the statutory protection afforded to tenants under S. 30(1)(a) and (b) could be limited or abrogated by landlords implementing "policy" decisions. If the meaning of reasonable restrictions was intended to include general policies adopted by landlords, regardless of the individual situation or behaviour of the tenant, the statute could have said so. It does not, and I am of the view that the Arbitrator correctly assessed the intention of the statute to be to protect individual tenants and their guests from unreasonable interference by landlords. It would be wrong in principle to permit the protection offered by the statute to be eroded by *ad hoc* non-statutory "policy" instruments promulgated by landlords, however well-intentioned.
  - [40] The fact that the Arbitrator did not address the petitioner's extensive reasons justifying the policy in any particular detail was not a failure to give adequate reasons in the circumstances. The reasons fully explained her substantive view of what was relevant to an outcome that was justified applying the law to the facts.

Guest Restrictions—Case Law

- *PHS Community Services Society v Swait, 2018 BCSC 824:*
  - [55] Furthermore, the statute is clearly aimed at conferring a benefits on tenants; without legislation such benefits would not exist: *Atira Property Management Inc. v. Richardson*, 2015 BCSC 751 (CanLII) at para. 26, citing *Berry* at para. 11. The *Act* makes it clear that there are certain standard terms from which no tenancy agreement can depart, and parties cannot contract out of the Act (s. 5). Nor is there any evidence or authority before me to suggest that from a juridical point of view, the interests of the respondents "co-mingle" with that of the petitioner or the Province. In fact the existence of the applications is demonstrative proof that their interests do not necessarily coincide in relation to all tenancy issues.
  - [56] More fundamentally, the petitioner has not provided any justification of why tenants who are being given a social benefit of below market housing, in an effort to try and stabilize their living situation, ought to be given less legal rights than tenants paying market rates in a residential building operated by a commercial entity.

Guest Restrictions—Case Law

- *[85]* I add that the arbitrator's reasoning parallels very closely Justice McEwan's reasons in *Atira Property Management v. Richardson*, 2015 BCSC 751 (CanLII) where he found that a blanket policy was inconsistent with the Act. This is precisely the reasoning of the arbitrator because he noted that it would be reasonable for the petitioner to require greater tenant control over specific guests that posed a concern; it is the blanket nature of the policy that he found unreasonable.

Guest Restrictions—Case Law

- During the COVID-19 pandemic, many non-profit housing providers unlawfully implemented building-wide guest bans.
- The Residential Tenancy COVID order (March 2020), clearly stated that landlords could not prevent or interfere with a tenant's ability to have occupants and/or guests access their rental unit.
- Vancouver Coastal Health has recommended "that housing providers continue allowing visitors and use other prevention strategies so people do not use alone in their rooms."
- The BC Centre for Disease Control has instructed PWUD to "buddy up" when using, to "check in on your buddies regularly" and to rely on buddies for food, harm reduction supplies and medicine.
- In some circumstances, the guest ban may also be discriminatory under *the BC Human Rights Code.*

Reflections on caselaw

- Are **All** guests restrictions in a first time tenancy agreement illegal?
- Can the compliance and enforcement unit step in?
  - Guest restrictions are low priority cases
  - Usually all tenants in the same building are affected
  - Need a directors order.
    - *" I caution the landlord not to include the 14-day guest policy in any future tenancy agreements and that by doing so, could lead to the landlord being recommended for investigation by the RTB Compliance and Enforcement Unit (CEU)."*

Reflections on caselaw

- The Occupant problem
  - *"Given the supported evidence that the tenant's son resides with its mother, I find on a balance of probabilities that the son only stays with the father as part of that custody arrangement and does not occupy the unit as a full-time residence"*
  - *"Based on the evidence presented by the Agent for the Tenant I determined that at the present time the agent for the Tenant is living elsewhere. As a result he is a guest and not a resident"*
  - The landlord may require the tenant to provide proof that the guest maintains a primary residence elsewhere. (BC housing agreement 15)

Over-under housing

National Occupancy standard

- A maximum of two persons per bedroom.
- Household members, of any age, living as part of a married or common-law couple share a bedroom with their spouse or common-law partner.
- Parents in a one-parent family, of any age, have a separate bedroom.
- Household members aged 18 or over have a separate bedroom - except those living as part of a married or common-law couple.
- Household members under 18 years old of the same sex share a bedroom - except parents in a one-parent family and those living as part of a married or common-law couple.
- Household members under 5 years old of the opposite sex share a bedroom if doing so would reduce the number of required bedrooms.

BC housing interpretation of national occupancy standard :

- There shall be no more than 2 or less than 1 person per bedroom.
- Spouses and couples share a bedroom.
- Parents do not share a bedroom with children.
- Dependants aged 18 or more do not share a bedroom.
- Dependants aged 5 or more of opposite sex do not share a bedroom.

Overhousing

Quiet Enjoyment

- Pursuant to section 28 of the *RTA*, a tenant is entitled to quiet enjoyment, including, but not limited to:
  - The right to reasonable privacy;
  - Freedom from unreasonable disturbance;
  - Exclusive possession, subject to the landlord's right of entry under the Legislation; and
  - Use of common areas for reasonable and lawful purposes, free from significant interference.

Landlord's Right to Access the Rental Unit Restricted

- Landlord's cannot impose "wellness checks" onto tenants.
- Pursuant to s 29 of the *RTA*, the Landlord's right to enter a rental unit is restricted:
- **Landlord's right to enter rental unit restricted**
- **29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:
  - (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
  - (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
    - (i) the purpose for entering, which must be reasonable;
    - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

Landlord's Right to Access the Rental Unit Restricted

- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

Landlord's Right to Access the Rental Unit Restricted

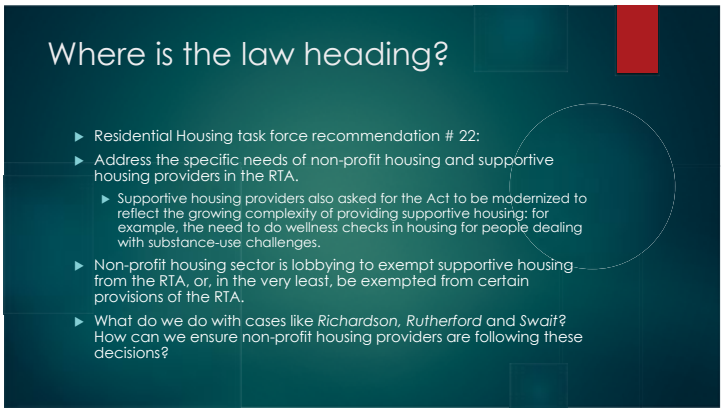
- Where a notice is given that meets the time constraints of the *RTA*, but entry is not for a reasonable purpose, the tenant may deny the landlord access. A "reasonable purpose" may include:
  - Inspecting the premises for damage;
  - Carrying out repairs to the premises; and
  - Showing the premises to prospective tenants, or • showing the premises to prospective purchasers.
- Entry on the property by the landlord should be limited to such reasonable activities as collecting rent, serving documents and delivering Notices of entry to the premises.
- If the landlord has entered the rental unit illegally, can apply to the RTB to have the locks changed.

RTB Compliance & Enforcement Unit

- RTB Compliance Unit may be useful to address non-profit housing issues, including jurisdiction.
- The RTB Compliance and Enforcement Unit has the authority to do the following:
  - conduct investigations to determine compliance with tenancy laws;
  - contact the landlord of the complaint by phone to advise them of their responsibilities under legislation and the consequences of non-compliance;
  - Send warning letters indicating what corrective measures the landlord must take to fix the problem and the consequences of not following this direction; and

RTB Compliance & Enforcement Unit

- **impose financial penalties on the Landlord (the penalties are paid to the Government, not tenants).**
- The Compliance and Enforcement Unit will be given greater authority to pursue investigations, including broadening the type of material they can compel, and compel records from a person, or third party who have hold relevant information.


Where is the law heading?
Residential Housing task force recommendation # 22:
Address the specific needs of non-profit housing and supportive housing providers in the RTA.
Supportive housing providers also asked for the Act to be modernized to reflect the growing complexity of providing supportive housing: for example, the need to do wellness checks in housing for people dealing with substance-use challenges.
Non-profit housing sector is lobbying to exempt supportive housing from the RTA, or, in the very least, be exempted from certain provisions of the RTA.
What do we do with cases like Richardson, Rutherford and Swait? How can we ensure non-profit housing providers are following these decisions?

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT OLC

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution (application) which were combined as a joiner application seeking remedy under the *Residential Tenancy Act* (Act). The tenants applied for an order to allow access to the unit, site or property for the tenant's guests and for an order directing the landlord to comply with the Act, regulation or tenancy agreement. Specifically, the tenants are seeking to have the 14 cumulative days of overnight stays between all of their guests be found to be in violation of the Act, regulation or tenancy agreement and that the landlord be ordered to cease to their blanket policy related to prohibiting any guests from staying more than 14 cumulative overnight stays in a calendar year.

The tenants, an advocate for the tenants, LH (advocate), and an agent for the landlord, AU (agent) appeared at the teleconference hearing and gave affirmed testimony. During the hearing both parties were given the opportunity to provide their evidence orally and respond to the testimony of the other party. I have reviewed all evidence before me that was presented during the hearing and that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, only the evidence relevant to the issues and findings in this matter are described in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

At the outset of the hearing, the agent confirmed that the landlord had been served with the tenants' documentary evidence and that the landlord had the opportunity to review that evidence prior to the hearing. While the advocate confirmed that they had been served with the landlord's 13 pages of documentary evidence, the parties were advised that the RTB had not been served with that evidence, so by mutual agreement of the parties, the advocate was permitted to upload the landlord's 13 pages of evidence during the hearing to avoid an adjournment as the hearing had been scheduled for 2.5

hours, versus as standard 1 hour hearing. Therefore, I find the parties were sufficiently served in accordance with the Act and the hearing proceeded.

Issues to be Decided

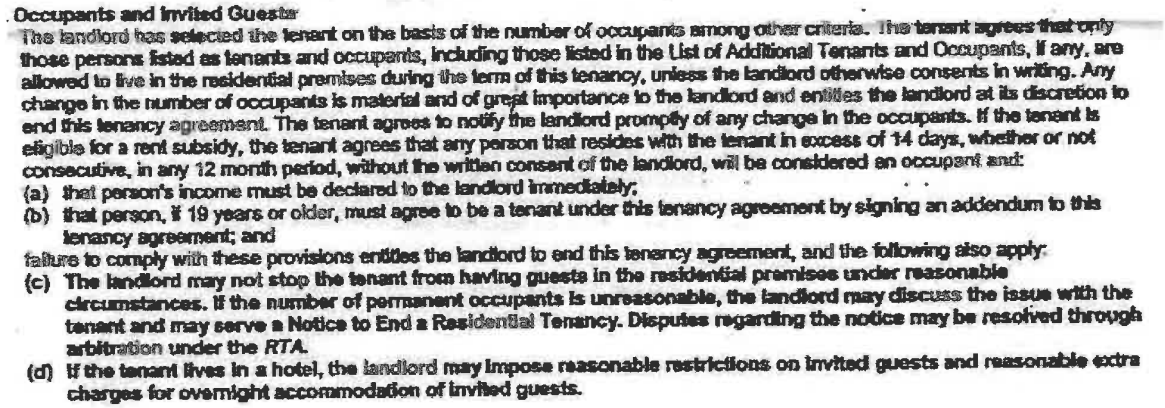
- Have the tenants provided sufficient evidence to support the landlord being ordered to cease their 14 cumulative overnight stays per calendar year guest policy (14-day guest policy)?
- If yes, should the 14-day guest policy be struck down as unenforceable under the Act?

Background and Evidence

Each tenant submitted a copy of their tenancy agreement. Tenant NM (NM) began their tenancy in October 2019, while tenant AHM (AHM) began their tenancy in June 2013.

Tenants' evidence

On page 8 of the tenancy agreement for AHM section 14 reads:



Occupants and Invited Guests

The landlord has selected the tenant on the basis of the number of occupants among other criteria. The tenant agrees that only those persons listed as tenants and occupants, including those listed in the List of Additional Tenants and Occupants, if any, are allowed to live in the residential premises during the term of this tenancy, unless the landlord otherwise consents in writing. Any change in the number of occupants is material and of great importance to the landlord and entitles the landlord at its discretion to end this tenancy agreement. The tenant agrees to notify the landlord promptly of any change in the occupants. If the tenant is eligible for a rent subsidy, the tenant agrees that any person that resides with the tenant in excess of 14 days, whether or not consecutive, in any 12 month period, without the written consent of the landlord, will be considered an occupant and:

(a) that person's income must be declared to the landlord immediately;

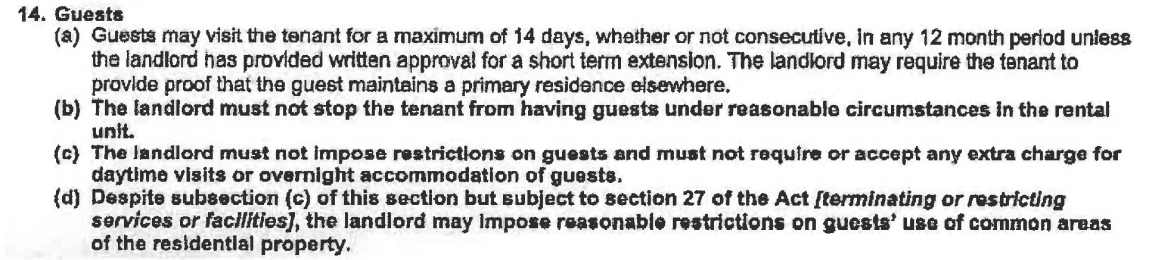
(b) that person, if 19 years or older, must agree to be a tenant under this tenancy agreement by signing an addendum to this tenancy agreement; and

failure to comply with these provisions entitles the landlord to end this tenancy agreement, and the following also apply:

(c) The landlord may not stop the tenant from having guests in the residential premises under reasonable circumstances. If the number of permanent occupants is unreasonable, the landlord may discuss the issue with the tenant and may serve a Notice to End a Residential Tenancy. Disputes regarding the notice may be resolved through arbitration under the *RTA*.

(d) If the tenant lives in a hotel, the landlord may impose reasonable restrictions on invited guests and reasonable extra charges for overnight accommodation of invited guests.

On page 16 of the tenancy agreement for NM section 14 reads:



14. Guests

(a) Guests may visit the tenant for a maximum of 14 days, whether or not consecutive, in any 12 month period unless the landlord has provided written approval for a short term extension. The landlord may require the tenant to provide proof that the guest maintains a primary residence elsewhere.

(b) The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit.

(c) The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.

(d) Despite subsection (c) of this section but subject to section 27 of the Act *[terminating or restricting services or facilities]*, the landlord may impose reasonable restrictions on guests' use of common areas of the residential property.

The advocate stated that both of the tenants have been given warning letters for violations of the terms regarding guests found in section 14 of their respective tenancy agreements and have since temporarily stopped with the activity pending the results of this hearing. The advocate stated that the warning letters submitted in evidence were only related to section 14 of the tenancy agreements and were not related to the any behaviour issues or damages done by their guests.

For AHM, the warning letters relates to visits from his wife on a weekly basis. The advocate writes that AHM and his wife married in 2018 and that AHM's wife lives in North Vancouver with her sister and that North Vancouver is where AHM's wife works. The advocate stated that it takes AHM's wife between 1.5 and 2 hours one-way to take public transportation to visit her husband, which is up to a 4-hour round-trip journey. The advocate stated that the landlord has by limiting the wife's visits to 14 days a year, has caused difficulties both financially and emotionally in their marriage. The advocate writes that the couple cannot see each other as much as they would wish, due to the time constraints for each 4-hour round-trip, plus the financial impacts of purchasing more transit tickets due to not being able to stay overnight as many times as they wish.

For NM, the advocate stated that she suffers from COPD (chronic obstructive pulmonary disease), which entails difficulty with breathing. The advocate writes that in March 2020, at the start of the pandemic, NM's daughter travelled to be near NM and her brother, with a focus on assisting her mother through the period of time as NM is extremely high risk of dying if she contracted the virus, due to being a senior and having a prior lung condition. NM's daughter would assist her mother with purchasing groceries and housework and sometimes stay overnight through a period of a few days, even though NM's daughter maintained her primary residence at her brother's home. The advocate writes that due to the landlord threatening eviction in this scenario, NM had to expose herself to additional risks of contracting COVID as NM felt they could not get as much help if the strict 14-day guest policy had not been in place.

The advocate stated that based on the current 14-day guest policy, the tenants can have only a single overnight visit once every 26 days. The advocate writes that the current 14-day guest policy robs the tenants of the ability to have a fulfilling, dignified and meaningful social life and to enjoy their right to be free from unreasonable restrictions on their guests.

The advocate submitted a comparison to demonstrate what the advocate stated was the absurdity of the 14-day guest policy by comparing that inmates in federal Canadian prisons currently enjoy 72 hours of private overnight visitors every 2 month or 18 day

per year, which is 4 more days of overnight visits than the tenants in this matter are permitted to enjoy in their tenancies. The advocate concedes that while the tenants are not inmates and can move, it is absurd to imagine that tenants could be held to more restrictive rules than federal inmates.

Furthermore, the advocate cited *Berry and Kloet v. British Columbia,* 2007 BCSC 257 (*Berry and Kloet* decision) that found that the overriding purpose of the Act is to bestow tenants with rights against the perceived superior strength of landlords:

> [11] I start from the accepted rules of statutory interpretation. I conclude that the Act is a statute which seeks to confer a benefit or protection upon tenants. Were it not for the Act, tenants would have only the benefit of notice of termination provided by the common law. In other words, while the Act seeks to balance the rights of landlords and tenants, it provides a benefit to tenants which would not otherwise exist. In these circumstances, ambiguity in language should be resolved in favour of the persons in that benefited group: See (Canada Attorney General) v. Abrahams, 1983 CanLII 17 (SCC), [1983] 1 S.C.R. 2: Henricks v. Hebert, [1998] B.C.J. No. 2745 (QL)(SC) at para. 55:
>
> I think it is accepted that one of the overriding purposes of prescribing statutory terms of tenancy, over and above specifically empowering residential tenants against the perceived superior strength of landlords, was to introduce order and consistency to an area where agreements were often vague, uncertain or non-existent on important matters, and remedies were relatively difficult to obtain

The advocate writes that based on the *Berry and Kloet* decision, landlords can only restrict the rights of tenants to the degree the Act allows and that the rules must be interpreted in favour of tenants. Section 30 of the Act was described:

> 30(1) A landlord must not unreasonably restrict access to residential property by
> (a) the tenant of a rental unit that is part of the residential property, or
> (b) a person permitted on the residential property by that tenant.

The advocate further writes that a landlord can therefore only restrict the guests of a tenant if it is reasonable to do so, in a specific situation and argues that in the matter before me, the 14-day guest policy was applied sweepingly and without any reason specific to the tenants in this matter. The advocate submits that the tenants are required to sign the tenancy agreement and agree to the 14-day guest policy and the advocate submits that under section 5 of the Act, the landlord may not avoid or contract out of the

Act or the regulations and that any attempt to avoid or contract out of the Act or regulations is of no effect given that section 5 of the Act states:

> **This Act cannot be avoided**
>
> **5**(1) Landlords and tenants may not avoid or contract out of this Act or the regulations.
>
> (2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

The advocate also writes:

> This is echoed by the honorable Mr. Justice McEwan of the Supreme Court of British Columbia in *Atira v. Richardson*, 2015 BCSC 751, (*Atira* decision) in paragraph 39, page 47-48:
>
> "In submitting that the Arbitrator failed to consider and apply the statutory requirement of "reasonableness" the petitioner is only arguing that the arbitrator was wrong because she did not agree with the petitioner's position. The arbitrator clearly rejected the notion that the statutory protection afforded to tenants under S.30(1)(a) and (b) could be limited or abrogated by landlords implementing "policy" decisions. If the meaning of reasonable restrictions was intended to include general policies adopted by landlords, regardless of the individual situation or behavior of the tenant, the statute could have said so. It does not, and I am of the view that the Arbitrator correctly assessed the intention of the statute to be to protect individual tenants and their guests from unreasonable interference by landlords. **It would be wrong in principle to permit the protection offered by the statute to be eroded by ad hoc non-statutory "policy" instruments promulgated by landlords, however well-intentioned."** [advocate emphasis]

In addition to the above, the advocate also writes that in the older of the two tenancy agreements, the 14-day guest policy term originated as a term only applicable to people in subsidized housing, and argues that it is discriminatory against people of low-income who need their housing subsidized. The advocate referred to a previous RTB decision about the 14-day guest policy and other rules of a similar nature said as follows:

> "Overall, I consider the basis for the landlord's check in and overnight stays policy to be repugnant, oppressive and paternalistic. Every tenant regardless of the community they live in, their socio-economic status, their occupation or their personal hardships have equal rights under the act."

The advocate writes that a tenant in low-income housing can have no more restrictions placed on the amount and number of visits than people living in a market-price or luxury apartments. The advocate also concedes that while prior RTB decisions are not binding on the arbitrator, they can be persuasive and submits that in the *Atira* decision on paragraph 25 the BC Supreme Court found:

> "while [prior RTB] decisions are not precedential, and each arbitrator is free to decide on his or her own interpretation, consistency in the approach to a particular right or provision may be of assistance in determining the reasonableness of a given outcome. The facts here are analogous to those in the RTB decision found at pages of the tenant's evidence package, and I submit that similar reasoning should be applied to this case."

And in a previous RTB decision the advocate writes that a previous arbitrator has written:

> "I also note that while I am not bound by previous decisions, I concur with my colleagues and I find that Section 30 of the Act and Section 9 of the schedule do not allow for a restriction for guest access to be made based on the neighbourhood or type of building. As a result, I find the landlord's restrictions to require guests present and surrender their identification and to not stay overnight are unreasonable and infringes on the rights granted to the tenant under Section 30 of the Act"

In addition, the advocate cited *Rutherfoord v. Neighbourhood Housing society,* 2012, BCSC 2177 (*Rutherfoord* decision) in paragraph 7 that reads:

> "[7] It appears that the arbitrator, in violation of this provision of the Act, attached a proviso similar to that contained in s. 32 relating to the provision of decoration and repair of premises, that the right varies with the nature and character and location of the rental unit. **In my view, that is a patently unreasonable interpretation of the Act and, on the face of the record, it appears rather discriminatory against the tenant. A tenant who has limited resources and is therefore forced into a neighbourhood that may have problems with**

> **neighbours is entitled to the same standard, according to s. 28 of the Residential Tenancy Act, that is accorded to all other tenants.** It seems to me that the arbitrator, if he in fact interpreted s. 28 in this fashion, has engaged in patently unreasonable reasoning. More likely, it is apparent from the lack of reference to s. 28 and a reference to the right to be free from unreasonable disturbance that the arbitrator failed to consider s. 28 at all." [advocate emphasis]

The advocate also mentioned that the written warnings sent by the landlord to the tenants referred to the incorrect section number of the tenants' respective tenancy agreements, which the advocate stated demonstrates that even their form letters are not specific to the tenants and are generic.

NM testified that the landlord was encouraging her to move to assisted living across the street and NM refused as NM stated that she does not require that level of care. NM also stated that she was glad she refused to move across the street as they had a severe COVID outbreak and many seniors died there as a result.

Landlord's evidence

The agent stated that the landlord feels that 14 overnight days is not unreasonable. In addition, the agent stated that AHM's wife sometimes is there 2-3 days per week which is 40% of the time and that the landlord has given AHM the option to add his spouse to the tenancy agreement. The agent stated that the offer was made to AHM as the rental building is operated by BC Housing and that rent is geared towards income and that 30% of their household income is what the tenants pay, with the remainder of the rent being paid by BC Housing. The agent also stated that each year, annual reviews are conducted for all tenants to ensure all tenants are paying 30% of their household income. The agent stated that AHM refused to have his spouse added to the tenancy agreement due to not being able to afford more rent.

The agent testified that if a guest is living there part-time they become an occupant and then the agent later used the term tenant instead of occupant. As a result, the agent was using the term tenant and occupant synonymously in describing the guests of the tenants. The agent stated that if a guest stays more than 14 overnight days per calendar year they become a tenant, which I will address later in this decision.

The agent summarized their position by stating that they feel the 14-day guest policy is valid and beyond that, each tenant agreed to it and signed the tenancy agreements confirming they would comply with it. The agent also testified that the 14-day guest

policy has nothing to do with the rights of a tenant and that all the landlord is doing is providing affordable housing and argue that they are complying with the Act.

The agent responded to NM by stating that caregivers that attend rental units to assist tenants do not stay overnight and that is the difference between NM's daughter staying over 14 nights per calendar year and any other caregiver that is attending the building.

Analysis

Based on the documentary evidence, the testimony of both parties, and on the balance of probabilities, I find the following.

Firstly, I disagree with the agent when they state that guests that stay overnight more than 14 nights per calendar year become tenants as the Act does not speak to a threshold of 14 days or any specific number of days under the Act.

Secondly, I agree with the advocate that 14 days per calendar year is too restrictive and I find the blanket 14-day guest policy to be both oppressive and more restrictive than what federal inmates enjoy in federal prison, which is 18 overnight visits per calendar year.

Thirdly, I agree with the advocate that section 30(1) of the Act applies and states:

> **Tenant's right of access protected**
>
> **30**(1) A landlord must not unreasonably restrict access to residential property by
>
> (a)the tenant of a rental unit that is part of the residential property, or
>
> (b)a person permitted on the residential property by that tenant.

I find that the landlord has failed to comply with section 30(1) of the Act and although the agent is claiming they are not restricting guests by not denying them entry, they are in essence doing so by writing warning letters to the tenants for violating the 14-day guest policy. Furthermore, the *Berry and Kloet* decision speaks to the Act providing protections for tenants that would not otherwise exist and I find that section 30(1) of the Act protects the tenants from such arbitrary 14-day guest policies.

In addition, I reject the agent's assertion that the tenants are required to comply with the 14-day guest policy because it is part of the tenancy agreement they signed due to section 5 of the Act, which I find applies and states:

This Act cannot be avoided

5(1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Therefore, I find that the landlords have attempted to contract outside of the Act by having tenants sign a tenancy agreement which includes what I find to be an unlawful 14-day guest policy. I also find the 14-day guest policy to be oppressive to the tenants and does not take into account the personal circumstances of each tenant.

My decision is supported by prior RTB decisions, where arbitrators have found similar guest policies to be oppressive, repugnant, and paternalistic. Furthermore, the Supreme Court in the *Atira* decision found that:

> …It would be wrong in principle to permit the protection offered by the statute to be eroded by ad hoc non-statutory "policy" instruments promulgated by landlords, however well-intentioned."

Based on the evidence before me, I find that the 14-day guest policy is an ad hoc non-statutory policy of the landlord that only serves to be oppressive to the tenants.

In addition, the Supreme Court in the *Rutherfoord* decision confirmed that tenants, regardless of their housing location, share the same protections as other tenants under the Act. As a result, I afford very little weight to the agent's claim that it is due to the BC Housing rent geared to income requirement that they have the 14-day guest policy as I find the landlord has provided insufficient evidence to support that after 14 overnight stays per calendar year that a guest becomes a tenant or an occupant under the Act.

I find the advocate's evidence to be logical, well-reasoned and I agree with the advocate that the 14-day guest policy should be struck down and pursuant to section 62(3) of the Act I make the following order.

I ORDER the landlord to immediately cease the 14-day guest policy.

I find the 14-day guest policy violates section 5 of the Act and has no force or effect under the Act.

As a result, I find the tenants' application to be fully successful.

I caution the landlord not to include the 14-day guest policy in any future tenancy agreements and that by doing so, could lead to the landlord being recommended for investigation by the RTB Compliance and Enforcement Unit (CEU).

If the landlord truly believes that a guest has become a tenant or occupant under the Act, the landlord has the ability to serve a notice to end tenancy under the Act. The tenants would then, in that scenario, have the ability to file an application to dispute such a notice.

Conclusion

The tenants' joined applications are fully successful.

The landlord has been ordered to immediately cease the 14-day guest policy. The 14-day guest policy has no force or effect under the Act.

As the filing fees were waived, they are not granted.

This decision will be emailed to the parties.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 19, 2021

Arguments

The result of the 14-day term is that a tenant can have only a single overnight visit once every 26 days. As seen above, this robs tenants of the ability to have a fulfilling, dignified and meaningful social life and to enjoy their right to be free from unreasonable restrictions on their guests. For these tenants, this restriction robs one of them of the ability to spend time with his wife and prevents the other from spending time with her child.

For comparison, inmates in Canadian prisons currently enjoy 72 hours of private overnight visitors every 2 months or 18 days a year. That is 4 more days than these tenants receive under their current tenancy agreements. It is absurd to imagine that it could be reasonable to place ordinary tenants under the same, or in this case even more restrictive rules than inmates. As can be seen in the evidence in the rules for private family visits to correctional facilities on page 7:

*"**Duration and frequency***

19. The duration and frequency for use of private family units will normally be up to 72 hours, every two months unless otherwise specified in the standing order."

Furthermore, as stated in *Berry and Kloet v. British Columbia*, 2007 BCSC 257, page 28 of the evidence, the overriding purpose of the residential tenancy act is to bestow tenants with rights against the perceived superior strength of landlords:

"[11] I start from the accepted rules of statutory interpretation. I conclude that the Act is a statute which seeks to confer a benefit or protection upon tenants. Were it not for the Act, tenants would have only the benefit of notice of termination provided by the common law. In other words, while the Act seeks to balance the rights of landlords and tenants, it provides a benefit to tenants which would not otherwise exist. In these circumstances, ambiguity in language should be resolved in favour of the persons in that benefited group: See (Canada Attorney General) v. Abrahams, 1983 CanLII 17 (SCC), [1983] 1 S.C.R. 2: Henricks v. Hebert, [1998] B.C.J. No. 2745 (QL)(SC) at para. 55:

I think it is accepted that one of the overriding purposes of prescribing statutory terms of tenancy, over and above specifically empowering residential tenants against the perceived superior strength of landlords, was to introduce order and consistency to an area where agreements were often vague, uncertain or non-existent on important matters, and remedies were relatively difficult to obtain"

This means that landlords can only restrict the rights of tenants to the degree that the *RTA* allows and that these rules must be interpreted in the favor of tenants. In this case, section 30 of the *RTA* states:

(1) A landlord must not unreasonably restrict access to residential property by

(a) the tenant of a rental unit that is part of the residential property, or

(b) a person permitted on the residential property by that tenant.

A landlord therefore can only restrict a tenant's guests if it is reasonable to do so, in the specific situation. However, as we can see in the case of these tenancy agreements, the 14-day rule is applied sweepingly and without any reason specific to the tenants. They are introduced at the beginning of the tenancy before it is even known whether there are any reasonable grounds to restrict the tenants' right to have guests. This blanket policy effectively removes the right bestowed to tenants under section 30 of the *RTA*. If the landlords were allowed, as they are doing here, to remove the rights of tenants through such blanket policies applied to all tenants, the rights bestowed by *RTA* upon tenants would essentially be meaningless.

This is echoed by the honorable Mr. Justice McEwan of the Supreme Court of British Columbia in *Atira v. Richardson,* 2015 BCSC 751, ("*Atira"*), in paragraph 39, page 23-24:

"In submitting that the Arbitrator failed to consider and apply the statutory requirement of "reasonableness" the petitioner is only arguing that the arbitrator was wrong because she did not agree with the petitioner's position. The arbitrator clearly rejected the notion that the statutory protection afforded to tenants under S.30(1)(a) and (b) could be limited or abrogated by landlords implementing "policy" decisions. If the meaning of reasonable restrictions was intended to include general policies adopted by landlords, regardless of the individual situation or behavior of the tenant, the statute could have said so. It does not, and I am of the view that the Arbitrator correctly assessed the intention of the statute to be to protect individual tenants and their guests from unreasonable interference by landlords. ***It would be wrong in principle to permit the protection offered by the statute to be eroded by ad hoc non-statutory "policy" instruments promulgated by landlords, however well-intentioned."*** (my emphasis)

Furthermore, as can be seen in the older of the two tenancy agreements, the term originated as a term only applicable to people in subsidized housing. It is essentially a form of discrimination against people of low-income who need their housing subsidized. An arbitrator in a previous RTB decision about the 14-day term and other rules of a similar nature said on page 46 of the evidence:

"Overall, I consider the basis for the landlord's check in and overnight stays policy to be repugnant, oppressive and paternalistic. Every tenant regardless of the community they live in, their socio-economic status, their occupation or their personal hardships have equal rights under the act."

As concluded by this arbitrator, a tenant in low-income housing can have no more restrictions placed on the amount and number of visits than people living in market-priced or luxury apartments. If it would be reasonable for a high-end apartment tenant to have overnight guests more than 14 days, it must be reasonable for a person in subsidized housing as well. While prior

RTB decisions are not binding, they can be persuasive. In *Atira v. Richardson* at paragraph 25, the BC Supreme Court, page 18-19 of the evidence, found that:

"while [prior RTB] decisions are not precedential, and each arbitrator is free to decide on his or her own interpretation, consistency in the approach to a particular right or provision may be of assistance in determining the reasonableness of a given outcome. The facts here are analogous to those in the RTB decision found at pages of the tenant's evidence package, and I submit that similar reasoning should be applied to this case."

This sentiment is also echoed by another arbitrator in page 52 of the evidence, stating that:

"I also note that while I am not bound by previous decisions, I concur with my colleagues and I find that Section 30 of the Act and Section 9 of the schedule do not allow for a restriction for guest access to be made based on the neighbourhood or type of building. As a result, I find the landlord's restrictions to require guests present and surrender their identification and to not stay overnight are unreasonable and infringes on the rights granted to the tenant under Section 30 of the act"

This reasoning that tenants in subsidized housing are entitled to the same rights as those in market rate housing is mirrored by the honorable Madam Justice Bruce, in *Rutherfoord v. Neighbourhood Housing society,* 2012 BCSC 2177, in paragraph 7, found on page 39 of the evidence:

"[7] It appears that the arbitrator, in violation of this provision of the Act, attached a proviso similar to that contained in s. 32 relating to the provision of decoration and repair of premises, that the right varies with the nature and character and location of the rental unit. ***In my view, that is a patently unreasonable interpretation of the Act and, on the face of the record, it appears rather discriminatory against the tenant. A tenant who has limited resources and is therefore forced into a neighbourhood that may have problems with neighbours is entitled to the same standard, according to s. 28 of the Residential Tenancy Act, that is accorded to all other tenants.*** *It seems to me that the arbitrator, if he in fact interpreted s. 28 in this fashion, has engaged in patently unreasonable reasoning. More likely, it is apparent from the lack of reference to s. 28 and a reference to the right to be free from unreasonable disturbance that the arbitrator failed to consider s. 28 at all."* (my emphasis)

Conclusion

In summary, the 14-day restriction of overnight guests is a violation of section 30(1)(a) and (b) of the *RTA*, because:

1) it is *prima facie* an unreasonable limitation on the tenants right to be free from unreasonable restrictions on their guests by the landlord;

2) It is a blanket policy that restricts the tenants' rights without taking into account the individual situation of the tenants, akin to the policy impugned by the Court in *Atira v. Richardson*; and,

3) The restriction is formed on a discriminatory basis because it primarily limits the rights of tenants in subsidized housing and not tenants who pay market rent. Regardless of their source of income, all tenants enjoy the same rights under the *RTA*.

Correctional Service Canada

Commissioner's Directive

Private Family Visits

Commissioner's Directive

- Number: 710-8
- In Effect: 2016-10-11

Related Links

- Policy Bulletin 547

10

AUTHORITIES

- *Corrections and Conditional Release Act* (CCRA), sections 3, 3.1, 4, 15.1, 59, 60 and 71
- *Corrections and Conditional Release Regulations*(CCRR),sections 4, 54 , 90 , 91 and 92

PURPOSE

- To outline the processes for the use of private family visit units

APPLICATION

Applies to staff involved in the application process and management of private family visits

CONTENTS

RESPONSIBILITIES

1. The Institutional Head will implement a Standing Order for the use of private family visit units to ensure the safety of the participants and the security of the institution.

2. The Institutional Head may delegate the authority for approval of private family visits to a level not below the Correctional Manager.
3. The Institutional Head or designate will:
    a. ensure processes are developed and implemented for the review and decision making on applications for the use of private family visit units. When the unit is not being utilized for family visits, it may be authorized for individual time for inmates on a case-by-case basis
    b. report to police any suspicions that a criminal act has occurred.
4. The Assistant Warden, Operations, will ensure:
    a. family violence prevention information is available to all visitors
    b. inmate and visitor(s) are advised of rules, regulations, behavioural expectations and responsibilities
    c. follow-up is conducted with the inmate and/or visitor(s) after the use of private family visit units.
    d. information related to victim services and the Restorative Opportunities Program is made available to visitors.
5. The Correctional Manager will:
    a. review applications for private family visits
    b. provide a recommendation to the decision maker.
6. The Correctional Officer II/Primary Worker will:
    a. process inmate requests for private family visits within the timeframes prescribed
    b. while conducting the Threat Risk Assessment for Private Family Visits (With Visitors) (CSC/SCC 1529) or Threat Risk Assessment for Private Family Visits (Individual Time) (CSC/SCC 1527):
        i. consult with the Correctional Manager
        ii. consider family violence history and information provided by the visitor(s) in the Statement of Voluntary Participation and Consent for Private Family Visits form (CSC/SCC 0531)
        iii. determine if a Community Assessment is required pursuant to CD 715-3 – Community Assessments
    c. following receipt of the Statement of Voluntary Participation and Consent for Private Family Visits form (CSC/SCC 0531), interview the visitor(s) if concerns are identified (if circumstances do not permit, the interview can be delegated to the Visit and Correspondence Officer)
    d. following the private family visit, conduct a follow-up interview with the inmate and, if required, with the visitor(s).
7. The Visit and Correspondence Officer will interview the visitor(s):
    a. upon request by the Correctional Officer II/Primary Worker
    b. prior to the visitor(s) leaving the institution after completion of the private family visit.
8. All staff will immediately report to the Correctional Manager in charge of the institution any suspicion of abuse or criminal activity during the use of the private family visit units.

ELIGIBILITY

Private Family Visits Eligibility - Inmates

9. Inmates are eligible unless they are:
    a. at risk for family violence
    b. participating in unescorted temporary absences for family contact purposes
    c. in a Special Handling Unit
    d. recommended or approved for transfer to a Special Handling Unit, or
    e. in disciplinary segregation at the time of the scheduled private family visit.
10. An inmate is not eligible to participate in private family visits with other inmates.

Private Family Visits Eligibility - Visitors

11. The following are eligible to participate in private family visits:
    a. immediate family
    b. individual with whom the inmate has a close personal relationship.
12. Proof of a common-law relationship is the responsibility of the inmate and/or the visitor.
13. A minor child must be escorted by an accompanying adult.

PROCEDURES

14. An assessment related to a child visiting his/her mother utilizing the private family visit unit in accordance with the part-time Mother-Child Program is not subject to the private family visit application process. Those applications will be managed in accordance with the part-time residential component process of the Mother-Child Program outlined in CD 768 – Institutional Mother-Child Program.

Approval Process

15. Upon receipt of the inmate's Application for the Use of the Private Family Visit Unit (CSC/SCC 0529), the Correctional Officer II/Primary Worker will:
    a. ensure the following are completed by the visitor(s):
        i. Statement of Voluntary Participation and Consent for Private Family Visits (CSC/SCC 0531)
        ii. if applicable, the Declaration of a Common-Law Union (CSC/SCC 0530E)
        iii. the Visiting Application (CSC/SCC 0653)
        iv. if applicable, the Visiting Application – Child Safety Waiver (CSC/SCC 0653-01E)
    b. if there are any concerns noted following the receipt of the Statement of Voluntary Participation and Consent for Private Family Visits form (CSC/SCC 0531), conduct an interview with the visitor(s) and document it in a Casework Record within five working days
    c. following consultation with the Correctional Manager and the Parole Officer, request a Community Assessment pursuant to CD 715-3 – Community Assessments, if required
    d. complete the Threat Risk Assessment for Private Family Visits (With Visitors) (CSC/SCC 1529) or Threat Risk Assessment for Private Family Visits (Individual Time) (CSC/SCC 1527) within 30 days, or where a Community Assessment is required, within 60 days following the submission of the inmate's completed Application for the Use of the Private Family Visit Unit (CSC/SCC 0529).
16. The Correctional Manager will:
    a. review applications for private family visits
    b. provide a recommendation to the decision maker which will include a detailed rationale.
17. Recommendations and decisions will be recorded on the CSC Board Review/Referral Decision Sheet and shared with the inmate pursuant to CD 701 – Information Sharing.
18. Following the transfer of an inmate or the movement of an inmate in a clustered institution as a result of a change in security classification, the Correctional Officer II/Primary Worker will review the previously approved private family visit decision and submit a recommendation to the Institutional Head or designate who will confirm in the CSC Board Review/Referral Decision Sheet, whether the private family visit will continue to be authorised, or will be modified or suspended. Unless significant changes have occurred, a new Threat Risk Assessment for Private Family Visits (With Visitors) (CSC/SCC 1529) or Threat Risk Assessment for Private Family Visits (Individual Time) (CSC/SCC 1527) is not required.

Duration and Frequency

19. The duration and frequency for the use of the private family visit units will normally be up to 72 hours, every two months unless otherwise specified in the Standing Order.

Safety Measures

20. During the use of the private family visit unit, regular contact will be made with the inmate and the visitor(s) in the least intrusive manner possible to ensure the security of the institution and the safety of the visitor(s) and the inmate.

21. The results of the post private family visit interview conducted with the inmate and visitor(s) by the Correctional Officer II/Primary Worker and Visit and Correspondence Officer will be documented in a Casework Record within five working days.

22. Any concerns will be immediately reported to the Correctional Manager in charge of the institution, documented in a Statement/Observation Report (CSC/SCC 0875) and shared with the Correctional Officer II/Primary Worker and the Parole Officer.

Refusal or Suspension of a Private Family Visit

23. A private family visit may be refused or suspended by the Institutional Head or designate if there are reasonable grounds to suspect:

    a. that during the course of the private family visit, the inmate and/or visitor(s) would:

        i. jeopardize the security of the penitentiary or the safety of any person, or

        ii. plan or commit a criminal offence, and

    b. that restrictions on the manner in which the visit takes place would not be adequate to control the risk

    c. other reasons as determined by the Institutional Head or designate.

24. Where a refusal or suspension is authorized, it may continue for as long as the risk continues, and:

    a. the inmate and the visitor(s) will be informed promptly, in writing, of the reasons for the refusal or suspension pursuant to CD 701 - Sharing of Information

    b. upon receipt of the written notification, the inmate and the visitor(s) will have five working days to make representations (verbally or in writing) with respect to the decision

    c. upon receipt of the information presented by the inmate and/or the visitor(s), a review will be conducted within five working days

    d. the inmate and visitor(s) will be informed of the final decision within 15 working days of the date of the review. The notice will also inform the inmate of his/her right to grieve the decision pursuant to CD 081 - Offender Complaints and Grievances.

25. Upon re-application by the inmate following a refusal or suspension, a re-assessment of the risk will be completed:

    a. no less than six months after the decision, or

    b. when new information is obtained that could change the decision.

Commissioner,

Original Signed by:
Don Head

ANNEX A CROSS-REFERENCES AND DEFINITIONS

CROSS-REFERENCES

CD 081 - Offender Complaints and Grievances
CD 259 – Exposure to Second Hand Smoke
CD 559 - Visits
CD 566-1 - Control of Entry to and Exit from Institutions
CD 566-4 – Counts and Security Patrols
CD 566-7 - Searching of Inmates
CD 566-8 - Searching of Staff and Visitors
CD 566-9 – Searching of Cells/Rooms, Vehicles and Other Areas
CD 701 – Information Sharing
CD 702 – Aboriginal Offenders
CD 715-3 - Community Assessments
CD 768 – Institutional Mother-Child Program
CD 800 - Health Services
CD 860 - Offender's Money
SOP 880-1 – Food Services – Central Feeding
SOP 880-2 – Food Services – Small Group Meal Preparation

Specific Guidelines for the Treatment of Opiate Dependence (Methadone /Suboxone®) (April 2015)

DEFINITIONS

Accompanying adult: within the context of bringing minor children into a penitentiary to visit an inmate, an accompanying adult can be anyone who has reached the age of majority of the province where the institution he/she wishes to visit is located, has completed a visiting application and been granted permission to come into the penitentiary, and has obtained a signed authorization from the custodial non-inmate guardian/parent.

Age of majority: the age at which a person is considered to be an adult by a province or territory where the institution someone wishes to visit is located.

Close personal relationship: (includes extended family members for Aboriginal offenders) exists between two individuals and is normally characterised by situations in which:

a. both individuals shared a close familial bond

b. one of the individuals contributed significantly to the moral or spiritual development of the other

c. both individuals were engaged in a long-term living arrangement or partnership

d. both individuals shared significant life experiences that resulted in an enduring bond of friendship and trust

e. for Aboriginal offenders, extended family members may include family relations that exist by birth, as well as significant others who are not related by birth, but are given the title of grandparent, parent, brother, sister, aunt, uncle or other relative.

Common-law partner: a person who, at the time of the inmate's incarceration, had been cohabitating with the inmate in a conjugal relationship for at least one year.

Family violence: assault, abuse or other harm that occurs within the family relationships, such as physical assault, psychological/emotional abuse, deprivation and financial exploitation. It is any behaviour that leaves the victim feeling helpless and hopeless or takes away his/her dignity and self-respect. It also includes psychological trauma experienced by children who witness violence perpetrated against other family members.

Family Violence Risk Assessment: evaluates the level of risk an offender presents to his/her partner.

Immediate family: in respect of an offender, includes the following members of the offender's family:

a. the offender's spouse or common-law partner

b. a child of the offender or of the offender's spouse or common-law partner

c. the father and mother of the offender or of the offender's spouse or common-law partner

d. the spouse or common-law partner of the father or mother of the offender or of the offender's spouse or common-law partner

e. the foster parent of the offender or of the offender's spouse or common-law partner

f. a child of the offender's father or mother or a child of the spouse or common-law partner of the offender's father or mother.

Individual time: opportunity provided to the inmate through the use of the private family visit unit to assess the life skill development and how participation will assist in meeting the objectives of his/her Correctional Plan.

Minor child: any individual under the age of majority.

Private family visits: visits that occur in separate structures inside the perimeter of the institution where the inmate may meet authorized visitors in private to enhance daily living skills, maintain positive community and familial relationships and responsibilities (e.g. parenting skills), and/or lessen the negative impact of incarceration on family relationships.

Threat Risk Assessment: an evaluation of factors that could pose a danger to the management of an offender, the safety of others, or security of an operational unit in particular circumstances.

ANNEX B

AGE OF MAJORITY

Province	Age of majority	Reference
Nova-Scotia	19	Age of Majority Act, R.S.N.S., c. 4, s. 2(1)

New-Brunswick	19	Age of Majority Act, R.S.N.S., c. A-4, s. 1(1)
Newfoundland and Labrador	19	Age of Majority Act, SNL 1995 Chapter A-4,2
Quebec	18	Code civil, art. 153
Ontario	18	Age of Majority and Accountability Act, R.S.O., 1990, c. A7, s. 1
Manitoba	18	Age of Majority Act, R.S.M., c. A7, s. 1
Saskatchewan	18	Age of Majority Act, R.S.S. 1978, c. A-6, s. 1
Alberta	18	Age of Majority Act, R.S.A. 2000, c. A-6, s. 1
British-Columbia	19	Age of Majority Act, R.S.B.C. 1996, c. 7, s. 1

N.B.: Some provinces and the territories are not listed, as CSC does not have institutions in those sites.

For more information

- Government-wide Forward Regulatory Plans
- The Cabinet Directive on Regulatory
- The Federal regulatory management
- The Canada–United States Regulatory Cooperation Council

To learn about upcoming or ongoing consultations on proposed federal regulations, visit the Canada Gazette and Consulting with Canadians websites.

Date modified : 2016-07-26

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Atira Property Management v. Richardson,* 2015 BCSC 751

Date: 20150507
Docket: S147698
Registry: Vancouver

Between:

Atira Property Management

Petitioner

And:

Jamie Stuart Richardson

Respondent

And:

Residential Tenancy Branch

Respondent

Before: The Honourable Mr. Justice McEwan

Reasons for Judgment

Counsel for the Petitioner:	L.M. Lyster
Counsel for Respondents:	A. Vulimiri
Place and Date of Trial/Hearing:	Vancouver, B.C. April 15, 2015
Place and Date of Judgment:	Vancouver, B.C. May 7, 2015

I

[1] The petitioner manages social purpose properties, which are single room occupancy buildings located in the Downtown Eastside neighbourhood of Vancouver. The London Hotel is one of its holdings.

[2] The respondent James Richardson is a tenant in the London Hotel.

[3] Starting on March 31, 2014 the petitioner introduced a policy requiring guests of tenants in its buildings to produce government issued identification in order to visit.

[4] The previous policy required identification but non-government identification, including a "Life Skills ID", and photocopied ID was accepted. Mr. Richardson felt that the new policy was unduly restrictive and effectively prevented many of his guests from visiting because they did not have, and could not afford, government identification.

[5] Accordingly he applied to the Residential Tenancy Branch for an exemption from the guest identification Policy.

[6] On May 12, 2014 a hearing by conference call took place in the absence of the petitioner, although it had filed materials. No enquiry appears to have been made as to why it was not in attendance.

[7] P.J. Nadler, the Arbitrator, alluded to the petitioner's submission:

> The landlord claimed in its materials that the City of Vancouver Single Room Accommodation By-Law No. 8733 by law 5.2 supports this requirement. That by-law states:
>
> Maintenance of records
>
> 5.2 An owner must maintain within the building, for the then current calendar year and three immediately preceding calendar years, records pertaining to each designated room including:
>
> (c) guest ledgers

[8] The Arbitrator referred to s. 30 of the *Residential Tenancy Act*, which reads:

> 30 (1) A landlord must not unreasonably restrict access to residential property by
>
> (a) the tenant of a rental unit that is part of the residential property, or
> (b) a person permitted on the residential property by that tenant.

[9] Arbitrator Nadler referred to another decision RTB Miller, No. 775605 which included the following observations:

> I accept the tenant's undisputed testimony. The tenant has a right to have guests and section 30(1)(b) of the *Act* prohibits the landlord from restricting access to the tenant's guests.
>
> I find that the landlord has no right to restrict access to the rental unit and I order the landlord to permit access by all of the tenant's guests. I further find that the landlord has no right to retain the ID of the tenant's guests. I order the landlord to stop his practice of seizing ID and I further order him to return either to the tenant or his guests, the ID of the tenant's guests which he currently has in his possession.

[10] He found that decision persuasive:

> While I am not bound by this decision because the facts and parties are not identical, I do however find it very persuasive. I too find that the requirement of the applicant/tenant's guests to produce "government-issued photo identification" is an unreasonable restriction of the tenant's guests access pursuant to section 30(1)(b). I further find that the City of Vancouver by-law 5.2 does not require that a tenant's guests must produce photo ID. The by-law only makes it mandatory for a landlord to keep a guest ledger.
>
> I order the landlord to permit the tenant to have guests without any requirement that they produce photo or any identification.
>
> Conclusion
>
> The landlord is ordered to stop restricting access to the tenant's guests by requiring any form of identification documents.

[11] The petitioner sought a review on the grounds that the London Hotel had experienced a water leak on the day of the hearing that made it impossible for its representative to attend.

[12] A review hearing was ordered. In the particular world of the Residential Tenancy Branch, a hearing that proceeds in the absence of one of the parties, although that party was prevented from attending for good reasons, is not set aside, but continues as an order subject to review, not a new proceeding.

[13] On August 5, 2012, Arbitrator Vaughan convened a Review Hearing. This hearing proceeded in person. Things got off to a rocky start with the Arbitrator proceeding in the absence of Mr. Richardson, who was 12 minutes late.

[14] The Arbitrator noted that the question to be decided was whether the May 12, 2014 decision should be confirmed, varied or set aside. He described the petitioner's case as follows:

> In support of this policy, the landlord submitted that the neighbourhood was known for high levels of unemployment, homelessness, drug use, crime and violence. The landlord submitted further that this requirement was necessary as they were unique in providing a supportive housing environment designed to ensure safety and security, and that-they provided a harm reduction zone in a dangerous neighbourhood. The landlord argued that many of their residents struggle with addiction and are habitual drug or alcohol users and that they provide safe housing to the "hard to house" population.
>
> The landlord submitted that this policy was put into place, in part, due to a double shooting in one of the properties managed by the landlord.
>
> The landlord further supported their position by submitting that there has been a marked decrease in violence in their residential properties and that the policy was enacted in conjunction with the Vancouver Police Department, with the support of BC Housing who provides funding.
>
> The landlord submitted further that the City of Vancouver passed a bylaw regarding single room occupancy accommodations, to protect this vulnerable part of the city, which required the property owners to maintain a guest ledger registry. The landlord provided a copy of this bylaw.
>
> The landlord argued that they do not consider the new policy to be restrictive or unreasonable, given the composition of the area and the "unique demographic" they house.
>
> The landlord's relevant documentary evidence included, but was not limited to, a letter from BC Housing information about the landlord's services and mission, a critical incident report, a copy of the house rules, and guidelines for safe and secure living in a single room occupancy accommodation.

[15] The Arbitrator described Mr. Richardson's case as follows:

> The tenant made clear he was seeking only relief from this new policy for himself and his guests.
>
> The tenant argued that the requirement to provide an identification card was an undue hardship on his guests, due to the structure of their lifestyle, which made possession of their identification card difficult. The tenant submitted further that the identification cards were not free and that it was difficult to obtain duplicates.

The tenant submitted further that there has not been any issues regarding his guests, but they have now been blocked from visiting him as their Life Skills card was no longer acceptable.

[16] The Arbitrator ruled as follows:

Analysis

The tenant has requested an order requiring the landlord to comply with the Act, in this case, section 30(1)(b). The landlord argued that restricting or limiting all tenants' guests to individuals who are able to present a government issued identification card a reasonable requirement considering the location and composition of the neighbourhood, due to what the landlord called a "unique demographic".

I, however, find that this "unique demographic" is entitled to and to receive all rights and privileges afforded tenants under the Act. I therefore find the landlord has submitted no evidence supporting that restricting this tenant's guests to be reasonable. I also accept the evidence of the tenant that it would create a hardship for his guests to produce a government issued identification card each visit to further conclude that the restrictive access is unreasonable.

I also do not accept that the City's bylaw required that the tenant's guest produce a government issued identification card, only that they maintain records of guests.

I therefore find the landlord's policy of requiring the tenant's guests to produce a government issued identification card upon each visit infringes upon the tenant's right to have guests visit him at his place of residence, and I therefore do not accept that the landlord's restrictions are reasonable.

On this basis, I confirm the original Decision of the original Arbitrator dated May 12, 2014, pursuant to section 82(3) of the Act, and it remains valid and enforceable, It must be noted that I have not reinstated the original Decision of May 12, 2014, as the reviewing Arbitrator in their Decision of June 2, 2014, granting this 'review hearing, did not suspend the Decision of May 12, 2014.

As I have confirmed the original Decision, the landlord remains ordered to permit the tenant to have guests without any requirement that they produce a photo or identification.

Conclusion

The original Decision of May 12, 2014, is confirmed and it remains valid and enforceable.

II

[17] The petitioner submits that:

The Arbitrator exercised her discretion under s. 30(1)(b) of the *Residential Tenancy Act* in a patently unreasonable fashion, in particular, by arbitrarily

> finding that the Petitioner submitted no evidence supporting the reasonableness of the Policy.
>
> The Arbitrator exercised her discretion in a patently unreasonable fashion by failing to consider or apply the statutory requirement of reasonableness in s.30(l)(b) of the *Residential Tenancy Act*, which states that a landlord must not unreasonably restrict access to the residential property by a person permitted on the residential property by the tenant.
>
> The Arbitrator failed to take the statutory requirement in s. 77(l)(c) of the *Residential Tenancy Act* into account when reaching her decision, as she did not include the reasons for her decision.

[18] The petitioner notes that at the Review Hearing it was permitted to submit new evidence including:

> (a) background information about the Petitioner and the demographics of its tenants. The evidence established the Petitioner's role in providing safe, secure and respectful housing, including single room occupancy hotels, for hard-to-house tenants.
>
> (b) evidence that its housing provides a harm reduction zone in a neighbourhood with high levels of homelessness, unemployment, crime, violence, sex work and drug use. It presented evidence that it developed the Policy to ensure the safety of all at-risk individuals living in its SRO buildings while also adhering to the *Residential Tenancy Act,* and that many tenants were relieved that the Policy protects them from drug dealers, sex offenders or other predators.
>
> (c) evidence that it had implemented a predecessor identification policy for guest before the current Policy came into effect Under the old policy, guests were allowed to present photocopies of I.D. or Life Skills identification cards acquired from the Life Skills Resource Centre, which could be obtained from the Centre without proof an individual's actual name or birthday. The Petitioner gave evidence that an underage visitor had accessed the Petitioner's buildings in contravention of its rules with a fake identification card from the Life Skills Resource Centre.
>
> (d) evidence that it provided tenants with three months' advance notice of the Policy and of the types of identification that would be accepted. The Petitioner also presented evidence that it gave information to tenants on ways they and their guests could obtain free identification cards from the B.C. government.
>
> (e) a letter from B.C. Housing, which provides operating funding to the Petitioner through Operating Agreements that address key operational metrics, including tenant selection, and the nature and scope of the support services provided by the Petitioner. In the letter, B.C. Housing affirmed its support for the Policy as a measure to protect tenants who may be vulnerable, to being preyed upon because of drug and alcohol addictions, mental illnesses, or other concurrent disorders.

> (f) evidence from [from BC Housing] that the Policy was updated to require government-issued I.D. (rather than any type of I.D., as previously required by the Petitioner) in response to a number of serious incidents, including a shooting in a building managed by the Petitioner in which a guest provided false identification. A Critical Incident Report regarding this crime was included in the evidence.

[19] The Petitioner submits that the Arbitrator acted arbitrarily in the face of such evidence in saying that the petitioner "submitted *no evidence* supporting that restricting this tenant's guests to be [sic] reasonable"; that the Arbitrator exercised her discretion in a patently unreasonable fashion in failing to consider the statutory requirement of reasonableness in s. 30(1)(b) of the *Residential Tenancy Act,* and that the Arbitrator failed to take the statutory requirements of s. 77(1)(c) into account by failing to give reasons for her decision.

[20] I think the petitioner's submission is almost entirely at cross-purposes to what the Arbitrator decided.

[21] It is clear from the Arbitrator's reasons that the issue was, in her view, narrow. She considered that the question posed by the tenant was whether he and his guests should have to live with this restriction in light of s. 30(1)(a) and (b) of the *Residential Tenancy Act.* The Arbitrator focussed on the fact that there was no evidence that restricting "*this* tenant's guests" was reasonable. That was a fair summary of the evidence if the focus was on Mr. Richardson. There was no evidence that he or his guests were ever a problem. The evidence was all directed toward justifying a blanket policy based on general concerns and certain anecdotal examples of trouble in the neighbourhood. The Arbitrator's decision can only have been unreasonable if her focus on the individual circumstances of Mr. Richardson was wrong, in one or more of the myriad ways the decisions of Administrative tribunals can be described as reviewable.

[22] I think it most useful to look at the context in which the decision is set. Among the materials Mr. Richardson had submitted were a RTB decision in the matter of the Bourbon Hotel July 18, 2014 file No. 821231. The case considered s. 30(1)(a) and (b):

> With respect to the dispute before me, the tenant is largely relying upon section 30(1) of the Act which provides:
>
> Tenant's right of access protected
>
> 30 (1) A landlord must not unreasonably restrict access to residential property by
>
> (a) the tenant of a rental unit that is part of the residential property, or
> (b) a person permitted on the residential property by that tenant.
>
> [my emphasis added]
>
> In interpreting legislation, each word has meaning and must be considered. Included in section 30(1) is the word "unreasonably". I interpret the inclusion of this word to mean that a landlord may restrict access if it is reasonable to do so in the circumstances.

[23] The Arbitrator in that case was concerned about a requirement of identification, in the absence of a reasonable basis for the restriction.

> Nevertheless I am concerned about the requirement for a guest to produce identification in any form so as to gain access to the residential property. It was acknowledged by the landlord that the request for identification is based upon an internal policy and not based upon a legal requirement. While I appreciate the issues the landlord contend with at the property, I find the requirement to produce photographic identification unreasonably restricts access to guests who wish to visit a tenant residing at the property and do not have identification with them. Therefore, I order the landlord to cease requiring guests to produce identification before they may be permitted access to the residential property.

[24] The Arbitrator determined that it would be reasonable to restrict a tenants' guest access on an individual basis if there was sufficient reasons:

> It is important to note that the orders issued in this decision deal specifically with the landlord's practice of requiring identification from guests. Despite these orders the landlord retains the right to restrict access to a tenant of a guest where it is reasonable to do so in the circumstances as provided under section 30(1) of the Act. To illustrate, where a landlord has sufficient reason to believe that a person is likely to cause harm to a person or property at the residential property, it may be reasonable for the landlord to restrict access to that person. As a caution to the landlord where the landlord's decision to restrict access is called into question, it is reasonable to expect that the landlord may be required to demonstrate the reason(s) for denying access.

[25] In the original decision in this case before Arbitrator Nadler, the quotation from a decision by Arbitrator Miller in file No. 775605 is to the same effect. While such decisions are not precedential, and each arbitrator is free to decide on his or

her own interpretation, consistency in the approach to a particular right or provision may be of assistance in determining the reasonableness of a given outcome.

III

[26] The *Residential Tenancy Act* has been described in *Berry v. British Columbia Residential Tenancy Act Arbitrator* 2007 BCSC 257 at para. 11 as a "statute which seeks to confer a benefit or protection upon tenants". In that case Williamson J. went on to say:

> While the *Act* seeks to balance the rights of landlords and tenants, it provides a benefit to tenants which would not otherwise exist. In these circumstances, ambiguity in language should be resolved in favour of the persons in that benefited group[.]

[27] It is clear from its text that s. 30(1)(a) and (b) are meant to place a tenant in a position that is free of unreasonable interference. Section 9 of the schedule to the *Residential Tenancy Regulation,* B.C. Reg. 249/208 reinforces this:

> Occupants and guests
>
> 9.(1) The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit.
>
> (2) The landlord must not impose restrictions on guests and must not require or , accept any extra charge for daytime visits or overnight accommodation of guests,
>
> (3) If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved by applying for dispute resolution under the Residential Tenancy Act.

[28] This has been interpreted as a personal right. In RTB decision 1043, July 2010, the situation of a landlord attempting to put in place a systemic rule limiting access between certain hours was ruled to be unreasonable:

> I find that under the current process a tenant is at liberty to welcome any visitor but after hours this liberty is contingent upon the tenant having advanced knowledge that the individual would be arriving at the precise time and being on hand to escort the visitor. So the question before me now is:
>
> Is it reasonable to impose a system in which the tenant is required to know in advance who will be visiting and when the visitor is going to arrive and then,

> after that, be required to await in person at the entrance to "escort" their guest?
>
> On the other hand, the problem for this landlord if visitors were permitted to enter at will on their word, is that the landlord would have no means to ensure that a visitor arriving, particularly after hours, actually intended to visit the tenant identified or whether they were there for another nefarious purpose.
>
> However, the problem of preventing unauthorized entry to residential buildings is a universal issue for every landlord in the province operating multi-unit complexes. Concerns about thefts, assaults, vandalism, squatters, drug activity or gangs are not unique to this landlord nor this complex. Financial challenges are also a common limitation. However, landlords have been required to find a means by which security can be ensured without violating the Act or unreasonably restricting a tenants right to have visitors.
>
> I find that any system, however fairly and consistently administered, that entails having a third party send a tenant's arriving guest away without the tenant's knowledge, would constitute an unreasonable restriction unless the tenant was fully agreeable to this process. This tenant is not.
>
> I do not accept the landlord's argument that restricting visitors is critical to avoid disturbing other residents. "Business hours" are not necessarily applicable to every individual's lifestyle. Whether the tenant is a shift-worker or merely likes to keep odd hours, a tenant is entitled to possession of the rental unit for 24 hours of every day and under the Act is entitled to enjoy their rental unit as they see fit, provided they do not significantly interfere with or unreasonably disturb others. Under the Act, a tenant is also responsible for the conduct of his or her guests. If others are unreasonably disturbed by a tenant or by persons permitted in the unit by the tenant, there are provisions under the Act to deal with this.

[29] In *Rutherfoord v. Neighbourhood Housing Society*, 2012 BCSC 2177 this court addressed a situation where an Arbitrator accepted the proposition that the nature of the neighbourhood and the *tenants* affected the landlord's duty to ensure that tenants were afforded "quiet enjoyment" of their premises. The Arbitrator had said:

> The evidence of the landlord that I accept is that these individuals move into this building from shelters or on the recommendation of their outreach workers. They live in the neighbourhood because it is affordable to them and they are nearer to the services that can support them. Neighbours can find themselves in conflict in any type of accommodation but I find it reasonable and probable to assume that conflict may be exacerbated in a building where many of the tenants suffer from health problems and addictions. For this reason, the landlord warns prospective tenants as to the nature of tenants that reside in the building.

[30] On review this court, per Bruce J. observed at para. 7:

> 7. It appears that the arbitrator, in violation of this provision of the Act, attached a proviso similar to that contained in s. 32 relating to the provision of decoration and repair of premises, that the right varies with the nature and character and location of the rental unit. In my view, that is a patently unreasonable interpretation of the Act and, on the face of the record, it appears rather discriminatory against the tenant. A tenant who has limited resources and is therefore forced into a neighbourhood that may have problems with neighbours is entitled to the same standard, according to s. 28 of the *Residential Tenancy Act,* that is accorded to all other tenants. It seems to me that the arbitrator, if he in fact interpreted s. 28 in this fashion, has engaged in patently unreasonable reasoning. More likely, it is apparent from the lack of reference to s. 28 and a reference to the right to be free from unreasonable disturbance that the arbitrator failed to consider s. 28 at all.

[31] Mr. Richardson submits that Arbitrator Vaughan's reasoning in this case is consistent with the reasoning of Bruce J. in *Rutherfoord*.

[32] While the examples drawn from other Residential Tenancy decisions are not binding, the illustrations given here show an approach to s. 30(1)(a) and (b) of the *Residential Tenancy Act* that is focussed on the individual, and on whether anything done by the *individual* justifies a reasonable restriction by the landlord. The *Rutherfoord* decision is of course, of binding effect.

[33] It is manifest that Arbitrator Vaughn understood the position of the petitioner. She set out the gist of the argument succinctly, but adequately. The issue in this case is simply whether a blanket "policy restriction" on tenants is a reasonable restriction under the *Residential Tenancy Act.* The Arbitrator's election to focus on the individual tenant is also clear. She says "I find that this 'unique demographic' is entitled to receive all rights and privileges afforded tenants under the *Act".* This is a clear rejection of the petitioner's principal submission that conditions in the area of the city justify, as "reasonable," a policy decision applicable to all tenants rather than the individualized approach taken by the Arbitrator.

[34] This approach in turn, if it is correct, justifies the finding that "the landlord has submitted *no* evidence supporting that restricting *this* tenant's guests [is] reasonable.

IV

[35] Mr. Richardson quotes from *Kinexus Bioinformatics Corp. v. Asad,* 2012 BCSC 33 at paras. 12-13 for a description of the role of the court on Judicial Review:

> 13. The court on judicial review does not sit as an appellate court. It does not retry the matters decided by the tribunal. It is not the court's role to review the wisdom of the tribunal's decision. The court cannot re-weigh the evidence, make findings of credibility or substitute its views of the merits for that of the tribunal. The court's role is limited to determining whether the tribunal has acted, and made its decision, within its statutory authority or jurisdiction: Ross v. British Columbia (Human Rights Tribunal) (1 May 2009), Vancouver L042211 (B.C.S.C.); Tse v. British Columbia (Council of Human Rights), [1991] B.C.J.
> No. 275 (QL) (S.C.). (paras 12-13)

[36] The parties appear to agree on the standard of review. The petitioner's submissions cast the Arbitrator's alleged errors as patently unreasonable exercises of discretion unsupported by adequate reasons. Section 78.1 of the *Residential Tenancy Act* provides that s. 58 of the *Administrative Tribunals Act* applies, and s. 84.1 is a clear privative clause. Section 58 reads:

> Standard of review if tribunal's enabling Act has privative clause
>
> 58 (1) If the tribunal's enabling Act contains a privative clause, relative to the courts the tribunal must be considered to be an expert tribunal in relation to all matters over which it has exclusive jurisdiction.
>
> (2) In a judicial review proceeding relating to expert tribunals under subsection (1),
>
> (a) a finding of fact or law or an exercise of discretion by the tribunal in respect of a matter over which it has exclusive jurisdiction under a privative clause must not be interfered with unless it is patently unreasonable,
>
> (b) questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly, and
>
> (c) for all matters other than those identified in paragraphs (a) and (b), the standard of review to be applied to the tribunal's decision is correctness.
>
> (3) For the purposes of subsection (2) (a), a discretionary decision is patently unreasonable if the discretion
>
> (a) is exercised arbitrarily or in bad faith,
> (b) is exercised for an improper purpose,
> (c) is based entirely or predominantly on irrelevant factors, or
> (d) fails to take statutory requirements into account.

[37] Mr. Richardson comments that the determination as to whether the petitioner's policy is reasonable or not is a discretionary call and cannot be interfered with unless it is patently unreasonable. He also submits that deference is owed a tribunal interpreting its "home" status, as stated in *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association* [2011] S.C.J. No. 61:

> […] unless the situation is exceptional [...], the interpretation by the tribunal of its own statute or statutes closely related to its function, with which it will have particular familiarity' should be presumed to be a question of statutory interpretation subject to deference on judicial review.

V

[38] I do not think it is necessary to spend much time on the arcane ins-and-outs of administrative law. The petitioners' complaint that the Arbitrator's finding that the petitioner had submitted no evidence was arbitrary or an error of law is untenable. The Arbitrator determined that the relevant evidence would be evidence that pertained to reasonable limitations on the tenant, based on his behaviour or that of his guests. This was, in my view, not a patently unreasonable, nor an unreasonable, nor, indeed an incorrect view of the law. Given the intent and purpose of the *Residential Tenancy Act* as described in *Berry* (see para. 26 above) a tenant specific view of the meaning of the statute was fully justified.

[39] In submitting that the Arbitrator failed to consider and apply the statutory requirement of "reasonableness" the petitioner is only arguing that the Arbitrator was wrong because she did not agree with the petitioner's position. The Arbitrator clearly rejected the notion that the statutory protection afforded to tenants under S. 30(1)(a) and (b) could be limited or abrogated by landlords implementing "policy" decisions. If the meaning of reasonable restrictions was intended to include general policies adopted by landlords, regardless of the individual situation or behaviour of the tenant, the statute could have said so. It does not, and I am of the view that the Arbitrator correctly assessed the intention of the statute to be to protect individual tenants and their guests from unreasonable interference by landlords. It would be wrong in principle to permit the protection offered by the statute to be eroded by *ad*

hoc non-statutory "policy" instruments promulgated by landlords, however well-intentioned.

[40] The fact that the Arbitrator did not address the petitioner's extensive reasons justifying the policy in any particular detail was not a failure to give adequate reasons in the circumstances. The reasons fully explained her substantive view of what was relevant to an outcome that was justified applying the law to the facts. Not only can I not say the Arbitrator was patently or otherwise unreasonable I cannot say she was wrong.

[41] The petition is accordingly dismissed with costs.

"T.M. McEwan"

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator),*** 2007 BCSC 257

Date: 20070226
Docket: S070139
Registry: Vancouver

Between:

Sarah Berry and Jeremy Kloet

Petitioners

And

K. Miller, in the capacity as An Arbitrator under the *Residential Tenancy Act* and Hollyburn Properties Limited, Landlord

Respondents

Before: The Honourable Mr. Justice Williamson

Reasons for Judgment

Counsel for the Petitioners Sarah Berry and Jeremy Kloet	David Mossop, Q.C.
Counsel for the Respondent Hollyburn Properties Limited	Stephen Mellows
Date and Place of Hearing:	February 12, 2007 Vancouver, B.C.

[1] On September 21, 2006, the petitioners were served with a notice to end tenancy pursuant to s. 49(6) of the ***Residential Tenancy Act***, SBC 2002 c. 78 (the "**Act**"). The grounds upon which the notice were based were that the landlord required that the rental unit be vacant in order to carry out certain renovations.

[2] The relevant portion of the statute reads as follows:

> 49(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:
>
> (b) renovate or repair the rental unit in a manner which requires the rental unit to be vacant

[3] The petitioners applied pursuant to s. 47 (4) of the ***Act*** for an order setting aside the notice to end the tenancy.

[4] The Dispute Resolution Officer rendered a decision on December 22, 2006 dismissing the tenant's application.

[5] The petitioners come before this court upon a judicial review seeking an order setting aside the Dispute Resolution Officer's decision on the grounds that it is patently unreasonable.

[6] The parties agree that the standard of review in these circumstances is one of patent unreasonableness.

[7] I note that when a landlord seeks to end a tenancy for purposes of renovation, s. 49(6) of the ***Act*** sets out three requirements:

(1) The landlord must have the necessary permits;

(2) The landlord must be acting in good faith with respect to the intention to renovate; and

(3) The renovations are to be undertaken “in a manner that requires the rental unit to be vacant”.

[8] There is no dispute here concerning necessary permits, nor whether the landlord intended in good faith to undertake the renovations.

[9] The issue is whether the decision of the Dispute Resolution Officer was patently unreasonable in her treatment of the question of whether the renovations required the rental unit to be vacant.

[10] I conclude that the decision of the Dispute Resolution Officer is patently unreasonable and should be set aside.

[11] I start from the accepted rules of statutory interpretation. I conclude that the ***Act*** is a statute which seeks to confer a benefit or protection upon tenants. Were it not for the ***Act***, tenants would have only the benefit of notice of termination provided by the common law. In other words, while the ***Act*** seeks to balance the rights of landlords and tenants, it provides a benefit to tenants which would not otherwise exist. In these circumstances, ambiguity in language should be resolved in favour of the persons in that benefited group: See ***(Canada Attorney General) v. Abrahams***, [1983] 1 S.C.R. 2: ***Henricks v. Hebert***, [1998] B.C.J. No. 2745 (QL)(SC) at para. 55:

> I think it is accepted that one of the overriding purposes of prescribing statutory terms of tenancy, over and above specifically empowering residential tenants against the perceived superior strength of landlords, was to introduce order and consistency to an area where agreements were often vague, uncertain or non-existent on important matters, and remedies were relatively difficult to obtain.

[12] The petitioners rely upon ***Allman v. Amacon Property Management Services Inc.***, 2006 BCSC 725, a judgment of Slade, J. of this court.

[13] In that case, the review judge set aside the decision of an arbitrator (now called a Dispute Resolution Officer) which had denied the petitioners' application to set aside a notice

to end tenancy. At para. 22, Slade, J. observed that the decision of the arbitrator was:

> ... devoid of any analysis of whether the renovations, due to their nature and extent, require (ie make necessary) vacant possession.

[14] Further, at para. 24, he wrote:

> The primary consideration is whether, as a practical matter, vacant possession is required due to the nature and extent of the renovations.

[15] In the decision at bar, considerable evidence was led by the landlord about the nature and extent of the renovations. The Dispute Resolution Officer stated, at para. 14, that she realized she must be satisfied that the nature and extent of the renovations "require vacant possession". She also observed that the landlord had acknowledged that revision of their proposed renovation schedule "was not impossible".

[16] The tenants brought evidence to show that some of the required renovations were already being performed at the date of the hearing, while the rental unit was being occupied. The tenants suggested that this was proof that the tenancy does not need to be terminated for the renovations to be undertaken. The tenants also said that they would be willing to vacate the suite temporarily, and to remove their

belongings, if it was necessary in order to accommodate renovations. I emphasize that the Dispute Resolution Officer set out this evidence in her decision.

[17] The heart of the Dispute Resolution Officer's decision is para. 17, which I reproduce in full:

> The ***Act*** does not define vacancy and section 49(6)(b) merely states that the landlord can end the tenancy if the renovation or repair is done in a manner that "requires the rental unit to be vacant" without defining any specific length of time vacancy would be required in order to support a notice to end tenancy under that section. While I am satisfied that it is possible for the landlord to adapt the renovation schedule and conduct the renovations in a piecemeal fashion, I find that the rental unit will need to be vacant for at least 3 days to allow for refinishing of the hardwood floors and retiling of the bathroom and kitchen floors. The tenants have acknowledged that vacancy is required for some period of time. In drafting the ***Act***, legislators did not stipulate a minimum length of time that vacancy is required to support a notice to end tenancy under section 49(6)(b) and I am not willing to find as a matter of law that the legislators had intended a minimum length of time to be required. I am satisfied that the landlord has met the burden of establishing that the rental unit must be vacant in order to accomplish the intended renovations.

[18] As can be seen, the Dispute Resolution Officer found that the rental unit would need to be vacant for at least three days. She also noted the tenants acknowledged that vacancy is required. However, in this analysis she ignored the evidence

before her that the tenants were prepared to vacate the premises for the period of time necessary for the renovations.

[19] I conclude that this was patently unreasonable. As noted, s. 49(6) of the ***Act*** sets out three requirements:

(a) The landlord must have the necessary permits;

(b) The landlord must be acting in good faith with respect to the intention to renovate; and

(c) The renovations are to be undertaken in a manner that requires the rental unit to be vacant.

[20] The third requirement, namely, that the renovations are to be undertaken in a manner that requires the rental unit to be vacant, has two dimensions to it.

[21] First, the renovations by their nature must be so extensive as to require that the unit be vacant in order for them to be carried out. In this sense, I use “vacant” to mean “empty”. Thus, the arbitrator must determine whether “as a practical matter” the unit needs to be empty for the renovations to take place. In some cases, the renovations might be more easily or economically undertaken if the unit were empty, but they will not require, as a practical matter, that the unit be empty. That was the case in ***Allman***. In

other cases, renovations would only be possible if the unit was unfurnished and uninhabited.

[22] Second, it must be the case that the only manner in which to achieve the necessary vacancy, or emptiness, is by terminating the tenancy. I say this based upon the purpose of s. 49(6). The purpose of s. 49(6) is not to give landlords a means for evicting tenants; rather, it is to ensure that landlords are able carry out renovations. Therefore, where it is possible to carry out renovations without ending the tenancy, there is no need to apply s. 49(6). On the other hand, where the only way in which the landlord would be able to obtain an empty unit is through termination of the tenancy, s. 49(6) will apply.

[23] This interpretation of s. 49(6) is consistent with the instruction in ***Abrahams*** and ***Henricks*** to resolve ambiguities in drafting in favour of the benefited group, in this case, tenants. Practically speaking, if the tenant is willing to empty the unit for the duration of the renovations, then an end to the tenancy is not required. It is irrational to think that s. 49(6) could be used by a landlord to evict tenants because a very brief period was required for a renovation in circumstances where the tenant agreed to vacate the premises

for that period of time. It could not have been the intent of the legislature to provide such a "loophole" for landlords.

[24] In this case, the Dispute Resolution Officer turned her mind to the first dimension but failed to address the second. The renovations required refinishing of hardwood floors and retiling of bathroom and kitchen floors. Thus, as a practical matter, she found that the unit had to be empty for the renovations to take place. Indeed, the tenants acknowledged that vacancy was required for some period of time. The first dimension of the "vacancy" requirement was met.

[25] However, the second dimension was not met. The tenants were willing to vacate the premises for the amount of time required to perform the renovations. Thus, the renovations could have been performed without resorting to a termination of the tenancy. The Dispute Resolution Officer failed to address whether the renovations could be performed without putting an end to the tenancy. In so failing, she did not deal properly with whether vacating the unit was "required" as is mandated by s. 49(6) of the ***Act***.

[26] The irrationality of her conclusion is in effect acknowledged by the respondents in their submissions. Counsel observed that there was no minimum time frame for necessary

vacancy set out in the ***Act***. He noted that, on the facts before her, the Dispute Resolution Officer determined that three days was enough – that is to say, if the tenants had to vacate the premises for three days, the requirements of the statute would have been met. He also observed that in other cases, perhaps one day is enough if "for example, hazardous insulation is being removed".

[27] The problem with this interpretation is that it ignores the second dimension of the "vacancy" requirement. On this interpretation, if a Dispute Resolution Officer found that any period of vacancy was required for a renovation, even a single day, a tenancy could be terminated. Such a finding flies in the face of the purpose of the statute, which is to balance the rights of tenants and landlords. It is irrational to think that a landlord could terminate a tenancy because a very brief period of emptiness was required.

[28] In failing to address this second aspect of the "vacancy" requirement, the Dispute Resolution Officer's decision was patently unreasonable.

[29] In the result, the Dispute Resolution Officer's order of December 22, 2006 is set aside, as is the order granting possession effective January 15, 2007 to the respondents.

[30] The petitioners will have their costs of this application and of the application with respect to a stay before Mr. Justice Silverman.

"L.P. Williamson, J."
The Honourable Mr. Justice L.P. Williamson

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Rutherfoord v. Neighbourhood Housing Society*, 2012 BCSC 2177

Date: 20121217
Docket: S123244
Registry: Vancouver

In the Matter of the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241

Between:

Paul Rutherfoord

Petitioner

And

Neighbourhood Housing Society

Respondent

Before: The Honourable Madam Justice Bruce

On judicial review from the Residential Tenancy Branch decision dated March 7, 2012

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioner:	J.K. Hadley
For the Respondent:	No appearance
Place and Date of Trial/Hearing:	Vancouver, B.C. December 17, 2012
Place and Date of Judgment:	Vancouver, B.C. December 17, 2012

[1] **THE COURT:** This is an application for judicial review of a decision of the Residential Tenancy Branch and an arbitrator under the Residential Tenancy Branch that addressed a complaint filed by the applicant, Mr. Rutherfoord, as the tenant of a residential premises located in the Province of British Columbia, in Vancouver. Mr. Rutherfoord's complaint addressed four specific issues. The first issue was that the landlord had failed to make timely repairs, basic repairs, on the property which caused him damage and loss and for which he claimed a small amount of damages in the amount of $500. He also claimed that the landlord failed to respond appropriately and in a timely fashion to the bedbug infestation which prolonged the infestation. He complained about cat excrement in the building's hallways being a pervasive issue, and, most importantly, he claimed that due to his disruptive neighbours, he had been denied quiet enjoyment of the premises. As a result, he claimed that he was entitled to relief under s. 28(v) and s. 32(1)(a) and (b) of the *Residential Tenancy Act*.

[2] The matter came on before the arbitrator as a hearing by telephone. Both the tenant and the landlord provided evidence to the adjudicator. The tenant had provided a written submission. The landlord did not. However, it appears that the landlord provided oral evidence, unsworn oral evidence, to the arbitrator over the telephone that addressed the issue of bedbugs and the issue of disturbance, but did not address the cat excrement infestation and the delay in carrying out repairs.

[3] The arbitrator considered the evidence of both the landlord and tenant and then, in the analysis, says as follows, and I quote:

> A landlord is responsible for ensuring that rental units meet "health, safety and housing standards" established by law, and are reasonably suitable for occupation given the nature and location of the property". This rental building caters to tenants suffering from health issues, abuse and addictions. The evidence of the landlord that I accept is that these individuals move into this building from shelters or on the recommendation of their outreach workers. They live in the neighbourhood because it is affordable to them and they are nearer to the services that can support them. Neighbours can find themselves in conflict in any type of accommodation but I find it reasonable and probable to assume that conflict may be exacerbated in a building where many of the tenants suffer from health problems and addictions. For this reason, the landlord warns prospective tenants as to the nature of tenants

> that reside in the building. In this instance the landlord has acknowledged that a conflict exists and I find she has taken steps to assist in resolving the conflict including offering alternate accommodation but this tenant refuses to move. Further there has been evidence that the other tenants may not be the sole source of the difficulties in that the landlord has testified that this tenant antagonizes his neighbours and is thereby contributing to the problems. While this tenant says that other tenants have complained too, he has produced insufficient evidence of this. The only written submissions made are copies of this tenant's complaints and the landlord's responses which I find to be appropriate.
>
> Further, with respect to the tenant's complaints that the landlord is not taking steps to curtail the bedbug problems I do not find this to be the case and I accept the landlord's evidence that she has a spraying program in place to address the issue.
>
> Overall, the burden of proof is on the party making the claim. When one party provides testimony of the events in one way and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails. I find this to be the case here. I find that the tenant has failed to prove [his] claim for monetary compensation in the sum of $500.00 and I find he has failed to show that the landlord should be compelled to comply with the Act or that there are services or facilities the tenant is not receiving that he should be receiving.
>
> The tenant's claims are dismissed.

[4] The standard of review on judicial review is patently unreasonable.

[5] First, I find that the arbitrator's decision to dismiss the entire claim without reference to any employer evidence, with respect to the repair issue, and the cat excrement issue, is patently unreasonable. There are no reasons to support the arbitrator's decision apart from a conclusory statement that the claim is dismissed because the tenant did not satisfy the onus of proof. Without reference to any evidence that the landlord provided, the court is unable to determine whether that outcome is within the scope of reasonable outcomes.

[6] Second, I find that the arbitrator's decision with respect to the disturbance complaint is patently unreasonable because, in making that decision, the arbitrator appears to have ignored s. 28(b) of the *Residential Tenancy Act*, which provides that a tenant is entitled to quiet enjoyment, including but not limited to, a right to the following:

(b) freedom from unreasonable disturbance.

[7] It appears that the arbitrator, in violation of this provision of the Act, attached a proviso similar to that contained in s. 32 relating to the provision of decoration and repair of premises, that the right varies with the nature and character and location of the rental unit. In my view, that is a patently unreasonable interpretation of the Act and, on the face of the record, it appears rather discriminatory against the tenant. A tenant who has limited resources and is therefore forced into a neighbourhood that may have problems with neighbours is entitled to the same standard, according to s. 28 of the *Residential Tenancy Act*, that is accorded to all other tenants. It seems to me that the arbitrator, if he in fact interpreted s. 28 in this fashion, has engaged in patently unreasonable reasoning. More likely, it is apparent from the lack of reference to s. 28 and a reference to the right to be free from unreasonable disturbance that the arbitrator failed to consider s. 28 at all.

[8] Now, based upon those errors, I find it is appropriate that the decision of the arbitrator be set aside. I grant the relief sought by the tenant that the matter be referred back to the Residential Tenancy Branch for a rehearing and that, in light of the nature of the errors committed by this particular arbitrator, that it would be more appropriate and more equitable for both parties that a different arbitrator hear the dispute.

[9] No party will be granted costs of this application as they are no longer being sought by the tenant, and I will order a transcript of these proceedings for counsel for Mr. Rutherfoord.

"Bruce J."

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Habitat Housing Society
Options Community Services
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes AAT, PSF, OLC

Introduction

This hearing was reconvened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. An Order allowing access to the unit by Tenant or Tenant's guests - Section 70;
2. An Order for the provision of facilities and services - Section 65; and
3. An Order that the Landlord comply with the Act - Section 62.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Landlord provided additional documents for the reconvened hearing of March 24, 2020. The Tenant asks that this evidence not be considered as it is contrary to the Interim Decision dated January 21, 2020 that does not allow further documentary or digital evidence. The Tenant provided additional documents for the reconvened hearing of May 21, 2020. The Landlord asks that this evidence not be considered as it is also contrary to the Interim Decision.

.

A review of the Landlord documents indicates that it contains evidence. As the Interim Decision does not allow consideration of further evidence and as the Landlord's

documents provide evidence, I decline to consider the Landlord's documents provided after the Interim Decision. A review of the Tenant's submission indicates that this is not documentary or digital evidence but case law that supports legal argument. As this is not evidence, I accept the Tenant's submissions for consideration.

Issue

Is the Landlord unreasonably restricting the Tenant's guests?
Has the Landlord removed the Tenant's access to facilities or services?

Facts

The Tenant states that the Landlord has a blanket guest policy that results in the denial of the Tenant's right to have guests. The Tenant states that there is no reason to restrict the Tenant's guests. The Tenant states that only one guest was denied entry in the summer of 2019 but that the Landlord has required all guests to show government issued identification for entry. Further the Tenant must sign a document setting out the date, unit number, time of visit, including expected leave time, names of guests and type of identification provided by the guest. The Tenant states that it must also document when the guest leaves or the visit will be automatically considered to be an overnight guest which is also restricted to 14 times in one year. The Tenant states that this restrictive and blanket guest policy has resulted in the Tenant not having guests as not everyone has the required identification and no alternative identification is offered to the Tenant. The Tenant states that the 14-day restriction on overnight guests leaves the Tenant without being able to obtain overnight help in the event of illness or injury. The Tenant requests an order allowing guests both during the day and overnight without the application of the Landlord's blanket policy.

The Landlord does not dispute the blanket policy and states that the Tenant has never had any problematic guests. The Landlord states that the blanket policy must be applied to the Tenant anyway as to do otherwise would result in "cherry picking". The Landlord states that this policy is in place as there has been damage caused to the

common areas in the past and there is no way of knowing who is responsible. The Landlord states that they do have cameras in the lounge, elevator and entry area. The Landlord states that the 14-night rule for overnight guests may be extended upon written request from a tenant but if the request is unreasonable the Landlord will deny the guest. The Landlord states that this rule is applied because people have been inviting friend to live in their units. The Landlord states that this policy is also reasonable as other landlords have the same policy.

The Landlord states that although the guest policy requires the presentation of identification this is not limited to government identification and does not preclude entry if no identification is not presented. The Landlord states that the tenants have not been informed that entry is still possible without government identification. The Landlord states that they need to verify the identification of guests as this information would be required as evidence to support damage to the common areas. The Landlord states that this is necessary due to the nature of the tenants the Landlord serves and that they tend to be more "street involved" and involved with drugs, drinking and the sex trade. The Landlord states that the tenants in the building are therefore more involved with criminal minded people.

The Tenant argues that a blanket policy should not apply to the Tenant as there have never been any issues with the Tenant's guests. The Tenant argues that this restrictive policy has had a big impact on its life. The Tenant argues that the blanket policy is unreasonable as it is contrary to the Act and regulations that provide that a landlord must not stop a tenant from having guests under reasonable circumstances. The Tenant argues that a blanket policy based on demographics or population has been denied as unreasonable in past BC Supreme Court cases. The Tenant provides copies of these and previous RTB decisions.

The Parties do not dispute that the Tenant resides in a high-rise building situated on the Landlord's property that also includes a low-rise building (the "Other" building). The

Tenant states that the Other building contains most of the tenant services such as a food program and social gatherings or events. The Tenant states that it was provided a fob to access the Other building at the outset of the tenancy in April 2017 and was not removed when the Landlord took over the tenancy in 2019. The Tenant states that in October 2019 and without warning its fob was deactivated by the Landlord. The Tenant states that as a result it has been denied access to the common areas and services in the Other building. The Tenant states that this deactivation occurred on the same day that a guard accused the Tenant of verbally accosting him. The Tenant states that the Landlord never asked to hear of the Tenant's side of the story and that the Tenant asked the Landlord to also review the camera recording as the guard said that the incident occurred in the lobby that has cameras. The Tenant states that as a result of the deactivated fob the Tenant can no longer access programs or services provided for the tenants in the building including the food program and social gatherings.

The Landlord states that while it knows the Tenant was given a fob to access the Other building it has no records of when the Tenant was given the fob as this occurred prior to the Landlord taking over the rentals and the Landlord does not have any of the previous landlord's records. The Landlord confirms that the fob was deactivated based on the incident with the guard. The Landlord states that the Tenant took videos of the guard and posted them online and was also verbally assaulting the guard. The Landlord states that the guard's name was shared on the Tenant's social media and as a result the guard became upset and concerned for its safety. The Landlord states that the guard was moved to work in another building so that there was no conflict between the Tenant and the guard. The Landlord states that the camera in the lobby does not collect sound. The Landlord states that the Tenant did speak with the Landlord and became very upset so left. The Landlord states that it then sent the Tenant a letter. The Landlord states that the Tenant is not restricted from entering the common areas or the program areas as the Tenant only has to obtain a staff person to allow access.

The Tenant states that since the fob deactivation the Tenant attempted up to 5 times to be escorted into the low rise and that on each of these occasions the staff were either unwilling to allow the access or were unavailable.

The Landlord states that the Tenant's building contains the same services as provided in the Other building. The Landlord states that the Tenant's ability to access programs and services have not been affected by the removal of the fob. The Landlord argues that access to these programs and services are not part of the agreement with the Tenant. The Landlord states that the Tenant did not sign a tenancy agreement. The Landlord states that the Tenant only signed a program participation agreement that also contains terms of the tenancy. The Landlord states that the Tenant is required under this agreement to participate in programs. The Landlord states that it provides additional programs but that these are not mandatory for the Tenant participation. The Landlord also states that it is not required to provide programming to the Tenant and is only required to provide housing. The Landlord states however that under the program agreement the Tenant is required to participate in a program delivered by a 3rd party. The Tenant states that the program agreement states that the Tenant will participate in the housing program and will accept support services including those provided by 3rd parties.

The Landlord states that a month prior to this hearing all the tenants have had their fobs deactivated due to a policy change by the Landlord. The Landlord states that the only service that the Tenant cannot access is to a social worker that provides services only in the Other building.

The Tenant states that the kitchen and food services in its building is part of a paid program only unlike the food program in the Other building. The Tenant states that for the past year and currently the guards have not allowed access to the bathroom facilities in the Tenant's building. The Tenant states that the only other bathroom facilities are in the other building and that should an emergency occur restricting access

to the rental unit, the Tenant would not have access to any bathroom facilities. The Tenant argues that the fob allowing access to the Other building is part of the Landlord's property upon which the Tenant's building is located and that under Section 27(2) of the Act the Tenant should have access to both buildings.

The Landlord states that the Tenant's rent is subsidized based on income and that no rental reduction can be given to the Tenant for the loss of the fob access to the Other building. The Landlord states that the rent paid does not include access to programs.

Analysis

Section 30(1)(b) of the Act provides that a landlord must not unreasonably restrict access to residential property by a person permitted on the residential property by the tenant. Section 28(a) of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy.

There is no dispute that the Landlord has a blanket policy in place for guests, including overnight guests. There is no dispute that this policy is applied to the Tenant's right to have guests. There is no dispute that this policy requires a check-in for the presentation of personal identification and the collection of other personal data around the visit. The Landlord's evidence is that this blanket policy is based on the perceived criminality of persons who use drugs or are in the sex trade and the belief that tenants who associate with these "street people" are criminal minded however the Landlord provides no evidence to support this assertion. The Landlord's additional reasons for the blanket guest policy appears to be based on the need to collect evidence should damage occur in the building from any guests. There is no evidence that the Tenant or its guests have caused any problems or were ever a cause for concern over the length of the tenancy. If there were a concern the Landlord has rights under the Act to seek the removal of a tenant whose guests are causing any significant problems for the Landlord or other occupants. The Landlord gives evidence that despite no problems the Tenant must still be subject to the restriction as it would otherwise be "cherry picking". However, I

consider that for this Tenant the restriction is in reality a punishment for any other tenant's behavior. This is repugnant. Further given the undisputed evidence that personal information is being collected from the Tenant and its guests, I find that in the circumstances this collection of personal information is wholly contrary to the Tenant's right of reasonable privacy.

While little evidence was produced in relation to the 14-night restriction against overnight guests, the Landlord's evidence is that the rationale for the policy is to prevent tenants from bringing in additional occupants. As there is no evidence that the Tenant has brought in another occupant over the course of its tenancy, I find that the restriction is unreasonable in the circumstances.

Overall, I consider the basis for the Landlord's guest check in and overnight stays policy to be repugnant, oppressive and paternalistic. Every tenant regardless of the community they live in, their socio-economic status, their occupation, or their personal hardships have equal rights under the Act. I therefore order the Landlord to cease all scrutiny and restrictions on the Tenant's guests including overnight guests through the use of its blanket policy. Should the Landlord fail to comply with this order the Tenant has leave to reapply for compensation for any damages that may result from the Landlord's failure.

Section 27 of the Act provides as follows:

(1)A landlord must not terminate or restrict a service or facility if

(a)the service or facility is essential to the tenant's use of the rental unit as living accommodation, or

(b)providing the service or facility is a material term of the tenancy agreement.

(2)A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

(a)gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b)reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

Overall, I found the Landlord's evidence and argument in relation to the programming that the Tenant is required to participate in difficult to understand and somewhat inconsistent. Nonetheless the Landlord's evidence is that the Tenant is not required to attend the programs offered in the Other building. The Tenant did not dispute this evidence. As a result, I find on a balance of probabilities that the Tenant's fob access to the Other building is not a material term of the tenancy or essential to the use of the rental unit as living accommodation. However, there is no dispute that at the outset of the tenancy the Tenant was provided a fob to access the Other building. There is no evidence that the fob was not provided to access the programs and facilities delivered in the Other building. No evidence or argument was given to support that the programs or common facilities are not services or facilities as defined under the Act. It is undisputed that the fob access was provided throughout the tenancy until an incident with a guard in October 2019. I find therefore that the Tenant was provided with access to a service or facility as part of the tenancy.

Based on the Landlord's evidence that the fob was deactivated due to an incident with a guard I find that this access to a facility was denied based on the Landlord's assessment of the Tenant's behavior. Nothing in the Act provides the Landlord with the right to remove access to a facility or service for a disturbance by a tenant. While the Tenant may have access to the same or similar programs in its own building, I consider that the removal of the fob stops the Tenant from the freedom and choice previously given to access any programs and services offered in the Other building. I also note that the evidence supports that the Tenant can only access the social worker and, in an emergency, the bathroom facilities, in the Other building. The Tenant gave evidence that since the loss of the fob the Landlord has not provided free access to the Other building as staff have either not been available or have not allowed entry. The Landlord

did not dispute the lack of available staff and I tend to accept the evidence of staff refusing entry given the evidence of the Landlord's oppressive acts in relation to guests. There is no evidence that the Landlord removed the fob access after 30 days notice in writing and no rent reduction was given for the loss of the fob access. I find therefore that the Landlord breached section 27(2) of the Act and I order the Landlord to return the Tenant's access to the Other building immediately by activating the fob or by providing the Tenant with another activated fob. Should the Landlord fail to act as ordered the Tenant has leave to reapply for compensation.

Conclusion

I Order the Landlord to cease the use of its blanket policy in relation to guests, including overnight guests on the Tenant.

I Order the Landlord to return the Tenant's access to the Other building immediately by activating the fob or by providing the Tenant with another activated fob.

This decision is made on authority delegated to me by the Director of the RTB under Section 9.1(1) of the Act.

Dated: June 17, 2020

Residential Tenancy Branch

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COMMUNITY BUILDERS BENEVOLENCE GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC OPT AAT

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution ("application") under the *Residential Tenancy Act ("Act")* seeking an order of possession for the rental unit, for an order directing the landlord to comply with the *Act,* regulation or tenancy agreement, and to seek an order allowing access to the rental unit and residential property.

The tenant and an agent for the landlord ("agent") attended the teleconference. The parties were affirmed and provided testimony and were provided the opportunity to present their documentary evidence. Neither party raised any concerns regarding the service of documentary evidence.

Preliminary and Procedural Matters

The parties provided their email addresses at the outset of the hearing which were confirmed by the undersigned arbitrator. The parties confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

At the outset of the hearing, due to the tenant confirming that he remains in the rental unit and the agent confirming that the tenant is not being evicted, I find the tenant's application for an order of possession to be moot and is dismissed as a result. There is no dispute that the tenant continues to occupy the rental unit.

Issues to be Decided

- Is the tenant's tenancy agreement now a month to month agreement?
- Is the tenant entitled to an order to be exempted from landlord's requirement for guests to show and/or present identification pursuant to Section 30 of the Act?
- Should the landlord be ordered to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord submitted in evidence a copy of a tenancy agreement dated December 7, 2017 which indicates the tenancy is a fixed term tenancy which requires the tenant to vacate by January 1, 2018. While both parties testified that they realize the law has changed effective December 11, 2017, and that in this situation the tenancy reverts to a month to month tenancy after January 1, 2018, I will explain further below as to why this is the case.

The remaining issues for the tenant that the tenant wanted addressed at this hearing which was indicated in the "Details of Dispute" portion of the application, is that the tenant did not want his guests to be restricted or be required to provide or surrender identification as requested by the landlord.

During the hearing, the agent testified and submitted a letter which reads in part:

> "In regards to [the tenant's] dispute about guests, he is welcome to have guests, our only requirement is that they sign in at the office. All tenants are welcome to have overnight guests. Management requests that they sign in so we know who is in the building in case of fire and for the mandatory 24 hour wellness checked required of staff as per SRO guidelines. There has also been an exceptionally high amount of overdoses at [name of building] since the opioid crisis has become so prevalent in Vancouver. It is not uncommon for staff to find non tenants overdoes in the shared washrooms. It is in theses cases that we need to know which guests are visiting which room. [The tenant] is welcome to have overnight guests we just ask that he let the office know who they are."

[Reproduced as written except for anonymizing the name of the tenant and the rental building]

The agent then went on to testify that in addition to writing down the guest name to "check in" they are also required to show their identification as the landlord needs to make sure the name matches their identification. The tenant stated that the need for identification should not be required as many disenfranchised people do not have identification or can't afford to pay for new identification if it is lost, etc.

A copy of the rules that the tenant was required to sign and to which the agent read from during the hearing called "Tenant commitment" includes the following which I have numbered for ease of reference below:

1. I will not bring any unregistered visitors into the building and I will not allow visitors to remain overnight/after 10 pm.

[Reproduced as written]

The tenant submitted that the landlord this policy that unreasonably restricts the tenant's ability to have guests attend his rental unit especially if they don't have identification as they are not permitted in at all. The agent did not address the discrepancy between #1 above which clearly does not allow guests overnight or past 10 pm, yet the agent testified that guests are allowed overnight and past 10 pm, which the tenant stated in practice, is not being permitted by those on staff in the building.

The tenant clarified that the policy requires his guests to present and surrender to the landlord their identification. The tenant submitted that the landlord's policy is unfair, done without authority and is not proper. In support of his position the tenant has referenced in a decision submitted in evidenced Supreme Court of British Columbia case 2015 BSCS 751 *Atira Property Management v Richardson*.

The agent relented that identification does not have to be surrendered but does have to be shown and that guests are not permitted just to sign in without identification. The agent stated that they operate the building based on their "SRO Building Owners' Manual", a copy of which was not submitted in evidence.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

The referenced Supreme Court decision was in response to a landlord's application for a Judicial Review of two Residential Tenancy Branch ("RTB") decisions in regard to a landlord's restrictive guest access policy. That decision upheld the two RTB decisions. Those decisions found that regardless of the community a tenant lives in they are entitled to the same protections of access as any other tenant in any other neighbourhood. It was also found that the landlord's policy infringes upon the tenant's right to have guests and that the landlord's restrictions were unreasonable.

Section 30(1) of the *Act* requires that a landlord not unreasonably restrict access to the residential property by the tenant of a rental unit that is part of the residential property or a person permitted on the residential property by that tenant. In addition, Residential Tenancy Regulation Schedule Section 9 states:

(1) The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit.
(2) The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.
(2.1) Despite subsection (2) of this section but subject to section 27 of the Act [terminating or restricting services or facilities], the landlord may impose reasonable restrictions on guests' use of common areas of the residential property.

The tenant is seeking relief from the requirement for his guests to present and/or surrender their identification, confirmation in writing that the tenant is permitted to have overnight guests, and confirmation that his tenancy agreement is now a month to month tenancy.

There was no evidence from the agent presented to me that the tenant's guests have been problematic or that the landlord is seeking to evict the tenant. As such I find the landlord has breached 30(1) of the *Act* by unreasonably restricting access to the residential property by the tenant of a rental unit that is part of the residential property or a person permitted on the residential property by that tenant.

The landlord has provided insufficient evidence that the collection of identification is for a legitimate purpose. For example, if there is a fire in the building, having a person write their name will provide the same number of people as having guests provide identification. Therefore, I find that the requirement for the tenant's guests to present and surrender identification to be a breach of section 30(1) of the *Act*. I also note that the document the tenant was required to sign is inconsistent with the testimony of the agent as the agent claims the overnight guests are permitted yet the document indicates that are not.

I also note that while I am not bound by previous decisions, I concur with my colleagues and I find that Section 30 of the *Act* and Section 9 of the Schedule do not allow for a restriction for guest access to be made based on the neighbourhood or type of building. As a result, I find the landlord's restrictions to require guests present and surrender their identification and to not stay overnight are unreasonable and infringes on the rights granted to the tenant under Section 30 of the *Act*.

Therefore, **I ORDER** that the landlord **effective immediately must not** request guests to present or surrender any identification when visiting the tenant.

In addition, **I ORDER** that the landlord **effective immediately must not** restrict guests from staying overnight.

Pursuant to section 41(1) and 44(3) of the *Act* and section 13.1 of the regulation, the one month fixed term tenancy automatically reverts to a month to month tenancy as the laws have changed effective December 11, 2017. The new law applies to existing tenancy agreements.

Conclusion

The tenant's request for an order of possession is moot and dismissed. The remainder of the tenant's application is successful.

The tenancy agreement as noted above has reverted to a month to month tenancy.

I have ordered that the landlord effectively immediately must not request guests to present or surrender any identification when visiting the tenant. I have also ordered that the landlord that effectively immediately the landlord must not restrict guests from staying overnight.

I also note that RTB decisions are specific to disputes between a landlord and tenant I caution the landlord that if they continue to apply a restriction that the RTB has ordered must not continue, the Director may impose administrative penalties, pursuant to Section 95(3) of the *Act*. The maximum penalty for an administrative penalty under is $5,000.00.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 25, 2018

Residential Tenancy Branch

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated August 16, 2017 ("1 Month Notice"), pursuant to section 47; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant, the tenant's agent and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant confirmed that his agent had authority to speak on his behalf at this hearing. This hearing lasted approximately 40 minutes in order to allow both parties to fully present their submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

The tenant's agent confirmed that she received the landlord's written evidence package on November 22, 2017, the night before this hearing. I received the evidence at the RTB on November 21, 2017. The tenant's agent confirmed that she received the evidence but did not have enough time to review it with the tenant or respond to it. She objected to me considering the evidence at the hearing and in my decision.

Rule 3.15 of the RTB *Rules of Procedure* requires the landlord, as the respondent, to submit his evidence at least seven days prior to the hearing date, not including the hearing date. During the hearing, I notified both parties that I would not consider the landlord's late written evidence package at this hearing or in my decision. I considered Rule 3.17 of the RTB *Rules of Procedure* and both parties' verbal submissions before making my decision. I find that the landlord had ample time to submit this evidence on time, given that the tenant filed his application on August 28, 2017 and the hearing

occurred on November 23, 2017, almost three months later. The landlord claimed that his father was sick so he was busy and unable to submit his evidence. I do not accept this reason, as the landlord did not submit any documentary evidence to demonstrate his father's illness for almost three months, and the landlord could have had an agent assist him with submitting evidence. I also find that the tenant did not have an opportunity to prepare for or respond to the evidence, which included a number of text messages and photographs from the landlord's surveillance camera. Accordingly, I find that it would be prejudicial to the tenant if I considered the landlord's written evidence.

The tenant confirmed receipt of the landlord's 1 Month Notice on August 16, 2017, the date that the landlord said that he posted it to the tenant's rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 1 Month Notice on August 16, 2017.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession for cause?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This month-to-month tenancy began on October 23, 2015. Monthly rent in the amount of $575.00 is payable on the first day of each month. A security deposit of $287.50 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit. The rental unit is a one-bedroom, one-bathroom basement suite of a house, where the landlord lives upstairs in the same house.
The landlord issued the 1 Month Notice with an effective date of September 30, 2017, for the following reason:

- *Tenant allowed an unreasonable number of occupants in the unit/site.*

The landlord testified that the tenant's written tenancy agreement addendum indicates that the tenant is only permitted to reside in the rental unit alone. It also indicates that the tenant cannot have any other occupants and the tenant's children can only visit him during the day. He said that the tenant's agent is residing in the rental unit, staying there every night, using the landlord's internet, and increasing the utility charges which are included in the tenant's rent.

The tenant acknowledged that he was aware that he is the only person entitled to reside in the rental unit but claimed that he does not have any occupants, only one guest, who is his agent, who visits him at the rental unit. The tenant's agent maintained that she visits the tenant often because they are best friends and enjoy spending a lot of time together. She said that she stays overnight at the tenant's residence but it is not every night and she rarely stays there when the tenant is not present because the landlord makes her uncomfortable. She explained that she has her own separate residence, she pays rent for it, and she receives mail at this address. She claimed that she only had one mail package sent to the tenant's rental unit address because it was easier and closer for her to do so for that one time. She stated that she does not pay any rent towards the tenant's rent and therefore, is not defined as an occupant. She said that the landlord attempted to charge the tenant $100.00 extra per month for an additional occupant in the rental unit but it was not paid by the tenant. She maintained that the tenant got his own internet access and password because the landlord blocked the tenant's agent from using the internet.

Analysis

In accordance with section 47(4) of the *Act*, the tenant must file his application for dispute resolution within ten days of receiving the 1 Month Notice. In this case, the tenant received the 1 Month Notice on August 16, 2017 and filed his application to dispute it on August 28, 2017, the next business day when the Residential Tenancy Branch ("RTB") offices are open. Accordingly, I find that the tenant's application was filed within the ten day limit under the *Act*.

Where a tenant applies to dispute a 1 Month Notice within the time limit, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 1 Month Notice is based.

I find that the landlord provided insufficient evidence to show that the tenant allowed an unreasonable number of occupants in the rental unit. The tenant only has one guest, his agent, who visits him often and stays overnight but she does not pay rent and she is

not involved in the tenancy. She has her own rental unit, for which she pays rent, and receives mail at her own permanent address.

This is a one-bedroom rental unit of approximately 500 to 600 square feet, as per the landlord's testimony. It is reasonable that two people can be accommodated in this rental unit. I do not find one additional person to be an "unreasonable" number.

Accordingly, I allow the tenant's application to cancel the landlord's 1 Month Notice. The landlord's 1 Month Notice, dated August 16, 2017, is cancelled and of no force or effect. The landlord is not entitled to an order of possession. This tenancy continues until it is ended in accordance with the *Act*.

As the tenant was successful in this application, I find that he is entitled to recover the $100.00 filing fee from the landlord.

Guests at the Rental Unit

I caution both parties to note the following with respect to the *Act* and the *Residential Tenancy Regulation* ("*Regulation*"):

Section 30(1)(b) of the *Act* states the following:

> *30 (1) A landlord must not unreasonably restrict access to residential property by*
>
> *(b) a person permitted on the residential property by that tenant.*

Section 5(1) of the *Regulation* states the following:

> *Prohibited fees*
>
> *5 (1) A landlord must not charge a guest fee, whether or not the guest stays overnight.*

The landlord cannot unreasonably restrict the tenant from having guests at the rental unit, as per section 30 of the *Act,* as noted above. The landlord cannot charge or accept fees for overnight guests, as per section 5 of the *Regulation*, as noted above.

Conclusion

The tenant's application to cancel the landlord's 1 Month Notice is allowed. The landlord's 1 Month Notice, dated August 16, 2017, is cancelled and of no force or effect. The landlord is not entitled to an order of possession.

This tenancy continues until it is ended in accordance with the *Act*.

I order the tenant to deduct $100.00 from his future rent payable to the landlord at the rental unit for this tenancy, in full satisfaction of the monetary award for the filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 23, 2017

Residential Tenancy Branch

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COMMUNITY BUILDERS GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute codes OLC MNDC

Introduction

This hearing was convened in response to an application under the *Residential Tenancy Act* (the Act) by the tenant seeking an Order for the landlord to comply with the Act. The tenant also seeks monetary compensation for loss of quiet enjoyment. Both parties attended all hearing dates ascribed to this proceeding. The tenant and their legal advocate as well as the landlord's representative appeared in the conference calls and each participated in the hearing via their submissions, document evidence and their testimony. Both parties acknowledged receiving all evidence of the other as submitted.

Preliminary matters

In the landlord's determination the living accommodation is transitional housing. The proceeding occurred over three dates, primarily to allow the landlord to provide evidence in concert with their assertion the Act does not apply to the tenant's living accommodation. The landlord was given opportunity to address the recent changes to legislation (Residential Tenancy Regulation) and Residential Tenancy Policy Guidelines providing definition and meaning of "transitional Housing": for the purpose of determining jurisdiction pursuant to Section 4 of the Act.

Both parties were given opportunity to address the matter of jurisdiction in the context of **Section 1** of **Residential Tenancy Regulation**, which states as follows;

Definitions

1 (1) In this regulation, **"Act"** means the *Residential Tenancy Act*, S.B.C. 2002, c. 78.

(2) For the purposes of section 4 (f) of the Act *[what the Act does not apply to]*, **"transitional housing"** means living accommodation that is provided

(a) on a temporary basis,

(b) by a person or organization that receives funding from a local government or the government of British Columbia or of Canada for the purpose of providing that accommodation, and

(c) together with programs intended to assist tenants to become better able to live independently.

Both parties were apprised of and were equally guided by **Residential Tenancy Policy Guideline 46** informing the parties the living accommodation must meet all of the criteria in the definition of "transitional housing "under Section 1 of the Regulation in order to be excluded from jurisdictional consideration pursuant to Section 4 of the Act, even if a transitional housing agreement has been signed.

The parties provided the tenant has been residing in their accommodation for 2 years. Neither party presented evidence of an end date to the residency. The landlord provided evidence they offer residents various supports which they claim are intended to assist independence. The landlord advanced 2 letters from the City of Vancouver addressing the City's involvement with the residential property and the landlord by way of agreements as well as their support for the intended purpose of the living accommodation. The City's documents state the City owns the residential property of the living accommodation, which in turn is leased to the landlord of this matter. The City's documents also state they fund the program expenses of an agency that partners with the City and the landlord, to provide support services to the residents of the residential property.

I found the tenant's 2 year residency combined with the absence of an end date does not reasonably meet the definition of 'temporary'. I accepted that the landlord has certain agreement(s) and a lease with the City. However, I found that the landlord failed to provide sufficient evidence that as landlord they are receiving *funding* from the City for the purpose of providing the living accommodation. I determined the landlord's living accommodation does not meet the test established by Section 1 of the Regulation and as such that its living accommodation is not exempt from the Residential Tenancy Act. Therefore the tenant's application advanced on the merits.

Issue(s) to be decided

Should the landlord be ordered to comply with the Act, regulation or tenancy agreement?

Is the tenant entitled to the monetary amount claimed?

Background and evidence

The undisputed relevant evidence in this matter is as follows. This tenancy started in January 2015. The residential property is a previous hotel structure. The living accommodation is a room with self-contained washroom. The tenant pays monthly rent of $375.00 and at the outset of the tenancy the landlord collected a security deposit.

The tenant claims the landlord has compromised their quiet enjoyment by imposing rules and expectations contrary to the Act. The tenant claims the landlord has repeatedly "harassed" them and their visitors or guests by imposing restrictions on their visits to the tenant's rental unit such as having a guest after "visiting hours" of 10:00 p.m. and the landlord's prohibition on overnight guests and unregistered guests. The tenant and landlord provided evidence of examples which the parties refer to as incident reports (IR), in which the tenant is admonished for having guests after visiting hours and an overnight guest. In one IR the tenant is informed that if they do not comply with the landlord's rules they will experience a "time out at a shelter". The tenant claims the landlord's monitoring and "harassment respecting guests and their activities and the resulting "threats" of eviction are disturbing to their quiet enjoyment.

The tenant also claims the landlord performs periodic inspections of their rental unit to which the tenant objects as some of the landlord's demands are unreasonable.

The landlord testified they have always considered their living accommodation as *transitional housing* and in their determination were exempt from the Act and have acted accordingly by establishing policies and rules to orderly operate the housing. The landlord provided document evidence they provide supportive housing through services offered to their residents to assist them in living independently; and, have crafted rules and expectations for all residents of the residential property in alignment with what they consider reasonable in order to meet their mandate and operating agreement. The landlord advanced that the tenant had signed a 'Safe and Supportive Housing agreement' with expectations on residents for the benefit and security of all residents. However, subsequent to the tenant filing for dispute resolution, the landlord's IR evidence is that the tenant permitted 5 intoxicated individuals of which 3 were "under age" all found sleeping in the "common room" of the residential property. The landlord's IR also highlighted the individuals were verbally abusive toward the landlord's staff.

Analysis

The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: www.gov.bc.ca/landlordtenant.

I have carefully considered and reflected on the relevant evidence in this matter. I find the Act and respective Regulation Schedule address occupants and guests. There is an obligation on the landlord to allow a tenant to have guests and not to deny having a guest under reasonable circumstances, and not impose unreasonable conditions respecting guests. I have been presented evidence clearly indicating the landlord has denied reasonable conditions respecting guests of the tenant. I find that the landlord has attempted by their repeated reminders to enforce limiting conditions pertaining to the tenant having guests, but specifically overnight guests. However, this is not to state that the Act extends a right to a tenant to have overnight guests other than in their rental unit or that the Act prevents a landlord from *reasonably* restricting a person or persons permitted access by a tenant onto residential property pursuant to Section 30 of the Act.

In their acknowledgement that their conduct toward the tenant has not been guided by the Act I find the landlord has knowingly abridged certain rights of the tenant under the Act and the situation must attract remedy. As a result,

I Order the landlord to Comply with the **Residential Tenancy Act,** and specifically,

I Order the landlord to comply with **Section 30(1)** of the Act.

The tenant is collaterally cautioned to comply. Needless to say, the Act imposes obligations and, responsibilities on both parties. And, the Act extends rights and remedies to both parties, which previously may not have been contemplated or perceived available.

In respect to the tenant's claim for monetary compensation I find that despite the landlord's intentions they have periodically abridged the tenant's rights and compromised the tenant's quiet enjoyment. As a result, I grant the tenant set compensation equivalent to one month's rent under the tenancy agreement, for each year of their tenancy, in the sum of $750.00 ($375 x 2 = $750.00).

The tenant is given a **Monetary Order** under Section 67 of the Act for the amount of **$750.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

The tenant can choose to reduce this amount from future rent payments, or collect on the monetary Order through the Small Claims Court.

Conclusion

The tenant's application is granted.

This Decision is final and binding on both parties.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Residential Tenancy Act.

Dated: January 30, 2017

Residential Tenancy Branch

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT, OLC

Introduction

The Application for Dispute Resolution filed by the Tenant seeks an order that the landlord allow access to the unit and that the landlord comply with the Act, regulations and/or the tenancy agreement.

A hearing was conducted by conference call in the presence of the agent for the tenant and in the absence of the landlord although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

The Residential Tenancy Act permits a party to serve another by mailing, by registered mail to where the other party resides. The Supreme Court of British Columbia has held that a party cannot avoid service by refusing to pick up their registered mail. The tenant produced evidence that the Application for Dispute Resolution was sent, by registered mail to where the landlord resides. There is a notation on the envelope stating the landlord has refused to accept the package. I determined the landlord has been sufficiently served with the Application for Dispute Resolution even though she has refused to pick up the package. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issue to be decided is whether the tenant is entitled to an order that the landlord allow access to the unit and that the landlord comply with the Act, regulations and/or tenancy agreement.

Background and Evidence

The tenancy began on May 1, 2016 after the parties entered into a written term tenancy agreement with a month to month term. The tenancy agreement provided that the tenant(s) would pay rent of $985 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of $492.50 on April 12, 2016.

The agent for the tenant produced evidence that the landlord is interfering with access to the rental property by the tenant's guest and is intimidating the tenant through misrepresentations and other actions to get the tenant to give 30 days notice.

Analysis:
Section 30 of the Residential Tenancy Act provides as follows:

> **Tenant's right of access protected**
>
> **30** (1) A landlord must not unreasonably restrict access to residential property by
>
> (a) the tenant of a rental unit that is part of the residential property, or
>
> (b) a person permitted on the residential property by that tenant.

Section 9(1) of the Schedule to the Residential Tenancy Act Regulations which is included in the tenancy agreement provides as follows:

> **Occupants and guests**
>
> **9** (1) The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit.
>
> (2) The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.
>
> (3) If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved by applying for dispute resolution under the *Residential Tenancy Act*.

Section 52 of the Residential Tenancy Act provides as follows:

> **Form and content of notice to end tenancy**
>
> **52** In order to be effective, a notice to end a tenancy must be in writing and must
>
> (a) be signed and dated by the landlord or tenant giving the notice,
>
> (b) give the address of the rental unit,
>
> (c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form.

Section 28 of the Act provides as follows:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(a) reasonable privacy;

(b) freedom from unreasonable disturbance;

(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

I made the following determinations:

- The demand that the tenant give the landlord a 30 days notice is not a termination notice as it is not in the approved form.
- The landlord must have cause to serve a one month Notice to End Tenancy on the Tenant.
- The presence of a guest including an overnight guests in the rental unit is permitted by the Act and Regulations and the landlord must not unreasonably restrict access to the property by a person permitted on the property by the Tenant. Based on the evidence presented by the Agent for the Tenant I determined that at the present time the agent for the Tenant is living elsewhere. As a result he is a guest and not a resident.
- The landlord alleged in a letter to the Tenant that anyone who stays in a tenant's suite for a period exceeding the allowable (10) days per year (either consecutively and/or cumulatively) are considered to be trespassing. I am not able to find any provision in the tenancy agreement, the Residential Tenancy Act and the Residential Tenancy Act Regulations that supports this statement. The Act and Regulations do not put a limitation on the number of days per year a guest can visit a tenant.
- The tenant has a legal right to serve a Notice ending the tenancy should she wish as this is a month to month tenancy. The landlord has a right to serve a one month Notice to End Tenancy is the landlord has cause. However, in my view

the landlord's action is sending letters demanding that the tenant give her a 30 days notice is not appropriate and may very well be a breach of the covenant of quiet enjoyment.

- Parts of the Addendum to the tenancy agreement may violate the Act and Regulations. I determined it is not appropriate to make a determination as the Tenant failed to include such a request in the Application for Dispute Resolution and the landlord was not present at the hearing.

Determination and Orders:

As a result I made the following orders:

a. That the landlord shall not unreasonably restrict the Tenant from having guests including overnight guests.
b. The letter(s) which includes in the captioned Notice of Termination of Tenancy is of no force and effect as a Notice to End Tenancy given by the Landlord as it is not in the approved form.
c. The landlord shall refrain from demanding the Tenant give 30 days notice.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Residential Tenancy Act.

Dated: June 14, 2016

Residential Tenancy Branch

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COMMUNITY BUILDERS BENEVOLENCE GROUP and 0955802 BC LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC PSF

Preliminary Issues

Upon review of the Tenant's "Dispute Details" submitted with his application the Tenant wrote that he was requesting my Decision include an allowance for him to make a second application for monetary compensation. He submitted that this request was made in order to comply with the Residential Tenancy Branch's (RTB's) policy to separate monetary order requests from other requests.

Section 58 of the *Residential Tenancy Act (the Act)* stipulates the requirements and provisions for making an application for Dispute Resolution.

Residential Tenancy Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

In this case the Tenant had not made application for a monetary order. Based on the above, I informed the Tenant that there was no need to issue an Order or to stipulate an allowance to grant leave to the Tenant to file a future application for a Monetary Order because the request for a monetary order was not before me and I did not dismiss a request for a monetary order pursuant to Rule 2.3.

The opportunity or allowance to file a future application for Dispute Resolution is provided to both the Tenant and the Landlord pursuant to section 58 of the *Act*.

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on July 22, 2015, seeking to obtain an Order that the Landlords comply with the *Act*, regulation, or tenancy agreement and Order the Landlords to provide services or facilities required by law.

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each person was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Section 1 of the Act defines a landlord in relation to a rental unit, to include the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord permits

occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under this Act, the tenancy agreement or a service agreement.

The hearing was conducted via teleconference and was attended by the Tenant and an Agent for each respondent Landlord. Each Agent met the definition of landlord, as listed above. Therefore, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa, except where the context indicates otherwise.

Each person gave affirmed testimony that they served the Residential Tenancy Branch (RTB) with copies of the same documents they served each other. Each acknowledged receipt of evidence served by the other and there were no issues raised regarding service or receipt of that evidence.

During the hearing each party was given full opportunity to provide their evidence orally, to ask each other questions, and respond to each other's testimony. Following is a summary of the submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Is this Decision bound by previously issued RTB Decisions?
2. Are the Landlords unreasonably restricting the Tenant's guests from having access to the rental property?
3. Should the Landlord be ordered to comply with the Act, regulation, or tenancy agreement?
4. Has the Landlord terminated or restricted the Tenant's access to a service or facility?

Background and Evidence

The Tenant has resided in the SRO (Single Room Occupancy) rental unit since August 14, 2012. The Tenant has access to his single room and to shared washroom facilities and common living areas.

The Tenant referenced RTB Decision dated April 25, 2014 which related to his dispute regarding his former Landlord's visitor policy. The Tenant's request to allow unrestricted access to his guests at that time was dismissed. The Tenant argued that since that Decision was issued a Supreme Court Decision was issued on May 7, 2015 which upheld his arguments that the Landlord could not be restricting access to his guests.

A copy of the Supreme Court of British Columbia Decision *Atira Property Management v. Richardson, 2015 BCSC 751* issued by The Honourable Mr. Justice McEwan was submitted into evidence by the Tenant.

The Tenant read into evidence section [28] paragraphs 5, 6, and part of 7 from the aforementioned Supreme Court Decision which states, in part:

However, the problem of preventing unauthorized entry to residential buildings is a universal issue for every landlord in the province operating multi-unit complexes. Concerns about thefts, assaults, vandalism, squatters, drug activity or gangs are not limitation. However, landlords have been required to find a means by which security can be ensured without violating the Act or unreasonably restricting a tenants right to have visitors.

I find that any system, however fairly and consistently administered, that entails having a third party send a tenant's arriving guest away without the tenant's knowledge, would constitute an unreasonable restriction unless the tenant was fully agreeable to this process. This tenant is not.

I do not accept the landlord's argument that restricting visitors is critical to avoid disturbing other residents. "Business hours" are not necessarily applicable to every individual's lifestyle. Whether the tenant is a shift-worker or merely likes to keep odd hours, a tenant is entitled to possession of the rental unit for 24 hours of every day and under the Act is entitled to enjoy their rental unit as they see fit, provided they do not significantly interfere with or unreasonably disturb others…

[Reproduced as written]

The Honourable Mr. Justice McEwan also wrote in the aforementioned decision, in part:

[28] This has been interpreted as a personal right. In RTB decision [number listed], July 2010, the situation of a landlord attempting to put in place a systemic rule limiting access between certain hours was ruled to be unreasonable:…

The Tenant read from the May 1, 2015 RTB Decision (file number recorded on the front page of this Decision) in response to the Landlord's evidence submission of a copy of a "Tenant commitment" document, where an Arbitrator found as follows:

While I accept that the tenant signed the "Tenant commitment" document that states the agreement is not subject to the Act, Section 5 of the Act prohibits the parties to a tenancy agreement from contracting out of the Act and that any attempt to do so is of no effect. (p 5 para 3)

Based on the above, I order that the landlord comply with the Act in all matters related to this tenancy.

[Reproduced as written]

The Tenant testified that despite a change in management of his rental building which was effective December 1, 2014, there has been no change in the guest policy. The current policy only allows guests between the hours of 9:00 a.m. and 10:00 p.m.; does not allow overnight guests; requires guests to show identification; and requires guests to sign in and out in a log

book. The Tenant submitted that these restrictions were in contravention of section 30(1)(a) and section 30(1)(b) of the *Act*.

The Landlords submitted documentary evidence which consisted of copies of: their written submission; the aforementioned "Tenant Commitment" document; page five of a tenancy agreement; 3 pages of media reports; and a document listing log entries related to this Tenant.

The Landlords did not dispute the Tenant's submission regarding their current guest policy. They asserted that this policy was needed for the safety of all of their tenants and guests. The Landlords argued that their guest policy was in support of their municipal police department policies as well as their municipal SRO (single room occupancy) by-laws. Copies of those by-laws were not submitted in the Landlord's documentary evidence.

The Landlords confirmed that all guests are required to show identification and write their name and the unit number of the guest they are visiting into their visitor's log. The Landlords submitted that they keep the visitor logs so that in case of a fire they know how many people were inside the building. That way they would not have to continue looking in spaces for anyone once everyone was accounted for if they did have to evacuate.

The Landlords asserted that they carefully monitor the arrival and departure of all guests in order to restrict known criminals from entering their building. They submitted that earlier this year there was an incident where two people who were not tenants were murdered by a non-resident(s) or guest(s) inside their building.

The Landlords stated that they were confused by the Tenant's conflicting information. They submitted that the Tenant wants unrestricted access for his guests and then reports to the media that he has concerns about dangerous people coming into the rental building.

The Landlords asserted that all tenants are responsible for their guest's behaviours. They testified that they know they can evict a tenant with one month notice under the *Act* if there are problems with a tenant's guests. They stated it was for those reasons that they record issues in their incident report log.

The Landlords argued that they have never refused access to the building for any guests of this Tenant. Upon further clarification the Landlords confirmed that this Tenant's guests are restricted to visiting between the hours of 9:00 a.m. and 10:00 p.m.; they must show identification; and his guests must sign in and out in the visitor log.

The Tenant submitted arguments that his guests have been refused access. He testified about a specific incident which occurred on July 6, 2015. He stated that he had been scheduled to assist his guest in a hearing scheduled with the RTB at 9:00 a.m. on July 6, 2015 and he had requested that his guest be allowed entry at 8:30 a.m. The Landlords' staff refused his guest

access to the building which prevented him the opportunity to properly prepare for that 9:00 a.m. hearing.

The Tenant argued that the safety issues submitted in the Landlords' evidence regarding the double murder and illegal activity relate to the Landlords' reduction in night staff and not their guest policy. He submitted that the Landlord reduced their night shift staff from January 2, 2015 to March 15, 2015 which is when the murders occurred.

The Tenant submitted there were two separate requirements: (1) the landlord has the responsibility to secure the building; and (2) the tenants have responsibility for their guests. He argued that there are provisions in the *Act* for the Landlords to deal with tenants or their guests who are not acting reasonably and there are also provisions in the *Act* and the law which allow unrestricted access for his guests.

Analysis

The *Residential Tenancy Act* (the *Act*), and the Regulation stipulates the provisions regarding residential tenancies as follows:

Regarding Authority to Hearing and Decide Disputes
Section 58(2) of the *Act* provides in part, that if the director receives an application under subsection (1), except:

> (a) the claim is for an amount that is more than the monetary limit for claims under the *Small Claims Act*,
> (b) the application was not made within the applicable period specified under this Act, or
> (c) the dispute is linked substantially to a matter that is before the Supreme Court.

Section 91 of the *Act* stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia.

Common law (also known as case law) is law which is created when a judge issues a decision in which they state the meaning or interpretation of a law, statute, or regulation. Common law includes Supreme Court Decisions relating to RTB Decisions issued in accordance with the *Act*.

Regarding Previously Issued RTB Decisions

Section 64(2) of the *Act* stipulates that the director must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions under this Part.

Section 5 of the Act prohibits the parties to a tenancy agreement from contracting out of the Act and that any attempt to do so is of no effect.

Regarding Restricting Access

Section 30(1)(b) of the *Act* that a landlord must not unreasonably restrict access to residential property by a person permitted on the residential property by the tenant.

The *Residential Tenancy Regulation Schedule* section 9(2) provides the landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.

B.C. Supreme Court Decisions: *Atira Property Management v. Richardson, 2015 BCSC 751* issued by The Honourable Mr. Justice McEwan.

Regarding Ordering a Landlord to Comply with the *Act*

Section 62(3) of the *Act* stipulates that the director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

Regarding Service or Facilities Required by Law

Section 27 stipulates that a landlord must not terminate or restrict a service or facility if that service of facility is essential to the tenant's use of the rental unit as living accommodation or providing the service or facility is a material term of the tenancy agreement.

Section 1 of the Act defines **service or facility** to include any of the following that are provided or agreed to be provided by the landlord to the tenant of a rental unit:

(a) appliances and furnishings;
(b) utilities and related services;
(c) cleaning and maintenance services;
(d) parking spaces and related facilities;
(e) cablevision facilities;
(f) laundry facilities;
(g) storage facilities;
(h) elevator;
(i) common recreational facilities;
(j) intercom systems;
(k) garbage facilities and related services;
(l) heating facilities or services;
(m) housekeeping services;

The April 25, 2014 RTB Decision

Upon review of the April 25, 2014 RTB Decision which dismissed the Tenant's previous application for unrestricted access for his guests, I conclude that that Decision has no bearing on this Decision, pursuant to section 64(2) of the *Act*. I make that conclusion in part after

consideration of the May 7, 2015 BC Supreme Court Decision, *Atira Property Manager v. Richardson, 2015 BCSC 751*.

The May 1, 2015 RTB Decision

Although I am not bound by the May 1, 2015 RTB Decision I am in agreement with the findings and Orders put forth in the May 1, 2015 RTB Decision as they relate to the "Tenant commitment" document.

After review of the evidence before me which included a "Tenant commitment" document, I also find that this document constitutes contracting out of the *Act* and is therefore of no force or effect, pursuant to section 5 of the *Act*.

Restricting Access

I accept the Landlords' submissions that their intention with having a visitor policy may have been driven by their desire to provide a safe living environment for the occupants. I agree that such a policy may assist the municipal police and other first responders in doing their jobs. However, I note that if there were such municipal SRO by-laws or policies stipulating such a policy, such municipal by-laws or policies would not excuse or supersede the *Act* or Common Law.

The Tenant is correct in his submission that the Supreme Court Decision *Atira Property Management v. Richardson, 2015 BCSC 751* establishes Law regarding the interpretation of section 30(1)(b)the *Act* and Section (2) of the *Regulation Schedule*.

I accept the Tenant`s submission that the Landlords have the responsibility to secure the building and a tenant has the responsibility for their guest(s)` actions. Any methods taken to meet those responsibilities must comply with the *Act*. Accordingly, I conclude that the Landlords' visitor policy which restricts the Tenant from having guests between the hours of 9:00 a.m. and 10:00 p.m.; requires guests to show identification; and sign in a visitor log, to be unreasonably restricting the Tenant's guests' access to the rental unit, in breach of section 30(1)(b) of the *Act*.

Based on the foregoing, I hereby Order the Landlords to comply with the *Act, Regulation,* and tenancy agreement and to provide unrestricted access to the rental unit for the Tenant`s guests effective immediately and for the duration of this tenancy.

Provide Services or Facilities Required by Law

Although the Tenant applied for an Order to have the Landlords provide services or facilities required by law, there was no evidence indicating that the Landlords had breached section 27 of the *Act*. Accordingly, this request is dismissed, without leave to reapply.

Conclusion

The Tenant was successful in proving that the Landlords' visitor policy was in breach of the *Act* and *Regulations* and the Landlords were ordered to allow unrestricted access to the rental unit for the Tenant's guests effective immediately and for duration of this tenancy.

The Tenant's request for an Order to have the Landlords provide services or facilities required by law was dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 17, 2015

Residential Tenancy Branch

THE LAW FOUNDATION OF BRITISH COLUMBIA

2021
PROVINCIAL ADVOCATES TRAINING CONFERENCE

Legal Aid BC

Helping clients keep their belongings

Danielle Sabelli

Topic: Housing & Tenancy

Recording Link: https://youtu.be/-6C4ZC6rH20

HELPING CLIENTS KEEP THEIR BELONGINGS

Danielle Sabelli
Community Legal Assistance Society
November 17, 2021

WHY DOES THIS MATTER?

- The regulation of people's belongings intersects with the regulation of their physical presence in the precarious spaces they are forced into. As individuals carry things and depend on those things for their survival, exclusionary rules that apply to their belongings will directly impact their own ability to occupy certain spaces.
- The legal governance of the personal belongings of the poor is widespread. For many the loss or destruction of possessions is endemic.

Governing the Belongings of the Precariously Housed: A Critical Legal Geography. By Nicholas Blomley, Alexandra Flynn, and Marie-Eve Sylvestre. Annu. Rev. Law Soc. Sci. 2020. 16:165–81

INTRODUCTION

- For many people who are precariously housed and people who are houseless, belongings are located on the land (and thus under the control) of private and public agents, such as landlords, non-profits, corporations, and governments.
- As people move between these spaces, their possessions become subject to the will of others, such as police officers, landlords, transit authority personnel, bylaw officers, debt collectors etc.

Governing the Belongings of the Precariously Housed: A Critical Legal Geography. By Nicholas Blomley, Alexandra Flynn, and Marie-Eve Sylvestre. Annu. Rev. Law Soc. Sci. 2020. 16:165–81

WHY DOES THIS MATTER?

- The governance of possessions by others often places vulnerable people in situations of enhanced precarity.
- Health problems may be exacerbated by property seizure (medications lost, tents seized etc.).
- Policing practices that result in the seizure of drug paraphernalia and evictions directly undermine the right to health for people who use drugs, including increased risks of overdoses, relapses, and disease.

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WHY DOES THIS MATTER?

- It takes time to accumulate belongings and may be difficult to acquire replacements.
- Principles of equality and equity are violated. Personal belongings of housed people are far more protected than the belongings of people who are precariously housed or homeless.
- Discriminatory practices that fall heavily on BIPOC communities, LGBTQ2S+ communities, people with disabilities, and women, who tend to be overrepresented among the precariously housed and houseless (this unfolds in intersectional ways).
- The seizure or destruction of personal property risks underplaying the significance and value of belongings to their owners, denying their dignity as human beings.

Governing the Belongings of the Precariously Housed: A Critical Legal Geography. By Nicholas Blomley, Alexandra Flynn, and Marie-Eve Sylvestre. Annu. Rev. Law Soc. Sci. 2020. 16:165–81

WHY DOES THIS MATTER?

- Certain spaces become highly contested and regulated sites (e.g. some non-profit housing providers restrict the amount of possession a tenant can bring into their buildings, encampments, sidewalks etc.).
- Shelter spaces can also be restrictive with limited recognition of the value belongings may have to their owners (disposing of property 30 days after a person has left, not providing a place to safely store items).
- The governance of belongings often becomes a form of governance of people through things.
- Law does not provide many protections for the belongings of people who are precariously housed and people who are houseless.

Governing the Belongings of the Precariously Housed: A Critical Legal Geography. By Nicholas Blomley, Alexandra Flynn, and Marie-Eve Sylvestre. Annu. Rev. Law Soc. Sci. 2020. 16:165–81

CAN A LANDLORD TAKE A TENANT'S PROPERTY?

What is a bailee at common law?

•The law of bailment in BC is set out in *Coast Crane Ltd. v. Dominion Bridge Co. Ltd. et al., British Columbia Power Commission v. E.B. Investments Ltd. et al.* [1961] B.C.J. No. 128; 28 D.LR. (2d) 1961 ("*Coast Crane*") where the Court states:

- In *Paton on Bailment*, 1952, p. 4, the learned author quotes as a definition "which has stood the test of time" the following words as definitive of bailment:
  - Any person is to be considered as a bailee who otherwise than as a servant either receives possession of a thing from another or consents to receive or hold possession of a thing for another upon an undertaking with the other person either to keep and return or deliver to him the specific thing or to (convey and) apply the specific thing according to the directions antecedent or future of the other person.

CAN A LANDLORD TAKE A TENANT'S PROPERTY?

A landlord can be a bailee

- In *Bello v Ren*, 2009 BCSC 1598 [*Bello*], the Court states:
  - [12] Mr. Bello was away from his apartment for three to five days due to an emergency hospitalization. An absence of a few days in these circumstances does not constitute an abandonment of goods within the meaning of s. 24(1) and indeed no such finding was made by the Dispute Resolution Officer. To the contrary, she noted at page 2 of the Reasons that the Landlord's evidence was that the tenant "did not vacate" after service of the Residential Tenancy Branch's order of possession.

CAN A LANDLORD TAKE A TENANT'S PROPERTY?

- [15] Section 91 of the *Residential Tenancy Act* provides that: "except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia." Absent abandonment, the Landlord did not have statutory authority to remove Mr. Bello's goods from his apartment. The Landlord was therefore a bailee at common law and owed a duty of care to Mr. Bello. Disposing of Mr. Bello's goods by taking them to the dump, particularly when he knew that Mr. Bello wanted those goods and was trying to retrieve them, is a gross breach of that duty.

CAN A LANDLORD TAKE A TENANT'S PROPERTY?

- Pursuant to s 26 (3) of the *RTA*, whether a tenant pays rent in accordance with the tenancy agreement, a landlord must not:
  - (a) seize any personal property of the tenant, or
  - (b) prevent or interfere with the tenant's access to the tenant's personal property.

DAMAGES

What are the damages for for breach of a bailee's duty of care at common law?

Restitutio in integrum (restore the injured party)

- In *Ashton v. Strata Corp. VR524*, [1999] B.C.J. No. 2429 (Prov. Ct.), the Court stated:
  - [49] The underlying principle in awarding damages is restitutio in integrum - to place the injured Party in the position he was in before the damage occurred, as best as can be done. In determining the proper measure of damages, the award must be reasonable both to the plaintiff and to the Defendant.
  - [50] The assessment of damages is a question of fact and based on the evidence, with the onus on the claimant to prove the value of his loss on a balance of probabilities.

DAMAGES

- All circumstances should be taken into account in arriving at a value for the lost goods, as set out in *Hislop Estates v. Western Oil Services Ltd.*, 1978 CanLII 2577 (BC SC), [1978] 2 W.W.R. 632 (B.C.S.C.) (confirmed in *Bello* at para 17).
- In *Bello, the* Court stated:
  - [19] The Dispute Resolution Officer had Mr. Bello's oral evidence about his lost property as well as a written list with estimated values. While the nature of the missing property and the value of the items must be proved by the tenant, the evidence must be weighed taking into account the difficulty a tenant faces in proving what is missing and what it is worth — a task made all the more difficult in this case because Mr. Bello's property was unlawfully seized and disposed of by the Landlord.

DAMAGES

- [18] In summary, at common law damages are awarded to put the injured bailor in the position he was in before the goods were lost or damaged. In the absence of contract, the most the bailor can recover is replacement cost or repair cost. However, account must be taken of all the circumstances, especially when accurate information is not available. Sometimes market value must be used, and sometimes intrinsic value. "Betterment" must be accounted for when replacing old items with new ones.

DAMAGES

Detinue

- When a person refuses to return personal property upon the request of a person entitled to it without justification.
- In *Schaffner v. Insurance Corporation of British Columbia*, 2016 BCSC 1186, the Court stated:
  - [11]…A claim in detinue lies at the suit of a person who has an immediate right to the possession of the goods against a person who is in actual possession of them, and who, upon proper demand, fails or refuses to deliver them up without lawful excuse.
- Even if property is returned, a tenant may be able to request nominal damages for wrongful detention of their belongings.

DAMAGES

Conversion

- Conversion involves taking, using or destroying someone else's personal property in a way that is inconsistent with the owner's ownership.
- In *Ask v. Mikolas*, 2010 BCSC 127 [*Mikolas*]. Mr. Justice Cullen, described the legal test for conversion:
  - [126] The elements that must be proven to establish the tort of conversion are:
    - (a) a wrongful act by the defendant involving the goods of the plaintiff;
    - (b) the act must consist of handling, disposing, or destroying the goods; and
    - (c) the defendant's actions must have either the effect or intention of interfering with (or denying) the plaintiff's right or title to the goods.

DAMAGES

- The remedy for conversion is that the defendant pay the value of the chattel at the time that it was wrongfully taken together with any consequential loss (see *Kostiuk (Re)*, 2002 BCCA 410 at para. 66).
- In *Mikolas*, the Court stated:

  - [28] …While the law typically takes market prices as the basis of valuation of property, it does so only because such prices are generally good evidence of its value to the owner… However, the basic rule of compensation is not market value, but *value to the owner*, and where the owner can demonstrate that the property had greater actual value, that actual value will be compensated.

DAMAGES

- [29] Value attributed to the owner beyond market value cannot be an unreasonable amount (see *Rawson* at para. 19). Further, an award of damages in tort generally does not take sentimental value into account, except in special circumstances, such as where there is a claim for mental distress or a deliberate act of wrongdoing (see *Smith v. British Columbia*, 2011 BCSC 298 at paras. 41–44).
- [30] For conversion of property that is deemed worthless, the court may award nominal damages. In *Georgian Bluffs (Township) v. Moyer*, 2012 ONCA 700, the Township removed and destroyed wood pallets that they regarded as an eyesore from the plaintiff's property. The Ontario Court of Appeal found that, although the pallets had no market value, the plaintiff was entitled to nominal damages for the conversion.

DAMAGES

An arbitrator may offset any damages to a tenant for disposal of belongings if rent is outstanding.

Damages under the RTA

- Pursuant to s 60 (1) *of the RTA*, an application for damages must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.
- Section 67 of the *RTA*, establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order the party to pay compensation to the party who suffered the loss or damage.
- Damage and loss includes damage to a person, including both physical and mental.

DAMAGES

- Section 7 of the *RTA*, states the party claiming the loss or damage bears the burden of proof.
- In order to determine whether compensation is due, the arbitrator may determine whether (see RTB Policy Guideline #16: Compensation for Damage and Loss):
  - A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
  - Loss or damage has resulted from this non-compliance;

DAMAGES

  - The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
  - The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.
- An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward and can award nominal damages and aggravated damages.

DAMAGES

- "Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.
- "Aggravated damages" are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

"ABANDONED" PROPERTY

- Abandoned property, is property for which the owner has intentionally relinquished all rights.
- Definitions are critical and regarding laws and cases that concern the belongings of people who are houseless and people who are precariously housed, this includes whether their belongings are deemed to have been "abandoned," "lost," or "misplaced."
- In Canada, section 7 of the Charter of Rights and Freedoms (1982) protects "life, liberty and security of the person," expressly omitting property as a protected ground.
- In contrast, In the United States, the Fourteenth Amendment forbids the state from depriving "any person of life, liberty, or property, without due process of law."

"ABANDONED" PROPERTY

- Although the constitutional protection of belongings has not yet been recognized in Canada, two cases (***Vancouver (City) v Wallstam,*** 2017 BCSC 937 and *Nanaimo (City) v. Courtoreille*, 2018 BCSC 1629) may help advance a future argument that personal possessions are critical to the life, liberty, and security of the person.

"ABANDONED" PROPERTY

Abandonment of property under the RTA

- Section 44 (1) (d) of the *RTA*, states a tenancy ends if the home is abandoned.
- Pursuant to s 24 (1) of the Regulation, a landlord may consider that a tenant has abandoned personal property if:
  - (a) the tenant leaves the personal property on residential property that the tenant has vacated after the tenancy agreement has ended, or
  - (b) subject to subsection (2), the tenant leaves the personal property on residential property.

"ABANDONED" PROPERTY

- (i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which the tenant has not paid rent, or
- (ii) from which the tenant has removed substantially all of the tenant's personal property.

- (2) The landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment only if:
  - (a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or
  - (b) the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.

"ABANDONED" PROPERTY

Is the home abandoned?

- The landlord may treat the home as abandoned if:
  - The tenant passes away and no action has taken place by the estate of the deceased, and rent hasn't been paid in one month;
  - It appears the belongings were intentionally left behind (e.g. grouped together in boxes, location of the items, belongings left unprotected);
  - The tenant does not demonstrate an intention to retrieving belongings (e.g. vague timelines for retrieval, failing to communicate, not showing up on an agreed upon date); and
  - The tenant is awaiting placement in a care facility.

DAMAGES

- In *Billion v Vaillancourt*, 2016 ONSC 5820, the Court stated:
  - [13] …In *Mputu v. Wright*, [2004] O.J. No. 6055 (S.C.J.) Wilson J. held at paragraph 41 that: "Landlords that fail to act reasonably in the circumstances face risk of liability." She further held at paragraph 39 that circumstances of the case before her that, "reasonable positive steps should be taken to make arrangements for the tenants to remove their belongings…A landlord must act reasonably. A landlord cannot simply ignore attempts on behalf of the tenant to contact him or turn a blind eye to what he knows is not simple abandonment of property. The landlord's conduct in this case was egregious and easily meets any test for abuse of process.

"ABANDONED" PROPERTY

Landlord has a duty of care when dealing with personal belongings

- Pursuant to s 24 (3) of the Regulation, if personal property is abandoned, the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with the following.
- Pursuant to s 25 (1) of the Regulation, the landlord must:
  - (a) store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal,
  - (b) keep a written inventory of the property,
  - (c) keep particulars of the disposition of the property for 2 years following the date of disposition, and
  - (d) advise a tenant or a tenant's representative who requests the information either that the property is stored or that it has been disposed of.

"ABANDONED" PROPERTY

- (2) Despite paragraph (1) (a), the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that:
  - (a) the property has a total market value of less than $500,
  - (b) the cost of removing, storing and selling the property would be more than the proceeds of its sale, or
  - (c) the storage of the property would be unsanitary or unsafe.
- (3) A court may, on application, determine the value of the property for the purposes of subsection (2).

"ABANDONED" PROPERTY

- Pursuant to s. 30 of the Regulation:
  - When dealing with a tenant's personal property under this Part, a landlord must exercise reasonable care and caution required by the nature of the property and the circumstances to ensure that the property does not deteriorate and is not damaged, lost or stolen as a result of an inappropriate method of removal or an unsuitable place of storage.

"ABANDONED" PROPERTY

Tenant's claim for abandoned property

- Pursuant to s 26 (1) of the Regulation, If a tenant claims their property at any time before it is disposed of, the landlord may, before returning the property, require the tenant to:
  - (a) reimburse the landlord for the landlord's reasonable costs of:
    - (i) removing and storing the property, and
    - (ii) a search required to comply with section 27 *[notice of disposition]*, and
  - (b) satisfy any amounts payable by the tenant to the landlord under this Act or a tenancy agreement.
- (2) If a tenant makes a claim under subsection (1), but does not pay the landlord the amount owed, the landlord may dispose of the property as provided by this Part.

SEIZING PETS

- If there are pets in a home, and nowhere for the pets to be placed, bailiffs will call animal control and the pets will be taken to a shelter.
- Vancouver Humane Society is partnering with social service agencies to break down the barriers and support the pets of women who are seeking housing or maintaining their housing while caring for a pet in crisis.
- COV states to claim your unlicensed dog from the Vancouver Animal Shelter, you must:
  - Provide proof of ownership, which can include:

SEIZING PETS

  - Adoption or purchase paperwork; and
  - Vet records with both the dog and owners' information License information from another municipality.
- Have government issued picture identification;
- Pay the unlicensed impound fee;
- Purchase a dog license. If you do not live in Vancouver, you must show proof of a license from another municipality ; and
- Bring a leash and collar.

SEIZING PETS

- Daily boarding fees will apply 24 hours after contact with the owner.
- The fee to retrieve your dog depends on if it is licensed and aggressive.
- Pickup fee:
  - $188.00 + $45.00 for an unlicensed dog and $96.00 for a licensed dog; and
  - $443.00 + $45.00 for an aggressive, unlicensed dog.
- Boarding fees:
  - Depends on the animal.
  - $25.00/day for a non - aggressive dog; and
  - $33.00/day for an aggressive dog.

BAILIFFS

- To forcibly evict a tenant, a landlord must file the order of possession with the BC Supreme Court Registry (or court services online) and get a document called a writ of possession from the Court. This is a very quick process. Often a landlord will be issued the writ of possession the same day they file for it.
- Once a landlord has a writ of possession, they can hire a court bailiff to enforce the eviction by removing your belongings and changing the locks.
- Landlords do not need to serve the writ of possession in advance. Landlords do not have to provide notice of a bailiff's entry.

BAILIFFS

Role of the court-appointed bailiff

- Court bailiffs are the only people who are allowed to enforce an eviction by removing you and your belongings from a rental unit and changing the locks. If necessary, a court bailiff can even physically remove you from the property.
- Court bailiff companies must be contracted under the Ministry of the Attorney General.
- A list of court bailiff companies by region can be found on the BC government website.

BAILIFFS

Role of the police

- The police do not have the authority to evict tenants. However, a court bailiff may ask them to attend an eviction to keep the peace while a tenant is being removed.
- Be aware of unlicensed bailiffs (e.g. Vancouver Eviction Service).
  - Tenant can request compensation for damage and loss when a landlord hires an unlicensed bailiff; and/or
  - May also be violations of trespass laws.

BAILIFFS

Can a court bailiff sell a tenant's belongings?

- A court bailiff can sell a tenant's personal property, but there are exceptions.
- The landlord is responsible for paying the court bailiff, which could cost between $1200 and $1500. Court bailiffs have the authority to seize and sell belongings to recover the cost of their services.
- Pursuant to s 71.1 of the *Court Order Enforcement Act*, some belongings are exempt from being seized and sold by court bailiffs. These exemptions include:
  - Necessary clothing for a person and their dependents;
  - Medical and dental aids for a person and their dependents;

BAILIFFS

- $4000 worth of household furnishings and appliances;
- A vehicle worth up to $5000;
- Tools or other items that a person requires for work, worth up to $10,000; and
- Works of art or other objects of cultural or historical significance brought into British Columbia for temporary public exhibit.
- If there is a dispute about the value of the items selected for exemption, sections 74 to 78 of the *Court Order Enforcement Act* provides a method for appraisal.

BAILIFFS

- The value of assets which are exempt relates to the current value, not the new or replacement value.
- Court bailiffs are supposed to provide tenants an opportunity to claim their exemptions when they first attend the home.
- A tenant must claim their exemptions within two days after the seizure of their belongings or notice of it, whichever is later, of the date they found out their belongings were seized.

BAILIFFS

- A bailiff may leave belongings they believe to be of no value (e.g. garbage) , in the home.
- A bailiff may deny a tenant's claim for exemptions if the are taking placing the belongings in safe storage.
  - Unclear how taking the exempted belongings does not amount to a" forced seizure" under the *Court Order Enforcement Act.*
- Tenants must retrieve their belongings all at once, cannot make multiple trips to the storage facility.

BAILIFFS

Can the court bailiff charge the tenant fees?

- The landlord pays the court bailiff fees, however a landlord can apply to the RTB for dispute resolution to recover the cost of those fees.
- The storage facility cannot charge a fee to release their belongings that have been placed in safe storage (be aware of attempts to mislead).
- Landlord is responsible for storage fees. Landlord can attempt to recover these fees by applying to the RTB, but they must mitigate their losses.

BAILIFFS

- *Vertone v. Peden, 2000 BCPC 101:*
  - [11] I find the bailiff's costs were unnecessary and unfortunate and dismiss the claim to recover those costs. To win an argument in a civil court is one thing, to gloat about it is quite another, but eagerness to inflict hardship has every appearance of vindictiveness. Had the landlord, despite whatever he thought was aggravation or provocation, been able to extend a simple courtesy to the tenants and talk to them, if not in person at least through counsel, he would have learned that the tenants understood their remedies had been exhausted and that they had signed a rental agreement for another property.

BAILIFFS

- [12] Since the bailiff's expenses were unnecessary the one portion of the counterclaim for lost and damaged goods as a result of the goods packed and moved by the bailiffs is allowed.

What can a tenant do if their belongings are damaged or stolen while in the bailiff's care?

- Tenants are first expected to first try to resolve it directly with the company. If you can't reach an agreement with the company, you can report your concern to the Contract Administrator Court Bailiff Program, Peter Hamilton, at: Peter.Hamilton@gov.bc.ca

BAILIFFS

- A tenant can obtain a stay on the writ of possession. If a bailiff has already removed the tenant's belongings and changed the locks, a tenant can ask for a order to regain access to the unit and for their belongings to be returned.
- *Goodman v Pavlovic*, 2021 BCSC 1503:
  - [76] I have also taken into account the conduct of the landlord and his agent, the bailiff. The bailiff should have paused his removal efforts when he learned a court order had been granted staying the Order of Possession. Instead, the bailiff sped up his efforts to evict the petitioners in an effort to thwart the order. This conduct cannot be encouraged.

SEIZURE BY POLICE

When can police seize belongings?

- Pursuant to s 489(2) of the *Criminal Code*, the police should only seize property if it is connected to a crime:
  - Was obtained by the commission of an offence (e.g. stolen, bought with proceeds of a crime);
  - Was used in the commission of an offence (e.g. a weapon) and/or;
  - Will give evidence in relation to an offence.

"Know your Rights: A Guide for People who Rely on Public Space" by Pivot Legal Society

SEIZURE BY POLICE

Illegally owned property

- This type of property may be destroyed and will not be returned.

Lawfully owned property

- Police rarely provide paperwork when seizing belongings.
- May have parties sign a waiver called "a waiver of voluntary relinquishment". The police may threaten a part with arrest if they do not sign the waiver.
- If property is seized, and no charges are laid, can try to call the local police property office and ask them to return the property.

"Know your Rights: A Guide for People who Rely on Public Space" by Pivot Legal Society

Hebert v. Balderston (2020 BCPC 43). Relevant paragraphs are 229-235.

https://www.pivotlegal.org/know-your-rights-handbook

https://www.tapsbc.ca/post/bailiff-at-the-door

THE LAW FOUNDATION OF BRITISH COLUMBIA

2021
PROVINCIAL ADVOCATES
TRAINING CONFERENCE

Legal Aid BC

Addressing discrimination: choosing the appropriate venue

Odette Dempsey-Caputo; Andrew Robb

Topic: Legal systems & court; Legal Help & Lawyers

Recording Link: https://youtu.be/VggIMC3pDC8

ADDRESSING DISCRIMINATION

Choosing the Appropriate Venue

Presented by:
Andrew Robb, Disability Alliance BC
Odette Dempsey-Caputo,Elizabeth Fry Legal Clinic

THE LAW FOUNDATION OF BRITISH COLUMBIA

Land Acknowledgments

Unceded territory of Musqueam, TsleilWaututh, and Squamish Peoples

and

Unceded territory of the səl̓xwɛpməx (Secwepemc) Nation

DISCLAIMER:

This presenation is meant to be a practical introduction for advocates to some very complex legal issues; it is not intended to be comprehensive.

If in doubt talk to your supervising lawyer.

OVERVIEW

What we will learn

01 Human Rights Law

02 Legal Process and which Venue

03 Practical Considerations

04 Scenarios

WHAT IS HUMAN RIGHTS LAW?

British Columbia has the Human Rights Code to help protect against discrimination and harassment.

The Human Rights Tribunal is responsible for complaints under the Human Rights Code.

The Code targets discrimination based on "prohibited grounds"

PROHIBITED GROUNDS

Race
Colour
Ancestry
Place of Origin
Age
Sexual Orientation
Religion
Family Status
Physical Disability
Political Belief
Marital Status
Source of Income
Conviction of criminal or summary conviction (Employment)

AREAS IT APPLIES TO:

Employment
- being hired.
- being fired.
- accommodation.
- treatment at work.

Housing and Property
- ownership.
- tenancies
- ability to by and sell property
- ads for housing

Services
- education
- goverment services
- customers services
- healthcare services
- et c.

Two laws in BC

FEDERAL JURISDICTION	PROVINCIAL JURISDICTION
Canadian Human Rights Act (the "CHRA")	BC Human Rights Code (the "BCHRC")

Federal

- Banking
- Airlines
- Interpovincial travel
- Telecommunications
- Fisheries
- Federal departments and agencies (RCMP)
- First nations governance

PROVINCIAL

- **Healthcare**
- **Education**
- **Housing**
- **Services and facilities to public**
- **Most workplaces**
- **Almost everything else the federal does not do.**

BC HUMAN RIGHTS TRIBUNAL

The Tribunal is an impartial body that makes binding decisions about allegations of human rights.

The Tribunal can force violators of the Code to take steps to improve their practices and award complainants various remedies.

HUMAN RIGHTS COMMISSION

- Does not generally play a role in the tribunal process
- does not act on individual complaints
- promotes education and research about human rights
- advocates at a systemic level.

CANADIAN HUMAN RIGHTS TRIBUNAL

The Tribunal can make binding decisions about human rights and can force violators to take steps to improve their practices.

The Canadian Human Rights Commission must approve the complaint before you can go to the Canadian Human Rights Tribunal..

CANADIAN HUMAN RIGHTS COMMISSION

The Canadian Human Rights Commission receives and investigates individual allegations about human rights violations.

The Commission also promotes education, and research about human rights and advocates on a systemic level.

OTHER VENUES:

Residential Tenancies

- The Residential Tenancy Branch cannot consider human rights issues.
- Human Rights Tribunal cannot consider issues with tenancy outside of the "prohibited grounds"

Provincial and Federal Courts

- Small Claims, Civil Resolution and the Supreme Court can consider employment issues but they cannot deal with human rights issues.

Grievances Arbitration

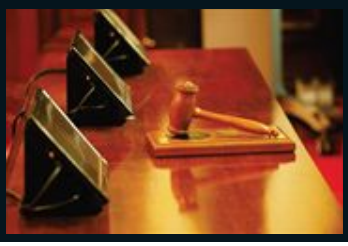
- Workers Compensation
- Union Grievances

HOW DO YOU KNOW WHICH VENUE?

Consider

- What outcomes you want
- How strong the claim is
- How long it might take to get a result
- How much it would cost to bring in the different venues

Can you do two venues at hte same time?



CONSIDER

- **Are there separate issues**
- **The HRT claim may get deferred (postponed)**
- **When the other claim is finished the HRT claim may be decide to continue or dismiss the claim.**

WHEN SHOULD YOU CONTACT A LAWYER

SCENARIO 1

Justyn Thyme went into a store to buy a watch. Justine Thyme does not agree with wearing a mask or vaccinations. She feels it is a breach of her fundamental rights. The store manager Di Lei stopped Justyn Thyme and told her she could not come into the store and asked Justyn Thyme to leave. Justyn Thyme has a medical condition that makes it hard to breath if she wears a mask.

SCENARIO 2

Anita Room sees an ad on Facebook that states that Ima Hogg is renting a room. The ad says that the rental has two bedrooms and that no children are permitted. Anita Room does not have any children so she goes and looks at the rental. Ima Hogg says that she will rent to Anita until she discovers that Anita is on PWD. She then tells her the room is no longer available.

Scenario 3

Kay Oss is a waiter. They are constantly late for work, forget orders and drop dishes. Kay Oss has worked at the restaurant for 8 years in the morning shift. The manager changed Kay Oss' hours to the evening and reduced their hours. Kay Oss cannot have their hours changed because of childcare. When Kay Oss tells their manager this, the manger fires Kay Oss.

SCENARIO 4

Polly Pipe smokes medical marijuana for her arthritis and severe anxiety. She has lived in the basement suite for 6 years and has smoked marijuana throughout her time there and no one ever complained about her smoking. Recently the landlord, Peter Owt decided he does not want Polly smoking anymore as he has had enough of her second hand smoke. The landlord, Peter Owt has given the Polly Pipe several warnings to stop smoking but the Polly refuses since it does not say in her tenancy agreement that she cannot smoke. Peter Owt recently gave her a one month notice of eviction for smoking in the basement suite.

SCENARIO 5

Jette Quick works for Fly-A-way airline, and is a member of the Fly-A-way Employees union. Fly-A-way airline offers special discount card to employees and their spouses. Jette Quick was divorced a long time ago. For many y ears he and his sister Olive Yew have lived alone in a house they inherited from their parents. Jette Quick asked for a discount card for Olive Yew but was told she does not qualify since she is not his spouse.

Scenario 6

Rose Bush, who is Metis, lives with her daughter Lily Pad. Lily was walking home with Rose Bush. Several police officers stopped Lily outside her house and asked her to show them what was in her backpack. Lily refused to show them saying they had no basis to ask to see what was in her backpack. The police told Lily she was being arrested. Rose told them they had no basis to arrest Lily. The police then blocked Rose from seeing Lily. Rose could hear Lily screaming as the police threw her on the ground. Rose couldn't see Lily and yelled at the police to stop but the police officers instead threatened to arrest Rose.

RESOURCES FOR ADVOCATES

- Your Supervising Lawyer
- PovNet
- Access Pro Bono
  www.accessprobono.ca/get-legal-help
- CLAS Human Rights Clinic
  bchrc.net
- Disability Alliance BC
  disabilityalliancebc.org
- Elizabeth Fry Legal Clinic
  kamloopsefry.com
- Other Legal Clinics
- Lawyer Referral
  https://www.accessprobono.ca/our-programs/lawyer-referral-service

THANK YOU!

Andrew Robb (he/him)
Staff Lawyer, Disability Law Clinic
Disability Alliance BC
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Odette Dempsey-Caputo (she/her)
Senior Staff Lawyer
Elizabeth Fry Legal Clinic
Phone: (250) 374-2119
Email: odette@kamloopsefry.com
702-235 1st Avenue,
Kamloops, BC V2C 3J4

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Kay Oss is a waiter. They are constantly late for work, forget orders and drop dishes. Kay Oss has worked at the restaurant for 8 years in the morning shift. The manager changed Kay Oss' hours to the evening and reduced their hours. Kay Oss cannot have their hours changed because of childcare. When Kay Oss tells their manager this, the manger fires Kay Oss.

Scenario 4

Polly Pipe smokes medical marijuana for her arthritis and severe anxiety. She has lived in the basement suite for 6 years and has smoked marijuana throughout her time there and no one ever complained about her smoking. Recently the landlord, Peter Owt decided he does not want Polly smoking anymore as he has had enough of her second hand smoke. The landlord, Peter Owt has given the Polly Pipe several warnings to stop smoking but the Polly refuses since it does not say in her tenancy agreement that she cannot smoke. Peter Owt recently gave her a one month notice of eviction for smoking in the basement suite.

Scenario 5

Jette Quick works for Fly-A-way airline, and is a member of the Fly-A-way Employees union. Fly-A-way airline offers special discount card to employees and their spouses. Jette Quick was divorced a long time ago. For many y ears he and his sister Olive Yew have lived alone in a house they inherited from their parents. Jette Quick asked for a discount card for Olive Yew but was told she does not qualify since she is not his spouse.

Scenario 6

Rose Bush, who is Metis, lives with her daughter Lily Pad. Lily was walking home with Rose Bush. Several police officers stopped Lily outside her house and asked her to show them what was in her backpack. Lily refused to show them saying they had no basis to ask to see what was in her backpack. The police told Lily she was being arrested. Rose told them they had no basis to arrest Lily. The police then blocked Rose from seeing Lily. Rose could hear Lily screaming as the police threw her on the ground. Rose couldn't see Lily and yelled at the police to stop but the police officers instead threatened to arrest Rose.

THE LAW FOUNDATION OF BRITISH COLUMBIA

2021
PROVINCIAL ADVOCATES TRAINING CONFERENCE

Legal Aid BC

Filing a human rights complaint

Laura Track

Topic: Legal systems & court;

Recording Link: https://youtu.be/JLfuMpaSs0s

FILING A HUMAN RIGHTS COMPLAINT

Presented by Laura Track

Human Rights Lawyer with the BC Human Rights Clinic at the Community Legal Assistance Society (CLAS)

www.bchrc.net

- Province-wide
- Free legal services for complainants
- Information by phone (live) – available to all
- Monday Short Service Clinic – available to all
- Legal advice and representation – by application
- Education workshops

Filing a Complaint - Where to start?

http://www.bchrt.bc.ca/

File a complaint

Before you file a complaint online:

Use Google Chrome. Do **not** use Safari.

Guest users will lose their work if the form is left for 30 minutes or more or if it takes more than 8 hours to complete. If you need more time to complete the form, use the Print version to avoid losing work.

Choose the type of form:

Form Number	Form Name	Form Type
Form 1.1	Complaint for an individual	Online and Print
Form 1.2	Authorization to file for another person (* see below)	Fillable and Print
Form 1.3	Complaint for a group or class of people	Online and Print
Form 1.4	Retaliation Complaint (** see below)	Online and Print

* If you are filing a complaint for someone else, you must complete and file an Authorization – Form 1.2 and the relevant Form 1.1, 1.3 or 1.4, unless you are a lawyer or legal advocate.

File a complaint

You have two options to fill out the form

- Continue as Guest.
  - This option is easiest.
  - This option won't save your work if you close the form or if you leave the form for more than 30 minutes.
  - This option gives you 8 hours to complete the form. But you can't leave the form for more than 30 minutes.
- Login to Continue.
  - This option requires you to create an account. You can choose a Basic account.
  - After you create an account, click "Continue to Service Directory" and search "HRT".
  - In your form, you can click "Save for Later". You can login later to work on your form.

Scenario

Alam works at Big Rock Construction Company. Her supervisor is Carl Berger.

Big Rock hires a new worker named Devon. On Devon's first day, he makes comments about Alam's appearance. He tells her she's "hot, like an Indian princess" and asks two of her male co-workers if she's any "fun after hours." He asks her out to dinner. When she declines, he tells her he's going to ask her parents to arrange their wedding and she'll have no choice but to marry him.

Quiz Question

If Alam decided to make a human rights complaint, what would be the **area of discrimination?** (select all that apply)

a. Sexual harassment
b. Tenancy
c. Employment
d. Race

Protected Areas

Step 2, Part A Area of discrimination

Information: The Human Rights Code protects people in the following "areas".

Check any area that applies to your complaint:	Information about the areas:
☐ **Employment** If your complaint is about employment, check if it is about: ☐ A job ☐ A job ad ☐ Lower rate of pay based on sex for similar work	Employment means work for an employer who controls the work and pay. It can include work as a volunteer, intern, or "independent contractor". Applies when you: • Apply for a job • Are working as an employee • Get fired
☐ **Services**	Applies when you want a service. For example, you go out to eat or shop. You go to school. You apply for a government benefit. You own a strata unit.
☐ **Tenancy**	Applies when you: • Try to rent a space • Are renting a space • Get evicted
☐ **Purchase of property**	Applies when you want to buy a house, condo, other unit, or land.
☐ **Publication**	Covers flyers, articles, notices, signs, and symbols. Applies when someone aims to discriminate. **Example:** A "whites only" sign Applies to a publication that is likely to expose a person or group to hatred. **Example:** An article that says a protected group is disgusting and immoral
☐ **Membership in a union, employer's organization, or occupational association**	Applies when: • You want to join a union or get licensed to work by a regulator • You get suspended or expelled • You are a member

Scenario

Alam tries to ignore Devon's behaviour, but it doesn't stop. Almost every day, he comments on her appearance or makes a sexual "joke". He refers to her as his Indian princess. When he does this, she ignores him or rolls her eyes and walks away. Her co-workers see all of this, but no one does anything to stop it.

Alam is nervous to confront Devon. He's so brash, and she's worried about how he'll react if she calls him out on his behaviour.

After about a month of this, Alam can't take it anymore and reports Devon's conduct to her supervisor, Carl. Carl tells her "boys will be boys, he's harmless. Just ignore him."

Quiz Question

If Alam decided to make a human rights complaint, what would be the **ground(s) of discrimination?** (select all that apply)

a. Sexual harassment
b. Race
c. Colour
d. Ancestry
e. Place of Origin
f. Gender identity
g. Sex

Grounds of Discrimination

Step 2, Part B Grounds of discrimination

Information: The Human Rights Code protects you based on the characteristics or "grounds" below. The Code protects you if you have the characteristic. The Code also protects you if you don't have the characteristic, but someone thinks you do. Discrimination is conduct that harms you based on one or more characteristics.

Example of multiple "grounds": A service provider treats an Indigenous woman badly. She selects the grounds race, colour, ancestry and sex.

Check only the grounds that apply to this complaint. Give details for each ground you check.
Examples: Disability – I have a learning disability. Disability – Respondent thinks I have a heart condition. Age – I am 67. Race – I am Métis.

☐ Race, details: _____	Racial identity. Example: South Asian or Indigenous.
☐ Colour, details: _____	Skin colour. Example: Black, "dark-skinned", "light-skinned".
☐ Ancestry, details: _____	Where your ancestors come from. Example: Your father is Métis.
☐ Place of origin, details: _____	Where you come from. Example: Born in China.
☐ Physical disability ☐ Mental disability (you can select both) details: _____	Conditions that affect or are seen as affecting your abilities. Examples: Addiction, amputation, asthma, bipolar disorder, cancer, depression, dementia, epilepsy, obesity, learning disorders, developmental disabilities, impairments to hearing, speech, vision, or mobility.
☐ Sex, details: _____	Includes being male, female, intersex, Two Spirit, or transgender. Includes pregnancy, breast-feeding, and sexual harassment.
☐ Gender identity or expression, details: _____	Gender identity is a person's sense of their gender, including man, woman, transgender, or non-binary. Gender expression is how a person presents their gender. It includes how a person acts and appears. Gender identity or expression can include a person's name or pronoun such as he, she, or they.

Grounds of Discrimination

☐ Sexual orientation, details: _____	Includes being heterosexual, gay, lesbian, bisexual, pansexual, or queer.
☐ Age (19 or over), details: _____	Does not apply: • To purchase of property • If legislation allows an age distinction
☐ Family status: _____	Includes: • Family size • Family type (example: single parent family) • Family care responsibilities • Who is in your family (example: someone lives you because of who your father is) Does not apply to purchase of property.
☐ Marital status: _____	Includes: • Married, single, widowed, divorced, common-law • Who your spouse is (example: someone fires you because they fired your spouse)
☐ Religion: _____	Includes: • Practicing a faith • Religious beliefs • Not having certain religious beliefs or any religious beliefs at all
☐ Political belief: _____	Applies only to employment and membership in a union, employer's organization, or occupational association. Includes: • Supporting a political party • Advocating for change to laws • Beliefs about how to govern a nation
☐ Criminal conviction: _____	Applies only to employment and membership in a union, employer's organization, or occupational association. Includes: • Charged with a crime • Convicted of an offence
☐ Lawful source of income: _____	Applies only to tenancy. Example: A landlord won't rent to you because you receive government benefits.

Grounds of Discrimination

- Race, colour, ancestry, and place of origin often overlap, combine to create someone's ethnic identity
- Naming all four won't mean higher damages, but can help to explain the nature of the discrimination
- ******Coming soon****** Indigenous identity to be added
- Sexual harassment = discrimination on the basis of sex
- Could also be discrimination on basis of gender identity and expression in some cases (e.g., comments on appearance or dress not conforming to expectations)
- Discrimination can be **intersectional**. E.g., "Indian princess" comment is racist **and** sexist

Quiz Question

How relevant is it to the likelihood of her complaint's success that Alam has not told Devon to stop his behaviour? (select one)

a. Not at all relevant
b. Somewhat relevant
c. Very relevant

Quiz Question

Devon might argue that he was just complimenting Alam and intended to flatter her, and he was only joking around. How successful do you think this defense would likely be? (select one)

a. Not at all successful
b. Somewhat successful
c. Very successful

Sexual Harassment

Three primary elements:

1. Conduct of a "sexual nature"
2. The conduct was "unwelcome"
3. The conduct produces negative consequences for the complainant.

Unwelcome Conduct

- Engaging in a course of vexatious* conduct that a person **knows or ought to know** is **unwelcome**
- * annoying, irritating, bothersome, upsetting, distressing
- Intention is not relevant. Focus is on the effect of the conduct: *Code* s. 2.

Unwelcome Conduct

- Clear communication that conduct is unwelcome → harasser is on notice
- A person does not have to expressly object unless the other person would reasonably have no reason to suspect the behaviour was unwelcome
- "A complaint, protest, or objection by an applicant is not a pre-condition to a finding of harassment and it does not mean that the behaviour or conduct wasn't unwelcome." - *Bento v. Manito's Rotisserie & Sandwich*, 2018 HRTO 2013
- Toleration of behaviour does not = acceptance

Quiz Question

If Alam decided to make a human rights complaint, who should she name as the Respondent(s)? (select all that apply)

a. Devon
b. Carl
c. Big Rock Construction Company
d. The co-workers who observed the harassment
e. The CEO of Big Rock Construction Company

The Respondent

Name of Respondent #1:		
Relationship to you: (**example:** your employer, landlord, government body)		
Email:		
Mailing address:		
City:	Province:	Postal code:
Telephone:	Fax:	Cell:
Name of Respondent #2 (if applicable):		
Relationship to you: (**example:** your manager, building caretaker, government employee)		
Email:		
Mailing address:		
City:	Province:	Postal code:
Telephone:	Fax:	Cell:

The Respondent – Employer's Liability

- Employers are responsible for ensuring a discrimination-free workplace
- An employer is liable for discrimination by its employees related to the employment: *Code* s. 44
- An employer must take steps to deal with issues of possible discrimination in the workplace

The Respondent – Individual Liability

- When to name an individual?
  - If personally responsible for what happened
  - Acting outside their job duties
  - High degree of personal culpability
- *Daley v. BC Ministry of Health*, 2006 BCHRT 341 at paras. 60-62

Application to Dismiss a Complaint against Individual Respondent

- Tribunal Practice Direction: http://www.bchrt.bc.ca/law-library/practice-directions/app-to-dismiss-complaint.htm
- Provides for early application to dismiss a complaint against an individual
- Practical implication is that naming numerous individuals may slow the process

Quiz Question

If Alam decided to make a human rights complaint, who would be the Respondent(s)? (select all that apply)

a. Devon
b. Carl
c. Big Rock Construction Company
d. The co-workers who observed the harassment
e. The CEO of Big Rock Construction Company

Scenario

Devon's behaviour continues. Alam starts to dread going to work. One morning, she has a panic attack while getting ready to leave for work.

Alam is taking night classes. She can't concentrate on her school work and has to withdraw from the two classes she's taking to avoid getting an F. It's too far into the semester to get a refund, so she's out $600 for the two classes.

Alam sees a psychologist, who diagnoses her with post-traumatic stress disorder. The psychologist attributes the PTSD to the harassment at work, and recommends Alam take two weeks off work.

Quiz Question

What are the implications of these facts for Alam's human rights complaint? (select all that apply)

a. She could add a claim for discrimination based on a mental disability
b. Her damages award would likely increase
c. The employer now has a duty to accommodate
d. No impact on the complaint

Disability and Employer's Actions

- The *Code* protects workers from discrimination due to existing disabilities
- Existence of a disability → duty to accommodate
- An employer's actions which cause or contribute to a disability do not, without more, violate the *Code*
- "The fact that particular conduct results in an individual experiencing stress and anxiety, or even a mental disability, does not mean that that conduct constitutes discrimination on the grounds of mental disability": *Vandale v. Golden (Town),* 2009 BCHRT 219
- But, if employee develops a disability due to employer's actions, the employer will have a duty to accommodate

Damages

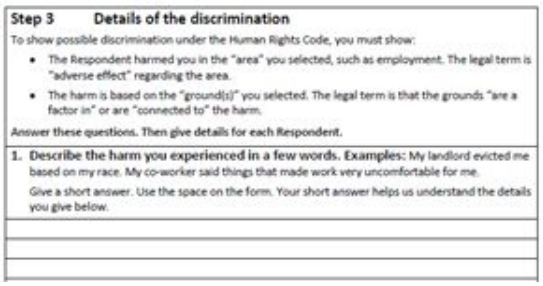
- Tribunal can order compensation for wage loss and expenses incurred due to discrimination
- Compensation for "injury to dignity, feelings, and self-respect" is assessed based on:
  - Nature of discrimination (severity, ongoing nature)
  - Complainant's social context or vulnerability
  - Effect on the complainant

Quiz Question

What are the implications of these facts for Alam's human rights complaint? (select all that apply)

a. She could add a claim for discrimination based on a mental disability
b. Her damages award would likely increase
c. The employer now has a duty to accommodate
d. No impact on the complaint

Details of Discrimination



Step 3 Details of the discrimination

To show possible discrimination under the Human Rights Code, you must show:

- The Respondent harmed you in the "area" you selected, such as employment. The legal term is "adverse effect" regarding the area.
- The harm is based on the "ground(s)" you selected. The legal term is that the grounds "are a factor in" or are "connected to" the harm.

Answer these questions. Then give details for each Respondent.

1. **Describe the harm you experienced in a few words. Examples:** My landlord evicted me based on my race. My co-worker said things that made work very uncomfortable for me.

Give a short answer. Use the space on the form. Your short answer helps us understand the details you give below.

3 MINUTE PRACTICE!

- Write a short, 1-2 sentence description of the discrimination Alam has experienced.
- My co-worker repeatedly sexually harassed me and used a racist term to describe me. I reported his behaviour to my supervisor, but nothing was done.

Explaining the Nexus

2. **Explain how the harm relates to the grounds you checked in Step 2, Part B above.**
Examples:
- The words my co-worker used are slurs about Black men.
- Security only followed me around the store, not the other people who were not First Nations.
- The Respondent fired me one week after they learned I was pregnant.
- A white male colleague got the promotion. I am at least as qualified. I am an Asian woman.
- My employer said I have to work Saturdays. My religion does not allow me to work Saturdays.
- My employer disciplined me for shouting at someone. My disability caused me to shout.
- This organization refused to provide an interpreter which I need because I am Deaf.

Consider getting help if you are not sure. See Who Can Help? on the Tribunal website.

If you need more space, use extra sheets (maximum 5 pages total for Step 3). Mark them "Step 3".

5 MINUTE PRACTICE!

- Explain how the harm relates to the grounds.
- My co-worker commented on my appearance, told me I was “hot”, asked me out, and asked my co-workers if I was “fun after hours.” He did this repeatedly for a month. This is sexual harassment.
- My co-worker called me an “Indian princess” on many occasions. He said he would get my parents to arrange our marriage. This is sex discrimination and discrimination based on my race, ancestry, and place of origin.
- I reported the behaviour to my supervisor and nothing was done. This is discrimination based on sex.

Details of Discrimination

Individual Complaint
Step 3 – Details of Discrimination

Respondent #1: _____

Describe what this Respondent did that harmed you.
- Be specific.
  Example: If someone harassed you, write out the words they used.
- Conduct can be what someone did or didn't do. The legal term is "acts or omissions".
  If you don't know the exact date, give an approximate date. **Examples:** 2020 02 23 or 2020 02

Conduct:	Dates: YYYY MM DD

Details of Discrimination

- Tell the story
- Chronology of events
- Write “see attached” and attach narrative
- For each Respondent, make sure to address three things:
  - Complainant’s protected characteristic(s)
  - Negative treatment or impact – what the Respondent did
  - Connection (“nexus”) between protected characteristic and negative treatment or impact

Is the complaint filed in time?

- Must file complaint within one year of alleged contravention (*Code* s. 22(1))
- Continuing contravention (*Code* s. 22(2))
  - Repeated acts of similar character
  - Must be one instance of discrimination within last year to anchor older events
  - Substantial gaps between acts may mean contravention is not “continuing”
- Discretion to accept late-filed complaints (*Code* s. 22(3))
  - Public interest to accept complaint
  - No substantial prejudice to any party

Scenario

When Alam comes to you for advice, she tells you that Devon's harassment began in early September, 2020. She reported it to her supervisor, Carl, on October 12, 2020, but he took no action. The behaviour continued throughout October. It happened almost every day.

Alam saw the psychologist on October 30, 2020. The psychologist diagnosed her with PTSD and recommended she be off work for 2 weeks. At the end of the 2 weeks, Alam quit her job, rather than returning.

Alam developed depression. She was hospitalized for several months in early 2021 due to the depression. She remains deeply impacted by these events.

5 MINUTE PRACTICE!

Step 4, Part A Is the complaint filed in time?

There is a 1-year time limit for filing a complaint. Answer these questions.

1. What is the date of the most recent conduct that you listed as discrimination?
   Respondent #1: _____ (yyyy-mm-dd) Respondent #2: _____ (yyyy-mm-dd)
2. Did the most recent conduct happen in the last year?
   Respondent #1: ☐ yes ☐ no Respondent #2: ☐ yes ☐ no
3. Did all of the conduct happen in the last year?
   ☐ yes – go to Step 5. You filed your complaint in time.
   ☐ no – continue in Step 4.
4. Is all of the conduct related or similar?
   Information: You must file a complaint within one year of the last conduct if the conduct is similar or related. The legal term is "continuing contravention".
   ☐ yes – answer questions 5 and 6.
   ☐ no – skip questions 5 and 6. Go to Step 4, Part B.
5. Explain how the conduct is similar or related (a "continuing contravention").
   Examples:
   - Each event is about a co-worker using racial slurs.
   - Each event is about an employer not accommodating a disability.
6. Explain any gaps in time.
   Information: Gaps in time might mean there is no "continuing contravention". The Tribunal will consider reasons for gaps.
   Examples:
   - "My employer denied me three promotions. The job postings were three months apart."
   - "My manager used racial slurs. He was on leave for four months."

Is the complaint filed in time?

- Tribunal has discretion to accept late-filed complaints if it is in the public interest
- Factors it will consider:
  - Length of delay
  - Reasons for delay (e.g., disability-related factors)
  - Public interest in complaint itself
    - Unique, novel, unusual issues
    - Vulnerable complainant
    - Gaps in jurisprudence
    - Systemic issue, the resolution of which would benefit others
  - No prejudice to respondent
  - *What might you argue on this point?*

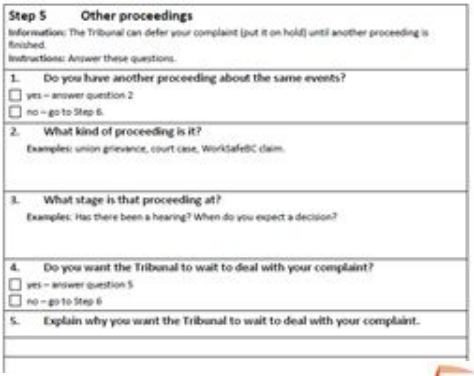
Leading Cases on Timeliness

- *School District v. Parent obo the Child*, 2018 BCCA 136 (CanLII), https://canlii.ca/t/hrffv
  - Meaning of "continuing contravention"
- *British Columbia (Ministry of Public Safety and Solicitor General) v. Mzite*, 2014 BCCA 220 (CanLII), https://canlii.ca/t/g7c2b
  - Public interest factors

Other Proceedings & Deferrals

- Employment standards? Union grievance? Wrongful dismissal? WorkSafe?
- The Tribunal may defer (pause) a complaint if another proceeding is capable of appropriately dealing with the substance of the complaint
  - Other forum must have authority to resolve the human rights issue
    - ✓Union grievance
    - X Employment standards, RTB, WorkSafe
  - It will address human rights issues
  - Fairness considerations (e.g., stage of the process)

Other Proceedings & Deferrals



Step 5 Other proceedings

Information: The Tribunal can defer your complaint (put it on hold) until another proceeding is finished.

Instructions: Answer these questions.

1. Do you have another proceeding about the same events?
   ☐ yes – answer question 2
   ☐ no – go to Step 6.
2. What kind of proceeding is it?
   Examples: union grievance, court case, WorkSafeBC claim.
3. What stage is that proceeding at?
   Examples: Has there been a hearing? When do you expect a decision?
4. Do you want the Tribunal to wait to deal with your complaint?
   ☐ yes – answer question 5
   ☐ no – go to Step 6
5. Explain why you want the Tribunal to wait to deal with your complaint.

Remedies

Step 6 Remedies

Check the kinds of remedies you want and that are available under s. 37 of the Human Rights Code:

- ☐ Order to stop the discrimination
- ☐ Declaration that the conduct is discrimination
- ☐ Steps or programs to address the discrimination (**examples:** training, policy)
- ☐ Compensation for injury to dignity, feelings, and self-respect
- ☐ Compensation for lost wages or other expenses such as moving expenses, photocopying, costs of attending the hearing (keep receipts)
- ☐ Something specific (**examples:** job back, ramp): _____

Mediation

Step 7 Mediation

Information:

- At a "mediation", a trained mediator works with you and the Respondent to find a solution to your complaint. Settlement is voluntary. If you can't agree, the process continues.
- If you settle your complaint, the process is usually much faster. If you don't settle, there are steps you must take before a hearing where you can prove your complaint. See Steps in the Process on the Tribunal website.
- Mediation is free.
- What you and the Respondent say in mediation is confidential.
- A mediator does not act for either party.
- You can bring your representative or a support person.
- You don't have to be in the same room as a Respondent to participate in mediation. The mediator can speak to you and the Respondent separately.
- For more information see Settle a Complaint on the Tribunal website.

The Tribunal will ask the Respondent if they want to attend a mediation. If you both agree, the Tribunal will contact you to schedule a date for the mediation.

Do you want to attend a mediation?

☐ yes ☐ no

Indigenous Peoples

Step 8 Indigenous Peoples

The Tribunal is committed to Truth and Reconciliation. This includes incorporating Indigenous protocols or ways of resolving disputes in its process.

Anyone can ask the Tribunal about:

- Help to understand the Tribunal process
- Process options
- Incorporating Indigenous protocols

☐ Check here if you are Indigenous and you want the Tribunal to contact you to talk about the process.

Protection from Retaliation

- It is a violation of the *Code* to punish someone because they
  - Made a human rights complaint
  - Might make a human rights complaint
  - Gave evidence in a human rights complaint
  - Might give evidence in a human rights complaint
  - Assisted someone to make a human rights complaint
  - Might assist someone to make a human rights complaint

What happens next?

- Complaint filed → Complaint accepted (~6 months)
- Complaint accepted → Mediation (~6+ months)
- No settlement → Response due (35 days)
- → Complainant's disclosure (35 days)
- → Respondent's disclosure AND Application to Dismiss, if any (35 days)
- Decision on Application to Dismiss ~12 months (or more)
- Hearing scheduled (6-12 months)
- Decision (6-12 months)

Human Rights Legal Help

- BC Human Rights Clinic – free legal help for human rights complainants. https://bchrc.net/
- Vancouver Island Human Rights Coalition – information and assistance with human rights complaints. https://vihrc.com/
- University of Victoria Law Centre – free legal help for human rights complainants and respondents in the Capital Regional District.
- UBC Law Students Legal Advice Program – free legal help for human rights complainants and respondents in the Lower Mainland.
- Thompson Rivers University Community Legal Clinic – free legal help for human rights complainants and respondents in Kamloops, Merritt, Ashcroft, Barriere, and Salmon Arm.
- Amici Curiae – assistance with legal forms.
- Access Pro Bono – free legal help on a variety of legal issues.
- Canadian Bar Association Lawyer Referral Service – 30 minute consultation with a lawyer.
- PovNet Find an Advocate – find a legal advocate in your community

More practice: Meredith

Meredith's employer has a bereavement leave policy. The policy says that employees are entitled to two days of paid leave if an immediate family member dies. An "immediate family member" is defined in the policy as a parent, sibling, or child.

Meredith is Indigenous. She was raised by her aunt in a remote community. When her aunt passes away, Meredith requests time off to travel home for the funeral. There are only three flights in and out of the community each week.

The HR manager denies Meredith's request because an aunt does not count as an immediate family member under the policy. The employer tells her she will have to use her vacation time if she wants to attend the funeral.

More practice: Meredith

- If Meredith made a human rights complaint:
  - Who would be the Respondent?
  - What would be the protected area?
  - What protected ground(s) could she claim?
  - How would you explain the nexus between the negative impact and the protected grounds?

More practice: Jason

Jason works in a warehouse. In 2016, he injured his shoulder while working. He went off work for 6 months and underwent surgery and rehab. His doctor recommended a gradual return to work plan. His boss refused to follow the plan, and pushed Jason to return quickly to his full, pre-injury duties. Within a month, Jason re-injured his shoulder and had to go back on medical leave. He recovered and returned to work two months later.

In January 2021, Jason re-injured his shoulder. He went off on leave for six months. His doctor again recommended a gradual return to work, and again, his boss pushed him to return to his full duties too quickly. When he was unwilling to comply, his employer fired him.

More practice: Jason

- If Jason made a human rights complaint:
  - Who would be the Respondent?
  - What would be the protected area?
  - What protected ground(s) could he claim?
  - How would you explain the nexus between the negative impact and the protected grounds?
- Jason wants to include the 2016 events in his complaint. How would you advise him?

Scenario: Alam and Big Rock Construction Co.

Alam works at Big Rock Construction Company. Her supervisor is Carl Berger.

Big Rock hires a new worker named Devon. On Devon's first day, he makes comments about Alam's appearance. He tells her she's "hot, like an Indian princess" and asks two of her male co-workers if she's any "fun after hours." He asks her out to dinner. When she declines, he tells her he's going to ask her parents to arrange their wedding and she'll have no choice but to marry him.

Alam tries to ignore Devon's behaviour, but it doesn't stop. Almost every day, he comments on her appearance or makes a sexual "joke". He refers to her as his Indian princess. When he does this, she ignores him or rolls her eyes and walks away. Her co-workers see all of this, but no one does anything to stop it.

Alam is nervous to confront Devon. He's so brash, and she's worried about how he'll react if she calls him out on his behaviour.

After about a month of this, Alam can't take it anymore and reports Devon's conduct to her supervisor, Carl. Carl tells her "boys will be boys, he's harmless. Just ignore him."

Devon's behaviour continues. Alam starts to dread going to work. One morning, she has a panic attack while getting ready to leave for work.

Alam is taking night classes. She can't concentrate on her school work and has to withdraw from the two classes she's taking to avoid getting an F. It's too far into the semester to get a refund, so she's out $600 for the two classes.

Alam sees a psychologist, who diagnoses her with post-traumatic stress disorder. The psychologist attributes the PTSD to the harassment at work, and recommends Alam take two weeks off work.

When Alam comes to you for advice, she tells you that Devon's harassment began in early September, 2020. She reported it to her supervisor, Carl, on October 12, 2020, but

he took no action. The behaviour continued throughout October. It happened almost every day.

Alam saw the psychologist on October 30, 2020. The psychologist diagnosed her with PTSD and recommended she be off work for 2 weeks. At the end of the 2 weeks, Alam quit her job, rather than returning.

Alam developed depression. She was hospitalized for several months in early 2021 due to the depression. She remains deeply impacted by these events.

THE LAW FOUNDATION OF BRITISH COLUMBIA

2021
PROVINCIAL ADVOCATES TRAINING CONFERENCE

Legal Aid BC

Office of the BC Human Rights Commissioner: reflections on the past year

Sarah Khan, General Counsel, and Sharon Thira, Executive Director, Education and Engagement, BC Human Rights Commission

Topic: Legal System & Courts

Recording Link: https://youtu.be/2kD-D4ra3Mw

To the Indigenous peoples of this place we now call British Columbia:

Today we turn our minds to you and to your ancestors. You have kept your unceded homelands strong. We are grateful to live and work here.

Sarah

səlilw̓ətaʔɬ , xʷməθkʷəy̓əm & Sḵwx̱wú7mesh (Vancouver)

Sharon

Nexwlélexwm, Sḵwx̱wú7mesh (Bowen Island)

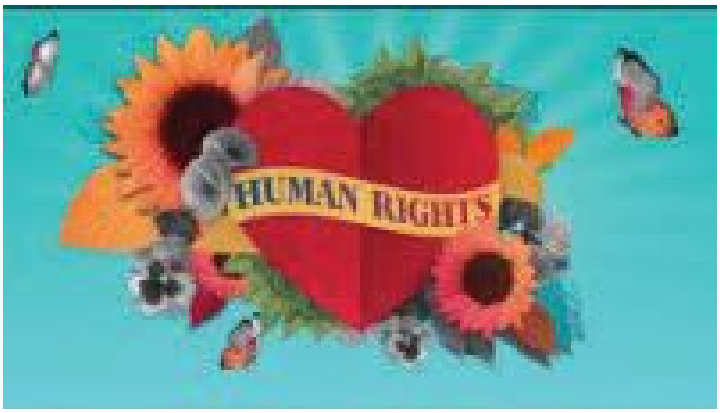
3

Agenda

- Welcome and introductions
- Where human rights fit in
- BCOHRC: who we are
- BCOHRC: What we've been up to
- Where you fit in

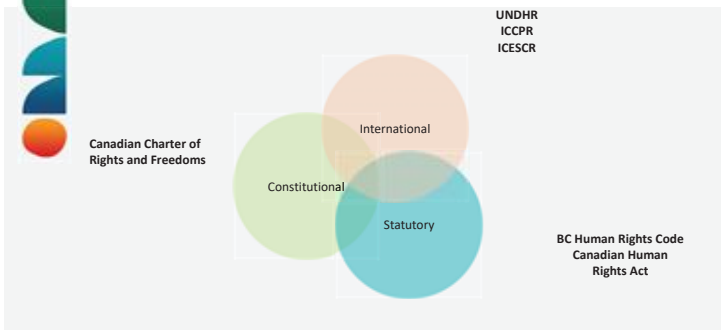
4

bchumanrights.ca



6

Human Rights Law



7

Human Rights Code

- Protects the most fundamental human right:

  right to equality

  or

  freedom from discrimination

8

Human Rights

9

11

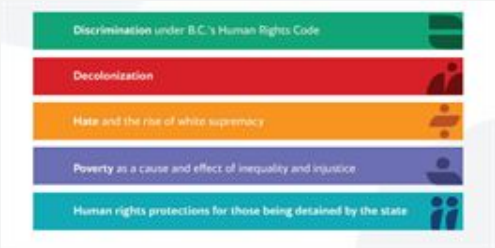
12

Mandate

To address the root causes of inequality, discrimination and injustice in B.C. by shifting laws, policies, practices and cultures.

13

Strategic Priorities

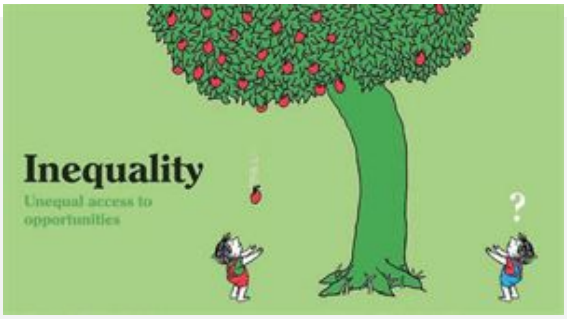


14

The tools of our Office

- Education
- Research
- Law and policy reform
- Inquiry and intervention
- Monitoring

Systemic change



2019 Design in Tech Report – Addressing Imbalance

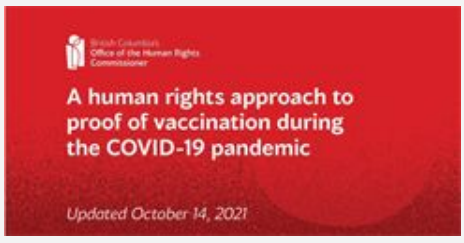
BCOHRC
What we are up to

17

Key projects

18

COVID-19



19

Storytelling

DISCRIMINATION
OCTOBER 29, 2020, 1:30 PM - 2:15 PM

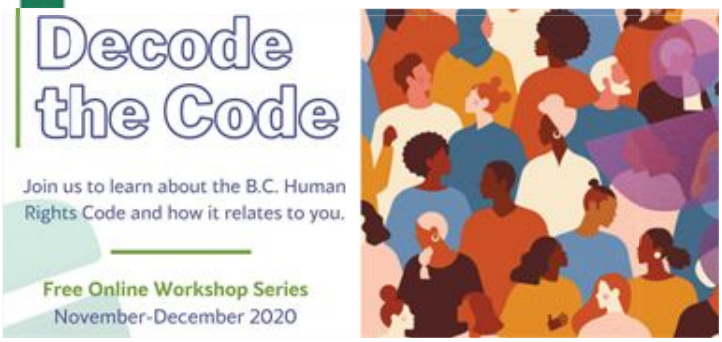
"I love my human rights" series launch and watch party: Danny Ramadan's story

On Friday, October 29, BC's Office of the Human Rights Commissioner (BCOHRC) is hosting a virtual screening of our new "I love my human rights" video series with a story featuring Syrian-Canadian author and LGBTQ+ refugee advocate Danny Ramadan. Ramadan is the organizer of An Evening in Damascus, an annual cultural gathering and fundraiser to facilitate the safe arrival of...

Now Live →

20

Education



Q&A's

22

Policing Submission

- Special Commission on Reforming the Police Act
- December 2020
- Legislative Assembly inviting submissions on systemic discrimination in policing in B.C.
- www.leg.bc.ca/parliamentary-business/committees/42ndparliament-1stsession-rpa

23

Interventions

- Family status discrimination
  Harvey v. Gibraltar Mines Ltd
- Publications on the internet
  Neufeld v. BC Teachers' Federation on behalf of Chilliwack Teachers' Association

24

Inquiry: Hate in the COVID-19 pandemic

- The Inquiry is focused on hate in all its forms, not only racism and racial hate.
- More information about the Inquiry including the **terms of reference** are available on the Inquiry website at: **https://hateinquiry.bchumanrights.ca**.

25

Inquiry: Key elements

- Conduct research
- Seek production of documents, data and information
- Retain experts
- **Receive input from the public**
- Hear from affected groups, experts, **organizations,** Indigenous leaders and others
- Issue a report containing findings and recommendations.

26

Inquiry: Invitation to participate

- **Community organizations** submissions
  - Oral presentations - November, 2021
  - Written and video submissions - by March 31, 2022
- Survey question input workshop – Dec 1, 2021
- Public online survey - Jan-Feb 2022
- Community Liaisons

27

Inquiry: Invitation to participate

- Have you seen a rise in hate during the pandemic?
- What role do you think the pandemic has played in the rise of hate"
- How have you responded to the increase in hate?
- What services exist in your community to support people who have experienced hate?

28

BCOHRC's first inquiry

"In my view, hate often stems from a fear of losing power—a fear that is aggravated during times of great uncertainty—and is rooted in racism, misogyny and other discriminatory belief systems. While COVID-19 has inflamed the problems of hate and white supremacy in B.C., it did not create them."

Kasari Governor, BC Human Rights Commissioner

Opening Ceremony

Q&A's

British Columbia's Office of the Human Rights Commissioner

Thank you

Visit **bchumanrights.ca** for more resources or find us on social media **@humanrights4bc**

THE LAW FOUNDATION OF BRITISH COLUMBIA

2021
PROVINCIAL ADVOCATES
TRAINING CONFERENCE

Legal Aid BC

Day school applications

Gloria Cardinal; Jaden Bourque

Topic: Indigenous Issues

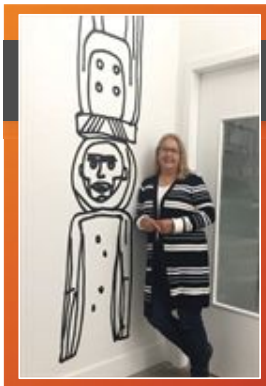
Recording Link: https://youtu.be/c6IqK--YPFc

Indian Day Schools in Canada

Federal Indian Day School Class Action Settlement (FIDSCAS)

Presented by:
Gloria Cardinal
Jaden Bourque
Indigenous Community Legal Clinic- Peter A. Allard School of Law

Indian Day School in Hay River



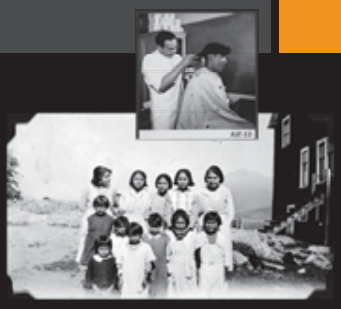
Presenters: Gloria & Jaden

"When you open your life to the living (your clients, student, co-workers), all things come spilling in on you, and you're flowing like a river, the changer and the changed…..it's an endless waterfall, like the rain falling on the ground, all around.
C. Williamson (1975, side 1, track 1)" p.169

Quote taken from The Resilient Practitioner, Burnout Prevention and Self-Care strategies for Counselors, Therpists, Teachers, and Health Professionals. 2nd Edition, Thomas Skovholt and Michelle Trotter-Mathison

Outline

- Introduction to presenters
- History of IDS in Canada
- Documents to read prior..
- Who is eligible for the IDS claim?
- Taking a Client's Narrative
- Definition of Harms suffered
- Level 1, 2, 3, 4, and 5 narratives
- Making an ATIP Request
- Additional information



my grade two story…

"My little school mate friend, we were in the same class, we were walking together and she had a big smile on her face, and she asked me how I was doing? She liked to skip a little when she walked and talked as we went to class that day.

Later that night she died, at the Kamloops Catholic Indian Residential School, from a tic.

Some days later our class was marched down to the graveyard and we all had to stand there until she was buried; then we were marched back to the classroom.

In the classroom many classmates were crying. It was a very sad day, and other children died at that school."

Lawrence Paul Yuxweluptun

History of Indian Day Schools

- In **1920** there were **247** Indian Day schools in Canada with a total enrollment of 7,477 students. The Government of **Canada** established and operated 699 Indian Day Schools over the years.
- Total student numbers between 1920 and 2000 was close to 200,000 First Nations, Inuit, Metis and non-status **Indian** children.
- Certain abuses were committed against these students and harms were suffered by these students attending Indian Day Schools.
  - "You were always hit with something: straps, pieces of wood, rulers, yardsticks, chalk thrown at you, erasers thrown at you, you were pushed around," said Dennis Diabo, Kahnawake. https://www.cbc.ca/news/indigenous/kahnawake-indian-day-schools-1.5172502

"We weren't allowed to speak Haida, not even mention a word in Haida," Wilson said. "We weren't allowed to draw. We weren't allowed to sing and dance. We weren't allowed to talk about anything about Haida culture."
And if they disobeyed, Wilson said that they were "whipped across the face" and sometimes "whipped across the back". "This was happening throughout my kindergarten, Grade 1, 2, and 3," he recalled"
Andy Wilson, Haida Nation

Federal Indian Day School Class Action Settlement (FIDSCAS)—Timeline

2009 - Gary McLean

May 2016

November 2018

January 13, 2020 Application process begins for IDS Survivor Class Members

Old Aiyansh on the Nass River, 1950s, Anglican Church

Documents to read prior to assisting Clients

- Schedule A
- Schedule B
  - The Agreement in Principle (3 pages)
  - Compensation Grid
  - The Claims process (8 pages)
- Schedule C
  - Amended Statement of Claim (24 pages)
  - Relief Claimed
  - Survivor Class
  - Family Class
- Schedule K
  - List of Approved IDS in Canada

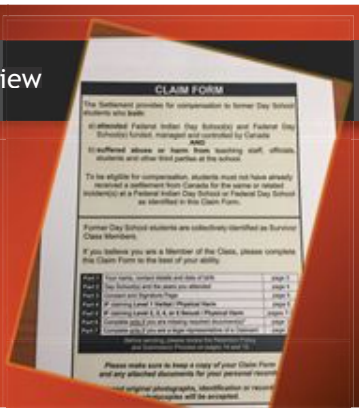
What is Schedule "K"
www.indiandayschools.com

Prov.	Alberta	Arctic Quebec	British Columbia	Manitoba	New Brunswick	Northwest Territories	Nova Scotia	Nunavut	Ontario	PEI	Quebec	Saskatchewan	Yukon
Pages	4 pg	½ pg	9 ½ pg	9 pg	1 pg	3 pg	1 pg	2 pg	14 pg	½ pg	6 pg	9 pg	1 pg
# of schools	52	11	112	115	12	29	12	25	172	2	54	93	8
Den.			66 RC										

Who is Eligible?

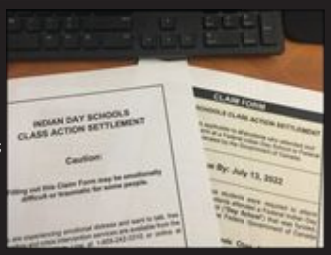
- A person who attended an Indian Day School listed in "Schedule K"
- A person who suffered a Level of Harm, as described in "Schedule C"
  - At the hand of a teacher, principle, other student, or other 3rd party
- A Survivor Class person who is deceased after July 31, 2007;
  - The executor can apply on behalf of the person who is deceased.
- A Family Class member - this compensation is through the legacy fund

Claim Form Overview

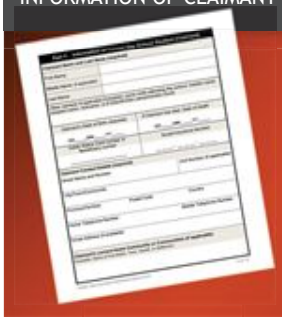


Lets start at the beginning:

- Cover Page – A "Caution"; a Wellness Help line, and a number for legal assistance;
- Claim Form – Page 1
  - The Due Date: July 13, 2022
  - A General Statement about Indian Day Schools;
  - Where to find Schedule K
  - Available Legal Advice



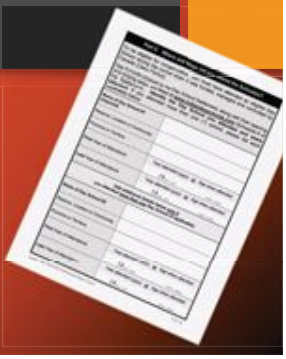
PART 1:
INFORMATION OF CLAIMANT



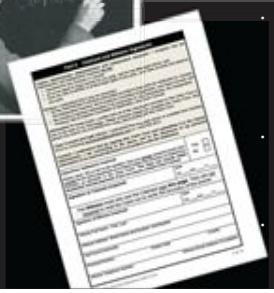
Part 2:
School attended:

Where?
This can be more than one school;

When?

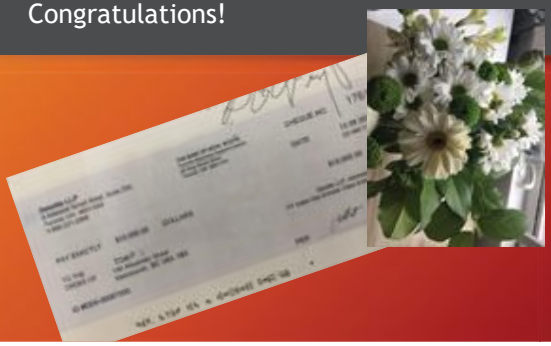


Part 3: Claimant and Witness Signatures



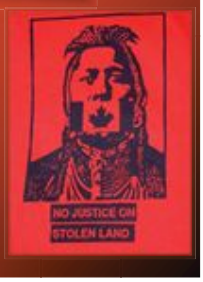
- Claims Administrator
  - is the one who gets claim forms
  - Reviews the claim forms
  - Makes sure harm level selected goes with the information you have provided
  - Is the one who gives claimants compensation if they qualify
- Independent Assessor
  - Can review the decision of Claims Administrator
  - Can overturn a decision by Admin to approve your claim
  - In some extraordinary circumstances, Assessor may send an issue to the exceptions committee
- By Signing this part of the form you are confirming it is true to the best of your knowledge and that some of your information may be disclosed

Congratulations!



The Significance of the Narrative

- Drafting a narrative should not be bypassed, even when helping a level 1 claimant. Why?
  - You will need to hear as much of their experience as they are willing to divulge to ensure that they will be submitting an appropriate claim
  - On some occasions an individual may not even realize that their claim rises above a level 1 harm
  - There cannot be justice without truth



Indigenizing a Colonial Process

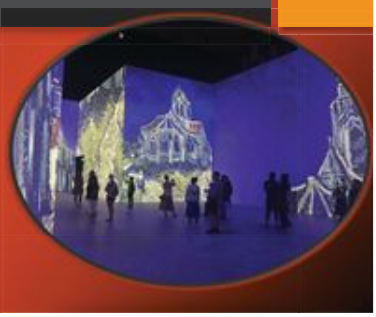
- The narrative component of the Claim Form is an opportunity to engage in truth telling and truth gathering—both of which are vital to healing and reconciliation.
- Even if they are a level 1 claimant, the harms they have suffered have likely left a lifelong impact upon them, and in many cases, they have not relayed their experiences to their own families. Therefore, clients may wish to use the narrative to share their experiences with their families to facilitate the healing process.

From *The Outside Circle*, by Patti LaBoucane-Benson

Prescribed Process

- Re-victimization cannot be avoided in assisting survivors with the narrative process
- Bearing this in mind, navigating this portion of the claim form takes considerable skill, patience, and sensitivity
- Prescribed process:

1. Take the time to establish a rapport with the survivor
2. Discuss the availability of therapeutic resources
3. Advise your client that they have significant control over the process and can take breaks as needed
4. Send drafts of your narrative to your client so you can clarify and make revisions throughout the process
5. Advise your client to keep a pen and pad with them to write down their memories--this process will bring up suppressed memories
6. Although the focus of the assessor is on harms incurred at Day School, expand your narrative to include a greater history of the survivor
7. Humanize the survivor in your narrative
8. End your meetings on a light note



Defining Harms

- The level of harms chart on the FIDSCAS claim form can be confusing, and may not provide a comprehensive guide for the purposes of informing the narrative component of the form
- The ICLC has found great utility in s. 44 of "Schedule C" in the *Consolidated Settlement Agreement* which can be found here: https://indiandayschools.com/en/wp-content/uploads/consolidated-settlement-agreement.pdf

The Scream by Kent Monkman

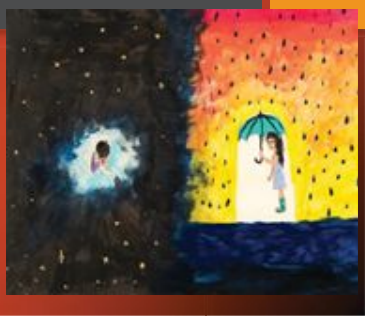
"Schedule C" s. 44

SURVIVOR CLASS

44. As a consequence of the negligence and/or breach of fiduciary, constitutional, statutory and common law duties, and the breaches of Aboriginal Rights by Canada and its agents, for whom Canada is vicariously liable, the Survivor Class members, including the Representative Plaintiffs, suffered injury and damages including:

Determining Harm

- The chosen level of harm should reflect the most serious instance of harm or abuse the survivor has sustained
  - If choosing between two levels, err on the side of caution and choose the higher level of harm
- Perpetrators of harm include:
  - Teachers
  - Students
  - Officials
  - Other 3rd parties
- Supplement the harms chart on pg. 7 of the claim form with the harms noted in s. 44 of "Schedule C"



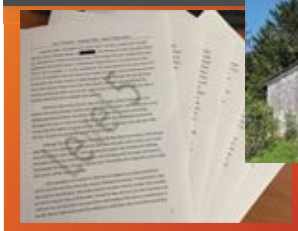
Level 2 Sample narrative

Level 3 Sample narrative

Level 4 Sample narrative

- "There are wounds that never show on the body that are deeper and more hurtful than anything that bleeds."
  - Laurell K. Hamilton

Level 5 Sample narrative



Witness Narratives

The Challenge of the Witness Narrative

- This process did not anticipate the ethical challenges associated with obtaining witness narratives
- How to corroborate without 'spilling the beans'?

Keep in Mind…

Your client

Sworn Declaration

- Gowling WLG has emphasized that the sworn declaration is afforded considerable weight by the assessor
- Anything beyond level 3 requires witness narratives, medical, dental, therapy records, or a sworn declaration if witness narratives and the aforementioned records are not possible.
- Names/positions are required for perpetrators with respect to higher level harms—if they are not available, a sworn declaration is required
- NB: Only one sworn declaration is required for the entire claim form

Making an ATIP Request

- Visit the following webpage: https://atip-aiprp.tbs-sct.gc.ca/en/Home/Welcome
- Scroll to the bottom of the page and click "Request Personal Information"

Part 7: Are you applying as a representative for a claimant?

- You can apply on behalf of someone if:
  - You are appointed by a court to make decisions concerning the affairs of a person under disability
  - You are the Estate Executor or Administrator appointed on behalf of a claimant who is deceased on or **AFTER JULY 31, 2007**
- If the deceased lived on reserve and you wish to become a representative call CIRNAC
- If you are an executor/ administrator or are appointed to make decisions on behalf of someone you will be asked to provide evidence of that appointment. Choose from the list of required documentation and list the documentation.

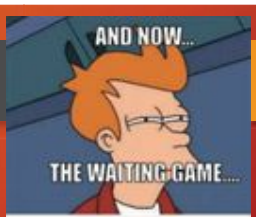
Retention of Claim Form and Documents

- On this page they want to know what you as the applicant want the claim Administrator to do with your claim form and documents
- Check the first box if you want everything destroyed
- Check the second box if you want your documents and claim form returned to you
- Check the third box if you want it to go to the Legacy Fund
  - The McLean Day School Settlement Corporation will take forms and documents delivered to the Legacy fund will use the documents for projects devoted to commemoration, healing/wellness, and to promote indigenous Language and Culture.

Submission Process: the Last page!

- Here on the last page we have a checklist
  - Make sure you have all the listed documents and all the appropriate pages filled out
- There are 3 ways to send your claim form
  - By Mail : PO BOX 1775, Toronto, ON, Canada, M5C 0A2
  - By Fax: 416-366-1102
  - By Email: indiandayschools@deloitte.ca

Time Estimates



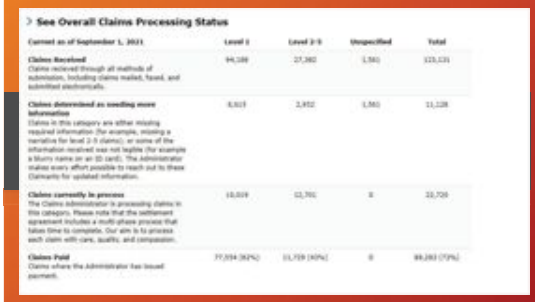
- What we have learned from the applications sent in
- Can take 2-3 months
- You will receive a payment letter to confirm a claim has been approved.
- Client receives a cheque for the amount

Level 1

- Can take up to 7-9 months for the review process to be complete
- These claims may also sent to the Government of Canada for a second look.

Level 2 - 5

Summary of Claims - As of September 1, 2021:



Website Updates

Additional notices

- Additional information – which accompanies the Missing Information Form

- A Letter advising that your Level 2-5 Claim is being sent to the Government of Canada

Additional notices

- You claimed Level 1, but the Administrator feels that you qualify for a higher level, or you have been reclassified at a higher level
- This does happen. One of our clients we put in for a level 2, and it was awarded a level 4.
- Your Claim is being sent to the exceptions committee to determine eligibility based on attendance at a Non-Schedule K school and/or year attended.

Call the Wellness Help Line: 1-855-242-3310

Other resources

Link from the Indiandayschools.com site created by Gowlings: Indian Day Schools Class Action Settlement form:

Watch on Youtube

https://www.youtube.com/watch?v=9Y0Ty_LttfU&feature=emb_title

Federal Indian Day School Class Action Settlement Claim: How-to

Table of Contents

Federal Indian Day School Class Action Settlement Claim: How-to

Does the Claimant Have a Viable Claim for the Federal Indian Day School Class Action Settlement (FIDSCAS)?:

Ideally, this can be resolved during the intake stage in which it is crucial to ask the claimant which Day School, recognized under "Schedule K" they attended. If their school is listed on "Schedule K," ensure that they attended the school during the dates recognized for this settlement. NB: some schools under "Schedule K" will demonstrate a transfer of control from Canada to another entity, and then back to Canada. For instance, see the following example from "Schedule K," which shows transfers at both the "Bishop Piché School," and "Cold Lake" school:

Alberta	**Bishop Piché School**	Fort Chipewyan Chipewyan	September 1, 1956 September 1, 1971	June 30, 1963 September 1, 1985	Fort Chipewyan, AB	Roman Catholic
Alberta	**Blue Quills**		February 1, 1971	July 1, 1972	St. Paul, AB	
Alberta	**Boyer River**		September 1, 1955	September 1, 1964	Rocky Lane, AB	Roman Catholic
Alberta	**Cold Lake**	LeGoff[1]	June 1, 1916 March 1, 1922 September 1, 1953	June 30, 1920 June 30, 1933 September 1, 1997	At Beaver Crossing on the Cold Lake Reserve	Roman Catholic

As per the *Final Agreement*, claims are only eligible for compensation if the claimant attended a "Schedule K" recognized school during the noted dates of federal control. That said, s. 10.01(e) states that the claims administrator is to receive monthly reports which include "ii. Applications deemed ineligible by reason of the named school not appearing on Schedule K, where the Application names the particular school" and "iii. Applications deemed ineligible by reason of the Claimant attending an Indian Day School listed on Schedule K during a time wholly outside of the dates of federal operation for the respective Indian Day School." Moreover,

s. 11.01(4)(g) states that it is the responsibility of the Exceptions Committee to refer "to the Parties for determination and resolution, if appropriate and in a manner consistent with this Agreement, Claims for compensation that were the subject of a report by the Claims Administrator under 10.01(e)(ii) and (iii)." In other words, there is potential that a claim respecting a school not recognized under "Schedule K," or one that does not accord with the recognized dates in "Schedule K" to still receive compensation under this class action.

Bearing the above in mind, one must work with a claimant to see what argument can be made to have their claim recognized. Is there any indication that their school was not under federal control during the time in which they were in its attendance? Was there continuity in the structure of the school, including the same staff and student body from recognized dates and beyond? Consider the following scenario: a claimant attended a "Schedule K" school two years after the recognized dates. During the claimant's attendance, however, there was not a changeover in the staff, the religious denomination, or the student body. Yet, a year later the school moved into a different building with different teachers and incorporated students from the settler population—all of which indicate a definitive change of control. This begs the question: who had conduct of the school during the previous two years that are not recognized in "Schedule K"?

At this point it is essential to begin investigating which entity controlled the school which will require making ATIP (Access to Information and Privacy) requests, and reaching out to communities and combing through the historical record. Consider reaching out to the diocese, the community's museum, or, if the claimant remembers a teacher's name, google it! Moreover,

it will be essential to consult with the claimant to see if there are any witnesses who may be able to corroborate that the school was under federal control.

It should be noted that s. 9.03(2) of the *Final Agreement*, "Principles Governing Claims Administration" states the following:

> "The intent is to minimize the burden on the Claimants in pursuing their Claims and to mitigate any likelihood of re-traumatization through the Claims Process. The Claims Administrator, Third Party Assessor, and the Exceptions Committee and its Members, shall, *in the absence of reasonable grounds to the contrary, assume that a Claimant is acting honestly and in good faith. In considering an Application, the Claims Administrator, Third Party Assessor, and Exceptions Committee and its Members, shall draw all reasonable and favourable inferences that can be drawn in favour of the Claimant, as well as resolving any doubt as to whether a Claim has been established in favour of the Claimant* [emphasis added]."

As such, take care to uncover any evidence that casts doubt as to whether a school was not under federal control. Thus, if the administrator cannot definitively prove that a school was not under federal control, it stands to reason that a survivor's claim under a school not recognized in "Schedule K" should stand. It may be helpful to cite sections 10.01(e)(ii) and (ii), 11.01(4)(g), and 9.03, within the claimant's narrative so as to flag this issue for the assessor.

ATIP (Access to Information and Privacy) Requests:

It will be essential to make one or more ATIP requests to complete a claim under the FIDSCAS process. For instance, all claims above a level 1 require proof of attendance which can be satisfied by attendance records, report cards, enrolment forms, class photos, school articles et cetera. That said, the survivors' claims date back decades, and consequently, the vast majority of claimants do not have evidence corroborating their attendance at Day School. Moreover, many communities do not have records as many have been either lost or destroyed. As such, ATIP

requests are invaluable with respect to procuring records as CIRNAC/ISC and Library and Archives may have the records the claims require. Additionally, it should be noted that the ATIP requests should be the first thing completed on your file as the results could take several months before you receive them.

Here are the steps involved in making an ATIP request for proof of a claimant's attendance at a federally controlled Day School:

1. Draft your request. Here is an example:

> *My name is Jaden Bourque, and I am an articling student with the Indigenous Community Legal Clinic, Peter A. Allard School of Law. I am assisting my client, {Clifford Andy Campbell}, who was born on {November 26, 1942}, in Prince Rupert, British Columbia, with {his} Federal Indian Day School Class Action Settlement Claim. As such, I am hoping to obtain any information that relates to his attendance at the "Kitkahtla Day School," which was located in Kitkatla, and was under federal control and in operation from 1891 until August 31st, 1979. {Mr. Campbell} believes he began attending the Day School at the age of six (~1948), and he dropped out in grade 8 (~1956).*

2. Visit the following website: https://www.canada.ca/en/treasury-board-secretariat/services/access-information-privacy/access-information/request-information.html

3. Click the blue tab that says, "Proceed to ATIP Online," and on the next page click the blue tab that says, "Start Request." You will be taken to another page.

4. On the new page, click the blue tab on the right that says, “Request Personal Information.”

5. Select the following option from the list: “Someone else who is living and you have their consent.” Then click the blue tab that says, “Next.”

6. Select either CIRNAC or Indigenous Services Canada (you can type this in the field beside “Institution Name.” For the purposes of the ATIP requests it appears as though CIRNAC and ISC are still treated as one entity. For instance, all of the ATIP requests I have made to ISC have been fulfilled by CIRNAC.

7. You will now be at the log-in page, and will be required to proceed as a guest or to register (helpful if you will be making many requests). Fill in the required fields under whichever option you choose. A verification email will now be sent to your email.

8. Proceed with your request by clicking on the verification email which will take you to a page with “Email confirmed” highlighted in green. Click the blue tab which says, “Continue Request.”

9. Fill in the required fields. For “Request Label,” type in the following: Federal Indian Day School Records for [Client’s full name]. For “Request description,” copy your draft of the request you will be making and paste it into the field. Next, select to have your documents in English, and select “Electronic copy.’ Click the blue tab that says, “Next.”

10. This page will give you the ability to attach documents to your request. At this point, upload your Authorization to release information document. Under the “Describe the contents of this file” field, type in “Signed Authorization to Release Information document.” Next, upload a copy of your client’s government issued photo ID. Not every ATIP Coordinator has requested this;

however, some do, so include it to prevent any delays for the request. Click the blue tab that says, "Next."

11. Provide your contact information by filling in all of the required fields. Click the blue tab that says "Next."

12. Confirm the details of your ATIP request and click the blue tab that says "Next." Your request is complete, and you should receive email confirmation. Since this request has been made under the *Privacy Act*, for personal information, there will be no charge for the request.

13. Visit Library and Archives' ATIP page to make a duplicate request, as the request made to CIRNAC/ISC may not glean any results. The website can be found here: https://www.bac-lac.gc.ca/eng/transparency/atip/Pages/request.aspx?type=PER&key=MjAyMS0wNS0wMyAzOjU5OjMwIFBN. The process is very similar to the one described in steps 1-12 and thus does not warrant further description.

So, other than records which demonstrate a claimant's attendance at a federally controlled Day School, what kinds of ATIP requests may be required for a claim? As noted in the preceding section of this document, eligibility for a claim may be in question, and as such, an ATIP request to seek information regarding which entity controlled a specific Day School may be required. To do so, proceed to the website noted in Step 2 above, and at Step 4, rather than clicking the "Request for personal information" tab, click on the "Request general records" tab as you will be seeking general records from CIRNAC/ISC such as those that demonstrate which entity had control of the Day School in question. Please note that this request will be made under the *Access to Information Act*, and as such, there will be a $5.00 charge (contact the legal

assistant for access to the ICLC credit card). For an explanation of the different acts involved in making ATIP requests, and general questions related to ATIP requests, please see the following website: https://www.canada.ca/en/treasury-board-secretariat/services/access-information-privacy/access-information/how-access-information-personal-information-requests-work.html.

Here is an example of an ATIP request for general records concerning which entity had control of a Day School:

> *My name is Jaden Bourque, and I am an articling student with the Indigenous Community Legal Clinic, Peter A. Allard School of Law. I am assisting my client, {Marion Judith Stewart}, who was born on {October 22, 1942}, in Prince Rupert, British Columbia, with {her} Federal Indian Day School Class Action Settlement Claim. That said, the school {Ms. Stewart} attended from {1952-1954} is not recognized by the claims administrator for this class action for the period in which {she} was in attendance. As such, I am hoping to obtain any information that demonstrates which entity or level of government had control of the "Port Edward Cannery Day School," during the period in which {Ms. Stewart} was in attendance.*
>
> *As per the claims administrator, The Port Edward Cannery Day School, which was located in Port Edward, British Columbia, was under federal control from {1945-1949}; however, {Ms. Stewart} contests these dates and insists that the Day School was under federal control during the time {she} was in attendance.*

It must be reiterated that it may take several months before you receive the results of your ATIP request, especially in consideration of the ongoing COVID-19 pandemic which has impacted the

ATIP coordinator's ability to meet statutorily mandated timelines. So, please make your ATIP requests as soon as possible.

Upon concluding the ATIP request, the ATIP officer who has conduct of the file will email you to advise you of this fact. On many occasions, the officer's email to you will include, in the attachments, a "Response Letter," which will inform you as to whether they have obtained relevant documents for your request, or whether they have been unable to do so. Additionally, if the officer has been successful in this endeavour, they will send you a "Release Package," included in the attachments, which will contain all of the documents relevant to your request.

Although the majority of the ATIP requests I have received adhere to the structure outlined above, I have also received numerous ATIP result emails from "epost Connect," which is Canada Post's secure messaging service. If you receive your ATIP results in this manner, click the "Access the Message" tab in the email, and you will be taken to the epost Connect website (https://www.canadapost-postescanada.ca/cpc/en/business/postal-services/digital-mail/epost-connect.page?&parameter=ecid%3D2012ext709%26participantToken%3DSSInQJBGYSLreOFshhNwEqWiKosApGz%26language%3Den) where you will be required to "Sign In" to access your message. For ICLC students, speak with the legal assistant to get the log-in information for these requests. Once you are logged in, click on the blue tab that says, "Use epost Connect," and you will be taken to the page that contains your messages. At this point, click on the files under the "NAME" column to access your message. Next, download the message contents, which will be the "Response Letter," and, if you are lucky, the "Release Package." Finally, upload these documents into CLIO and the G:Drive under the appropriate client matter.

What Happens If the ATIP Requests Do Not Obtain Any Pertinent Information for the Survivor's Claim?

Simply put, many ATIP requests do not glean results. Consequently, you will be relying upon the sworn declaration located on Part 6 (page 12) of the claim form. The sworn declaration is intended to stand in lieu of any component that is missing from the claim form including attendance records, medical records, witness narratives et cetera. It has been anticipated by the claims administrator that certain records will no longer exist, period. For example, historic medical records are not statutorily required to be kept for longer than ten years in the province of British Columbia; and, in the case of sexual assault, the vast majority of these incidents were not witnessed—understandably. As such, the claim administrator is purported to give equivalent weight to the sworn declaration as to whichever component of the claim is missing.

Sworn Declaration—Commentary:

The sworn declaration will be required for every claim you complete if said claim exceeds a level 1 harm, as it is extremely unlikely that each corroborative component "required" by the administrator will be possible to obtain. Moreover, some level 1 claims will need to rely upon a sworn declaration in the event that the claimant does not have a government issued ID or social insurance number. That said, do not make the mistake of simply relying upon sworn declarations when there is a possibility of procuring records or completing witness narratives, as a sworn declaration is not as persuasive as true corroboration.

In fact, upon speaking with class counsel about the weight given to the sworn declaration, it was noted that the higher the level a claimant is seeking, the heavier the burden of proof will be for the claim. Thus, it would be a disservice to the claimant to not present a thorough claim

which demonstrates a complete effort to obtain all necessary records, and comprehensive narratives. Remember, this class action is a perpetuation of colonization, and it should not be taken for granted that the individual who assesses the claim will do so in a manner that conforms to s. 9.03 (2) of the *Final Agreement* which was previously discussed in this document.

Additionally, the claim administrator has remained reticent about the methodology assessors utilize to make decisions about each claim, despite multiple efforts on my part to inquire about any guidelines that may inform their decisions. This, of course, raises concerns as to whether assessors are making consistent decisions, not to mention just decisions. Moreover, the recent influx of "reassessment" files at the ICLC indicates that the aforementioned concerns should be given credence. For instance, the ICLC has seen a level 3 claim, completed by an advocate in Powell River, that demonstrated high level harms reassessed to a level 1 claim, while also seeing a claim completed at the ICLC that demonstrated far less severe harm being successfully awarded a level 3. The difference between the claims was the effort to obtain attendance records, witness narratives, and drafting a comprehensive narrative. That said, one is left wondering whether all assessors would have arrived at the same decision for these claims.

Selecting a Harm Level:

Upon completing the claim form, you will be asked to select a harm level for the claim, and will be referred to page 7 of the claim form which contains a "Harm Grid" that is not only difficult to comprehend, but perhaps also intended to influence claimants into selecting lower level harms. For instance, the grid notes that one or more instances of physical abuse resulting in long-term harms such as physical or mental impairment will qualify for either a level 3 or level 4 harm, yet there is no description in the "Harm Grid" including examples of said impairments.

Moreover, the claim form notes that level 1 harms include "[u]nreasonable or disproportionate acts of discipline or punishment," and yet, the claim form itself does not define what constitutes unreasonable or disproportionate acts of discipline or punishment. Therefore, claimants and advocates are left scratching their heads as to what an appropriate harm level for a claim may be. Is strapping or ear/hair pulling unreasonable or disproportionate? Is locking a child in the basement or a closet unreasonable or disproportionate? What about shaming a child in front of the rest of the class by having them kneel in front of everyone whilst holding bibles in each hand of their outstretched arms until the child collapses?

As per s. 9.05(1) the *Final Agreement*, for harms not captured or contemplated by the "Harm Grid," the assessor may refer a claim to the Exceptions Committee if the assessor "is of the opinion that the circumstances described by the Claimant are exceptional and should be considered for compensation." Bearing this in mind, it is understandable how many claimants overlook many of the harms they have endured whilst making their claim. As such, it behooves advocates and counsel to take care and delve deeply into a claimant's experience when they are working on the narrative component of the claim (this will be thoroughly discussed in "The Narrative" section of this document). Moreover, err on the side of caution, and if in doubt as to whether you should select a higher level or lower level of harm, select the higher harm level as there is not truly a downside of doing so if your work on the claim is thorough. The worst-case scenario is that the claimant will receive a notice of reassessment for their claim (this will be discussed in the "Request for Reconsideration" section of this document).

In expounding upon how one selects an appropriate level of harm for a claim, ICLC's prescribed process includes an analysis of s. 44 of "Schedule C" in the *Final Agreement*, as this section will give concrete examples of long-term mental impairments. Please see s. 44 here:

> "44. As a consequence of the negligence and/or breach of fiduciary, constitutional, statutory and common law duties, and the breaches of Aboriginal Rights by Canada and its agents, for whom Canada is vicariously liable, the Survivor Class members, including the Representative Plaintiffs, suffered injury and damages including:
>
> a) assault and battery;
> b) sexual abuse;
> c) severe emotional, psychological pain and suffering;
> d) loss of language, culture, spirituality, and Aboriginal identity;
> e) isolation from their family, community and Nation;
> f) an impairment of mental and emotional health, in some cases amounting to a permanent disability;
> g) an impaired ability to trust other people, to form or sustain intimate relationships, to participate in normal family life, or to control anger;
> h) a propensity to addiction;
> i) alienation from community, family, spouses and children;
> j) an impaired ability to enjoy and participate in recreational, social, cultural, athletic and employment activities;
> k) an impairment of the capacity to function in the work place and a permanent impairment in the capacity to earn income;
> l) deprivation of an education, including basic literacy and skills necessary to obtain gainful employment;
> m) sexual dysfunction, confusion and disorientation;
> n) depression, anxiety and emotional dysfunction;
> o) suicidal tendencies and ideation;
> p) loss of self-esteem and feelings of degradation, shame, fear and loneliness;
> q) nightmares, flashbacks and sleeping problems;
> r) fear, humiliation and embarrassment as a child and adult;
> s) impaired ability to express emotions in a normal and healthy manner;
> t) loss of ability to participate in, or fulfill, cultural practices and duties;
> u) loss of ability to live in their community and Nation; and
> v) cultural, economic, and social devastation"

Bearing the above list in mind, however, do not treat this is a comprehensive list of harms. For instance, harms not captured in this list that you may wish to speak to include issues

with authority figures, fear of religion, anxiety involved with the act of learning and educational environments, descent into criminal activity et cetera. In your narrative you should include any harms described by a client that may stem from their experiences in the Federal Indian Day School system. Remember, as previously noted, s. 9.05(1) of the *Final Agreement* stipulates that the Exceptions Committee will consider harms not anticipated by the *Final Agreement*.

The Narrative:

The narrative is where the lion's share of the work on a claim occurs. Moreover, the narrative is the only component of the entire class action process in which we can Indigenize and decolonize the process. As such, the importance of the narrative cannot be overstated. Keeping this in mind, the ICLC has implemented a prescribed process for undertaking the narrative component of FIDSCAS claims to ensure that the narrative is effective and captures the truth of the survivor's experience at Day School. That said, before getting into this process, please take note of the following tips:

- Before commencing your first interview, assure, and then reassure your client that everything they share with you will remain confidential, and that this process is not adversarial.
    - Your client's mistrust in the legal system and the State is well-earned.
    - Your client likely has a deep fear of being interrogated about their claim by the courts, a tribunal, or an investigator. Thus, if you do not put their mind at ease about the impossibility of this occurring, they may not be forthcoming with their story. Many survivors have hesitated to share their stories before now because the

reality of the situation is that they would either not be believed, or they feared that they would not be believed.

- Assume that there are very few level 1 claims. Therefore, work with your client patiently before proceeding with a level 1 claim. Many clients, unfortunately, do not realize the full extent of the harms they incurred at Day School as they were abused to the point that they believed the abuse was "normal."
    - With this mind, however, it must be noted that some survivors cannot bear sharing their stories, and as such, it is better for them to submit a level 1 claim than to forego $10,000.00.
- A claim cannot be revised once submitted. As such, proceed with the knowledge that you must select the appropriate harm level and do as thorough a job as you possibly can.
- See the FIDSCAS database in the "Staff Shared Area" in the G:Drive for examples of complete narratives which you may consider a style guide.

With the aforementioned out of the way, the ICLC's prescribed process is as follows:

1. Take the time to establish a rapport with the survivor.

When you commence working with a survivor it should be your assumption that they have endured extreme abuse, and that they have never shared their experiences at Day School with another person, including their family members or partners. As such, take a few moments to establish a rapport with them. A helpful place to begin may be to acknowledge how awkward it must be for them discuss intimate details about their lives without knowing anything about you. As such, discuss yourself, including how you ended up doing this kind of work. For instance, you may wish to discuss your passion for social justice and your belief in decolonizing the law.

In addition, feel free to be candid and to discuss how this class action is a perpetuation of colonization, and apologize for the necessity of engaging with this process. Moreover, apologize for how meagre the compensation for FIDSCAS is. Furthermore, you may wish to share that you also have a deep mistrust of the state and its actors in consideration of historic and ongoing abuse of Indigenous people and that engaging in this work is an opportunity to effect ameliorative changes to the law and society.

Next, discuss how your goal is to assist them with sharing their truth. I have personally found that my clients are receptive to the notion of truth-gathering/truth-sharing, and that their primary goal is to heal. In fact, most survivors I have assisted with their FIDSCAS claims see the compensation as a secondary motive to sharing their truth. Accordingly, many of my clients use the narrative we draft together to share their history with their family and friends as it is easier than expressing these details through other means.

For Indigenous advocates and counsel, consider discussing your own family history with the survivor, which may include discussing your family history with Residential School, Day School, 60s Scoop et cetera. I have found that this can be especially fruitful in gaining their trust. For settler advocates and counsel, it is okay to discuss your unease with the settler/Indigenous dynamics—just reassure your client that your goal is to ensure that they are heard, and you have their best interests at heart.

A succinct method for establishing a rapport is to be candid, be empathetic, and to be a human! Treat your client with the utmost respect and you will be fine.

2. Discuss the availability of therapeutic resources.

Before you begin discussing the survivor's experience at Day School, call their attention to any therapeutic resources that they will have access to including the resources noted on the claim form and at indiandayschools.com, as well as local resources in their community. A list of free resources, partially tailored to Vancouver clients include the following:

Hope for Wellness Helpline	**t:** 1.855.242.3310
Experienced and culturally competent counsellors offer immediate mental health support and crisis intervention to all Indigenous peoples across Canada. Available 24/7 in English and French – on request, phone counselling is available in Cree, Ojibway, and Inuktitut. Online counselling is also available at www.hopeforwellness.ca	
KUU-US Crisis Line Society	t: **1.800.588.8717** e: **kuu-usexecutivedirector@shaw.ca**
Crisis line service for Indigenous adults, youth, and elders in BC. Available 24/7. For more information: www.kuu-uscrisisline.ca	
Kilala Lelum: Urban Indigenous Health & Healing Cooperative	t: **604.620.4010**
Indigenous Elders work with physicians and allied health professionals to provide physical, mental, emotional, and spiritual care to residents of Vancouver's Downtown Eastside. Located at 626 Powell St, Vancouver. 2 to 3 month waitlist for services. For more information: www.kilalalelum.ca	
Vancouver Aboriginal Health Society	t: **604.254.9949** e: **admin@vahs.life**
The All My Relations Elders Program - Mmmooooooke Na Sii Yea Yea (MNSYY) - aims to improve patients' wellness, resilience, and sense of positive identity through connection to Indigenous culture, spirituality, and Elders with the goal of addressing intergenerational effects of residential schools and colonialism.	

Services include one-to-one counselling sessions with Indigenous Elders, cultural teaching circles, access to health care providers, access to Indigenous ceremonies, therapeutic listening, advocacy and referrals.

Located at 449 East Hastings St, Vancouver.

For more information: www.vahs.life

Lu'ma Medical Centre	t: **604.558.8822** e: **Booking@LumaMedical.ca**

Patients of the Lu'ma Medical Centre can access traditional healing with Elders, cultural ceremonies, and one-to-one and family counselling.

Located in East Vancouver.

For more information: www.lnhs.ca/luma-medical-centre

Metro Vancouver Indigenous Services Society	t: **604.255.2394**

Culturally diverse support services for Indigenous people including support groups, individual/family counselling and community healing.

Open to Indigenous residents of Vancouver, North Vancouver and Richmond.

Located at #100 – 2732 East Hastings St, Vancouver.

For more information: www.mviss.ca

Aboriginal Wellness Program	t: **604.675.2551**

One-to-one counselling, support groups, and cultural support for Indigenous people living in Vancouver and the Lower Mainland.

6 to 8 month waitlist for services.

Located at #288 – 2750 E Hastings St, Vancouver.

For more information: www.vch.ca

First Nations Health Authority	t: **1.855.550.5454**

One-to-one counselling available for those eligible for FNHA Health Benefits (First Nations people with a Status number, who have Medical Service Plan coverage and who are not

otherwise covered by benefits provided by the federal government or a self-governing First Nation).

Indigenous Residential School Resolution Health Support Program and Missing and Murdered Indigenous Women and Girls Health Support Services available for First Nations and non-First Nations individuals.

Available throughout BC.

For more information: www.fnha.ca

YWCA Crabtree Corner: Elder in Residence	t: **778.222.4209**

The Elder is Residence at Crabtree Corner provides group and one-to-one support for families with an Indigenous approach, centring Indigenous perspectives and knowledge. Support, healing and wellness for those who are disconnected from family or who are working to reconnect with their Indigeneity.

Available to residents of Vancouver.

Located at 533 E Hastings St, Vancouver.

For more information: www.ywcavan.org/programs/crabtree-corner

Saa'ust Centre	t: **604.684.1178**
	e: **saa-ust@vancouver.ca**

Support centre for families and survivors affected by the Nation Inquiry into Missing and Murdered Indigenous Women and Girls.

Services include cultural activities, prayer space, drop-in workshops and referrals to counselling.

Located at 44 E Cordova St, Vancouver.

For more information: www.vancouver.ca/people-programs/saa-ust-centre

Indian Residential School Survivors Society	t: **1.800.721.0066**
	e: **reception@irsss.ca**

Short-term crisis counselling, emotional support and spiritual healing for survivors of residential schools and their families.

Services available across BC.

For more information: www.irsss.ca

Residential Historical Abuse Program	t: **604-875-4255** e: **rhap@vch.ca**
Funding for counselling for adults who were sexually abused while in foster care in BC. Services available across BC.	
Atira Women's Resource Society	**t:** 604.331.1407 **ext.** 107 e: **stv@atira.bc.ca**
One-to-one and group counselling to women and transwomen in the Downtown Eastside who have experienced current or past relationship abuse, sexual assault, or physical, emotional or sexual abuse at any age. Servies are provided from a strengths-based, feminist, anti-oppressive, and harm reduction perspective. For more information: www.atira.bc.ca	
Battered Women's Support Services	t: **1.855.687.1868** e: **intake@bwss.org**
One-to-one and group counselling for women in the Lower Mainland who are currently experiencing violence and/or who are survivors of violence including childhood sexual abuse or adult sexual assault. BWSS also provides support to women survivors of Indian Residential Schools and/or foster care. BWSS offers culturally appropriate services run by Indigenous women for Indigenous women. The Indigenous Women's program offers drum groups, counselling and ceremonies. Crisis & Intake Line available 24/7. Support workers provide emotional support, information and referrals, and help with coping and safety planning. For more information: www.bwss.org	
WAVAW Rape Crisis Centre	**t:** 1.877.392.7583 **e: admin@wavaw.ca**
One-to-one and group counselling to survivors of sexualized violence who are of marginalized genders: cis and trans women, Two-Spirit, trans and/or non-binary people. WAVAW also provides phone, one-to-one, group and family counselling as well as traditional healing ceremonies for self-identified family members of Missing and Murdered Indigenous Women. Crisis & Info Line available 24/7. Support workers provide immediate crisis assistance, emotional support, information and referrals. For more information: www.wavaw.ca	
Family Services of Greater Vancouver	t: **604.874.2938** ext. **4141** e: **specializedtraumaservices@fsgv.ca**

One-to-one counselling for women survivors of adult or childhood physical/sexual abuse, domestic violence, sexual assault, or incest. 1.5-year waitlist. Located in Vancouver, Richmond, and New Westminster. For more information: www.fsgv.ca	
VGH Access & Assessment Centre	t: **604.675.3700**
Mental health services available to all residents of the City of Vancouver age 17 and up. Call or visit drop-in centre between 7:30 a.m. to 11:00 p.m., 7 days a week. Located at Vancouver General Hospital. For more information: www.vch.ca	
Crisis Line Association of BC	t: **310.6789** e: **info@crisislines.bc.ca**
Emotional support, information and resources specific to mental health. The Crisis Line Association of BC also provides the 1-800 SUICIDE line for anyone who is considering suicide or is concerned about someone who may be. Dial 1.800.784.2433. For more information: www.crisislines.bc.ca	
VictimLinkBC	t: **1.800.563.0808** e: **VictimLinkBC@bc211.ca**
24/7 phone line providing information and referrals to all victims of crime and immediate crisis support to victims of family and sexual violence. For more information: www.healthlinkbc.ca	

3. Advise your client that they have significant control over the process and can take breaks as needed.

Please be cognizant of the fact that survivors have been inculcated to believe that they lack control in their lives. In fact, throughout my work, numerous survivors not only discussed preclusions from speaking their mother tongue, or exhibiting their Indigeneity, but they also shared that during their attendance at Day School they were only permitted to use the washroom during scheduled breaks—no matter what. Consequently, many survivors have control issues. As such, it is imperative to discuss with the survivor that they are in control of this process.

Prior to commencing a narrative interview, it is helpful to discuss with the survivor that they will be in charge of how often you meet and for what length of time you will be meeting. As you might imagine, their journey into their past is extremely taxing on them, and as such, they will be in the best position to know for how long they wish to discuss their history during each session.

In addition, it is helpful to reassure your client that it will not be burdensome upon you to have this flexibility with them.

4. **Send drafts of your narrative to your client so you can clarify and make revisions throughout the process.**

Drafting a narrative is a process that will require multiple drafts. Moreover, anticipate that you will make mistakes regarding names, places, incidents et cetera. As such, before submitting a draft to your client advise them that there is a strong likelihood that your first draft will require revisions, and reassure them that you want them to be extremely discerning regarding the accuracy of their narrative and that you will not be offended if they correct you.

For clients who utilize email, it is appropriate to send drafts to their email for their review and to follow up with a phone call to discuss the accuracy. That said, many survivors do not

employ the use of technology and may require that their narrative be mailed to them or set aside for an in-person pickup at the ICLC.

Another important point to consider is that you should strive to produce a narrative that is appropriate for your client's literacy level. As such, proceed with the understanding that many survivors are deeply self-conscious about their literacy level and may be quick to approve of a draft rather than advising you that they did not understand the language you were using. In addressing this complication, reassure your client that you want them to be critical of the narrative and that you will not be offended by their suggestions. Moreover, take care to ensure that you have thoroughly discussed the contents of their narrative with them as it is imperative that your client's narrative is accurate and that they approve of it.

5. **Advise your client to keep a pen and pad with them to write down their memories—this process will bring up suppressed memories.**

The vast majority of survivors experience a resurfacing of memories subsequent to sharing their history with you. As such, it is advisable to instruct your client to keep a pen and pad of paper with them to note their memories between your sessions. Moreover, encourage your client to reach out to other survivors who attended school with them, or their family members—if they feel comfortable doing so—as this facilitates memory recall.

It is also advisable to caution your client that they may suffer from nightmares and/or anxiety subsequent to discussing their experiences with you. In fact, several of my clients suffered from nightmares after engaging in the narrative process. Sadly, there is no way to produce a narrative without retraumatizing your client. As such, exercise the utmost compassion in doing this

important work. That said, all of the survivors I have worked with found the process to be healing, and expressed heartfelt gratitude for the work we completed on their claims which is especially rewarding.

6. **Although the focus of the assessor is on harms incurred at Day School, expand your narrative to include a greater history of the survivor.**

    Your goal in drafting a narrative should be to complete a comprehensive story of your client's life history. Therefore, do not limit the scope of your narrative merely to what harms your clients suffered at Day School, as this will not capture the suite of long-term mental impairments that your client has exhibited throughout their life.

    Additionally, completing a thorough narrative for your client respecting FIDSCAS will position them to utilize their narrative for impending class actions regarding their attendance at Day School.

7. **Humanize the survivor in your narrative.**

In the drafting of your narrative, take every possible opportunity to humanize your client. For instance, refer to them by their name, or nickname if that is their preference. Moreover, use their family members' names if they are discussed, and take time to discuss the idiosyncratic nature of your client, which will include capturing their language within the narrative. Use every opportunity to demonstrate to the assessor that your client is a person, and not a claim number. Moreover, do not be afraid to utilize block quotes in your narrative as this is a powerful display of your client sharing their story with their own words.

That said, this brings to question whether one should use a first-person or third-person narrative structure in a narrative. Although, a first-person structure can be effective, it is my experience that it hamstrings the ability to include technical language from the *Final Agreement*, which is effective in advocating for your client's cause as it signals to the assessor that you are well-versed with the terms of the settlement agreement, and that you have taken appropriate measures to ground the claim within the parameters of the settlement agreement. Furthermore, the flexibility to utilize settlement language will enable you to flag portions of the narrative to the Exceptions Committee which may facilitate bringing a claim to an expedited resolution. For instance, if the claimant attended a Day School not recognized on "Schedule K," it may be beneficial to acknowledge this in the narrative and cite the sections that pertain to onus, burden of proof, the Exceptions Committee et cetera. In short, be thorough now so the claimant will not have to needlessly deal with future hurdles in the claims process.

8. End your meetings on a light note.

Your client meetings will be emotionally taxing on both parties. As such, it is important to end your meetings on a light note. I have found that a foolproof method of putting a smile on your client's face will be to ask them about their grandchildren (if they have grandchildren, that is). If they don't have grandchildren, you have probably discussed some of their interests by the time you have dug into their past, so focus on this. In addition, reassure your client that they can reach out to you if they feel that they need some support prior to your next scheduled meeting. Although it is against ICLC protocol to provide clients with your personal number, I have always relaxed this rule for survivors and encouraged them to contact me at their will. First, they have

always been respectful of my time, and second, this has been beneficial with regard to gaining their trust.

With respect to yourself, please take the time to be kind to yourself and decompress. Although clinicians at the ICLC are expected to work a standard workday, you are still encouraged to step away from your work to collect yourself subsequent to engaging with traumatic material. If you need to go for a walk and grab a treat, or seize upon a solitary moment to relax, please do so. Moreover, if you believe that you do not have the capacity to continue doing this work, advise your supervisor. It is crucial that we do no harm while doing this important work, and this includes doing no harm to our clinicians. This is a supportive environment, and your supervisors are exceptionally kind and understanding people!

9. Manage your client's expectations.

Managing your client's expectations about the FIDSCAS process is imperative, and must done from the outset of your file work. First and foremost, advise your client that this process is arduous and will take time. Please explain to your client that our primary goal at the ICLC is to put together as thorough a claim as we possibly can. Explain to your client that we only get one chance to submit a claim to the administrator and, considering what is required for a successful claim (tracking down medical records, therapy records, witness narratives et cetera), a claim will likely take several months to complete. Unfortunately, rumours about FIDSCAS abound, and clients often hear that people in their community received their settlement monies in a matter of weeks. Consequently, your client may be gung-ho to have their claim submitted prematurely. If you encounter this, please discuss the following points with your client:

- Discuss with your client that the ICLC is a teaching clinic which mandates a turnover of students each semester who undertake a rigorous orientation prior to commencing their file work which will result in their file not being touched between semesters.
- Explain to your client that we are a pro bono clinic with scarce resources and a very high demand for our services.
- Explain to your client that if their claim is reassessed, they will only have 120 days, upon receiving written notice, to produce all of the missing components of their claim, or to bolster whichever materials they have already submitted. This is an exceptionally short period of time to conduct witness interviews, draft narratives, or to track down missing records.

That said, also take care to reassure your client that their file is in good hands, and that we take the utmost care to handle their matter in a trauma-informed, Indigenized, and decolonial manner which requires us to be exceptionally thorough with each claim we work on.

Witness Narratives:

In many respects witness narratives are the most challenging component of a FIDSCAS claim as the ethical issues surrounding witness narratives does not appear to have been anticipated by the *Final Agreement*. For example, how does one corroborate the details of a client's narrative without "spilling the beans?" In approaching this difficult task, you should operate under the assumption that the experiences your client has relayed to you have not been shared with another person, nor is it acceptable for you to disclose the details of their narrative. Moreover, you must consider the inverse of this relationship—that is, is the witness comfortable with you disclosing the details of their narrative to your client?

Establishing witness narratives is rife with ethical quandaries, especially when you consider that you have not been retained by witnesses, and as such, you are not necessarily bound by the same standards of confidentiality, nor do you have a fiduciary duty to the witness. That said, the ICLC has devised a distinct prescribed process for completing witness narratives which treats the witness as though they are entitled to the same obligations as a client. The prescribed process is as follows:

1. Consider the relationship between the client and the witness.

Prior to engaging with a witness, have a conversation with your client to assess what their relationship with witness is like. Are they family members, or classmates? Are they close? Do they have a relationship in which they are comfortable being completely transparent about the abuse they suffered at Day School, and would they mind if these details were shared freely?

You may ask for your client's permission to share this information freely; however, you may risk closing the lines of communication if you do so, particularly for those who have never shared their experiences with anyone—remember, it is miraculous if they have found the strength to share their experiences with you. That said, it may be advisable to pitch the idea to them if they have indicated to you that they are especially close to the witness and have thoroughly discussed their Day School experience with them. If there is no indication that there is a high degree of transparency between the client and the witness, see the second point of the process.

2. If you do not have your client's permission to share the details of their narrative, how do you proceed?

If you do not have your client's explicit permission to share their experiences with complete transparency, it will be crucial to ask strategic questions during your witness interview. For example, if you are broaching the subject of sexual abuse—highly sensitive subject matter—consider asking questions in the following manner:

- Rather than: "Did you see Mr. Nelson sexually assault David?"
- Ask the following: "Do you remember Mr. Nelson?"; "Did any teachers sexually assault any children at the school?"; "Do you recall if something like this ever happened to David?"

As you may have deduced, asking questions in this manner will ensure that the details of your client's narrative will not be disclosed while still enabling you to substantiate the allegations in their claim.

For the purposes of a witness narrative, it is not necessarily required that the witness saw the conduct occur firsthand—especially in the case of sexual abuse as the vast majority will not have been witnessed. Ergo, it should be sufficient for the witness to speak to whether they heard rumours of sexual abuse, saw such acts perpetrated by parties against any children, or as is common from my experience, they share that they themselves were sexually abused at Day School. With respect to the latter, it has been my experience that when the witness discloses the abuse that they have suffered, it is often at the hands of the same perpetrator and in the same fashion as the abuse described by the client.

For many aspects of your client's narrative, it will not be possible to corroborate their claims. For instance, when discussing long-term mental impairments, a witness simply

cannot attest to your client's psyche. That said, the witness will often discuss their own mental impairments which stem from the very same abuse described by your client, which is indicative of your client's psyche. Therefore, a witness narrative is not dissimilar from a standard FIDSCAS narrative. As such, the prescribed process for FIDSCAS narratives should be applied to witness narratives.

3. Drafting the witness narrative.

It has been my experience that the most effective manner for drafting a witness narrative is to intersperse the witness' story with the client's narrative into one document. Not only is it a powerful display of corroboration, seeing the client's narrative juxtaposed with the witness' substantiation of the client's claims, but it is my experience that it is also easier to draft the document in this fashion. Moreover, presenting the narrative in this fashion will be more streamlined for the assessor to digest.

Additionally, when drafting the witness narrative, it is advisable to include language such as this:

"As noted within [client's] narrative, [witness] is her older sister who was raised with her; and as such, she is able to corroborate significant portions of the abuse described in [client's] narrative. Moreover, subsequent to speaking with [witness], while maintaining [client's] confidential story, it is obvious that [client's] narrative is accurate, and if anything, does not include all of the abuse [client] incurred at the Day School."

Here is a short excerpt of a witness narrative:

Chester (Client):

With respect to the sexual abuse Chester sustained while he was at Day School, Chester recalls how Dr. Jack Gifford made unwanted advances towards him when he was age 12-15. As stated by Chester:

> "He told all the other kids to leave the class, and then started hugging me, and trying to put his hands on me. He put his hands on my knee, and on my body. I could smell alcohol on his breath, and I sensed it wasn't good and I told him that I had to go. He knew that I wasn't going to put up with it. But I can remember him getting other kids. Sometimes he would get them to go to his house."

That said, although Chester was able to avoid Dr. Jack Gifford's sexual advances for the most part, Chester has stated that many other students, including his brother, Nigel, were not so lucky, and he recollects Nigel spending time at Dr. Gifford's residence and notes that "there are many witnesses who know about it [Dr. Gifford's sexual abuse]." "I knew my brother spent time with him, where he lived," says Chester, "but, I never told my mother and my dad anything about that. I kept it to myself." To this day, this is one of Chester's biggest regrets.

Frasier (Witness):

Frasier substantiates allegations against Dr. Jack Gifford, and notes that it is well-known in their community that Dr. Gifford preyed upon the children at the Day School. That said, Frasier recalls one occasion in which Nigel detailed the abuse he suffered at the hands of Dr. Gifford, and other staff at the Day School. Frasier recounts Nigel's story as follows:

> "He [Dr. Jack Gifford] caused a great amount of damage to the community—not just to the sexuality of young men, but to their psyche. We played basketball together [Frasier and Nigel], and I knew he was a homosexual, and one day he told me how it started with him—the genesis of it all, before he could think critically and make decisions of his own. He told me, 'I stood there while the people abused me. They [Day School staff

> onlookers] laughed at me and the blood running down my legs.' He did not tell me how old he was when it happened."

With respect to the relationships between Chester and Nigel, Frasier recalls that Nigel's homosexuality was a source of contention between Nigel and his siblings. In fact, . . .

4. Produce a redacted witness narrative.

Upon completing a draft of the witness narrative, as is the case with a standard narrative, it must be reviewed by the interviewee to seek revisions and their approval. Therefore, it is essential to produce a redacted witness narrative to retain your client's confidentiality. Keeping with the example above, here is an excerpt of a redacted witness narrative:

Chester (Client):

This section has been removed to protect client confidentiality.

Frasier (Witness):

Frasier substantiates allegations against Dr. Jack Gifford, and notes that it is well-known in their community that Dr. Gifford preyed upon the children at the Day School. That said, Frasier recalls one accession in which Nigel detailed the abuse he suffered at the hands of Dr. Gifford, and other staff at the Day School. Frasier recounts Nigel's story as follows:

> "He [Dr. Jack Gifford] caused a great amount of damage to the community; not just to the sexuality of young men, but to their psyche. We played basketball together [Frasier and Nigel], and I knew he was a homosexual, and one day he told me how it started with him—the genesis of it all, before he could think critically and make decisions of his own. He told me, 'I stood there while the people abused me. They [Day School staff onlookers] laughed at me and the blood running down my legs.' He did not tell me how old he was when it happened."

With respect to the relationships between Chester and Nigel, Frasier recalls that Nigel's homosexuality was a source of contention between Nigel and his siblings. In fact, . . .

5. Request that the witness narrative be destroyed rather than returned to the client or submitted to the Legacy Fund.

Upon submitting the claim package, you must select between three options on page 14 of the claim form which are as follows:

Retention of Claim Form and Documents	
You can choose to have your Claim Form and supporting documents attached to the form:	
Please check one:	
A) Securely Destroyed; Or	Destroy ☐
B) Returned to you; Or	Return ☐
C) Delivered to the Legacy Fund*	Legacy* ☐
* Under the Settlement Agreement, the McLean Day Schools Settlement Corporation will be established to promote Legacy Projects for commemoration, wellness/healing, and the restoration and preservation of Indigenous languages and culture. The Corporation will be managed by Directors (to be appointed by the Parties to the Agreement), with input from an Advisory Committee (representative of Indigenous survivors and their families). For more information, refer to the Agreement and visit [www.indiandayschools.com].	

At this point, it is still unclear what will happen with claim packages that are delivered to the Legacy Fund. For example, at indiandayschools.com, this is the extent of what is currently known about the Legacy Fund (the contents of the *Final Agreement* pertaining to the Legacy Fund are not more expansive):

> "The settlement includes a $200 million Legacy Fund to support commemoration projects, health and wellness programs, "truth-telling" events, and the restoration and preservation of Indigenous languages and culture. . .

> Grants will be made from the McLean Day Schools Settlement Corporation to charities, not-for-profit organizations, and community-based organizations through a proposal-driven selection process. Organizations and charities will have to apply for these grants according to the guidelines and procedures put in place for the selection process. An organization that is provided with a grant will be responsible for carrying out the selected project in its community.
>
> Please note that the McLean Day Schools Settlement Corporation is currently in its start-up phase and is working to develop the guidelines and procedures for organizations to follow in applying for grants under the Legacy Fund. More details about the Legacy Fund will become available after the Corporation has developed the applicable guidelines and procedures for Legacy Fund grant applications. The Corporation anticipates that it will be in a position to provide further guidance in Fall 2020; however, current timing is uncertain and subject to change as a result of COVID-19 developments.[1]"

As such, if your file includes a witness narrative in which the client and witness do not have a completely transparent relationship, you must select option "A) Securely Destroyed." Therefore, upon finalizing a claim, discuss this decision with your client and explain to them that this decision is intended to protect the confidentiality of the witness—I have also noticed that my clients are uneasy about delivering their claim to the Legacy Fund considering how little is known about it. Next, provide your client with a copy of their claim package sans witness narrative, and then submit the claim via email to the administrator, as doing so through email will provide you with instant confirmation that the claim package has been received by the administrator.

Notes About Witnesses:

One of the most unfortunate aspects of the FIDSCAS process requiring witness narratives is that you will often be put into the awkward position of retraumatizing an individual who does not necessarily have assistance with making their own claim. Moreover, in many instances, as I

[1] FAQ, indiandayschools.com, website: https://indiandayschools.com/en/faq/#legacy-fund

have come to learn, the witness suffered even worse abuse than my client. Bearing this in mind, speak with your supervisor about the possibility of doing an intake with the witness to assist them with their FIDSCAS claim. Some of the merits of accepting the witness' claim include an accelerated resolution to the narrative component of their own claim, as you will have already delved deep into their history by virtue of working with them on a witness narrative; and, the claim in which they were previously a witness will provide you with immediate access to a witness and a narrative that can be easily modified into a witness narrative.

Request for Reconsideration:

In the event that the administrator reassesses a claim, the claimant will be notified in a letter, upon which receiving they will have 120 days to either accept the administrator's reassessment of their claim, or to request a reconsideration of the assessor's decision. If the claimant chooses the latter option, they must indicate so on the "Reconsideration Decision" form that accompanies the letter, which will also require the claimant to submit additional information and documentation regarding their claim. In the event that the claimant does not respond to the reassessment letter, s. 16 of "Schedule B," of the *Final Agreement*, states that "the Level classification by the Claims Administrator is final and the Claimant will be deemed to have waived his/her rights to reconsideration or Third Party review."

As noted previously in this document, 120 days is a short turnaround for a claimant to provide the administrator with the requested documents and information. For example, it may be the case that the original claim did not include a narrative, let alone a witness narrative or supporting documents respecting therapy records, medical records, et cetera. Moreover, a

claimant has 120 days to respond to the administrator from date the letter was drafted, not the date that on which it was received.

As per s. 18 of "Schedule B," upon submitting the "Reconsideration Decision" package to the administrator, after reviewing the package, the administrator will either maintain the reassessment level, grant the claimant's original assessment, or find that the claim exceeds the claimant's assessment (the claimant will be notified in writing no matter the outcome).

In the event that a claimant does not receive a favourable outcome with their reconsideration, the claimant will have 90 days to request that their claim is reviewed by the Third Party Assessor. If 90 days elapses without a request being made, the level classification by the administrator will stand. If the claimant requests review by the Third Party Assessor, sections 21, 22, and 23 of "Schedule B" state the following:

> "21. The Third Party Assessor will confirm receipt of the Claimant's Application and supporting documentation from the Claims Administrator. The Third Party Assessor may invite the Claimant to provide more information and/or an audio or video recording of his/her evidence in support of the self-identified eligible Level.
>
> 22. Having received any additional information from the Claimant, and having regard to the principles and validation requirements referenced in Section 9.03 of the Settlement Agreement, the Third Party Assessor will make one of two determinations: (i) issue a final decision awarding any of Levels 2-5, with reasons; or (ii) refer the Application to the Exceptions Committee.
>
> 23. The Third Party Assessor will refer an Application to the Exceptions Committee where the harms described in the Application are not contemplated in the Harms Grid and where, having regard to the object, intention and spirit of the Settlement Agreement, the Third Party Assessor is of the opinion that the circumstances described by the Claimant are exceptional and should be considered for compensation."

As stated at s. 25 of "Schedule B," subsequent to the Exceptions Committee's review, "the decision of the Exceptions Committee is final."

Request for Deadline Extension:

The discussion pertaining to time limits begs the following question: is an extension of a deadline possible?

As per sections 28-31 of "Schedule B" of the *Final Agreement*, it is recognized that a claimant may be granted an extension of the settlement limitation date for up to 6 months; however, there is no language within the *Final Agreement* that speaks to whether the timelines regarding reassessment may be granted an extension. As such, proceed with the understanding that there will not be any flexibility from the administrator concerning these timelines. Again, this is why the ICLC strives to submit a thorough claim.

So, what is considered for granting extensions on a claim? According to s. 30 of "Schedule B," a request for an extension must be submitted to the administrator no later than 6 months prior to the deadline (July 13, 2022), and relevant criteria for an extension includes a person under disability, undue hardship, and/or exceptional circumstances in their case. Although one might infer that the administrator will push back the limitation date for the extent of the COVID-19 pandemic, this remains to be seen.

Estate Claims:

As of this time, class counsel (Gowling WLG), despite being paid $62 million for their work on FIDSCAS, $7 million of which is intended for ongoing legal support for claimants, will not be offering legal assistance for the families of survivors beyond assisting them with the claim form itself. Moreover, many individuals have noted that they have been told by class counsel and

the claim administrator that they cannot submit a claim form until all estate issues have been resolved (there must be an estate administrator or executor).

Consequently, this perpetuates colonization and its malignant impacts upon the Indigenous community by creating a serious access to justice issue. As such, we will continue to assist clients with the estate administration process while we research methods for bypassing the estate administration process altogether as it can be exceptionally time-consuming, and as of this time, the current limitation date of July 13, 2022 remains in effect.

That said, for estate claims, please turn your attention to the estate administration component of the file while you work on the standard components of the claim. For instance, note that estate claims still have the potential to rise beyond a level 1 harm; however, in lieu of a client's narrative, all corroboration must be found in witness narratives or through journal entries/diaries if they exist. As such, one of the first steps on an estate claim will be for you to determine whether there are potential witnesses who can speak to the abuse the survivor endured at Day School.

Closing Letter Templates:

Due to the ICLC opening different types of FIDSCAS files, this must be reflected within the closing letter you send to your client upon completion of their file. For instance, the issues addressed in a closing letter must anticipate the possibility of reassessment, a possible determination of ineligibility for the class action, and if you are closing a reassessment file, a brief description of steps involved in protesting the administrator's decision. See the examples below:

Standard FIDSCAS Claim:

April 23rd, 2021

SENT BY REGULAR MAIL

Ms. Jennifer Stonehouse
12675 99A Avenue
Surrey, B.C.
V3V 2R4

Dear Ms. Jennifer Stonehouse,

Re: Your File with the Indigenous Community Legal Clinic

On January 27th, 2020, the Indigenous Community Legal Clinic, Peter A. Allard School of Law (ICLC) opened a file for you with respect to assisting you with completing your Federal Indian Day School Class Action Settlement claim form.

On April 21st, 2021, your claim was finalized and submitted via email to Deloitte, the Federal Indian Day School Class Action claims administrator. As such, the work on your file is complete and your file with the ICLC will now be closed.

In the event that your claim is not successfully assessed to a level 5 harm, you will be notified by the administrator that your claim has been reassessed. Upon receiving this notice, please contact the ICLC immediately as you will have 120 days to request a reconsideration of the assessor's decision which will require further information regarding the details in your claim—a process that may require our assistance. It has been an honour assisting you with this legal matter, Ms. Stonehouse.

Best wishes,

Jaden Bourque
Articling Student
Peter A. Allard School of Law (ICLC)
Phone: (604) 827-1740
Fax: (604) 684-7874
Email: bourque@allard.ubc.ca

Possible Determination of Ineligibility:

May 3rd, 2021

SENT BY REGULAR MAIL

Ms. Penny Wilson
4012 West 51st Street
Vancouver, B.C.
V6N 3W1

Dear Ms. Penny Wilson,

Re: Your File with the Indigenous Community Legal Clinic

On January 14th, 2021, the Indigenous Community Legal Clinic, Peter A. Allard School of Law (ICLC) opened a file for you with respect to assisting you with completing your Federal Indian Day School Class Action Settlement claim form.

On May 3rd, 2021, your claim was finalized and submitted via email to Deloitte, the Federal Indian Day School Class Action claims administrator. As such, the work on your file is complete and your file with the ICLC will now be closed.

In the event that your level 1 claim is deemed ineligible for this class action, you will receive an ineligibility letter from the claims administrator. Upon receiving this notice, please contact the ICLC immediately to discuss the grounds on which the claims administrator has denied your claim. It has been an honour assisting you with this legal matter, Ms. Wilson.

Best wishes,

Jaden Bourque
Articling Student
Peter A. Allard School of Law (ICLC)
Phone: (604) 822-8655
Fax: (604) 684-7874
Email: bourque@allard.ubc.ca

Reassessment:

March 24th, 2021

SENT BY REGULAR MAIL

Mr. Raymond Johnson
5008 River Road
Powell River, B.C.
V8A 0B7

Dear Mr. Raymond Johnson,

Re: Your File with the Indigenous Community Legal Clinic

On January 19th, 2021, the Indigenous Community Legal Clinic, Peter A. Allard School of Law (ICLC) opened a file for you with respect to assisting you with requesting a reconsideration of the assessor's decision regarding your Federal Indian Day School Class Action Settlement claim.

After completing a comprehensive narrative and submitting the '"Reconsideration Decision" package to Deloitte, the Federal Indian Day Schools Class Action claims administrator, on March 15th, 2021, the work on your legal matter has been concluded. As such, your matter with the ICLC has now been closed.

In the event that your claim is not successfully reassessed to a level 3 harm, please contact the ICLC immediately as you will have the option to request that your claim be reviewed by the Independent Assessor—a process that may require our assistance. It has been an honour assisting you with this legal matter, Mr. Johnson.

Best wishes,

Jaden Bourque
Articling Student
Peter A. Allard School of Law (ICLC)
Phone: (604) 827-1740
Fax: (604) 684-7874
Email: bourque@allard.ubc.ca

Helpful Tips:

- Use an Elder's support letter in lieu of therapy records if therapy records do not exist.
    - Many survivors are uncomfortable with Western notions of therapy; however, there is the possibility that they have sought relief from working with the Elders in their community.
- Take photos of all scars resulting from abuse noted in the narrative to submit with the claim.
    - Some clients incur visible scars from self-harming post-Day School which can be tied to long-term impairments, which in this case would include disfigurement.
- If the survivor's nation has its own newspaper, scan through the archives to find corroboration respecting attendance, and individuals.
    - The ATIP requests on one file I completed had no results; however, I was able to find a photo of the claimant in a news story about the annual graduates from the Day School which pictured and named the claimant.
- When assigned a file, take note of which Day School(s) your client attended and see if any other clinicians have a file with a client who attended the same school.
    - As the ICLC continues to accumulate new FIDSCAS clients, we are beginning to see ties between files which has given us the ability to obtain witness narratives for files in which the claimants did not believe to be a possibility.

Level 2 – Indian Day School Narrative - Claimant: Rick Smith

Rick Smith is a member of the Okanese First Nation located in the province of Saskatchewan. He was born on [redacted], 1954 and has an older sister who passed away in 2010 and two younger sisters. He is Dakota and Plains Cree and has competed in world championships in the Northern Plains style of dance. He has also been a teacher, a painter, a board member, and now teaches contemporary native art. He gets out daily on his electric scooter and goes often to Stanley Park to sing before the totem poles.

Rick became a teacher in large part to counter the traumatic and intellectually harmful practices he witnessed both at Day School and Residential school. From 1960 to 1961, Rick attended the File Hills Federal Indian Day School located near the boundaries of the Okanese Reserve. At that time, he lived with his paternal grandparents who provided a nurturing and loving home to him. The school stood in sharp contrast. Rick was only 5 to 7 years-old when he attended Day School but can recall the feeling of not wanting to leave the comfort, care and guidance of his grandparent's to sit at a desk for hours at a time.

Sitting at a desk for most of the school day was difficult, not only for its physical discomfort but because the teachers did not have the compassion and training of teachers today. There was no acknowledgment of ADD/ADHD which Rick wonders if he had as it was hard for him to pay attention when sitting all day. He was one of the students to get 'tapped' most frequently by the teachers who would walk around the class with yardsticks and hit students for anything from slouching slightly to looking out the window. Students were forced to always sit up straight, look straight ahead and keep their hands folded on the desktop. The only times this sitting was disrupted for Rick was when he had to go to the bathroom. He said this was always a humiliating experience as there was only an outhouse and students had to publicly ask teachers for permission then be watched as they ventured outside and returned.

Rick had been used to learning from his grandparents. They would give him meaningful duties and chores that contributed to the wellness of their home like looking after the horses which he enjoyed doing. He was also sometimes responsible for finding food for their family. Fortunately, he retains vivid memories of the songs and ceremonies they taught him despite these being interrupted abruptly by day school.

Rick does not recall any incidents of physical or sexual abuse at day school but does remember bullying between kids. He was too scared to speak up most of the time as he would be made fun of. His most vivid memory from his time at File Hills is of being forced to take a daily "vitamin" with a glass of powdered milk. The vitamin was either in the form of a round pill about a quarter of an inch in diameter, black with yellow speckles or like a tough dog biscuit, about 2 inches square. He has been unable to determine what it might have been and we can

find nothing comparable online. Rick states that the vitamin tasted ugly and would make him puke almost every time because it upset his stomach. On one occasion, he was not able to make it to the bathroom before puking and he stained the front of his shirt. Because there was only the outhouse, there was not a place for him to wash himself or his clothes. He said this was another humiliating experience beyond the disgust he normally experienced from the pill.

Rick remembers that the principal, Mr. Cummings, would go hunting with his grandfather who was the chief at the time. The community respected the chief who traditionally had a limited education. Although the community wanted Rick to be chief at one point, he chose to become a teacher so that he could teach the next generation of students in better ways than what he experienced. This goal came after many years of counselling for the abuse and trauma he suffered especially at residential school, but also for the pain of day school. Rick's highest level of formal western education is grade 9 but he is steeped in the knowledge of his culture and was hired to be an arts and culture teacher for the Okanagan school district.

Rick says he "took his own experiences in those schools which was very harsh and [where] he didn't learn too much because his brain wasn't fed good stuff, and made sure to make his students feel good, taught them to do good things instead of trying to catch them doing bad things. [He] was not going to look for the faults in [his] students but look for their little achievements." While he was teaching, he also ran the Friendship Centre in Kelowna and sat on its Board for several years with the portfolio of staff management and program development.

The fact that Rick has done so much of significance and achieved so much is fully due to the teaching of his grandparents and the healing journey he has been on. He is glad that teaching practices have changed since he was in school but still feels a lot of anger and disappointment at his own educational experience. There was a lot of humiliation and disgust to work through and at times when reliving these memories for this claim, he did become emotionally distressed. Nevertheless, Rick knows that he has made a positive difference and has taken everything ugly that he experienced and turned it into something good and healing.

Level 3 - Day School Narrative: Allie West

Allie West is a 77 year old woman, born in Babine, British Columbia on [redacted], 1943. She is an Indigenous woman and member of the Fort Babine Nation. Throughout her adolescence, she attended Fort Babine Day School. Two years ago, Allie' sister, Maggie West, told a group of people about a particular incident that occurred when they were students at the day school. Allie was sitting in the back row of the classroom. She was around 6 years old. Father Morin, a priest at the school, called Allie up to the front of the classroom. She does not remember why he called on her, but said that it was probably because she was not listening. She put her head down, then he called her name again. He called "Allie!" several more times. His voice was raised and angry. Allie recalls the fear that she felt in that moment. Finally, she sauntered up to the front of the room, and stood before Father Morin. He took his belt off and asked for her hands. She put both of her hands out, with her palms facing upward. Father Morin began strapping her hands with his belt in swift, repeated motions. Allie stated that "he seemed to enjoy it."

During this lashing, her classmates buried their heads in their arms on their desks. Allie claimed that she knows her classmates hid out of fear: "they were afraid they would be next if they laughed or said anything." She noted that strapping was common at the school, mostly at the hands of the nuns.

According to Allie, the school was "ok" when it was run by teachers: Mr. and Ms. Bowie and Joe Steele. At that time, there were some priests at the school. Allie pointed the arrival of the sisters and the departure of Bowie's and Mr. Steele as the period where "everything changed." The teachers were exclusively nuns, all of whom were very strict.

Allie wishes that her sister Maggie did not bring up this memory of the strapping because she does not want to remember what she endured as a child. She states that she had "buried it." She mentioned that, throughout her life, she always asked about Father Morin's whereabouts and whether or not he was still alive. She was unclear as to why she had this interest. Allie gained clarity when her sister revealed that she was strapped by Father Morin– a moment in recent years which she describes as a "nightmare."

When describing the incident, Allie repeatedly uttered "Why would he do this?" She has wondered if she is a" bad person who deserved it." Allie described Father Morin's blows as being executed with "full force." She noted that the priest was a strong man, and she was a small girl with dainty hands.

After school that day the nurse, Mother Noella, made Allie scrub the kitchen floor. She felt significant pain in her hands while she scrubbed. She recalls having scrubbed from after school, around

3:00, to 7:00 or 8:00 at night. During this period of time, her mother began wondering what had happened to her daughter. Furious, the mother sent Allie' sister, Maggie, to retrieve her. When Maggie arrived, Mother Noella permitted Allie to go home.

Allie lives with physical effects from this incident. Her right hand is permanently disfigured. Specifically, her right thumb is enlarged at the joint and far stiffer than her left thumb. Allie noted that the thumb feels dislocated, and it causes her pain, but that she is used to it. Still, the disfigurement makes it difficult for her to write as she is right-handed. She can only loosely grip a pen a writing position. When she uses a coffee mug, she loops her four fingers through the handle and, generally, opts not to use her thumb whilst lifting it.

In another incident, the same priest (Father Morin) chased her and her friend while they played in the gutters of the school. He was holding a stick a large branch from a nearby tree. Father Moren never caught up to them, but she feels confident that he would have hit them with the stick had he been able to do so.

When Allie was 18 years old, she ran away from Fort Babine "to get away from everything." She went to Smithers. Her doctor was located there – he provided her with living accommodations at the hospital. The nurses took her on as a student. They taught her how to look after child patients. Allie did this work for two years. When she was 21, she and her sister Maggie were selected by an Indian Agent to move to Vancouver and upgrade their education. After two years, they finished school and were fully qualified as nurses. Her sister returned to Fort Babine. Allie opted to take a nursing job at Vancouver General, and Nanaimo thereafter. Today, she is retired and resides in Vancouver. Allie believes that her experience at the school has contributed to her desire never to live in her childhood home of Fort Babine again.

Level 4 Narrative – Reconsideration file

Peter Jones was born in Church House, British Columbia, on [redacted], 1951. Subsequent to attending Residential School in Sechelt, British Columbia, Peter commenced attending the Church House Indian Day School ("the Day School"), which was located on the Homalco Indian Reserve, and was under federal control from September 9th, 1959, until June 30th, 1980. As recalled by Peter, he attended the Day School from 1962-1967.

Peter's initial claim has been reassessed from a level-3 harm to a level-1 harm; and as such, Peter is contesting the reassessment and requesting that the assessment be reconsidered. The focus of his previous narrative largely revolved around a tragic incident which led to Peter becoming permanently blind. That said, what was missing from his previous narrative is a comprehensive documentation of the harms he endured at the Day School, and the lifelong mental impairment that has plagued him ever since.

As per Peter, he recalls that from his earliest moments attending the Day School, he and the other students experienced physical, psychological, spiritual, and cultural abuse at the hands of the Day School staff. For instance, Peter recalls how the teachers would call them "savages," and tell them that "Indians are nothing but a bunch of drunks." In particular, Peter recalls how one of his teachers, Mr. Ruff, preyed upon him and the other children and frequently assaulted them. Peter recollects as follows:

> "I remember one time, after recess, I headed back to the classroom with my uncle, and we were laughing and joking, and as soon as we stepped into the classroom, he [Mr. Ruff] started punching us. He hit me right in the face, and he kept swinging at us [Peter and his uncle]. I remember trying to dodge his punches, and I remember being terrified. He was a grown man, and we were just kids. He would fight with all of the students.
>
> He used to be in the army, and he had that mentality that army people have. I remember when we used to have PE and he would have us marching around in the basement; and, if you weren't moving fast enough, he would knee you in the bum. He attacked students all

> the time, and often out of nowhere. You never knew when you might be attacked. It was really traumatic. He would strap us if we were daydreaming—he would hit us with a ruler. And, he would pull on our ears to get our attention. He was always trying to control us."

As per Peter, the effects of Mr. Ruff's attacks, led him to fear authority figures, and caused him to associate the act of learning, and the environment of educational institutions, with abuse, fear, and shame. For instance, Peter recollects that when he was an adult, and he wanted to attend Langara college, the smell of the chalk in the classroom immediately resulted in a bout of anxiety which ultimately caused him to withdraw from further studies. As noted by Peter, the smell resulted in flashbacks to the Day School and the horrific abuse he endured there.

According to Peter, the Day School environment, and the difficulties he was facing at home with his abusive stepfather, caused him to approach the social worker in the community and request to be enrolled back into the Sechelt Residential School. An important point of context with this request is that Peter had endured copious abuse at the Residential School which included sexual abuse, physical abuse, and grossly inadequate nutrition—a fact corroborated by his settlement in the Indian Residential Schools Settlement Agreement. That said, Peter still insists that the time he spent attending the Day School was by far the darkest time in his life. In fact, when the social worker told him that it wouldn't be possible to enroll him back into the Residential School at the time of his request, this was the catalyst for Peter drinking the methyl hydrate which they stole from the Day School the next day, which resulted in him becoming blind (the primary subject matter of Peter's initial narrative).

Peter insists that the Day School environment fostered his descent into alcoholism. "I started drinking when I was eleven, and even went to school drunk one time. I had one of the teachers at the Day School take us [Peter and his cousin] to court for juvenile drinking," recalls

Peter. Peter expounds upon the manner in which alcoholism compounded the abuse he sustained at the Day School as follows:

> "There was a lot of drinking in Church House. It is probably the reason that it is a ghost town today. People decided it wasn't safe there anymore. My stepfather was always beating me and my mom. They wanted me to stay home and look after them when they were drinking, and if I did, they would beat me. I was always trying to hide, and was always looking for a meal. And, I learned that when I drank, I didn't have to worry about the trauma from other peoples' drinking."

Sadly, much of the same abuse he experienced at home was perpetuated by the teachers at the Day School, and as such, Peter was in a constant state of fear which made Mr. Ruff's erratic and unprovoked attacks on him even worse, as pointed out by Peter.

In addition to his lifelong fear of authority figures, Peter notes that the Day School was a driving force in his lack of self-esteem, and his struggle with depression which included suicidal ideation. "I used to think about swimming out into the ocean and drowning," with a high degree of frequency, recalls Peter. Not only was he physically and psychologically abused, but the psychological trauma stemming from Day School was multifaceted. In addition to the general sense of impending danger, Peter soon learned how inadequate the education he received at the Day School was. As per Peter, "our grades really suffered in Day School, we were in grade 7 but could only do grade 3 arithmetic"—a fact he learned when he was later enrolled in the Jericho School for the Blind. To this day, Peter notes that he can still remember the Day School staff telling him and the other children that they were "uneducated savages." These words cut deep, and in conjunction with the abuse from Mr. Ruff and the prevalence of alcohol in the community, Peter found it hard to cope and turned to drinking to assuage his pain.

Unfortunately, Peter's circumstances worsened when he became blind. "When I lost my eyesight, I came to the realization that I am blind and am never going to see again. I said, 'you

better kiss your dreams goodbye.' I lost my purpose in life." From this point, the drinking he engaged in to escape the pain he endured at Day School and home transformed into a method of ending his suffering. As noted by Peter, he tried to drink himself to death, and "didn't know that at fifteen, [he] was an alcoholic."

Peter's life took a dramatic turn when he joined Alcoholics Anonymous at the age of 22, when he stopped drinking, and subsequently married his wife, Sheila, and began counselling other people in the program. Peter has been married to Sheila for 26 years, and as per Peter, "she taught [him] how to love unconditionally." According to Peter, his experiences at Day School had left him believing that he was incapable of loving another person until he met Sheila. That said, Peter notes that he does not have any children and made the decision not to have children when he was in Day School. "I made up my mind when I was younger that I didn't want to bring a child into this world considering what I went through. I thought this world is so cruel," says Peter.

According to Peter, he has suffered from nightmares for many years, and he became detached from his community due to his memories associated with the time he spent at the Day School. He now refers to Church House as a ghost town—a fitting title considering how the memories he has of the place, and the mark it left on his psyche, continue to haunt him decades later.

Level 5 Narrative – Samantha Miller – Masset Village School

Samantha Miller, who prefers to be called "Sam," was born in Haida Gwaii, formerly called the Queen Charlotte Islands, on [redacted], 1956. She has five sisters and eight brothers; and, although three of them are deceased, many of her siblings still reside in Haida Gwaii. Sam attended the Massett Day School, or Old Massett Village School as it was then known, from 1962 to 1965, for grades 1-3. As per "Schedule K," the school operated on the reserve from 1877 to 1974. As recalled by Sam, the school was a hostile environment, and an unfortunate precursor for the abuse she would continue to suffer throughout her life. Although, she only spent three years at the Massett Village School (the "Day School"), the abuse Sam sustained has had numerous permanent effects upon her life, and the horrors she experienced within the walls of the Day School have left an indelible mark upon her.

At the Day School, Sam was the victim of many types of abuse at the hands of her teachers, the school principal, and the nurse. She suffered emotional, verbal, intellectual, social, spiritual, and physical abuse. According to Sam, she lived with her parents and siblings throughout the time in which she attended the Day School; and, she attended continuously, except when the children all got the measles, chicken pox and mumps at the same time. After this they all received vaccinations and did not fall ill again.

Although Sam was young when she attended the Day School, her memory of the time she spent there is very clear. Sam recalls that the class sizes were quite small, as there were "maybe about 20 students at the school," with many being her cousins. She remembers the buildings associated with the Day School, including the school building itself, the chapel, the houses for the principal, the teachers, the priest, and the nurse. The building had a large bell on top of it that they used to call the students to class.

Sam remembers one occasion in which she was trapped in an outhouse behind the school, near the end of the school day, and how distressed she became. As recollected by Sam, she could not open the door, and nobody seemed to be able to hear her screams. She eventually got out by using her shoe to hit the latch. As noted by Sam, she is not sure who locked her in the outhouse; but, she feels that it may have been a staff member of the school, in consideration of the fact that the staff would punish the children on a daily basis, they would often punish them

even if they did not do anything wrong, and other children in the school were occasionally locked away as a form of punishment. For instance, Sam remembers how the Day School staff locked many children in the outhouse throughout the day, and specifically remembers how her neighbor, Crystal White, was locked away for an entire day—left crying until her parents had to come pick her up at the end of the school day. Sam also recalls how she and the other children were strapped on an almost daily basis:

> "We would get strapped almost every day. The girls would get strapped once, and the boys would get strapped twice. They strapped us with a thick, long, leather strap. And, they would strap us every time one kid did something wrong—it didn't matter if you weren't the one who did something wrong. I was often punished for something that I didn't even know that I was, or was not, doing. To this day, many of us suffer from rheumatoid arthritis in our hands and wrists, and I wonder if it is from the strappings."

According to Sam, her grade one teacher was physically, and verbally abusive. For instance, Sam recalls that the teacher used the strap quite frequently on the students, and she remembers being hit on her hands and on her arms. The teacher would make them sit up straight by hitting them, and as noted by Sam, "she would pull up our dresses and hit us on the back and bum." This teacher also verbally abused the children as she yelled and screamed incessantly at the students.

Sam also recollects that the nurse in the Day School was abusive and "terrible" towards the children in that she would frequently yell and use abusive language towards the children when she was tending to them. For instance, Sam recalls that the nurse was very cruel when the children were vaccinated at the Day School. Sam also remembers how the nurse really could not be bothered to treat her on one occasion in which she tripped in the schoolyard and cut her hand on a piece of glass. According to Sam, the nurse was cruel, not helpful, and consequently, Sam ended up having her older brother tend to her wound by utilizing traditional Haida methods and medicines. That said, Sam has a large scar on her right hand and finger from this laceration to this day.

Sam remembers her grade two teacher, Mrs. Hogan, as being "kind and pleasant"; however, this stands in glaring contrast to her memories of Mr. Tracy, her grade three teacher who was also the school's principal. Mr. Tracy was the most abusive figure within the Day

School, and Sam remembers that he used a lot of abusive language towards Sam and the other children—mocking the students and threatening them. Moreover, Sam recollects that he would take the girls to the office, usually after school, and he would sexually assault them. Sam recalls that he would have her remove her underwear, and he would then rub her genitals and buttocks. He would also take off his pants and would make her perform sexual acts on him. According to Sam, he would tell her to be quiet about it during and after, he would restrain her throughout the act, and she remembers that he would often say to her, during the assault, "Look down at us, and do it harder." In addition to the frequent manual sexual stimulation, Sam remembers that Mr. Tracy also made her perform oral stimulation. For instance, Sam can remember Mr. Tracy telling her to "stick [her] tongue out and touch it." As noted by Sam, this also happened to her sister; and despite her sister's general reluctance to discuss her Day School experiences, she told Sam that this act by Mr. Tracy was also the worst thing that ever happened to her. According to Sam, Mr. Tracy did not abuse the boys at the school, but preyed upon all of the girls in the school in this manner—the girls could be heard crying in the office by their peers, and they would speak about what happened amongst themselves on occasion.

Sam also has a strong recollection of the manner in which the school stripped her, and the other students, of their Haida culture. For instance, Sam recalls how the teachers forbid them from speaking their mother tongue. "My dad always taught us to say thank you in our language. So, we would always say 'Háw'aa' [Haida for "thank you"], and when we tried that at school we were told that we could not say that." Sam does not recall a single instance of being able to discuss or learn about anything Haida related at Day School, and remembers that they were not allowed to play any games at school. Moreover, she and the other students were made to sing "Oh Canada" every morning, in addition to reciting the Lord's Prayer. According to Sam, they only learned English at the school, and she remembers learning from a book about "Dick & Jane" throughout her time at the Day School, and she describes it as the only educational tool used. Looking back on this now upsets Sam as she views the "education" she received at the Day School as inadequate. For instance, Sam recalls that she was not taught about fractions or decimals, and was never taught subtraction. She never received individual instruction from the teachers, and the teachers "would tell [the students] to do things without explaining them."

Sam also remembers another affront to her culture on behalf of the Day School through how the Day School staff would cut the hair of the Haida boys who attended the day school, and the hair of the girls, too, if it was deemed to be too long. Sam recollects how some mothers would perm the hair of the girls to make it look shorter and to protect them from getting their hair cut.

Additionally, Sam remembers that she was never allowed to eat Haida food at school, but instead had to subsist on the snacks provided by the school which were of terrible quality. According to Sam, they were forced to eat tasteless, hard biscuits, and to drink milk, made from skim milk powder, and she recalls how the staff at the Day School would become angry if the children did not finish the food. For instance, Sam remembers how she, and the other children, would attempt to hide the biscuits and get rid of them by throwing them out the window or by smuggling them outside and dropping them in the playground. Moreover, Sam remembers how she would sneak away during recess to go pick berries in the forest trails behind the school, despite being forbidden from eating anything during the recess period.

In addition to reciting a prayer in the mornings at Day School, Sam recalls how Father Ross Kreager, the priest at the school, taught them about Christianity during Sunday School, which was held in his basement. She remembers that she and the other students were forced to attend Sunday School by Mr. Tracy, and she can recall that they were taught to memorize Bible verses and awarded prizes when they did so. Sam does not recollect being abused by Father Kreager; however, she does view him as a part of a system that controlled her people. For instance, Sam remembers how there were three tall men in three-piece suits who would walk through the village and enforced the Haida children's attendance at the Day School—the men were the Indian Agents in her village. According to Sam, they would go from house to house and ask for children to make sure they all attended the school.

Although Sam only attended the Day School for three years, the damages she has sustained from colonization, broadly, and Day School, in particular, have shadowed her throughout her life. And, unfortunately, the sexual abuse she encountered as child by men such as Mr. Tracy, has been repeated by other offenders throughout her life. For instance, Sam recalls how she was sexually assaulted by the chief of her village, Hector Williams. As per Sam, when she was 19-years-old she called a taxi to drive her home from an event, and in this instance, the

taxi was operated by Mr. Williams, who drove Sam a half-mile beyond the end of the village to a site where he wanted to put the new graveyard and where he locked her in the car and proceeded to rape her. According to Sam, when she was attacked, "I used my words, and I told him to let me go, but he locked the car, and it happened. I was afraid. When he was done I got out of the vehicle and walked two miles telling him not to come near me. I told him never to come near me or see me. I could have pressed charges because I went to see a doctor. I am not sure why I decided not to." Shortly after she was attacked, Sam learned that she was pregnant with her attacker's child, and she decided that she was going to keep the child. "I remember telling my grandma about what happened, and I told her that I was keeping this child." Sam only spoke to Mr. Williams one time after the attack, and only to inform him that she was pregnant, she was keeping the child, and he would have to pay support for the child.

Subsequent to becoming pregnant with her daughter, Lonnie, Sam left Haida Gwaii to reside in the Courtney/Comox area on Vancouver Island to be near her sister who had a farm, was a positive influence, and offered her strong support. Sam soon enrolled in courses at North Island College, and received training in early childhood education. According to Sam, her band paid for her to get this training, and there was another Indigenous woman in the program (only the two of them) who became a good friend. Sam soon gained employment at a native preschool program for 4 or 5 years when her daughter was young, and she claims that she went into this career because "I didn't want native children to have horrible teachers like I did, and because I didn't want my daughter to have to have that type of experience."

Sam's daughter and her grandchildren are the primary focus in her life; and, to this day, despite having relationships with men throughout her life, she has never been married. "A few men asked me to marry them, but I always said no. I wanted to raise my daughter by myself." When asked why she felt this way, Sam said that she wasn't sure; but, when she thought about it, she attributed this decision to her lack of trust in men, which developed from the unfortunate experiences detailed throughout this narrative. Consequently, Sam has decided to remain alone, and is happy to be living with her daughter and grandchildren in Burnaby. However, the one issue that still causes her stress in her home life is that she does not trust her daughter's long-term boyfriend, as she believes he is abusing pills, and she senses that this will inevitably harm her daughter.

Despite having endured a multitude of horrific experiences throughout Day School and the rest of her life, Sam is a remarkably resilient woman who has channeled her strength into providing a good life for her daughter. This includes retaining, and in many cases, obtaining a deeper understanding of her Haida culture and transmitting it to her relations. For instance, Sam has learned to make carvings and button jackets, and she has focused on learning how to prepare and harvest traditional Haida foods. Moreover, Sam continues to travel back home to Haida Gwaii biannually to "spend time with the elders and the younger ones to gather stories, gather medicines, and collect cedar bark."

According to Sam, her return to traditional Haida lifeways keeps her grounded, and keeps her on a healing path. For instance, when asked about whether she has ever suffered from depression, Sam states that despite experiencing a bout of depression when she became pregnant with her daughter, "[she] was always too busy to be depressed. [She] tried to always be active with family and elders." As recollected by Sam, when she was experiencing difficult times, she frequently turned to her sister, who shared many Haida stories and art with her, which assuaged her pain.

Sam's philosophy in life is to keep looking forward, as opposed to dwelling on the past. "I've been through all of this [reflecting on Day School], and I never need to look back on it. If you stay happy, all good things come to you. Stay in the present, keep focusing on your wellbeing and health, and you will always be happy." That said, when Sam was asked to reflect on her Day School experience, she noted that she when she was living on Haida, she would dream about the things that had happened to her at the Day School, her dreams were always nightmares, and they were always in black and white. However, when she left Haida Gwaii, in 1976, she started dreaming about nicer things as she worked to put the trauma behind her, and she started dreaming in colour.

Sam often reminisces about her early childhood in Haida Gwaii, and the joys she experienced before she attended Day School. For instance, she reflects on the special moments she shared with her father:

> "My dad was my inspiration, and we always went fishing together. He took me halibut and trout fishing. I remember that we went to an island to go fishing—it was a special place—and we found seagull eggs. He showed me how to carefully put the eggs into the bucket, and then we took the eggs home to aunty and boiled them. The eggs were

> speckled, and they were delicious. I was a tomboy, and always wanted to learn from my dad."

Treasured memories such as this one have greatly influenced the manner in which Sam has chosen to raise her children and grandchildren; and as such, rather than repeat the horrific abuse she incurred at Day School, as so many other survivors have, Sam has managed to live a life free of substance abuse, and family violence. Sam proudly boasts that "I never got angry with my daughter my whole life," and has forged an incredibly close relationship with her daughter, Lonnie, an alumnus of Vancouver Island University, who now financially supports Sam, while they continue to foster their close family bond.

Class Photo: Samantha, seated in the bottom row in the middle with a sweater and hands on her lap

School Photo: Samantha, sitting in the bottom row. The first child on the right.

Resource Books:

1. Reducing Compassion Fatigue, Secondary Traumatic Stress, and Burnout: A Trauma-Sensitive Workbook , William Steele
2. The Resilient Practitioner: Burnout and Compassion Fatigue Prevention and Self-Care Strategies for the Helping Professions 2rd Edition, by Thomas Skovholt, Michelle Trotter-Mathison
3. Complex PTSD: From Surviving to Thriving: A Guide and Map for Recovering from Childhood Trauma Paperback – December 13, 2013, by Peter Walker
4. Healing Developmental Trauma: How Early Trauma Affects Self-Regulation, Self-Image, and the Capacity for Relationship Paperback – September 25, 2012, by Laurence Heller Ph.D., Aline LaPierre, Psy.D
5. Healing Secondary Trauma: Proven Strategies for Caregivers and Professionals to Manage Stress, Anxiety, and Compassion Fatigue Paperback – May 5, 2020, by Trudy Gilbert-Eliot PhD
6. Trauma informed practices with Children and Adults – William Steele, Cathy Malchiodi
7. Trauma Informed Legal Practice Toolkit, Myrna McCallum, editor – a series of articles

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Susanna Hughes, Nate Prosser, Harshada Deshpande, Adam Fraser

Topic: Legal Help & Lawyers; Families & Children

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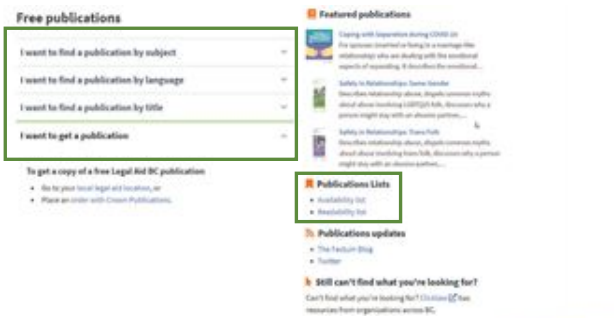

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Level 3

Legal Aid BC

Family Law

Level 1

Level 2

Legal Aid BC

Family Law

Level 1

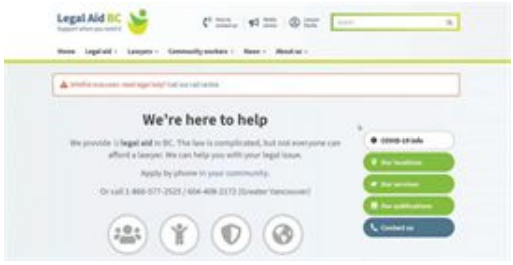
Level 2

Legal Aid BC

FOUR WEBSITES

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

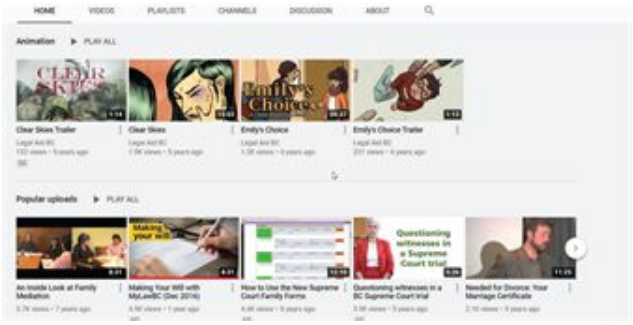
Legal Aid BC



legalaid.bc.ca/

Legal Aid BC

Legal Aid BC



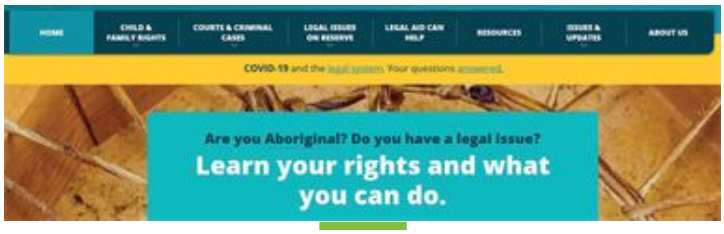
https://www.youtube.com/user/LegalAidBC

Legal Aid BC

Family Law videos

- 100s of videos
- When Parents Disagree: COVID-19 vaccine for children
- What is family duty council?
- How can family duty council help in court?
- Working through a new parenting plan: Staying out of court / going to court
- Do I need a protection order?

Legal Aid BC



Aboriginal.legalaid.bc.ca

Legal Aid BC

LIVED EXPERIENCES

- Using lived experiences to educate
- Videos
- Graphic novels


Parents Legal Centre helped Anna get her son back
Legal Aid BC


Child and family rights
What do you need help with?
Legal Aid BC


Courts and criminal cases
Legal Aid BC


Legal issues on reserve
What do you need help with?
Legal Aid BC


FamilyLaw.
Legal help for people in BC
Familylaw.lss.bc.ca
Legal Aid BC


FAMILY LAW IN BC
Divorce
Parenting
Support and finances
Abuse and family violence
Using the court system
Related legal issues
Ways to stay out of court
Welcome to Family Law in BC
Find the answers to your family law issue
Separation & Divorce
Children
Finances & Support

GUIDES

- Step-by-step guides to complex legal processes
- Links for forms and how to fill them
- Help people save time and money
- Other resources

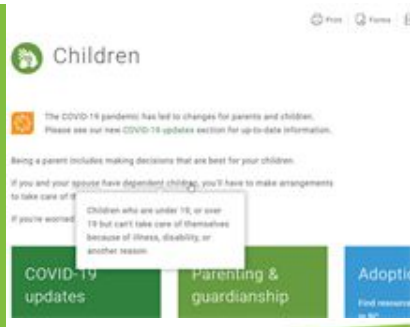
Step-by-step guides

- Apply for a family law protection order without notice
- Changing a family order in Supreme Court if you do/don't agree
- Enforcing a parenting agreement
- Respond if you've been served with a form (3, 10, 12, 15, 16, 29, or 39)
- Get a case management order with/without notice
- Complete a Provincial Court Financial Statement
- More

Legal Aid BC

INFO PAGES

- Q&As
- COVID-19 resources
- Links to forms and other resources
- Hover-over information
- In-depth information written in plain language



Legal Aid BC

Information pages

- Who can swear an affidavit?
- Q&As: Parenting, family violence, Mortgage and rent, keeping kids safe when you have a protection order
- If you're struggling to pay support
- If your spouse is harassing you through the courts
- Child protection process
- Delegated Aboriginal agencies
- More

Legal Aid BC

ADVOCATE PAGE

- What's new in family law
- Information pages by topic
- Step-by-step guides by topic
- Links to other resources
- Publications
- Videos

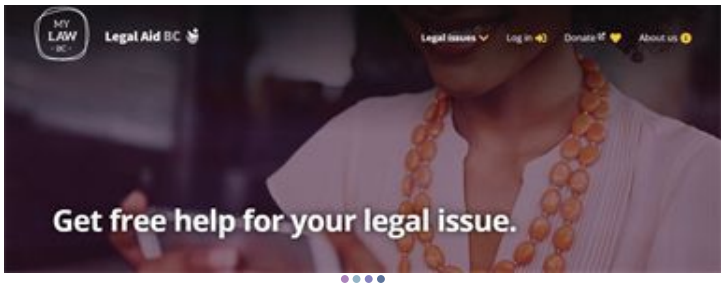
Legal Aid BC

THANK YOU

adam.fraser@legalaid.bc.ca

Legal Aid BC

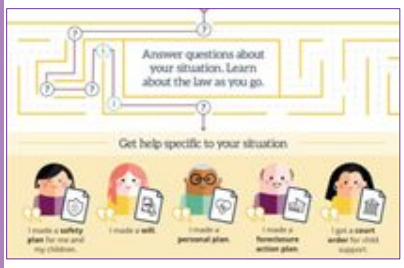
MyLawBC: online help for families



MyLawBC.com

GUIDED PATHWAYS

- Answer questions about your situation
- Get a step-by-step plan to take action
- Only the info you need when you need it



Guided pathways available

Family
- Make a separation plan
- Get family orders
- I've been served with a court document
- Make a safety plan

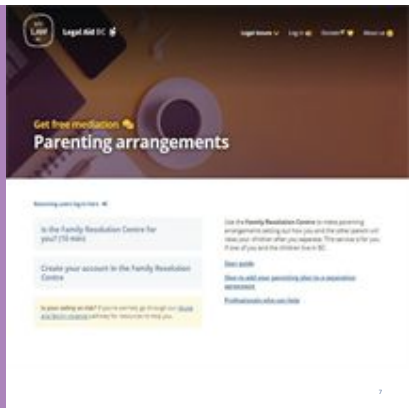
Not quite family
- Find out if you can keep your home
- Make a will
- Plan for the future

FAMILY RESOLUTION CENTRE

- Platform for creating parenting and child support arrangements
- Work together for what's best for your children
- Get a free mediator to help

FREE MEDIATION

- Uses the Family Resolution Centre platform
- Up to 5 hours of free mediation per area
- Qualified under the Family Law Act

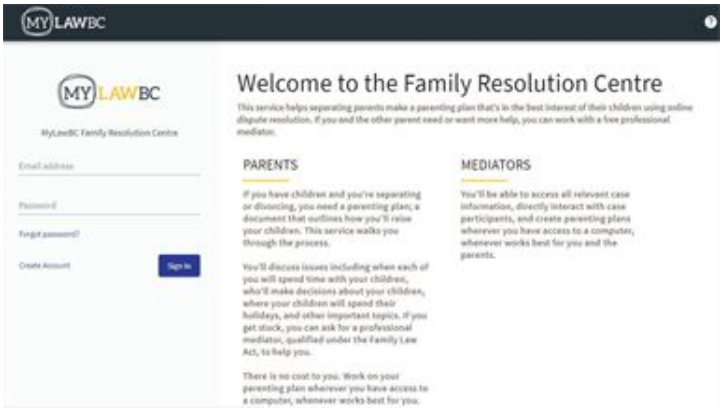


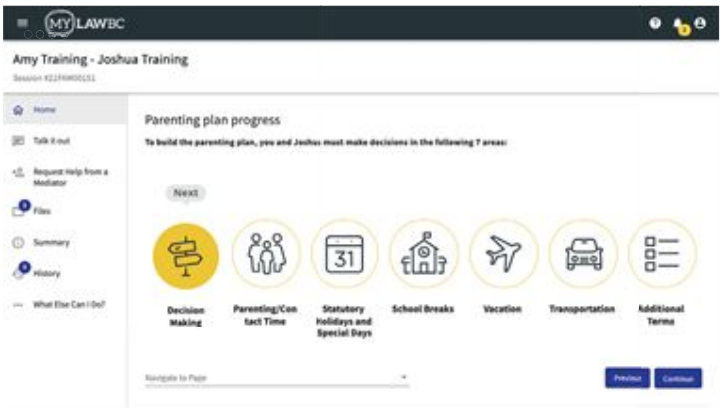
Why make the Family Resolution Centre?

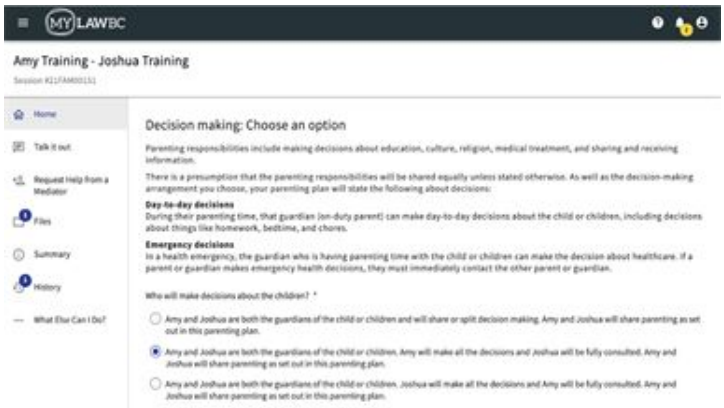
- Parenting issues are some of the hardest to resolve
- Help people who can't afford these services
- Mediation helps preserve relationships
- Reduce stress for users

Who can use the Family Resolution Centre?

- Deals with parenting issues and child support
- No financial eligibility requirements
- Screening for appropriateness for online mediation
  - No cases with family violence

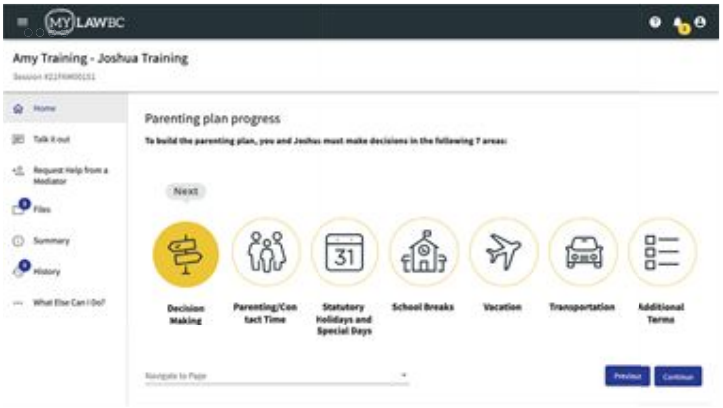


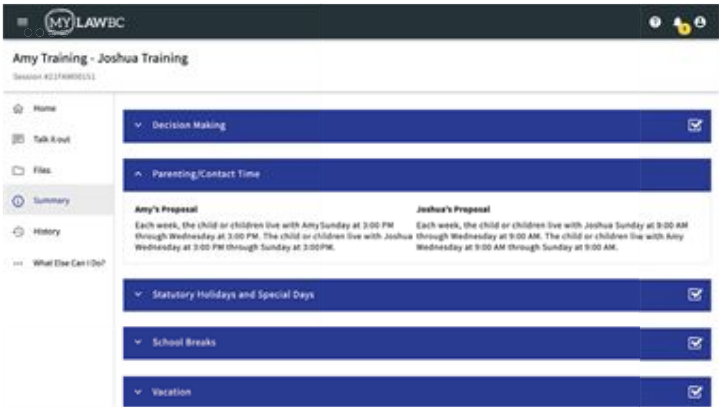


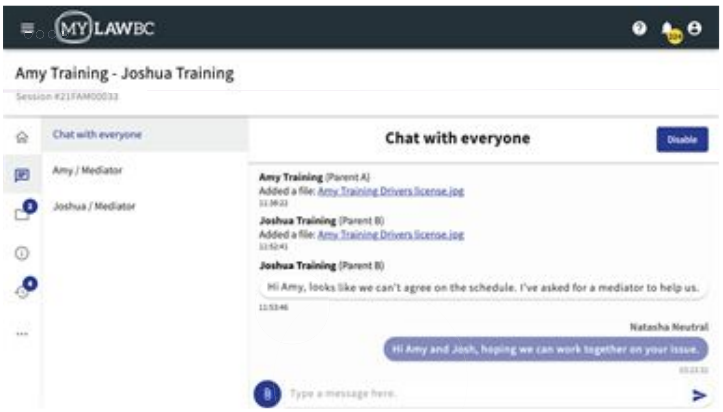



MYLAWBC
Amy Training - Joshua Training
Review your proposed plan
Your proposed parenting plan is ready for review and acceptance.
Parenting Plan
This parenting plan commences as soon as both parties have signed.
This parenting plan is dated: 01/31/2021
BETWEEN:
Training, Amy, "Amy"
AND:
Training, Joshua, "Joshua"
We are the parents of the following child or children:


(19FAM00012) MyLawBC Family: Review a proposed parenting plan


MYLAWBC
Amy Training - Joshua Training
Parenting plan progress
To build the parenting plan, you and Joshua must make decisions in the following 7 areas:
Next
Decision Making
Parenting/Contact Time
Statutory Holidays and Special Days
School Breaks
Vacation
Transportation
Additional Terms
Previous
Continue


MYLAWBC
Amy Training - Joshua Training
Decision Making
Parenting/Contact Time
Amy's Proposal
Joshua's Proposal
Statutory Holidays and Special Days
School Breaks
Vacation


MYLAWBC
Amy Training - Joshua Training
Chat with everyone
Amy / Mediator
Joshua / Mediator
Chat with everyone
Disable
Amy Training (Parent A)
Added a file: Amy Training Drivers license.jpg
Joshua Training (Parent B)
Added a file: Amy Training Drivers license.jpg
Joshua Training (Parent B)
Hi Amy, looks like we can't agree on the schedule. I've asked for a mediator to help us.
Natasha Neutral
Hi Amy and Josh, hoping we can work together on your issue.
Type a message here.


MYLAWBC
Amy Training - Joshua Training
Review your proposed plan
The mediator drafted a parenting plan for you and Joshua to review. Your proposed parenting plan is ready for review and acceptance.
Parenting Plan
This parenting plan commences as soon as both parties have signed.
BETWEEN:
Training, Amy, "Amy"

THANK YOU

MY LAW - BC -

MyLawBC.com

Family Law Services Update

Provincial Advocates' Conference – October 6, 2021

Presented by:

Susanna Hughes
Acting Manager, Family Law Services
Legal Aid BC
susanna.hughes@legalaid.bc.ca

Legal Aid BC
Support when you need it

Legal Aid applications

- Legal aid intake services remain available by telephone; in person in Vancouver and some other locations
- Local offices are listed at https://lss.bc.ca/legal_aid/legalAidLocations
- Legal Aid provincial call centre 604-408-2172 or 1-866-577-2525

Legal Aid BC

Legal Aid Family Law Coverage

Available for 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 your children;
- when the other parent threatens to remove your children permanently from the province; or
- when you have guardianship or parenting time with your children and the other parent has contact with or parenting time, but they have unlawfully held your children and not allowed you to carry out your parenting time

Legal Aid BC

Legal Aid Family Law Coverage

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

Legal Aid BC

Legal Aid Family Law Coverage

In some situations, where services are part of a pilot project and provided on a limited basis for part of your case, or to help you prepare for mediation, negotiate an agreement, or prepare to represent yourself in court, including:

- when you have a child support or spousal support claim;
- When you need help to make a parenting arrangement or decide contact for your children; or
- when you need help with the preservation and/or division of family property.

Legal Aid BC

Legal Aid Child Protection Coverage

You can get a lawyer to represent you for a child protection matter if:

- the Ministry of Children and Family Development (MCFD), or a Delegated Aboriginal Agency, has taken your child or children away from you, or there is a risk that your child may be taken.
- There are guardianship or custody and contact or access issues related to a child in the care of MCFD (foster care).

Coverage may also be available for a member of the child's extended family or community who wishes to become either a temporary or permanent caregiver for the child.

Legal representation may be provided either by a lawyer in private practice or an LABC staff lawyer at a Parents Legal Centre, depending on the client's situation and location.

Legal Aid BC

Family Advice Services

- Family Duty Counsel
- Family LawLINE

Legal Aid BC

Who are the clients?

- Self-represented parties
- People who have a lawyer, either privately or on legal aid, are not eligible for family advice services
- Must be financially eligible for advice services – see https://legalaid.bc.ca/legal_aid/doIQualifyAdvice
- Clients who are not financially eligible but are engaged in mediation with Family Justice Services can receive up to one hour of advice with a referral form
- Clients who are not financially eligible and not in mediation may be given up to 45 minutes of advice at the lawyer's discretion
- Must have family or child protection law issues in British Columbia

Legal Aid BC

Family Duty Counsel (FDC)

- Attached to specific court locations
- All services have been provided remotely since March 2020; no in-person service currently available anywhere in BC
- FDC is currently providing advice by telephone – either by appointment or on-the-spot depending on location
- FDC is attending Provincial Court family and CFCSA appearances by MS Teams

Legal Aid BC

Family Duty Counsel (FDC)

- Nanaimo, Surrey, Vancouver, and Victoria are scheduling client appointments
- All locations are able to accommodate clients with urgent matters, usually the same or next day
- Surrey and Vancouver have interpretation services available for client appointments with FDC

Legal Aid BC

Family Duty Counsel (FDC)

Court attendances by MS Teams for:

- Family and CFCSA remand lists
- Family Management Conferences – if arranged in advance
- Family Settlement Conferences and Judicial Case Conferences – if arranged in advance

To arrange in advance – phone local FDC number

Legal Aid BC

Family Duty Counsel (FDC)

- For current hours and contact information see https://legalaid.bc.ca/legal_aid/familyDutyCounsel
- Contact information is provided for all locations with a dedicated phone number
- Locations without a dedicated phone number will have FDC available for family court list days if using MS Teams – contact local court registry for information

Legal Aid BC

Family LawLINE

Telephone service available province-wide

- Lawyers located around the province give information, advice, and assistance on family law and child protection matters
- Operated by a team of administrative/intake legal assistants, and a roster of lawyers located around the province
- Hours of service for first-time telephone advice:
  - Mon, Tues, Thurs, Fri 9:00 am – 3:00 pm
  - Wed 9:00 am – 2:30 pm
- Additional weekday hours for telephone appointments, including late afternoon and early evening
- Interpreters available if required
- **Contact 604-408-2172 or 1-866-577-2525**

Legal Aid BC

Family LawLINE (continued)

- Clients receive up to **6 hours** of telephone advice from a lawyer
- Initial call through LABC Call Centre – client can apply for legal aid or ask to be transferred to Family LawLINE
- Screened by Family LawLINE administrative/intake legal assistant
- Follow-up service by appointment – usually with the same lawyer - for up to 45 minutes per session
- After each session with the lawyer the client receives an "Advice Given" form (written record of the advice they received and next steps for the client to take)
- Administrative/intake legal assistant maintains digital client files and records, sets appointments, etc.
- With client's consent, a support person may participate in the telephone consultation

Legal Aid BC

What do the lawyers help with?

- Brief legal advice about the law and procedure
- Review documents
- Assist clients who are preparing documents themselves
- Advice about urgent court applications
- Lawyers advise and support clients who have court or non-court matters
- Referrals to legal aid (if appropriate) or other resources
- Maximum 3 hours of advice for financially eligible clients (6 hours in Victoria)

Legal Aid BC

Advice services cannot:

- Help with non-family law issues e.g. civil or criminal
- Help if the client already has a lawyer
- Become the client's lawyer while providing advice service
- Attend court for trials or contested hearings
- Prepare court documents for a client
- Advise a client regarding Court of Appeal proceedings
- Advise a client on non-BC court procedures, forms or law (except for interjurisdictional support orders)

Legal Aid BC

Future changes:

- Planning for a hybrid model of in person and remote family advice services
- Adding a paralegal to Family LawLINE to provide additional client assistance

- Feedback or suggestions? Please email me:
  Susanna Hughes
  susanna.hughes@legalaid.bc.ca

Legal Aid BC

Questions?

Legal Aid BC

Parents Legal Centre

2021 Virtual Provincial Training Conference for Legal Advocates

Harshada Deshpande (Staff Lawyer – PLC Vancouver)

Legal Aid BC
Support when you need it

Acknowledgement

We would like to acknowledge the Musqueam, Squamish and Tsleil-Waututh Nations, on whose traditional territories we live and work.

Legal Aid BC

Legal Aid BC

- As of May 28, 2020, we are officially LABC.
- New logo, new brand.

Legal Aid BC

Video

- https://youtu.be/gpPhqTfxYU8

Legal Aid BC

What is the PLC?

- Legal services provided by Legal Aid BC (LABC) for parents/caregivers with child protection matters.
- Provide legal advice and representation at uncontested hearings.
- Focus on early intervention and collaborative resolution of child protection concerns.
- Provide culturally-sensitive and trauma-informed services.

Legal Aid BC

PLC Team

Lawyer
- Provides legal representation and advocacy
- Works with ACLW/Advocate to identify client's needs and develop plan to address the CP concerns
- Provides engagement in the community

ACLW/Advocate
- Supports the client in addressing underlying issues that led to the CP concerns
- Connects clients with community supports and resources
- Develops relationships with community resources

Administrative Assistant
- Manages office administration, intake, phone calls, and data collection

Legal Aid BC

Who Qualifies for the PLC?

Requirements:

- Parent or "person who stands in in place of a parent"
- Must have a child protection concern or file
- File must fall within the geographic catchment area of each office
- Client must meet the financial criteria for LABC
- Matter can be resolved without a trial

PLCs cannot assist if:

- a conflict of interest exists;
- a tariff lawyer is already assisting the client;
- the person is not the parent; or
- the case cannot be resolved without trial.

Legal Aid BC

Updated financial guidelines

Table of net household monthly income (for representation services)*		
Household size	Standard and Family Limited Representation cases	CFCSA and Criminal Early Resolution cases
1	$1,670	$2,670
2	$2,340	$3,340
3	$3,010	$4,010
4	$3,680	$4,680
5	$4,350	$5,350
6	$5,020	$6,020
7 or more	$5,690	$6,690

https://lss.bc.ca/legal_aid/doIQualifyRepresentation

Legal Aid BC

How is the PLC different?

PLC services

- Focus on early intervention and collaborative solutions.
- ACLW/Advocate can accompany parents to meetings connect parents with resources to address underlying protection concerns.
- Designed to be culturally-sensitive and easily accessible.
- If a client opposes the Director's application, the PLC can represent the client up until trial dates must be set.
  - If the client continues to qualify for legal aid, they will be referred to another lawyer who can represent them at the trial.

Legal Aid BC

PLC Locations

- Ten locations throughout the province:
  1. Campbell River
  2. Duncan
  3. Kamloops
  4. Prince George
  5. Smithers/Hazelton
  6. Surrey
  7. Terrace
  8. Vancouver
  9. Victoria
  10. Williams Lake

Legal Aid BC

Network locations

- Provide a space and computer access to assist parents in accessing PLC services.
- Call **1-888-522-2752** (1-888-LABC-PLC) to determine eligibility.
- 26 network locations throughout the province.

Legal Aid BC

Network Locations – List

- Abbotsford – NCCABC Abbotsford Provincial Courthouse
- Burns Lake - The Link (Lakes District Family Enhancement Society)
- Chase - Adams Lake Indian Band & Neskonlith Indian Band
- Clearwater - Yellowhead Community Services
- Courtenay - Wachiay Friendship Centre
- Fort Nelson - Fort Nelson Aboriginal Friendship Society & Fort Nelson Community Literacy Society
- Fort Ware - Kwadacha Nation
- Houston - Dze L K'ant Friendship Centre Society
- Merritt - Conayt Friendship Society
- Mission - Mission Friendship Centre Society
- Nanaimo – NCCABC (Nanaimo Office) & Tillicum Lelum Aboriginal Friendship Centre
- New Aiyansh - Nisga'a Lisims Government
- Port Hardy - Sasamans Society
- Salmon Arm - Adams Lake Indian Band
- Terrace - Kermode Friendship Centre
- Vancouver – Sheway
- Vernon - NCCABC
- Victoria – Hulitan & Island Métis Family and Community Services Society Colwood/Langford

https://lss.bc.ca/legal_aid/plc-network-locations

Legal Aid BC

PLCs and the federal *Act (C-92)*

- *An Act respecting First Nations, Inuit and Métis children, youth and families* came into force Jan. 1, 2020.
- Establishes national *minimum* standards for providing child an family services to Indigenous families and children.
  - Where pre-existing provincial legislation is different or in conflict, the federal standards will apply.
- Best interests of the *Indigenous* child are the paramount consideration. [Refer to s. 10(2)]

Legal Aid BC

Contact us

- Online at https://lss.bc.ca/legal_aid/parents-legal-centres
- By phone at **1-888-522-2752 (1-888-LABC-PLC)**

Legal Aid BC

THE LAW FOUNDATION OF BRITISH COLUMBIA

2021
PROVINCIAL ADVOCATES TRAINING CONFERENCE

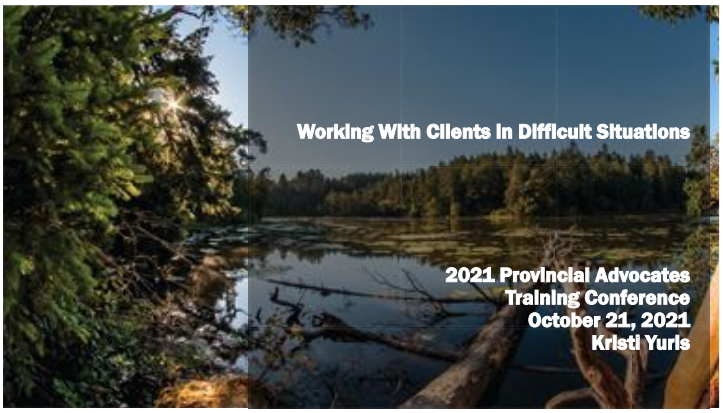
Legal Aid BC

Working with clients in difficult situations

Kristi Yuris

Topic: Legal Help & Lawyers

Recording Link: https://youtu.be/1MVBek88Dx8



Overview

- Setting the Context-Barriers to Accessing Services
- General Best Practices in Communication & Boundary Setting
- Responding to Challenging Situations

Setting the Context: Common Barriers to Accessing Service

- Stigma and discrimination
- Fragmented and inadequate support systems
- Trauma/Mental Health/Substance Misuse

STIGMA

Effects of Stigma

- Two-thirds of persons with diagnosable disorders do not seek treatment
- Many have poor self-regard and low self-esteem
- Internalization of negative stereotypes
- People avoid seeking help and to keep symptoms and substance use secret
- Social Isolation and limited supports

Common Barriers to Accessing Service: Fragmented & Inadequate Services

- High levels of frustration, hopelessness & giving up
- Burden of coordination of services falls on the client.
- Lack of adequate primary medical and psychiatric care
- Essential services are increasingly difficult to access

Common Barriers to Accessing Service: Trauma

- Trauma: “can be acute (a single traumatic event limited in time), chronic (multiple traumatic events) or complex (history of severe and long-term trauma)”
- Trauma is a common denominator-colonization and genocide, racism, gender-based violence, poverty and discrimination
- Individual’s response to trauma compounded by previous traumas, lack of supports and services

Common Barriers to Accessing Service: Trauma

- Difficulty trusting others-profound violation of sense of self and security
- Flashbacks/nightmares-feeling of loss of control
- Avoidance/numbing
- Hyper-arousal
- Poor emotional regulation
- Memory and concentration impairments

Common Barriers to Accessing Service: Mental Health & Substance Misuse

- Unable to identify or articulate what type of help is needed
- Speak tangentially/incoherently
- Shift from one topic to another at will, talk about several issues within short period
- Unable to focus or lack concentration
- Highly anxious or panicked
- Lack of motivation
- Poor executive and planning skills

Trauma-Informed Practices

- Trauma/mental health awareness
- Take time to establish rapport and empathy
- Be clear and honest about time, service restrictions and agenda
- Allow time for the person to tell their story
- Use short, clear direct sentences and questions
- Cover one topic/direction at a time
- Create collaborative atmosphere
- Identify supports, strengths and resilience

Trauma-Informed Practices in Service Delivery

- Demonstrate empathy when cannot assist or resolution unsatisfactory
- Echo/paraphrase person's concerns
- Ask to make sure communicating clearly
- Acknowledge point of view without agreeing
- Use the language of cooperation: "*we could look at it this way*". "*How can we resolve this?*”
- Always be conscious of your own emotional and physical safety

Trauma-Informed Practices in Service Delivery

- Practice self-care and non-attachment to outcomes
- Emphasize strengths. Give lots of encouragement for steps taken
- Prioritize self care: breathe, take a break, set realistic goals, take care of mind and body, use your team
- Recognize limits of role and where referral is appropriate

Addressing Challenging Situations:

Hostile/aggressive behaviors:

- Follow any existing safety protocols in the workplace
- Is anger reasonable? If yes…
- Be clear about boundaries and enforce consequences
- Body language can say more than words…
- Be aware of tone of voice and language
- Reassure concerns are important

Addressing Challenging Situations

High conflict individuals:

- Often resultant from unresolved or untreated trauma
- Common features
- **High Conflict Institute:** https://www.highconflictinstitute.com

Addressing Challenging Situations

An E.A.R. (Empathy, Attention, Respect) Statement is a short statement that acknowledges a person's emotions, attempts to connect with them and helps calm them down, keeping them focused on problem-solving.

E: Empathy "I can hear how upset you are"
A: Attention "Tell me what's going on"
R: Respect "I respect the efforts you have made to resolve this"

Addressing Challenging Situations

- Responding with E.A.R statements
- Focus on Options Available
- BIFF Responses (Brief, Firm, Friendly & Fair)
- Set Limits (Don't make it personal, use policies, procedures, rules and regulations)

Addressing Challenging Behaviours

- Use **structure**: time, repetition, deadlines, regular follow up articulate commitment
- Use **skills**: active listening, assertiveness, empathy
- Focus on **goals and problem solving** rather than emotions
- Use **self-care**: work-life balance, use team, consistency
- **Tolerate** hostility without retaliating or withdrawing
- **Set boundaries** on appropriate conduct and re-enforce
- Be **consistent** and maintain clear roles & responsibilities
- **Articulate** and keep to time limitations
- Respond **promptly and professionally** to complaints

Addressing Challenging Behaviours

Working with clients who may lack capacity:

- Capacity: ability to understand information AND ability to appreciate consequences
- Presence of mental health impairment is not enough to draw conclusion of incapacity
- No single global test of capacity
- "Capacity continuum": capacity not an either/or thing–can be quite variable

Addressing Challenging Behaviours

Working with clients who may lack capacity:

- Legal test may be set out in relevant statute: section 9 of BC RA
- See BC Law Institute Report on Common Law Tests of Capacity

http://www.bcli.org/wordpress/wp-content/uploads/2013/09/2013-09-24_BCLI_Report_on_Common-Law_Tests_of_Capacity_FINAL.pdf

- Common law: distinctive tests of capacity dependent upon nature of transaction, decision or relationship

Addressing Challenging Behaviours

- Capacity to retain and instruct counsel: retainer a form of contract so must be able to understand terms and form rational judgement of its effect on interests
- Law of agency: ability to understand nature and effect of appointing counsel
- Presumption of capacity to retain and instruct

Addressing Challenging Behaviours

- Professional Code of Conduct:
  - Does client has the ability to understand the information and can they appreciate the reasonably foreseeable consequences
- Should "decline to act" where believe incapable of giving instructions
- If failure to act could result in imminent and irreparable harm, lawyer can take action to the extent necessary to protect interests until legal representative can be found

Addressing Challenging Behaviours

Where a client is or may be suicidal:

- Take all threats or attempts seriously
- Know intervention can help: suicide is the most preventable type of death and interventions do save lives
- Be aware and learn warning signs of suicide:
  - Giving away possessions/drug or alcohol abuse/recent job loss/death of close person-especially by suicide/diagnosis of serious illness/loss of freedom/loss of financial security
- Be direct and ask if the person is thinking of suicide. If the answer is yes, ask if the person has a plan and what the time line is

Addressing Challenging Behaviours

- Talking openly about suicide does not increase risk. Open communication lowers anxiety and the risk of an impulsive act
- Talk to the person alone in a private setting
- Allow the person to talk freely – don't interrupt
- Give yourself plenty of time for the conversation
- Do not minimize the feelings expressed by the person
- In an acute crisis, connect with emergency services
- Don't leave person alone and remove any dangerous items from immediate vicinity

Addressing Challenging Behaviours

Working with survivors who appear intoxicated:

- Is impairment the result of intoxication or symptom of illness, or the result of pharmaceutical side effects?
- Open the conversation around medication use, how client is coping, whether using substances to manage symptoms, trauma, effects of assault?
- Are there changes in use-increased? Brand new? What are triggers?
- How to accommodate? What are agencies policies regarding tolerance of active intoxication?
- Ask about patterns of use or effects of medications so can accommodate in scheduling of appointments and follow up

Addressing Specific Barriers to Communication

Clients living with psychosis/paranoia:

- Reduce stimuli in the environment
- Resist focusing on content and instead acknowledge distress
- Empathize instead of challenging delusions directly.
- Don't collude with beliefs.
- Suggest they check interpretations with trusted person
- Find grains of truth in client's account…

Addressing Specific Barriers to Communication

- Reasonable to ask for evidence to support allegations and to indicate advice/follow up limited if no evidence to support claims
- Encourage person to seek help because of specific circumstances and their named distress
- Learn preferences while survivors are non-symptomatic

QUESTIONS??

THE LAW FOUNDATION OF BRITISH COLUMBIA

2021
PROVINCIAL ADVOCATES
TRAINING CONFERENCE

Legal Aid BC

Oral advocacy skills for tribunal hearings

Odette Dempsey-Caputo

Topic: Legal Help & Lawyers; Legal System & Courts

Recording Link: https://youtu.be/JvxyADNz2Os

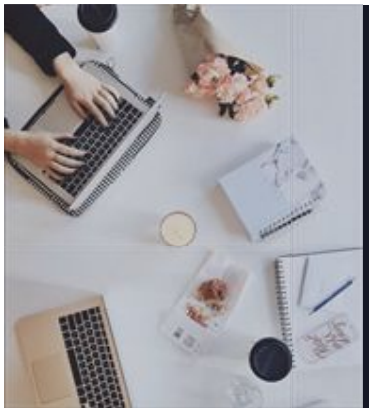
Oral Advocacy

BY: ODETTE DEMPSEY-CAPUTO
ELIZABETH FRY LEGAL CLINIC

Land Acknowledgement

Unceded and ancestral territory of the səl̓xwɛpməx (Secwepemc) Nation

It is not possible to be in favour of justice for some people and not be in favor of justice for all people.
-Martin Luther King Jr.



THE NUMBER 1 RULE

PREPARE
PREPARE
PREPARE
PREPARE
PREPARE

Ask these questions:

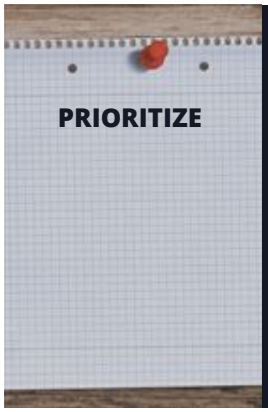
1. What does the client want to achieve?
2. What are you hoping to achieve at the hearing?
3. What are the key issues?
4. What is the law that applies?
5. What are your key legal principles or legal arguments?
6. What key points do you need to prove?
7. Do you have the evidence to prove each of these points?
8. What is the theory of your case?

Boe Peep has a dog named Buzz that likes to bark. Her downstairs neighbour Toi Story has complained about Buzz barking to Isabelle's landlord Andy. Boe Peep was just handed a one month eviction notice. Boe Peep wants to have use of the whole backyard. She use to have the whole backyard but Andy spilt it in half when Toi Story moved in.

What does the client want to achieve?

What are you hoping to achieve at the hearing?

Boe Peep has a dog named Buzz that likes to bark. Her downstairs neighbour Toi Story has complained about Buzz barking to Isabelle's landlord Andy. Boe Peep was just handed a one month eviction notice. Boe Peep wants to have use of the whole backyard. She use to have the whole backyard but Andy split it in half when Toi Story moved in.



What are the Key issues?

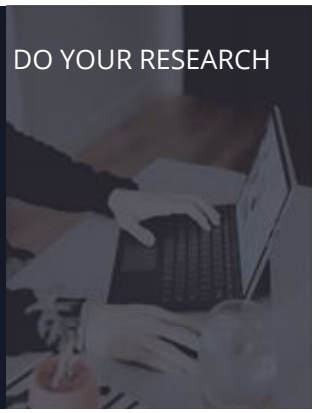
- **weakest**
- **strongest**

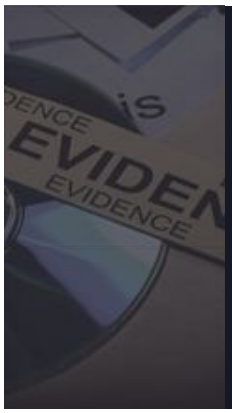
Boe Peep was just handed a one month eviction notice. Boe Peep wants to have use of the whole backyard. She use to have the whole backyard but Andy split it in half when Toi Story moved in. Boe Peep yells at Toi Story whenever she is in the backyard. Boe Peep has also taken videos of Toi Story in the backyard.

What is the law that applies?

- Statutes
- Case Law/Tribunal Decisions

What are your key legal principles or legal arguments?





What key points do you need to prove?

- **Write in a chart put evidence next to each point.**

Do you have the evidence to prove each of these points?

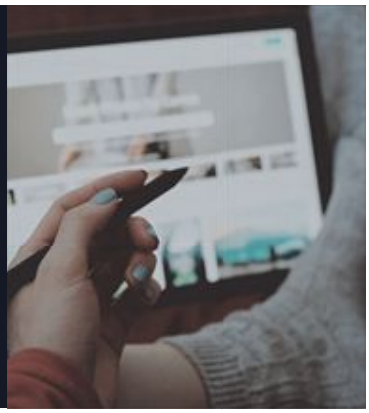
- **Evidence comes in all kinds of different forms: photos, videos, letters/emails, text messages et c.**
- **Check how to upload it, serve it et c.**

What is the theory of your case?

Detailed and accurate story of what occurred

It is how you tell the story of your side of the matter

Should be a single paragraph that sets out specific facts and the legal principles in a way as to justify the outcome you want



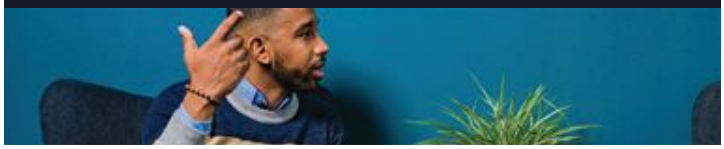
A good case theory:

must be:
- logical
- simple
- plausible
- understandable

accord with common sense.

framework for the facts

address the legal elements of the claim



Boe Peep was just handed a one month eviction notice. Boe Peep wants to have use of the whole backyard. She use to have the whole backyard but Andy split it in half when Toi Story moved in. Boe Peep yells at Toi Story whenever she is in the backyard. Boe Peep has also taken videos of Toi Story in the backyard.

Theme

- moral of the story,
- motivates the the decision maker to action
- shows why the desired result deserved and necessary
- sets the tone for your client's case

Organize Your documents :

- in a helpful way
- list your documents
- number your pages
- make it easy for the decision maker (Keep it simple)

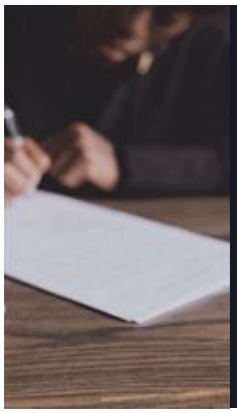
Prepare your case

Tips:
- Organize in Binders
- Practice with client
- Prepare all of your witneses
  - place
  - how attend
  - exclusion
  - duty to tell truth
  - what to call decision maker
  - ask cross examination questions too

01
QUESTIONS FOR YOUR WITNESSES/CLIENT

02
CROSS EXAMINATION QUESTIONS FOR THE OTHER SIDES WITNESSES

03
YOUR ARGUMENT

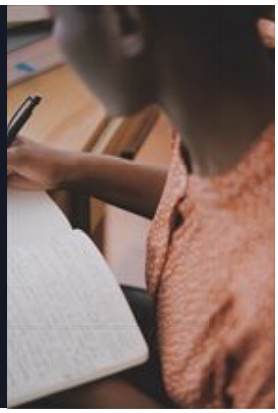


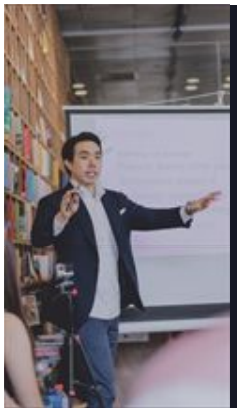
Tell client and witnesses

Answer what is asked
Slow down
DO NOT get angry
Tell the truth
You can say I don't know

Write out your argument:

- Use headings
- Use numbered paragraphs and pages
- Use spaces
- Simple is best
- Summarize at the beginning
- Start Strong, End Strong
- Personalize your client depersonalize the other side
- State a point and then elaborate
- Refer to your evidence
- Hole punch on right side of page



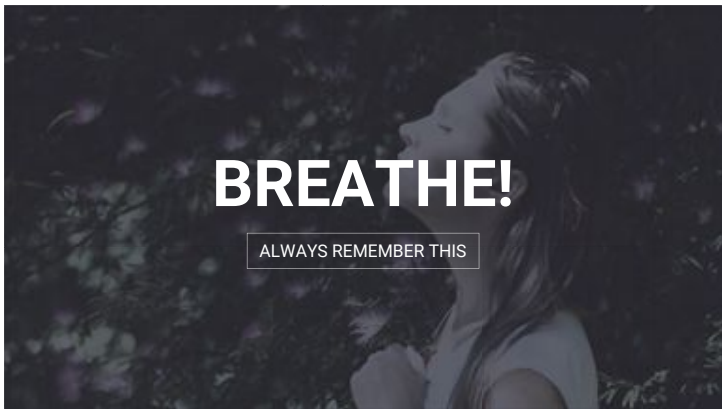


SIX BE'S

Be Slow
Be Polite
Be Flexible
Be Positive
Be Concise
Be Yourself

TIPS FOR YOU:

1. **KNOW YOUR CASE INSIDE AND OUT**
2. **GIVE TIME TO THE DECISION MAKER**
3. **DO NOT INTERUPT**
4. **WATCH THE DECISION MAKER**
5. **DO NOT RESPOND TO PERSONAL ATTACKS**
6. **ANSWER QUESTIONS ASKED**



SCENARIO 1

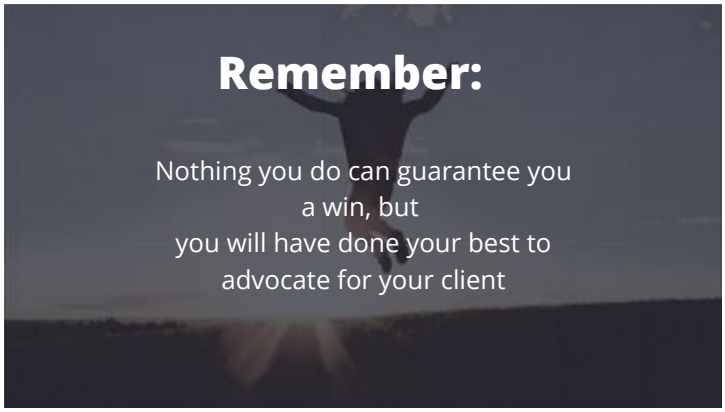
Rex works as a nurse at Pix Sell Hospital. He is a perfectionist and is often very anxious. Rex's doctor diagnosed Rex with high functioning anxiety and advise him he should take time off work. Rex did not want to take time off work. One day Rex yelled at a patient. When Rex was called into a meeting with management he told them that he has high functioning anxiety and his doctor told him to take time off. They then reduced his workload and eventually let him go.

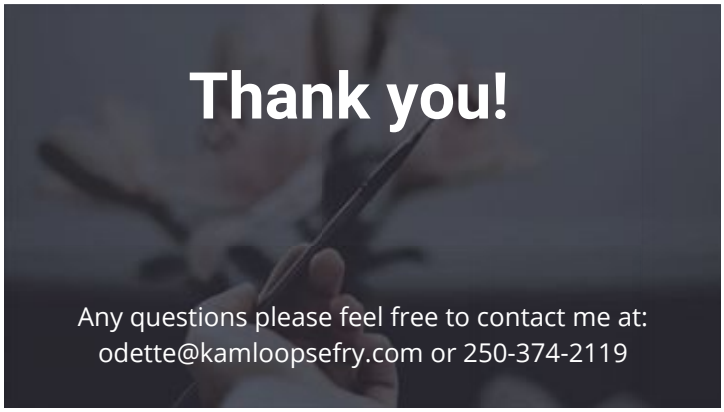
SCENARIO 2

Rita book rents a unit in an apartment building. She struggles to walk as she has severe arthritis. Her daughter Ann Teak often gets Rita her groceries and drops them off. Ann Teak has a temper and has yelled at the other tenants many times. The other tenants are scared of Ann Teak and have complained to the Landlord. The Landlord issued a one month notice to end tenancy. Rita Book is devastated she will never be able to find a place with as cheap of rent. She had no idea the other tenants were scared of Ann Teak.

SCENARIO 3

Rolly Pipe smokes medical marijuana for her arthritis and severe anxiety. She has lived in the basement suite for 6 years and has smoked marijuana throughout her time there and no one ever complained about her smoking. Recently the landlord, Peter Owt decided he does not want Polly smoking anymore as he has had enough of her second hand smoke. The landlord, Peter Owt has given the Polly Pipe several warnings to stop smoking but the Polly refuses since it does not say in her tenancy agreement that she cannot smoke. Peter Owt recently gave her a one month notice of eviction for smoking in the basement suite.





Preparing Your Case Plan:

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THE LAW FOUNDATION OF BRITISH COLUMBIA

2021
PROVINCIAL ADVOCATES
TRAINING CONFERENCE

Legal Aid BC

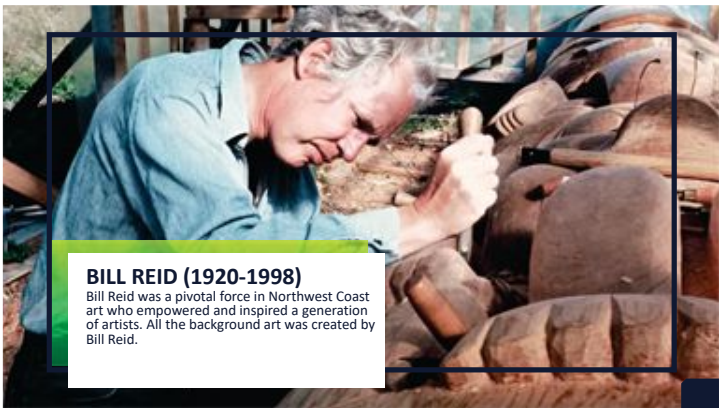
Welfare law updates

Alison Ward, Andrew Robb

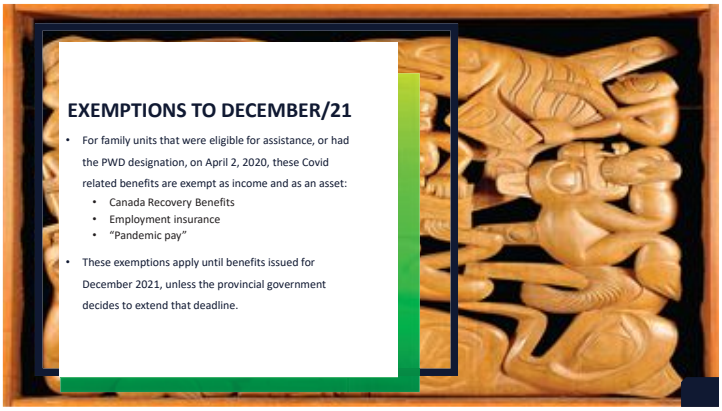
Topic: Welfare & Benefits

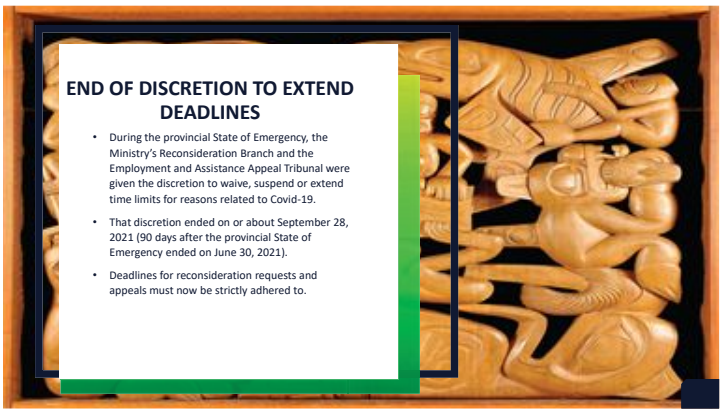
Recording Link: https://youtu.be/wnTQzBzFYys


WELFARE LAW UPDATE
OCTOBER 12, 2021
Andrew Robb, lawyer, DABC
Alison Ward, lawyer, CLAS


BILL REID (1920-1998)
Bill Reid was a pivotal force in Northwest Coast art who empowered and inspired a generation of artists. All the background art was created by Bill Reid.


TEMPORARY COVID RELATED CHANGES


EXEMPTIONS TO DECEMBER/21
For family units that were eligible for assistance, or had the PWD designation, on April 2, 2020, these Covid related benefits are exempt as income and as an asset:
Canada Recovery Benefits
Employment insurance
"Pandemic pay"
These exemptions apply until benefits issued for December 2021, unless the provincial government decides to extend that deadline.

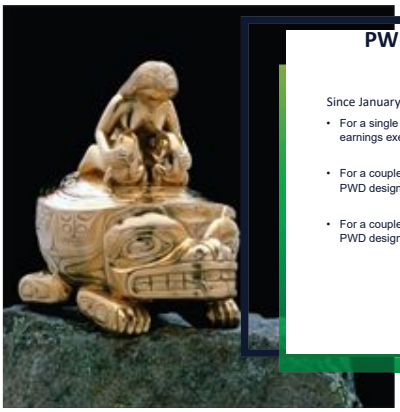

END OF DISCRETION TO EXTEND DEADLINES
During the provincial State of Emergency, the Ministry's Reconsideration Branch and the Employment and Assistance Appeal Tribunal were given the discretion to waive, suspend or extend time limits for reasons related to Covid-19.
That discretion ended on or about September 28, 2021 (90 days after the provincial State of Emergency ended on June 30, 2021).
Deadlines for reconsideration requests and appeals must now be strictly adhered to.


PERMANENT CHANGES IN WELFARE LAW
HIGHLIGHTS

INCREASES TO ALL WELFARE RATES

- In May 2021, the monthly support rate was increased by $175 for each adult recipient in a family unit, for all categories of benefits.
- On October 1, 2021, monthly support rates were again very slightly adjusted upward for some family units.
- These increases means the **monthly rate for a single person are now:**
  - **Income assistance: $935.00**
  - **PPMB: $985.00**
  - **PWD: $1358.50**

- Before this, a temporary COVID-19 crisis supplement of $300 per month was provided from April to December 2020, and a $150 per month recovery supplement was provided from January to March 2021. With the $175 permanent increase, these temporary Covid-19 supplements ended.



PWD EARNINGS EXEMPTION INCREASE

Since January 1, 2021:

- For a single person or single parent on PWD, the annualized earnings exemption (AEE) is **$15,000** (up from $12,000).
- For a couple (with or without children) where only one adult has the PWD designation, the AEE is **$18,000** (up from $14,400).
- For a couple (with or without children) where both adults have the PWD designation, the AEE is **$30,000** (up from $24,000).

IA/PPMB EARNINGS EXEMPTION INCREASE

- For all family units with a person with the PPMB designation, the earnings exemption is $**900/month** (up from $700/month).
- For singles and couples without children on IA, the earnings exemption is $500/month (up from $400).
- For family units on IA with disabled dependent or supported child-precluding employment over 30 hours/week, the earnings exemption is $900/month (up from $700).
- For all other families on IA with dependent or supported children, the earnings exemption is $750/month (up from $600).

ICBC PREMIUM REBATES EXEMPTED

- Starting in April 2021, ICBC issued refunds to most customers. This was due to Covid-related rebates and changes to ICBC rules.
- Any refunds or rebates from ICBC are exempted as income and as an asset for all categories of benefits (income assistance, hardship assistance, PPMB benefits and disability assistance).

WORK EXPERIENCE OPPORTUNITIES GRANTS

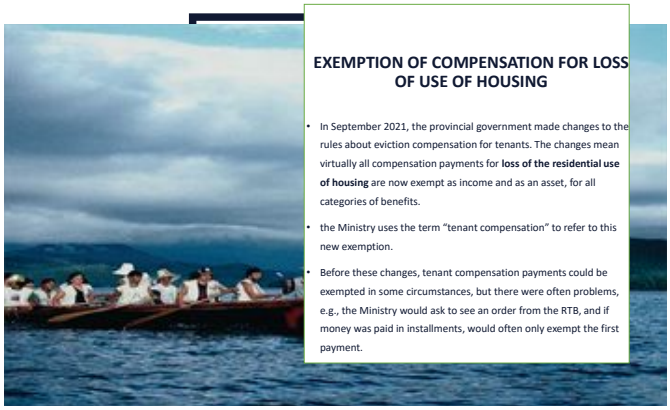
- The Work Experience Opportunities Grant program was intended to give marginalized people opportunities to increase their ability to participate in the labour market.
- Effective January 1, 2021, any income, goods, or services that someone receives from their participation in the Ministry's Work Experience Opportunities Grant program, is exempt as both income and an asset. This applies to all categories of benefits (income assistance, hardship assistance, PPMB benefits, and disability assistance).
- The most recent grants were given in March 2021 to non-profits, social enterprises, charities, and businesses who applied, so that they could provide 12 weeks of work experience placements.

INCOME ASSISTANCE AND STUDENTS

- As of July 12, 2021, all recipients of income assistance may be eligible to ask the Ministry for pre-approval to attend full-time studies for which student loans may be available (a "funded program of studies") for up to two years.
- As before, pre-approval can be sought only if the person's employment plan has a condition requiring them to attend this program of studies, and they have been on assistance for the last 3 months (though that criteria can be waived in exceptional circumstances).

INCOME ASSISTANCE AND STUDENTS

- If someone on income assistance is approved to attend full-time studies in a funded program of studies, then if they receive scholarships, RESP withdrawals, grants, bursaries, or a training allowance (other than student loans), then some or all of that money may be exempted by the Ministry.
- The exemption is for the total of the students "day care costs," "education costs" and (new) "education-related living costs," which includes the costs of food, shelter, clothing, utilities and other expenses needed to participate in the program of studies. Student loans themselves are not exempted as income.



EXEMPTION OF COMPENSATION FOR LOSS OF USE OF HOUSING

- In September 2021, the provincial government made changes to the rules about eviction compensation for tenants. The changes mean virtually all compensation payments for **loss of the residential use of housing** are now exempt as income and as an asset, for all categories of benefits.
- the Ministry uses the term "tenant compensation" to refer to this new exemption.
- Before these changes, tenant compensation payments could be exempted in some circumstances, but there were often problems, e.g., the Ministry would ask to see an order from the RTB, and if money was paid in installments, would often only exempt the first payment.

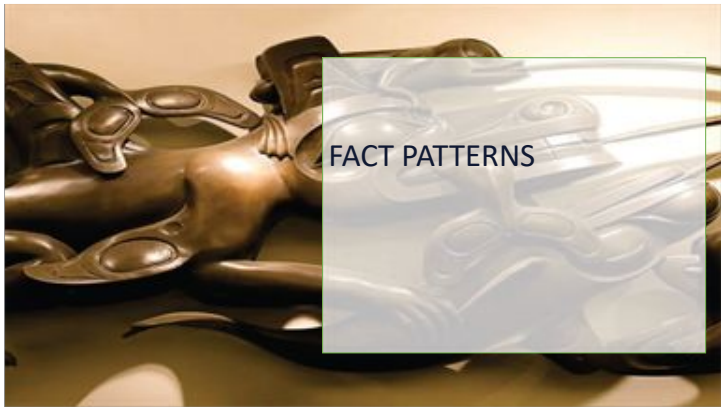
EXEMPTION OF COMPENSATION FOR LOSS OF USE OF HOUSING

The new rules for exemption are broad. The Regulations provide that compensation is exempt as unearned income and as an asset:

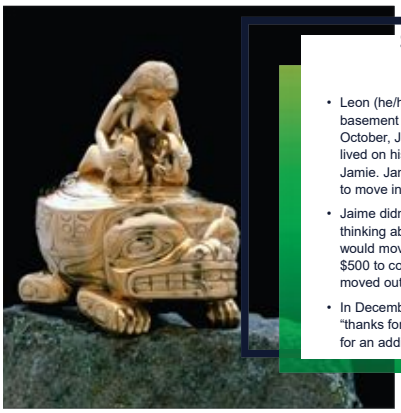
- If the person was a "tenant' under the RTA or MHPTA, **or** was a licensee, occupant, or lessee or "had a similar right or permission to use the premises for residential purposes;"
- if it is paid for a full or partial compensation for **loss of the residential use of premises**, including for:

"eviction, relocation, demolition, temporary displacement during repair, renovation or redevelopment, or as an inducement to cease or suspend residential use."

- If the money is paid under a contract, policy or enactment, *or* paid voluntarily at the discretion of the person responsible for the residential premises (i.e., landlord, owner, manager or person in a similar position).
- whether it is a one -time payment **or** series of payments.



FACT PATTERNS



SCENARIO 1: TENANT COMPENSATION

- Leon (he/him) receives income assistance. He rents a basement suite from his landlord, Jaime (she/her). In October, Jamie told Leon about her elderly father, who lived on his own but needed more and more support from Jamie. Jamie said she was considering asking her father to move into the basement suite.
- Jaime didn't give Leon an eviction notice, but he was thinking about moving out anyway, so he told Jaime he would move out at the end of the month, if she gave him $500 to cover his moving costs. Jaime agreed, and Leon moved out before the end of October.
- In December, Jaime sent Leon a Christmas card. It said "thanks for being a good tenant" and included a cheque for an additional $500.

SCENARIO 1: QUESTIONS

Leon asked you:

- Do I have to report the payments from Jaime to the Ministry?
- What will the Ministry do?
- What can I do if the Ministry reduces my IA benefits because of the payments from Jaime?

SCENARIO 2: CPP-D

- Andrew (they/them) lives on their own and receives CPP-Disability benefits, in the amount of $1200 per month, as their only source of income. Two years ago Andrew applied for PWD benefits from the Ministry, but they were told they were ineligible due to their CPP-D benefits.
- Andrew needs dental treatment and a new pair of glasses but he has no insurance, and no savings. Can you help him?

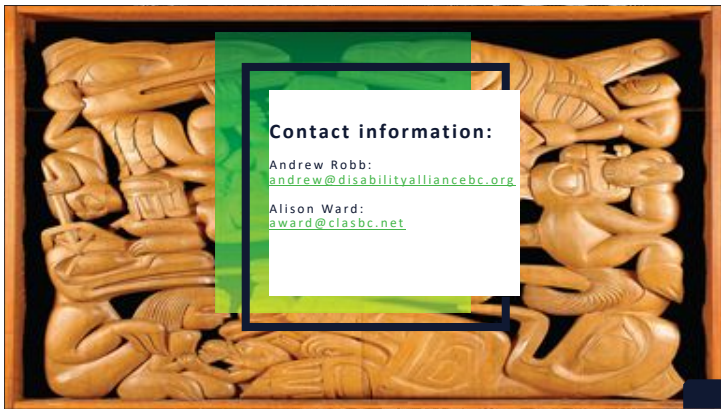
SCENARIO 3 – TENANT COMPENSATION AND MOVING COSTS

- Patricia is on disability assistance. She has been a tenant for 10 years in a house her landlord has permission to demolish. She lives in a city that has a tenant relocation and protection policy (TRPP). She received 5 months rent ($3500)from her landlord under the TRPP, and $700 more under the RTA.

Questions

a) Patricia wants to know if the $4200 she's received will affect her disability assistance. What do you tell her?

b) Patricia is moving next month. She wants the Ministry to pay for her moving costs. What do you tell her?



Welfare Law Update, October 13, 2020 to October 1, 2021

*Prepared by Alison Ward, Barrister and Solicitor, Community Legal Assistance Society, October 10, 2021

There have been a number of changes to the Employment and Assistance legislation governing welfare benefits since the last Provincial Advocacy Training Conference in 2020.

Temporary changes

1. Canada Recovery Benefits exempted as income and as an asset until December 31, 2021 for certain eligible family units.

2. "Pandemic pay" exempted as income and an asset for certain eligible family units.

3. The BC recovery benefit was exempted as income and as an asset for all categories of benefits.

4. Exemption of certain pandemic-related benefits extended until January 1, 2022.

Permanent changes

5. End of discretion to waive timelines: the Employment and Assistance Appeal Tribunal, and the Ministry's Reconsideration Branch, no longer have discretion to waive, extend or suspend deadlines, effective September 28, 2021.

6. Increase in earnings exemptions for income assistance, PPMB benefits and disability assistance effective January 1, 2021.

7. Exemption of money, goods or services received by people participating in the Ministry's Work experience opportunities grant, effective January 1, 2021.

8. Exemption of settlement funds from the *Toth* and *Ross* class actions in Federal Court, for all categories of benefits, effective February 1, 2021.

9. Rebate of premiums paid to ICBC exempted as income and as an asset, for all categories of benefits, effective May 1, 2021.

10. Increase to all welfare rates, including comforts allowances and the seniors supplement, effective May 1, 2021.

11. The Seniors' supplement was removed from welfare legislation, and is now delivered by Ministry policy only, effective May 1, 2021.

12. Income assistance and students: all recipients of income assistance are now eligible to ask for Ministry pre-approval to attend full-time studies for which student loans may be available, for up to two years. If approved, the type of expenses that can be exempted from RESPs and student funding they receive (*other* than from student loans) are broadened, effective July 12, 2021.

13. Tenant compensation: broadening of types of compensation for loss of use of residential premises that are exempt as income and as an asset for all categories of benefits, effective September 13, 2021.

14. Support rates were adjusted very slightly upward for some family units, and shelter rates were very slightly adjusted upward for family units affected by outstanding warrant, effective October 1, 2021.

Details:

Temporary Covid-19 related changes

1. Canada Recovery benefits exempted for some family units

   Effective November 9, 2020, Canada Recovery benefits were exempted as income and as an asset for family units who were eligible for income assistance, hardship assistance, PPMB benefits or disability assistance on April 2, 2020. The exemption also applies to people who had the PWD designation on April 2, 2020. This exemption continues until benefits paid for December 2021.

   See: *Employment and Assistance Regulation*, subsections 2.1 (2), (3) and (4)

   Employment and Assistance for Persons with Disabilities Regulation subsections 2.01 (2)(3) and (4)

2. Exemption of "pandemic pay" for some family units

"Pandemic pay" was exempted as unearned income, and as an asset for family units who were eligible for income assistance, hardship assistance, PPMB benefits or disability assistance on April 2, 2020. The exemption also applies to people who had the PWD designation on April 2, 2020. This exemption continues until benefits paid for December 2021.

Pandemic pay is defined as additional income (on top of regular pay) received for work or services done in certain "essential services" and received during the State of Emergency in BC that ended on June 30, 2021. For the definition of "essential services," see the *COVID-19 (Limits on Actions and Proceedings) Regulation*.

See: *Employment and Assistance* Regulation, subsections 2.1 (1) to (7)

Employment and Assistance for Persons with Disabilities Regulation, subsections 2.01 (1) to (7)

3. BC Recovery Benefit exempted

The BC Recovery Benefit was a one-time, income-tested payment of up to $500 for individuals and up to $1 000 for single parents and other families. Effective December 1, 2020, it was exempted as income and as an asset for all types of benefits (income assistance, hardship assistance, PPMB benefits and disability assistance). Applications for the BC Recovery Benefit closed on July 1, 2021.

See: *Employment and Assistance Regulation*, section 2.7

Employment and Assistance for Persons with Disabilities Regulation section 2.07

4. Exemption of certain pandemic-related benefits extended until January 1, 2022

Since the start of the pandemic, special rules have applied to family units who were eligible for income assistance, hardship assistance, PPMB benefits or disability assistance on April 2, 2020, and to people who had the PWD designation on April 2, 2020 (whether or not they were receiving disability assistance then).

For this group, CERB benefits, Canada Recovery Benefits, employment insurance and pandemic pay have been exempt as income and as an asset. This exemption has been extended a few times and is currently set to expire on January 1, 2022. This means that December 2021 is currently the last benefit month for which these exemptions apply.

Of course, it is possible that the provincial government may decide to extend this date again.

See: *Employment and Assistance Regulation*, subsections 2.1(1) and (5)

Employment and Assistance for Persons with Disabilities Regulation, subsections 2.01(1) and (5)

Permanent changes

5. End of discretion to extend, waive, or suspend time limits ended (EAAT and Reconsideration Branch)

During the provincial State of Emergency related to the pandemic, the Ministry's Reconsideration Branch and the Employment and Assistance Appeal Tribunal ("EAAT") were given the discretion to waive, suspend or extend time limits for reasons related to Covid-19.

The legislation that created that discretion was the *Covid-19 Related Measures Act.* That discretion ended on or about September 28, 2021 (90 days after the provincial State of Emergency ended on June 30, 2021).

6. Increased earnings exemption:

Earnings exemptions increased as follows on January 1, 2021 (note: people receiving hardship assistance do not have any earnings exemption):

PWD:

- Single person or single parent with the PWD designation:
  - annualized earnings exemption (AEE) **$15, 000** (up from $12, 000).

- Couple (with or without children) where only one adult has the PWD designation:
  - annualized earnings exemption **$18 000** (up from $14, 400).

- Couple (with or without children) where both adults have the PWD designation:
  - annualized earnings exemption **$30 000** (up from $24, 000).

PPMB:

- All family units with a person with the PPMB designation:
  - $**900/month** (up from $700/month).

Income assistance

- Singles and couples on income assistance**:**
  - **$500/month** (up from $400).

- Family unit with disabled dependent or supported child precluding employment over 30 hours/week:
  - **$900/month** (up from $700).

- All other families with dependent children or supported children:
  - **$750.00/month** (up from $600).

See: *Employment and Assistance* Regulation, subsection 3(6) of Schedule B

*Employment and Assistance for Persons with Disabilities Regulation, s*ection 3 of Schedule B

7. Work Experience Opportunities Grant exemptions

Effective January 1, 2021, any income, goods, or services in kind that someone receives from their participation in this program, is exempt as both income and an asset. This applies to all categories of benefits, (income assistance, hardship assistance, PPMB benefits, and disability assistance).

The Ministry's work experience opportunities are designed to help economic recovery from the pandemic by giving marginalized people opportunities to increase their ability to participate in the labour market. The most recent grants were given in March 2021 to non-profits, social enterprises, charities, and businesses who applied, so that they could provide 12 weeks of work experience placements; at that time. Grants were $5000 per participant. In the last intake in March 2021, anyone on income or disability assistance was eligible to apply for the work experience placements. Further grants may be announced in future, and rules about eligibility may change at that time.

See: *Employment and Assistance Regulation*, subsection 11(1) (fff); subsection 1(a)(lvii) of Schedule B; and subsection 6(eee) of Schedule D

Employment and Assistance for Persons with Disabilities Regulation, subsection 10(1) (fff); subsection 1(a)(lxi) of Schedule B, and subsection 6 (iii) of Schedule D

8. Exemption of settlement monies from *Ross* and *Toth* class actions in Federal Court

Funds received from these two class action settlements were exempted as both income and an asset for all categories of benefits (income assistance, hardship assistance, PPMB, and disability assistance) effective February 1, 2021.

The *Toth* class action was brought on behalf of certain veterans whose veterans' disability pensions had had certain other, veteran-related payments deducted from them by the federal government, up until May 19, 2012. Most payments from the Toth class action were expected to be paid by about December 2020.

The *Ross* class action challenged what is sometimes referred to as "the LGBT purge" by the RCMP, Canadian Armed Forces and Canadian Public Service, based on written policies dating from about 1955 which led to LGBTQ2S employees being identified, investigated, sanctioned, and often discharged.

See: *Employment and Assistance Regulation*, subsections 11(1) (00.1) and 11(1) (00.2); subsections 1(a) (xxxvii.1) and (xxxvii.2) of Schedule B; and subsections 6(k.1) and 6(k.2) of Schedule D

Employment and Assistance for Persons with Disabilities Regulation, subsections 10(1) (oo.1) and (oo.2); subsections 1(a) (xii.1) and 1(a) (xii.2) of Schedule B, and subsections 6(k.1) and (k.2) of Schedule D.

9. ICBC premium rebates exempted

Effective April 19, 2021, full or partial rebates (refunds) of ICBC premiums are exempted as income and as an asset for all categories of benefits (income assistance, hardship assistance, PPMB benefits and disability assistance).

See: *Employment and Assistance Regulation*, subsection 11(1) (ggg); subsection1(a)(lviii) of Schedule B; and sub- section 6(fff) of Schedule D.

Employment and Assistance for Persons with Disabilities Regulation, subsection 10(1) (ggg); subsection 1(a)(lxii) of Schedule B; and subsection 6(jjj) of Schedule D.

10. Increase to all welfare rates, including comforts allowances and the seniors supplement, effective May 1, 2021.

The monthly support rate was increased by $175 for each adult recipient in a family unit (the support rate of dependent children was not increased), for all categories of benefits. This change took effect with benefit cheques issued in late April for the month of May 2021.

Prior to this, a temporary COVID-19 crisis supplement of $300 per month was provided from April to December 2020, and a $150 per month recovery supplement was provided from January to March 2021. With the $175 permanent increase, these temporary Covid-19 supplements ended.

The seniors' supplement was increased by $50 per month, per recipient. The maximum seniors' supplement rate for a single person is now $99.30/month (up from $49.30), and for a senior couple, $220.50/month (up from 120.50).

Comforts allowances for people on income assistance living in special care facilities also increased by $20, up to $115 per month. Comforts allowances for people on disability assistance in special care facilities remains unchanged at $222/month.

> See*: Employment and Assistance Regulation*, Schedule A, subsection 2(1) table; and Schedule D, Table 1, column 3
>
> *Employment and Assistance for Persons with Disabilities Regulation,* Schedule A, subsection 2(1) table; Schedule D, Table 1, column 3

11. The Seniors' supplement was removed from welfare legislation, and is now delivered by Ministry policy only, effective May 1, 2021.

Until May 1, 2021, the Seniors' Supplement was provided under section 64 of the *Employment and Assistance Regulation*. That section was repealed on May 1, 2021.

The Seniors' Supplement continues to be provided under Ministry policy, which no changes to eligibility conditions.

The Senior's Supplement is a provincial top-up to seniors who receive the federal Guaranteed Income Supplement (GIS) payment or receive the Allowance as their spouse is 65 or over and on GIS. Eligibility for the seniors' supplement flows from GIS eligibility, and seniors do not need to apply for the seniors' supplement. The fact that the Senior's

Supplement is no longer provided under the welfare legislation means decisions about the seniors' supplement can't be reconsidered and appealed under the welfare legislation. The impact of this change should be negligible however, as eligibility for the Seniors Supplement is determined by eligibility for GIS and is not independently determined by MSDPR.

> Note: The Seniors' Supplement was previously provided under section 64 of the *Employment and Assistance Regulation,* which was repealed by Appendix 1, section 3 of Order in Council 246, effective May 1, 2021

12. Income assistance and students:

As of July 12, 2021, all recipients of income assistance may be eligible to ask the Ministry for pre-approval to attend full-time studies for which student loans may be available (a "funded program of studies") for up to two years. As before, approval is only available if the person's employment plan has a condition requiring them to attend this program, and they have been on assistance for the last 3 months (though that criteria can be waived in exceptional circumstances). Before the July 12th change, only single parents were eligible to ask the Ministry for pre-approval to be a full-time student in a funded program of studies, and approval was for one year at most.

The type of expenses that can be exempted for full-time students in a funded program of studies has also been expanded. If the student receives funding such as money from a RESP, grants, bursaries, scholarships, a training allowance, or student funding (not including funds from student loans), then an amount for "education-related living costs" can now be exempted from their awards, in additional to amounts for day care costs or education costs. This new exemption for "educated -related living costs" means "*the costs, other than education costs, including the costs of food, shelter, clothing, utilities and other living expenses, that, in the opinion of the minister, are reasonably required for the student to participate in the program of studies."*

See: *Employment and Assistance Regulation,* section 11(1)(iii), section 16, and Schedule B, section 8

13. Tenant compensation: broadening of types of compensation for loss of use of residential premises that are exempted as income and as an asset

Effective September 13, 2021, new sections were added to the EA and EAPD Regulations, which exempt "a single payment or a series of payments" that are paid in relation a person's "loss of the residential use of premises" as income and as an asset.

Prior to this change, "eviction compensation" could be exempted as income as an "other award" under Schedule B, section 7(1) (c) of the EA and EAPD Regulations; this exemption was only up to a family unit's asset exemption level. There were often issues about what "eviction compensation" meant, e.g., sometimes the Ministry would ask to see an order from the RTB, and if money was paid in installments, would often only exempt the first payment.

The new rules for exemption are very broad. The Regulations provide that compensation is exempt as unearned income and as an asset:

- if the person was a "tenant' under the RTA or MHPTA, or was a licensee, occupant, or lessee or "had a similar right or permission to use the premises for residential purposes;"

- if it is paid for a full or partial compensation for loss of the residential use of premises, including for "*eviction, relocation, demolition, temporary displacement during repair, renovation or redevelopment, or as an inducement to cease or suspend residential use."*

- If the money is paid under a contract, policy or enactment, *or* paid voluntarily at the discretion of the person responsible for the residential premises (i.e., landlord, owner, manager or person in a similar position).

- whether it is a one -time payment or series of payments.

The Ministry uses the term "tenant compensation" to refer to this new exemption. There is a new policy on "tenant compensation" in the "income treatment and exemptions" section of the Ministry policy manual. The policy provides that *"tenant compensation for moving costs are not to be considered resources when determining eligibility for the Moving, Transportation, and Living Costs Supplement."*

See: *Employment and Assistance Regulation,* subsection 11(1)(hhh); and subsection 1(a)(lix) of Schedule B, subsection 6(ggg) of Schedule D

Employment and Assistance for Persons with Disabilities Regulation, subsection 10(1)(hhh), subsection 1(a)(lxiii) of Schedule B, and section 6(kkk) of Schedule D.

14. Minor rate adjustment effective October 1, 2021

There were minor increases in the support rate for many (but not all) family unit sizes. The increases vary depending on the type of benefit received and the size of a family unit. In some cases, support rates were rounded up to the nearest 50 cents or dollar; in other cases, there was a slightly larger increase.

For example, there is no change for a single person on income assistance. The support rate for a person on PPMB benefits went up $2.08 per month, to $610.00. The support rate for a single person on disability assistance increased 8 cents per month, to $983.50.

The shelter rate for family units affected by outstanding warrants was also very slightly adjusted upward.

See: *Employment and Assistance Regulation,* Schedule A rate tables

Employment and Assistance for Persons with Disabilities Regulation, Schedule A rate tables.

THE LAW FOUNDATION OF BRITISH COLUMBIA

2021
PROVINCIAL ADVOCATES
TRAINING CONFERENCE

Legal Aid BC

Connecting with MSDPR to help your client

Ann Evans Locker, Nadia Boukhouali,
Ian Harrower, Morten Bisgaard, Tish Lakes,
Alison Ward, Anita LaHue, John Bethell,
Kellie Vachon

Topic: Welfare & Benefits

Ministry of Social Development and Poverty Reduction

Virtual Legal Advocates Conference Session:

"Connecting with SDPR Staff to Help your Client"

Breakout Section

Manager, Community Relations & Service Quality

Ian Harrower

Contact Information:
Email: Ian.Harrower@gov.bc.ca
Phone: 250-649-2624
Mobile Phone: 250-961-5501

- Responsible for North Geographic Area (e.g. Quesnel north)
- Physically located in Prince George
- Subject Matter Expert/Liaison with SDPR Specialized Services that includes:
  - Funeral Assistance
  - Special Care Facilities
  - Case Reviews
  - OAS/GIS
  - Senior Supplement
  - General Supplements

Manager, Community Relations & Service Quality

Kellie Vachon

Contact Information:
Email: Kellie.Vachon@gov.bc.ca
Mobile Phone: 604-999-6476

- Responsible for Interior area
- Physically located in Surrey
- Provides support to incoming issues from external stakeholders, clients, advocates, etc

Manager, Community Relations & Service Quality

Nadia Boukhouali

Contact Information:
Email: Nadia.Boukhouali@gov.bc.ca
Mobile Phone: 250-507-4502

- Responsible for Vancouver Island area
- Physically located in Victoria
- Subject Matter Expert/Liaison with SDPR Specialized Services that includes:
  - Contact Centre
  - Advocate Client Enquiry (ACE)
  - BC Bus Pass
  - Employment Planning
  - Reconsiderations
  - Health Supplements (including Medical Transportation)

Manager, Community Relations & Service Quality

John Bethell

Contact Information:
Email: John.Bethell@gov.bc.ca
Mobile Phone: 604-512-5487

- Responsible for Lower Mainland, Fraser and Vancouver Coastal
- Physically located in Vancouver
- Subject Matter Expert/Liaison with Intake (Income Assistance Applications)

Round Table of Attendees

- **Legal Advocate Co-chair**

- **All Other Attendees:**

Please provide your name, your organization, and community you provide services in.

GEO Issue Support

- The GEO Committee meets every three months
- Dialogue at the meetings include identifying geographic trends, issues, concerns, observations, and complaints
- Client specific issues/concerns are referred directly to the Manager of Community Relations & Service Quality
- Information collected from the GEO committee is shared with the Moving Forward Steering Committee

Review of Issues Supported

- Consents – Information Privacy and Security
- Income Assistance Application Process
- Ministry Rate Changes
- Change in Circumstances
- Health Supplements – Medical Equipment and Supplier

Consents - Information Privacy & Security

- Forms:
  - Consent to Disclosure of Information – HR3189
  - Release of Personal Information – HR0095
  - Consent to Disclosure of Information – Service Authorization – HR3189A
- Other Agency Consent Forms

Income Assistance Application Process

- Options available for applicants to apply:
  - Online through My Self Serve (Self-Directed)
  - By phone through 1-866-866-0800 (Staff Assisted)
  - In person either at an office providing ministry services or in the community at a community organization (Staff Assisted)
- Access to resolve Intake challenges/issue is available:
  - Intake Fax Number – 1-855-671-8801
  - Intake Advocate Phone Number – 1-833-478-2678
  - Advocate Client Enquiry (ACE) Line – 1-866-866-0800 or email request: SDSI.AdvocateClientEnquiries@gov.bc.ca

Ministry Rate Changes

- October 1, 2017 Rate Increase: monthly income assistance rates disability assistance rates were increased by $100.
- April 1, 2019 Rate Increase: monthly income assistance rates disability assistance rates were increased by $50 per eligible adult in the household.
- April 1, 2021 Rate Increase: monthly income assistance rates disability assistance rates were increased by $175 per eligible adult in the household.
- October 1, 2021 minor adjustments to simplify rates and address inequities to help ensure fairness.

Change in Circumstances

- Redesigned Monthly Report easier to use, and more space to identify change in circumstances
- Change in Circumstance may include:
  - Change in Income (e.g. employment, CPPD, OAS/GIS, etc.)
  - Change in residency (move to another location within BC)
  - Move to location outside of BC temporarily
  - Change to the family unit
- Underpayments, overpayments and delays in the monthly cheque are often linked to change in circumstances

Health Supplements

- Ministry provides basic medical equipment and supplies to eligible income assistance and disability clients.
- The least expensive, appropriate medical equipment and devices may be provided to assist with a medically essential need.
- Items can include:
  - Orthotics and bracing
  - Nutritional supplements
  - Canes, crutches, walkers
  - Wheelchairs, scooters
  - Lift devices
  - Glucose meters

Questions

Ministry of Social Development and Poverty Reduction

Virtual Legal Advocates Conference Session:
"Connecting with SDPR Staff to Help your Client"

Presented to: 2021 Virtual Provincial Training Conference for Legal Advocates
Date: October 12, 2021

Territorial Acknowledgement from SDPR Attendees

Grateful for living on Snuneymuxw First Nation Territory

Qayqayt First Nation

k̓ik̓əƛ̓əm Kwikwetlem First Nation

Skwxwú7mesh Úxwumixw Squamish Nation

Traditional and unceded territories of the Coast Salish peoples, specifically the Katzie, Kwantlen and Semiahmoo Nations

Tsleil-Waututh Nation

Esquimalt Nation

Songhees

Gratitude to the Lekwungen People, also known today as the Songhees and Esquimalt Nations

Service Commitment and Standards

The ministry is committed to providing quality service, and is continually working to improve the way clients access and receive services.

To view Service Standards and Service commitments, visit:

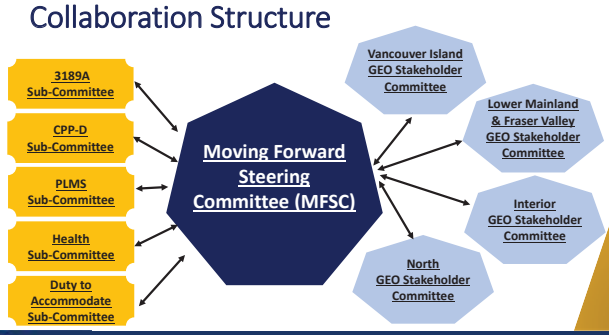
www2.gov.bc.ca/gov/content/governments/organizational-structure/ministries-organizations/ministries/social-development-poverty-reduction/ministry-reports

Overview

1. Collaboration
2. Support
3. Services
4. Provincial Issues Support

Collaboration
with the Ministry of Social Development and Poverty Reduction

Collaboration Structure



Support

Community Relations and Service Quality

Community Relations and Service Quality Support

- Dedicated Managers within the Ministry to support clients and stakeholders
- Support 4 main geographical areas:
  - North
  - Interior
  - Lower Mainland and Fraser Valley
  - Vancouver Island

Community Relations and Service Quality Team

Manager of Community Relations and Service Quality (MCRSQ) Role

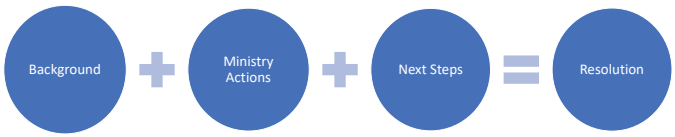
- A dual role managing service quality and community relations within a geographic area, with a variety of stakeholders and advocacy groups, in an environment that is continually changing.
- Lead or participate on cross-government/external committees, liaising with community partners, contractors, ministries and governments, First Nations and stakeholders as a representative for the ministry.
- Work closely with external stakeholders, clients and staff to collaborate on resolving issues/complaints and identifying service delivery improvements.

Complaint Resolution Process

- 1-866-866-0800
- Advocate Client Enquiry
  - 1-855-771-8704 and/or
  - Email: SDSI.AdvocateClientEnquiries@gov.bc.ca
- Supervisor
- Community Relations & Service Quality Managers

Working towards a Resolution

Complaints or issues come from various sources:
Complaint resolution process (from clients directly) from staff, Office of the Ombudsperson, from Advocates, MLAs/Constituency Assistants, general information requests by public, media alerts/media threat, etc.



Ministry Contact List

- Identifies who to contact in a geographic area
- Identifies who to contact regarding specific ministry services
- The list will be sent via email to all participants

Services

Community Integration

Community Integration Services

- Clients and communities have a range of service needs when accessing in-person services
- Introduced Community Integration Services in 2019 (formerly referred to as outreach)
- Introduced Community Integration Specialists throughout the Province, including areas where previous outreach services were limited

Community Integration Specialist Role

- Focused on connecting B.C.'s most vulnerable citizens with financial assistance and community supports
- Works in collaboration with other government and community agencies to create positive outcomes for clients in their communities
- Examples of services include: facilitated intakes, shelter and health requests, intensive case management, referrals and inquiries from community partners and coordination of ministry services

How to access a CIS Worker

Community Agency Drop in

CIS workers drop in to various community agencies on specific days or at the request of a community agency, where clients who attend the agency can access ministry services

Ministry Staff Referral

Ministry staff identify that a client would benefit from Community Integration Services and will refer the client to a Community Integration Specialist

Community Agency Request

Community and/or government agencies can request Community Integration Services support for a specific event/reason through a Community Relations and Service Quality Manager

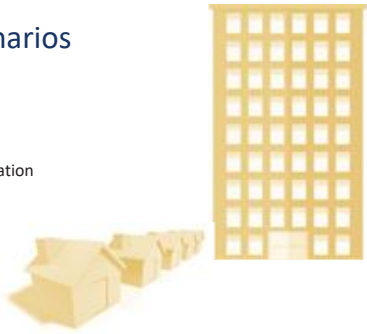
Provincial Issue Support

Top 3 current topics

COVID Related Scenarios

- Access to BC Vaccine Card, Government Issued Photo Identification, and accessing Ministry in-person offices
- Seniors no longer receiving the Guaranteed Income Supplement (GIS)
  - Ministry Assistance
  - Senior Supplement
  - BC Bus Pass
- Options for accessing Ministry services if unable to attend the in-person office

Housing Support Scenarios



- Clients selling their home and:
  - Moving to another community
  - Repurchasing a home
  - Moving to rental/other accommodation
- Rental accommodation delays
- Evictions

Canada Pension Plan Support Scenarios

- Client turning 65 years old, next steps linking to Old Age Security (OAS) & Guaranteed Income Supplement (GIS)
- Canada Pension Plan Disability Benefits application process
- Canada Pension Plan Post-Retirement Disability Benefit

Questions

MINISTRY OF SOCIAL DEVELOPMENT AND POVERTY REDUCTION

COMMUNITY RELATIONS AND SERVICE QUALITY (CRSQ) MANAGER CONTACT LIST

(October 12, 2021)

Work Unit (All Provincial Issues)	Community Relations and Service Quality Manager (CRSQ)	PHONE	GEOGRAPHIC AREA (Includes Ombudsperson Investigations & MySS Apps)
INTAKE (Applications general)	Michele Lauzon Michele.Lauzon@gov.bc.ca	Mobile: 604 760-4471	Lower Mainland Fraser and Van Coastal Lowermainland.MCRSQ@gov.bc.ca
	John Bethell John.Bethell@gov.bc.ca	Mobile: 604 512-5487	Lower Mainland Fraser and Van Coastal Lowermainland.MCRSQ@gov.bc.ca
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Please note: To streamline responsiveness, Lower Mainland, Fraser and Vancouver Coastal geographic issues are managed collectively through one mailbox: **Lower Mainland MCRSQ mailbox** (Lowermainland.MCRSQ@gov.bc.ca) to be used by Lower Mainland stakeholders and ministry staff only, as the preferred method of contact. Stakeholder queries sent to the mailbox will be responded to by the first available MCRSQ as soon as possible.
Please continue to use the complaint resolution process: **Staff → Supervisor → MCRSQ**

THE LAW FOUNDATION OF BRITISH COLUMBIA

2021
PROVINCIAL ADVOCATES TRAINING CONFERENCE

Legal Aid BC

Welfare law for newer advocates

Alison Ward, Sonia Marino, Tish Lakes

Topic: Welfare & Benefits

Welfare Law for Newer Advocates

October 13, 2021

Tish Lakes, legal advocate, OARS, Vernon
Sonia Marino, legal advocate, First United, Vancouver
Alison Ward, lawyer, Community Advocate Support Line, CLAS, Vancouver

Kris

You have a new intake today for Kris. Kris and their 3 year-old daughter rent an apartment in an old house which has recently had serious problems with mice. Two days ago, their apartment was broken into. Several things were stolen, including their favorite boots and winter coat. The lock in the door was jammed during the break in, and a spare house key was also stolen. Their landlord is away and unresponsive to tenancy issues.

Kris receives benefits from the Ministry. They ask you if the Ministry can pay for any of the things they need.

- What issues do you see?

Kris: legislation

- Kris told you that they receive PPMB benefits: what legislation applies?
- PPMB benefits are provided under the *Employment and Assistance (EA) Regulation*
- look at section 59 of the EA Regulation re crisis supplements

https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/263_2002#section59

Kris

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Kris receives benefits from the Ministry. They ask you if the Ministry can pay for any of the things they need.

- What do you think it's important for newer advocates to think about in this example?

Kris: practice points

- Think about how you would initiate this crisis supplement request with the Ministry
  - Call 1 866 line?
  - Use the Ministry's Advocate Client Enquiry (ACE) line?
  - Use MySelf Serve? (Kris says they have an old account they rarely look at)
- What documents or evidence do you think you need for this case
- Next steps: clarify who is responsible to do what
  - What will the client do, and what will you do as the advocate?

Ministry ACE line (Advocate Client Enquiry)

The Ministry's ACE line provides advocates with a single point of contact for multiple clients. Staffed by a designated "ACE team." Its goal is to respond to advocates within 1 business day

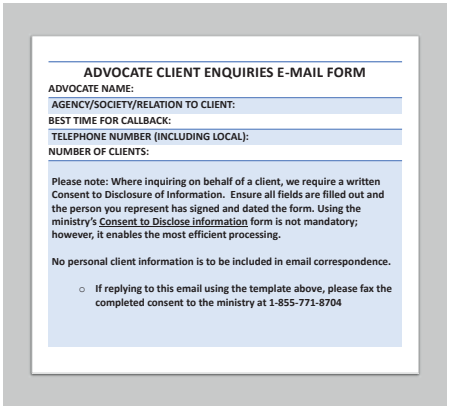
There are two ways to contact ACE:

- Call transfer through the Ministry's 1 866 866-0800 provincial toll-free line; or
- email ACE and request a call back. Email address is SDSI.AdvocateClientEnquiries@gov.bc.ca

- ACE needs a client's signed Release of Information on file to work with an advocate
- Use Ministry fax number **(1-855-771-8704)** submit Consents to Disclose Information (HR3189) and Consents with Service Authorization (HR3189A) to the ACE line
- There is an email template (next slide) to use to email ACE
- Do not send identifying client information to ACE, due to Ministry privacy concerns.

ACE line (2)

- Ministry requires advocates to use the template below to email the ACE line
- To get a copy, email the ACE line: its auto-reply includes the template



ADVOCATE CLIENT ENQUIRIES E-MAIL FORM

ADVOCATE NAME:

AGENCY/SOCIETY/RELATION TO CLIENT:

BEST TIME FOR CALLBACK:

TELEPHONE NUMBER (INCLUDING LOCAL):

NUMBER OF CLIENTS:

Please note: Where inquiring on behalf of a client, we require a written Consent to Disclosure of Information. Ensure all fields are filled out and the person you represent has signed and dated the form. Using the ministry's Consent to Disclose information form is not mandatory; however, it enables the most efficient processing.

No personal client information is to be included in email correspondence.

- **If replying to this email using the template above, please fax the completed consent to the ministry at 1-855-771-8704**

Mei

This morning you had a call from Mei, a 55 year old woman who is divorced with 3 adult children. Mei says her doctor told her to apply for disability because she can't work and has no income. She called the Ministry's 1 866 number to see if she could get income assistance but they told her she can't.

Mei says she's been living off her credit cards and has $12 000 in credit card debt. You find out she also has $110,000 in savings, owns the house she lives in, and has a car worth $25 000. Mei says all those things came from her final divorce settlement. Mei wants to save her money and property to live off when she's a senior. She has no other income. She lives by herself and has no work history in Canada. Her first language is Mandarin and she has difficulty understanding English.

You talked with Mei about her medical conditions and how they affect her, then told her you can probably help her with an application for the PWD designation.

- Do you see any welfare issues?

Mei: legislation

Section 11 of the EA legislation allows someone applying for the PWD designation to get income assistance in the meantime.

Section 11

(2.1) Despite subsection (2), a family unit that includes an applicant or a recipient **who has applied for and has not been denied**, **or who the minister is satisfied has a genuine intention to apply for, designation as a person with disabilities** under section 2 of the *Employment and Assistance for Persons with Disabilities Act* may receive income assistance, subject to all other eligibility criteria, if the family unit has assets with a total value of no more than

(a)in the case of a family unit that includes one applicant or recipient who has applied for and has not been denied, or who the minister is satisfied has a genuine intention to apply for, designation as a person with disabilities, **$100 000**, or

(b)in the case of a family unit that includes 2 applicants or recipients [in the same situation]… $200 000

EA Regulation, section 13. 1 and disability trusts/RDSPs

An IA applicant who intends to apply (or has applied) for the PWD designation is also eligible to transfer any assets over the PWD levels to a disability trust or RDSP: the assets are exempted for 3 months (which can be extended) to give them time to set up a trust or RDSP.

Mei: legislation (2)

In addition to her $110,000 savings, Mei owns a car worth $25 000, and owns the home she lives in. Does welfare count these as assets?

- EA Regulation, section 11 lists exempt assets
- section 11 goes from (a) to (iii); there are 61 specific exemptions
- two of the most common are one vehicle (no limit on equity) and a home where the family unit lives

Mei

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You talked with Mei about her medical conditions and how they affect her, then told her you can probably help her with an application for the PWD designation.

- What is important for newer advocates to think about in this situation?

Mei: issue assessment

- What could Mei ask for from the Ministry?
  - Income assistance while applying for PWD
  - Possibly an immediate needs assessment (if savings are locked in and not accessible).
  - PWD designation
- Are there any deadlines that apply?

Mei: practice points

What are the next steps you think Mei needs to take?

a) Reduce cash assets to the allowable level
b) Apply for income assistance to open the file
   - Think about how you and/or Mei will contact the Ministry to apply
   - Can she apply by phone? Will she need an interpreter?
   - Can she use the online application?
   - Will the Ministry help her in applying online?

Clarify and communicate who is responsible to do what:
- for her IA application
- for her PWD designation application

George

George receives PWD benefits from the Ministry. He just received a letter from the Ministry's Prevention, Loss Management Services (PLMS) branch, explaining that his file is under review. The letter asks for bank records, a tenancy agreement, utility payments and pay stubs for the past year. George did some work last year but didn't declare it to the Ministry. He is very anxious about the situation, and he has not contacted the Ministry yet. His deadline to reply to the Ministry is in 3 days. He wants to know what will happen if he doesn't respond to the Ministry.

- What issues do you see?

George: legal context

What happens if George doesn't give the Ministry the information requested?

- section 10 of the EA Act (information and verification) says the Ministry can direct an applicant or recipient to give the Ministry information and verification related to eligibility for benefits (past or present), within a set time and in a set way. This is a condition of eligibility.
- If the Ministry thinks someone has not complied with section 10, it can reduce their benefits by $25 per month, **or** declare them ineligible for all benefits, until they comply
- If a family unit is homeless or at risk of homelessness, the Ministry can only reduce benefits under section 10 (not declare them ineligible)
- There are some limits on what can be requested under section 10:
  - only information that is relevant to an eligibility issue can be requested
  - requests cannot go back more than six years (limitation period issue)
  - 1998 BC Supreme Court decision Stow v BC (1998 CanLii 5694)
    - "nothing in the Act or Regulations can be interpreted to require an applicant for income assistance to produce documents which, for him or her, are impossible to produce"

George: legal context

What about fraud? Could George could be charged for fraud in relation to welfare benefits?

- Fraud charges are rare but possible, either under the Criminal Code of Canada or the EA/EAPD legislation
- Any information the client gives the Ministry could be used against them in a criminal proceeding, including trial
- To be convicted of fraud, there must be proof of a fraudulent intent. If client misreported because of reasons related to mental health or other disabilities (e.g. addiction, brain injury etc.), or other reasons such as illiteracy, weak English language understanding, etc. document with PLMS asap, to show lack of any criminal intent to defraud.
  - If you or the client are concerned about possible fraud charges, refer the client to see a criminal lawyer for advice.
  - If client is charged, refer immediately to apply for legal aid.

George: welfare legislation and policy

Section 10 (information and verification) of the EA Act and EAPD Act are identical
https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/02040_01#section10

Section 27 (overpayments) of the EA Act, and section 18 of the EAPD Act are identical
https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/02041_01#section18

Compliance Review policy:
https://www2.gov.bc.ca/gov/content/governments/policies-for-government/bcea-policy-and-procedure-manual/compliance-and-debt-management/compliance-review

George: welfare legislation and policy (2)

- There is also legislation about how the Ministry can collect overpayments and "offence overpayments" (overpayment established by a conviction for fraud or misrepresentation)
- These rules are in section 89, EA Regulation, & s 74, EAPD Regulation
  - Overpayments: collected at $10 per month
  - Offence overpayments: collected at $100 per month

George: welfare legislation (3)

The legislation also gives the Ministry the discretion to impose administrative "sanctions" (penalties) for overpayments

- Where an overpayment arises from inaccurate or incomplete reporting, the Ministry "may" (i.e. has a discretion whether or not to) impose a sanction. See EA Act s 15., and EAPD Act s 14.1
- The possible sanction is a $25 reduction in the family unit's benefit rate.
- Duration of sanction varies:
  - 1st time: 3 months; 2nd time: 6 months; 3rd time or more: 12 months

George

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- What do you think it's important for a newer advocate to know about handling this issue?

George: next steps

What are the next steps George needs to take?

a) Request extension of deadline by PLMS, or send in any documents George has ready (which will also extend the deadline)

b) Build relationship with client; they may be hesitant to disclose information.
- reassure client about confidentiality with advocate
- for undeclared earnings, earnings exemptions are applied retroactively
- ongoing PWD benefits are not cut off due to undeclared earnings in past (except if s 10 issue)
- explore reasons why someone did not report, proactively document those (e.g. mental health or cognitive disabilities, language or other barriers)

George: next steps (2)

c) Of the things the Ministry has requested, determine what documents George has access to
- Ministry cannot require him to provide documents that he is unable to obtain
- 1998 BC Supreme Court decision Stow v BC (1998 CanLii 5694)
  "nothing in the Act or Regulations can be interpreted to require an applicant for income assistance to produce documents which, for him or her, are impossible to produce"
- Undeclared earnings: special considerations where the person worked under the table

d) Get medical evidence to confirm mitigating circumstances (disability, addiction, etc.) that underlie reporting errors

e) Submit document and evidence to PLMS.

Questions?

Thank you!

Contact information:

Tish Lakes: tishlakes@okadvocate.ca
Sonia Marino: smarino@firstunited.ca
Alison Ward: award@clasbc.net

PovNet:

sign up for PovNet lists online at https://www.povnet.org/online-community
or email Nicky@povnet.org

THE LAW FOUNDATION OF BRITISH COLUMBIA

2021
PROVINCIAL ADVOCATES
TRAINING CONFERENCE

Legal Aid BC

CPP-D overview

Sohrab Rezaei, Caitlin Wright, Ashley Silcock

Topic: Welfare & Benefits

Recording Link: https://youtu.be/o707A7Khv24

CPP-D: HANDS-ON SESSION

PRESENTED BY:
ASHLEY SILCOCK, *DISABILITY ALLIANCE OF BC*
CAITLIN WRIGHT, *TOGETHER AGAINST POVERTY SOCIETY*
SOHRAB REZAEI, *MS SOCIETY OF CANADA*

PRESENTATION OVERVIEW

- *Introduction*
- *Eligibility and Criteria*
- *Severe and Prolonged*
- *How to Determine MQP*
- *Late Applicant and Provisions*
- *Fact Patterns and Group Work*

WHAT CPP-D ISN'T:

- ❑ No medical coverage
- ❑ No additional supplements (health, nutritional, transportation)
- ❑ Not income-tested
- ❑ Minimal reporting duties, except around working
- ❑ Non-taxable income

THE CPP-D BENEFIT

- ❑ Base disability/fixed amount (changes yearly due to inflation) + 75% of client's CPP contributions over their working lifetime.
- ❑ **2021 Amounts:**
  - ❑ **Fixed: $510.85**
  - ❑ **Maximum: $1,413.66**
  - ❑ **Children's benefit (flat rate): $257.58**
- ❑ Contrast with PWD: total amount for single individual is $1358.50
- ❑ Everyone's CPP-D benefit will be different – no standardized rate tables.

ELIGIBILITY CRITERIA FOR CPP-DISABILITY BENEFITS

- ❑ have a *severe* **and** *prolonged* disability
- ❑ be under the age of 65
- ❑ meet the contributory requirements for CPP
- ❑ due to severe **and** prolonged physical or mental disability, prevented from regularly pursuing substantial gainful occupation

Tip for Advocates:

Canada Pension Plan Adjudication Framework

SEVERE

Severe: disability is severe if it renders a person incapable regularly of pursuing any substantially gainful occupation

Medical Condition:

-nature of condition
-functional limitations
-impact of treatments
-co-morbidities
-direct statements by medical professionals
-personal characteristics

PROLONGED

Prolonged: likely to be "long continued" ***and of*** *"indefinite duration"* ***or*** *result in death.*

- ❑ Only considered after "severe" has been met
- ❑ Assessment of whether the severe disability will continue into the future and if likely or not that person will return to work
- ❑ 2 components:
  - ❑ "likely to result in death" (no expected recovery and grave prognosis resulting in death in near future), *or*
  - ❑ "likely to be long continued" and "of indefinite duration" (no legislated time, but 12 months is "reasonable")

"SUBSTANTIALLY GAINFUL"?

68.1 (1) For the purposes of…the Act, substantially gainful, in respect of an occupation, describes an occupation that provides a salary or wages equal to or greater than the maximum amount a person could receive as a disability pension.

The amount is determined by the formula:

(A x B) + C
Where
A is .25 x the Maximum Pensionable Earnings Average;
B is .75; and
C is the flat rate benefit, calculated as provided in subsection 56(2) of the Act, x 12.

MINIMUM QUALIFYING PERIOD (MQP)

The Minimum Qualifying Period is the *minimum* amount of time a person is required to work and contribute to CPP during their working life-time (known as the contributory period) prior to becoming disabled.

The current MQP rules are as follows:

- ❑ **If your client worked for less than 25 years then they need to have worked and contributed to CPP 4 out of the last 6 years.**
- ❑ **If your client worked for over 25 years, they need to have contributed 3 out of 6 years.**

"WHAT IF MY CLIENT STOPPED WORKING YEARS AGO AND IT'S NOW 'TOO LATE' TO APPLY?"

Various provisions that could potentially mitigate lateness of application or low contributory years.

CHILD REARING PROVISION

- ❑ Meant to assist a parent who stayed home/out of workforce to raise child(ren) (up to age 7)
  - ❑ Drops/cancels low-earning years during period of child-rearing and providing pension credits (extending their MQP)
  - ❑ Protecting value of CPP earnings during period of low earnings

CREDIT SPLIT PROVISION

- ❑ If your client was the lower-earning spouse/common law partner during a relationship, they may be able to apply for a credit split which means they will share credits equally with their former partner.
- ❑ Sharing = mirroring, so both individuals would have the higher-earning person's contribution years and contribution amounts for the years the Credit Split is approved for.
- ❑ Can be contentious!

LIVING OR WORKING OUTSIDE CANADA

- Your client may be able to use pension credits/amounts from another country to help qualify for CPP-D benefits.
- Only really possible if there is a pension-sharing agreement between Canada and that country.

THE LATE APPLICANT PROVISION

- You have enough years of CPP contributions when you first became severely disabled **and…**
- You have been **continuously disabled** from that time up until present.
- Look at the Statement of Contribution to determine the *most recent* period of six years where your client made valid CPP contributions for either 4 or 3 years (do not have to be consecutive years).
- Why most recent?
  - Potentially more/better medical evidence
  - Less likely to have had interruptions in healthcare/not having a doctor
  - Client's memory and ability to submit a stronger application

ANY QUESTIONS?

FACT PATTERNS AND GROUP WORKTIME!

Tribunal File Number:_____ Client Name:_____

Age:_____ Date Stopped Work:_____ Date of disability:_____

Minimum Qualifying Period Requirements through the years:

- 1986-1996
  5 out of the last 10 years

- 1987-1997:
  5 out of the last 10 years
  5 years (if less than 10 years in contributory period)
  2 out of the last 3 years or
  2 years if only 2 years in the contributory period.

- 1998-current day
  4 out of 6 years

- Applications made after March 3, 2008
  with 25 years of contributions 3 out of 6 years.

Factors Affecting Minimum Qualifying Period

1. Child Rearing Drop Out (CRDP)
2. Credit Split
3. International Agreement
4. Proration of Earnings

1.Child Rearing Drop Out

Allows the primary caregiver for a child under the age of 7 to pull remove up to 6 years from their contributory period if their earnings were below the YBE if they were:

- collecting the family alliance (1966 to December 1992) or
- Eligible individual for the child tax benefit (January 1993 to present)

DOB:_____ DOB:_____
DOB:_____ DOB:_____
DOB:_____ DOB:_____

2. Credit Split

Divorce/Annulment on or after January 1, 1987
Date they began to reside together:_____
Date of divorce or separation _____

Separated on or after January 1, 1987 but no divorce/annulment
You must have:

- Lived together for at least 12 months and
- Have been living apart for at least 12 months

No deadline to apply unless the former spouse dies. At that point there is 36 months to submit a credit split application.

Common Law Union dissolves and separation occurs on or after January 1, 1987
You must have:

- Lived together for at least 12 months
- Have been living apart for at least 12 months (if previous partner is still alive)

Documents and application must be submitted within 48 months since the date they began to reside apart. Unless, the previous partner is alive and agrees to waive the 48 month requirement and consent to the split.

Divorce/Annulment January 1978 to 1986
The only way for a person who hasn't already been awarded these credits would be if their former spouse is alive and agrees to waive the 36 month requirement and consent to a credit split.

3.International Agreement

The list of countries and their respective treaties can be found at:
https://www.treaty-accord.gc.ca/result-resultat.aspx?lang=eng&type=1&subject=b9c50d1b-c737-eb11-96a3-005056834bd1&page=1&maxRecords=50&t=637671312627626581

4.Proration of earnings

Note: If proration is required for a client to meet MQP, the client **must** be deemed disabled in the year that was prorated. For example a client whose MQP with proration is June 2019 must be found disabled between January and June of 2019.

This can apply in cases where a client has had *some* earnings for the earlier parts of the year but because they had to stop working due to disability they were unable to met the Years Basic Exemption for that.

To assess if a client may be eligible you must convert the YBE to a Monthly Basic exemption:

Step 1
YBE ÷12 = Monthly Basic Exemption

Step 2
Clients Earnings for Year to be Prorated ÷ Monthly Basic Exemption from Step 1 = Number of Months of Proration (round down)

Year	YMPE	YBE Disabiltiy	CRDO met	Client met YBE
1970	5, 300	600		
1971	5, 400	600		
1972	5, 500	600		
1973	5, 600	600		
1974	6, 600	600		
1975	7, 400	700		
1976	8, 300	800		
1977	9, 300	900		
1978	10, 400	1, 000		
1979	11, 700	1, 100		
1980	13, 100	1, 300		
1981	14, 700	1, 400		
1982	16, 500	1, 600		
1983	18, 500	1, 800		
1984	20, 800	2, 000		
1985	23, 400	2, 300		
1986	25, 800	2, 500		
1987	25, 900	2, 500		
1988	26, 500	2, 600		
1989	27, 700	2, 700		
1990	28, 900	2, 800		
1991	30, 500	3, 000		
1992	32, 300	3, 200		
1993	33, 400	3, 300		
1994	33, 400	3, 300		
1995	34, 900	3, 400		
1996	35, 400	3, 500		
1997	35, 800	3, 500		
1998	36, 900	3, 600		
1999	37, 400	3, 700		
2000	37, 600	3, 700		
2001	38, 300	3, 800		
2002	39, 100	3, 900		
2003	39, 900	3, 900		

Year	YMPE	YBE Disabiltiy	CRDO met	Client met YBE
2004	40, 500	4, 000		
2005	41, 100	4, 100		
2006	42, 100	4, 200		
2007	43, 700	4, 300		
2008	44, 900	4, 400		
2009	46, 300	4, 600		
2010	47, 200	4, 700		
2011	48, 300	4, 800		
2012	50, 100	5, 000		
2013	51, 100	5, 100		
2014	52, 500	5, 200		
2015	53, 600	5, 300		
2016	54, 900	5, 400		
2017	55, 300	5, 500		
2018	55, 900	5, 500		
2019	57, 400	5, 700		
2020	58, 700	5, 800		
2021	61, 600	6, 100		

Name_____ SIN:_____

1. In your expert medical opinion does this patient have the capacity to return to work, retrain, o do any different types of work?

   ☐ Yes
   ☐ No

2. On a balance of probabilities and based on the medical information you have access is your patient likely to regain the capacity to work in the future?

   ☐ Yes
   ☐ No

3. When did your patient's condition(s) become so severe they lost the capacity to work?

_____
_____

4. Has your patient complied with all medical treatments, suggestions and medications (to the best of their abilities?

   ☐ Yes
   ☐ No

5. Please indicate the areas where your patient experiences either symptoms or restrictions:

   ☐ Physical (please complete pages)
   ☐ Cognitive/emotional (please complete pages
   ☐ Communication (please complete
   ☐ Seeing/Hearing (please complete
   ☐ Functional/life skills (please complete pages

Name_____ SIN:_____

The following areas are impacted by this patient's condition(s)

Sitting	☐ Agree	☐ Disagree
This patient is completely unable to sit.		
This patient can sit for a limited amount of time (please describe) _____ _____		
This patient cannot predict from hour to hour or day to day how long they will be able to sit for.		
This patient is unable to or has difficulties with transferring from sitting to standing.		
This patient has sitting related safety concerns.		

Comments:_____

_____

Standing	☐ Agree	☐ Disagree
This patient is completely unable to stand		
This patient can sit for a limited amount of time (please describe) _____ _____		
This patient is not able to predict from hour to hour or day to day how long they will be able to stand for .		
This patient has standing related safety concerns		

Comments:_____

_____

Name_____ SIN:_____

Walking	☐ Agree	☐ Disagree
This patient is completely unable to walk		
This patient can walk for a limited amount of time/distance(please describe) _____ _____		
This patient is not able to predict from hour to hour or day to day how long or how far they will be able to walk. .		
This patient has walking related safety concerns.		

Comments:_____

_____

Lifting/carrying	☐ Agree	☐ Disagree
This patient is completely unable to lift or carry		
This patient can lift a limited amount of weight/time (please describe) ___ _____		
This patient is not able to predict from hour to hour or day to day how long or how much they will be able to lift .		
This patient cannot perform repetitive lifting/carrying		
This patient has lifting related safety concerns		

Comments: _____

_____

Name_____ SIN:_____

Reaching	☐ Agree	☐ Disagree
This patient is completely unable to reach in one or more direction		
This patient has limitations reaching in one or more direction(s) (please describe) _____		
This patient is not able to predict from hour to hour or day to day how long or how much they will be able to reach. .		
This patient cannot perform repetitive reaching		
This patient has reaching related safety concerns		

Comments: _____

_____

Bending	☐ Agree	☐ Disagree
This patient is completely unable to bend		
This patient can limitations reaching in bending (please describe) _____		
This patient is not able to predict from hour to hour or day to day how long or how much they will be able to bend. .		
This patient cannot perform repetitive bending		
This patient has reaching related safety bending.		

Comments: _____

_____

Name_____ SIN:_____

Balance	☐ Agree	☐ Disagree
This patient has balance related safety concerns.		
This patient is unable to predict when they will be able to balance safely. .		

Comments: _____

_____

Bowel function	☐ Agree	☐ Disagree
This patient has fecal incontinence		
This patient is not able to predict from hour to hour or day to day how long or often they must be in or near the bathroom to manage their bowel function. .		

Comments: _____

_____

Bladder function	☐ Agree	☐ Disagree
This patient has urinary incontinence		
This patient is not able to predict from hour to hour or day to day how long or often they must be in or near the bathroom to manage their bladder function. .		

Comments: _____

_____

Name_____ SIN:_____

Cognitive/Emotional

In this section please indicate the areas your patient experiences symptoms along with the frequency and predictability of those symptoms.

- Agitation, frustration, and/or anger

  ☐ Not affected
  ☐ Continuously affected
  ☐ Periodically affected (predictable)
  ☐ Periodically affected (unpredictable)

- Poor attention/concentration

  ☐ Not affected
  ☐ Continuously affected
  ☐ Periodically affected (predictable)
  ☐ Periodically affected (unpredictable)

- Blurred sense of identity

  ☐ Not affected
  ☐ Continuously affected
  ☐ Periodically affected (predictable)
  ☐ Periodically affected (unpredictable)

- Depersonalization/derealisation

  ☐ Not affected
  ☐ Continuously affected
  ☐ Periodically affected (predictable)
  ☐ Periodically affected (unpredictable)

- Poor attention/concentration

  ☐ Not affected
  ☐ Continuously affected
  ☐ Periodically affected (predictable)
  ☐ Periodically affected (unpredictable)

- Disassociation

  ☐ Not affected
  ☐ Continuously affected
  ☐ Periodically affected (predictable)
  ☐ Periodically affected (unpredictable)

- Emotional regulation

  ☐ Not affected
  ☐ Continuously affected
  ☐ Periodically affected (predictable)
  ☐ Periodically affected (unpredictable)

- Executive functioning

  - Judgement

    ☐ Not affected
    ☐ Continuously affected
    ☐ Periodically affected (predictable)
    ☐ Periodically affected (unpredictable)

  - Organizing

    ☐ Not affected
    ☐ Continuously affected
    ☐ Periodically affected (predictable)
    ☐ Periodically affected (unpredictable)

  - Planning

    ☐ Not affected
    ☐ Continuously affected
    ☐ Periodically affected (predictable)
    ☐ Periodically affected (unpredictable)

Name_____ SIN:_____

- Problem solving

☐ Not affected
☐ Continuously affected
☐ Periodically affected (predictable)
☐ Periodically affected (unpredictable)

- Reasoning

☐ Not affected
☐ Continuously affected
☐ Periodically affected (predictable)
☐ Periodically affected (unpredictable)

- Sequencing

☐ Not affected
☐ Continuously affected
☐ Periodically affected (predictable)
☐ Periodically affected (unpredictable)

- Self-monitoring

☐ Not affected
☐ Continuously affected
☐ Periodically affected (predictable)
☐ Periodically affected (unpredictable)

- Starting and finishing tasks

☐ Not affected
☐ Continuously affected
☐ Periodically affected (predictable)
☐ Periodically affected (unpredictable)

- Understanding different points of view

☐ Not affected
☐ Continuously affected
☐ Periodically affected (predictable)
☐ Periodically affected (unpredictable)

- Working memory

☐ Not affected
☐ Continuously affected
☐ Periodically affected (predictable)
☐ Periodically affected (unpredictable)

- Feelings of impending doom

☐ Not affected
☐ Continuously affected
☐ Periodically affected (predictable)
☐ Periodically affected (unpredictable)

- Hypomania

☐ Not affected
☐ Continuously affected
☐ Periodically affected (predictable)
☐ Periodically affected (unpredictable)

- Impulse control

☐ Not affected
☐ Continuously affected
☐ Periodically affected (predictable)
☐ Periodically affected (unpredictable)

- Inability or difficulty adjusting to change

☐ Not affected
☐ Continuously affected
☐ Periodically affected (predictable)
☐ Periodically affected (unpredictable)

- Interest in activities/tasks

☐ Not affected
☐ Continuously affected
☐ Periodically affected (predictable)
☐ Periodically affected (unpredictable)

Name_____ SIN:_____

- Making decisions

  ☐ Not affected
  ☐ Continuously affected
  ☐ Periodically affected (predictable)
  ☐ Periodically affected (unpredictable)

- Mania

  ☐ Not affected
  ☐ Continuously affected
  ☐ Periodically affected (predictable)
  ☐ Periodically affected (unpredictable)

- Memory

  ☐ Not affected
  ☐ Continuously affected
  ☐ Periodically affected (predictable)
  ☐ Periodically affected (unpredictable)

- Motivation

  ☐ Not affected
  ☐ Continuously affected
  ☐ Periodically affected (predictable)
  ☐ Periodically affected (unpredictable)

- Multi-tasking

  ☐ Not affected
  ☐ Continuously affected
  ☐ Periodically affected (predictable)
  ☐ Periodically affected (unpredictable)

- Negative thinking

  ☐ Not affected
  ☐ Continuously affected
  ☐ Periodically affected (predictable)
  ☐ Periodically affected (unpredictable)

- Obsessive thoughts

  ☐ Not affected
  ☐ Continuously affected
  ☐ Periodically affected (predictable)
  ☐ Periodically affected (unpredictable)

- Intrusive thoughts

  ☐ Not affected
  ☐ Continuously affected
  ☐ Periodically affected (predictable)
  ☐ Periodically affected (unpredictable)

- Compulsions

  ☐ Not affected
  ☐ Continuously affected
  ☐ Periodically affected (predictable)
  ☐ Periodically affected (unpredictable)

- Panic attacks

  ☐ Not affected
  ☐ Continuously affected
  ☐ Periodically affected (predictable)
  ☐ Periodically affected (unpredictable)

- Phobias/irrational fears

  ☐ Not affected
  ☐ Continuously affected
  ☐ Periodically affected (predictable)
  ☐ Periodically affected (unpredictable)

- Delusions

  ☐ Not affected
  ☐ Continuously affected
  ☐ Periodically affected (predictable)
  ☐ Periodically affected (unpredictable)

Name_____ SIN:_____

- Hallucinations

  ☐ Not affected
  ☐ Continuously affected
  ☐ Periodically affected (predictable)
  ☐ Periodically affected (unpredictable)

- Repetitive behaviours

  ☐ Not affected
  ☐ Continuously affected
  ☐ Periodically affected (predictable)
  ☐ Periodically affected (unpredictable)

- Rigid thinking

  ☐ Not affected
  ☐ Continuously affected
  ☐ Periodically affected (predictable)
  ☐ Periodically affected (unpredictable)

- Rituals

  ☐ Not affected
  ☐ Continuously affected
  ☐ Periodically affected (predictable)
  ☐ Periodically affected (unpredictable)

- Self-harm

  ☐ Not affected
  ☐ Continuously affected
  ☐ Periodically affected (predictable)
  ☐ Periodically affected (unpredictable)

- Sensory processing/sensory dysregulation

  ☐ Not affected
  ☐ Continuously affected
  ☐ Periodically affected (predictable)
  ☐ Periodically affected (unpredictable)

- Strict routines

  ☐ Not affected
  ☐ Continuously affected
  ☐ Periodically affected (predictable)
  ☐ Periodically affected (unpredictable)

- Suicidal ideation

  ☐ Not affected
  ☐ Continuously affected
  ☐ Periodically affected (predictable)
  ☐ Periodically affected (unpredictable)

- Thoughts of death

  ☐ Not affected
  ☐ Continuously affected
  ☐ Periodically affected (predictable)
  ☐ Periodically affected (unpredictable)

- Unpredictable behaviours

  ☐ Not affected
  ☐ Continuously affected
  ☐ Periodically affected (predictable)
  ☐ Periodically affected (unpredictable)

Comments:_____
_____
_____
_____

Name_____ SIN:_____

Communication

The following areas are impacted by this patient's condition(s)

Writing	☐ Agree	☐ Disagree
This patient is completely unable to write		
This patient can write for a limited amount of time (please describe) _____		
This patient struggles with spelling and grammar		
This patient has difficulty putting their thoughts and ideas into writing in a way other people can understand		

Comments:_____
_____
_____

Reading	☐ Agree	☐ Disagree
This patient is completely unable to read.		
This patient has difficulty reading and understanding what they have read.		
This patient cannot retain what they have read.		

Comments:_____
_____
_____

Name_____ SIN:_____

Conversations	☐ Agree	☐ Disagree
This patient is unable to participate in conversations		
This patient has significant barriers when they attempt to take part in conversations (please describe) _____ _____		

Sensory

The following areas are impacted by this patient's condition(s)

Vision	☐ Agree	☐ Disagree
This patient is blind		
This patient is partially sighted		
This patient has low vision		
This patient is unable to or has difficulties with transferring from sitting to standing.		

Comments:_____
_____
_____

Vision	☐ Agree	☐ Disagree
This patient is Deaf/deaf		
This patient is hard of hearing		

Comments:_____
_____
_____

Name_____ SIN:_____

Functional life skills

In this section please indicate the areas where your patient experiences difficulty with completing tasks and the frequency and predictability of their struggles.

- Answering phone/email/mail

  ☐ Not affected
  ☐ Continuously affected
  ☐ Periodically affected (predictable)
  ☐ Periodically affected (unpredictable)

- Calculations

  ☐ Not affected
  ☐ Continuously affected
  ☐ Periodically affected (predictable)
  ☐ Periodically affected (unpredictable)

- Cleaning

  ☐ Not affected
  ☐ Continuously affected
  ☐ Periodically affected (predictable)
  ☐ Periodically affected (unpredictable)

- Cooking

  ☐ Not affected
  ☐ Continuously affected
  ☐ Periodically affected (predictable)
  ☐ Periodically affected (unpredictable)

- Eating

  ☐ Not affected
  ☐ Continuously affected
  ☐ Periodically affected (predictable)
  ☐ Periodically affected (unpredictable)

- Making plans and attendance

  ☐ Not affected
  ☐ Continuously affected
  ☐ Periodically affected (predictable)
  ☐ Periodically affected (unpredictable)

- Management of finances

  ☐ Not affected
  ☐ Continuously affected
  ☐ Periodically affected (predictable)
  ☐ Periodically affected (unpredictable)

- Personal care

  - Dressing

    ☐ Not affected
    ☐ Continuously affected
    ☐ Periodically affected (predictable)
    ☐ Periodically affected (unpredictable)

  - Bathing

    ☐ Not affected
    ☐ Continuously affected
    ☐ Periodically affected (predictable)
    ☐ Periodically affected (unpredictable)

  - Grooming

    ☐ Not affected
    ☐ Continuously affected
    ☐ Periodically affected (predictable)
    ☐ Periodically affected (unpredictable)

Name_____ SIN:_____

- Shopping

  ☐ Not affected
  ☐ Continuously affected
  ☐ Periodically affected (predictable)
  ☐ Periodically affected (unpredictable)

- Social functioning

  ☐ Not affected
  ☐ Continuously affected
  ☐ Periodically affected (predictable)
  ☐ Periodically affected (unpredictable)

- Yard work

  ☐ Not affected
  ☐ Continuously affected
  ☐ Periodically affected (predictable)
  ☐ Periodically affected (unpredictable)

- Use of public transportation

  ☐ Not affected
  ☐ Continuously affected
  ☐ Periodically affected (predictable)
  ☐ Periodically affected (unpredictable)

- Use of personal transportation

  ☐ Not affected
  ☐ Continuously affected
  ☐ Periodically affected (predictable)
  ☐ Periodically affected (unpredictable)

- Use of screens (ie/ computers)

  ☐ Not affected
  ☐ Continuously affected
  ☐ Periodically affected (predictable)
  ☐ Periodically affected (unpredictable)

Comments:_____

Name_____ SIN:_____

Additional Comments:

Doctor's Name:_____ Signature:_____

Date:_____

Fact Pattern 1 –

	Your contributions				Your pensionable earnings		
Year	Base portion	First additional portion	Second additional portion	Total	Base portion	First additional portion	Second additional portion
2003	1,801.80			1801.80	39,900 **M**		
2004	1,409.81			1,409.81	31,981		
2005	1,861.20			1,861.20	41, 100 **M**		
2006	1,449.86			1,449.86	32,790		
2007	1,989.90			1,989.90	43,700 **M**		
2008	2,049.30			2,049.30	44,900 **M**		
2009	2,118.60			2,118.60	46,300 **M**		
2010	2,306.70			2,306.70	50,100 **M**		
2011	2,356.20			2,356.20	51,100 **M**		
2012	0.00			0.00	0 **B**		
2013	0.00			0.00	0 **B**		
2014	0.00			0.00	0 **B**		
2015	0.00			0.00	0 **B**		
2016	0.00			0.00	0 **B**		
2017	0.00			0.00	0 **B**		
2018	0.00			0.00	0 **B**		
2019	0.00			0.00	0 **B**		
2020	0.00			0.00	0 **B**		

B – Below basic exemptions amount for the year | CS – Credit Split | M – Maximum pensionable earnings for the year | P – Post retirement benefit | S – Self-employed earnings

Background:

- Client decided to stop working in 2012 due to the birth of her first child as her spouse was able to support their family. She was the primary caregiver and received Canada Child Benefit.
- In 2019, your client had plans to return to work but suffered a severe MS attack. Her doctor advised her to stop working.
- Client feels due to her severe physical and cognitive issues she is unable to return to work. She comes to your advocacy office in 2021 asking for assistance to apply for the CPP-D benefit and provides you with the above Statement of Contributions.

Questions:

1. What is the client's Minimum Qualifying Period (MQP)?
2. Does she qualify for child-rearing provisions?
3. Does she qualify for late applicant provisions?
4. Based on her situation, would she qualify for CPP-D? What would you advise her?

Provincial Training Conference – CPP-D Fact Patterns

Fact Pattern 2 –

	Your contributions				Your pensionable earnings		
Year	Base portion	First additional portion	Second additional portion	Total	Base portion	First additional portion	Second additional portion
1990	0.00			0.00	0 **B**		
1991	58.26			58.26	5,532		
1992	75.41			75.41	6,341		
1993	1.36			1.36	3,354		
1994	0.00			0.00	0 **B**		
1995	0.00			0.00	0 **B**		
1996	0.00			0.00	0 **B**		
1997	0.00			0.00	0 **B**		
1998	0.00			0.00	0 **B**		
1999	0.00			0.00	0 **B**		
2000	0.00			0.00	0 **B**		
2001	279.50			279.50	10,000		
2002	517.00 S			517.00	9,000		
2003	544.50 S			544.50	9,000		
2004	841.50 S			841.50	12,000		
2005	841.50 S			841.50	12,000		
2006	321.75			321.75	10,000		
2007	1,039.50			1,039.50	24,500		
2008	1,546.37			1,546.37	34,740		
2009	669.46			669.46	17,024		
2010	688.52			688.52	17,409		
2011	915.17			915.17	21,988		
2012	355.16			355.16	10,675		
2013	586.67			586.67	15,352		
2014	710.52			710.52	17,854		
2015	799.11			799.11	19,643		
2016	405.63			405.63	11,694		
2017	745.18			745.18	18,554		
2018	354.94			354.94	10,670		
2019	658.51	19.95		678.46	16,803	16,800	
2020	136.43	8.27		144.70	6,256	6,256	
2021	0.00			0.00	0 **B**		

B – Below basic exemptions amount for the year | CS – Credit Split | M – Maximum pensionable earnings for the year | P – Post retirement benefit | S – Self-employed earnings

Background

- Client was diagnosed with MS about 15 years ago. He is 50 years old.
- He felt that over the years he was health enough to work until recently when he had a major setback.
- In December 2020, he suffered a major MS relapse and decided it is time to stop working.
- Client has variety of assets valued at about $250,000 but is looking to apply for the CPP-D benefits.
- Client's neurologist retired in early 2020 and since then has not found a new neurologist. He also hasn't had a GP for several years. Therefore, he does not have a medical doctor to support his application.

Questions

1. What is the client's MQP? Does he have sufficient contributions to qualify for CPP-D?
2. As he has no doctor, what would you suggest to the client?
3. What could you suggest to strengthen his application?

Fact Pattern 3

CPP (Canada Pension Plan) Earnings and Contributions

Date of Birth: Jan 1971

Earnings and contributions last updated on 8 Oct 2021

Year	Your contributions	Your pensionable earnings	Notes
1981	$4.14	$0.00	B
1982 to 1984	$0.00	$0.00	
1985	$5.71	$0.00	B
1986	$0.00	$0.00	
1987	$0.00	$0.00	B
1988 to 2001	$0.00	$0.00	
2002	$469.24	$8,492.00	S
2003 to 2010	$0.00	$0.00	
2011	$78.92	$0.00	B
2012	$31.23	$0.00	B
2013	$440.72	$7,623.00	
2014	$1,047.16	$23,577.00	
2015	$485.03	$14,430.00	
2016	$8.17	$0.00	B
2017 to 2020	$0.00	$0.00	
2021	$0	$0	

Legend for Notes:
B – Below basic exemption | M – Maximum | P – Post-Retirement benefit | S – Self-Employed earnings | CS – Credit Split

What is client's MQP? No current years on contribution, so look to see if client would be eligible as a late applicant.

Fact Pattern 4

CPP (Canada Pension Plan) Earnings and Contributions

Date of Birth: Feb 1987
Earnings and contributions last updated on 8 Oct 2021

Year	Your contributions	Your pensionable earnings	Notes
2004 to 2006	$0.00	$0.00	
2007	$129.44	$6,115.00	
2008	$129.44	$6,115.00	
2009	$0.00	$0.00	
2010	$681.73	$17,272.00	
2011	$114.39	$5,811.00	
2012 to 2015	$0.00	$0.00	
2016	$42.96	$4,368.00	
2017	$596.04	$15,541.00	
2018	$296.30	$9,485.00	
2019	$1,840.49	$39,587.00	
2020	$2,445.00	$50,081.00	
2021	$0.00	$0.00	

Legend for Notes:
B – Below basic exemption | M – Maximum | P – Post-Retirement benefit | S – Self-Employed earnings | CS – Credit Split

MQP: The person's MQP is 2017-2021, meaning that the person would need to prove a prolonged and severe disability dating from December 31 2021.

This person was born with a physical disability, making them completely dependent on a motorized wheelchair for all mobility. In 2013, they were also diagnosed with anxiety, depression, and PTSD, and underwent involuntary admission to a psychiatric hospital for 4 months. Since that time, they have been prescribed and taking psychiatric medication, have ongoing psychological assessments, and access counselling services.

Starting in 2016, they were able to return to work, and have had both their highest years of pensionable earnings and contributed the highest amounts in CPP contributions since entering the workforce in 2007. Unfortunately, due to the ongoing pandemic, in late May 2021 they unexpectedly lost their job, and their spouse makes slightly too much money for them to qualify for provincial disability benefits (PWD) as a family unit.

Would they be a good candidate for CPP-D benefits?

What kind of information would their Application and Medical Report need to confirm?

Is there information you can identify that actually works against their chance for success, and what information would you want to verify to try and challenge this?

Fact Pattern 5

CPP (Canada Pension Plan) Earnings and Contributions

Date of Birth: Nov 1978

Earnings and contributions last updated on 8 Oct 2021

Year	Your contributions	Your pensionable earnings	Notes
1989	$0.00	$0.00	
1990	$0.00	$0.00	B
1991	$0.00	$0.00	
1992	$0.35	$0.00	B
1993	$0.00	$0.00	
1994	$113.89	$7,780.00	
1995	$159.35	$9.302.00	
1996 to 1997	$0.00	$0.00	B
1998	$62.09	$5,440.00	
1999 to 2003	$0.00	$0.00	B
2004	$849.27	$20,657.00	
2005	$952.90	$22,013.00	
2006	$463.84	$12,869.00	
2007	$1,006.09	$23,824.00	
2008 to 2011	$0.00	$0.00	B
2012	$113.08	$5,784.00	
2013	$545.16	$14,513.00	
2014	$816.11	$19,986.00	
2015 to 2017	$0.00	$0.00	B
2018	$486.99	$13,338.00	
2019 to 2020	$0.00	$0.00	B
2021	$0.00	$0.00	

Legend for Notes:
B – Below basic exemption | M – Maximum | P – Post-Retirement benefit | S – Self-Employed earnings | CS – Credit Split

This client has struggled with mental health disorders since late adolescence. She took several breaks between jobs to raise her children. She stopped working in 2019 just prior to the 2020 COVID pandemic, and has found it impossible to go back into the workforce since that time. Her mental health has significantly worsened over the last three years, and she has also begun experiencing chronic pain, migraines, and severe/chronic fatigue, further impacting her cognitive functions. Understanding she is a late applicant, she applies for the child rearing provision, to exclude some of her most recent low-no earnings years of 2015, 2016, and 2017

	Pensionable Earnings	Child's age
1998	37, 500	
1999	35, 000	Child born
2000	0	1
2001	0	2
2002	0	3
2003	0	4
2004	35, 000	5
2004	35, 000	6
2005	35, 000	7
2006	0	8
2007	0	9
2008	0	10
2009	0	11
2010	35, 000	12
2011	40, 000	13
2012	42, 000	14
2013	0	Child born / 15
2014	0	1 / 16
2015	0	2 / 17
2016	0	3 / 18
2017	0	4
2018	0	5
2019	0	6
2020	0	7

Wade is married and has 2 children and was the parent who stopped working to take care of them. Calculate Wade's MQP using the Child Rearing Dropout Provision. Please remember that you can only pull out full calendar years so that amounts to a total of 6 years while the child is under the age of 7.

1. Calculate Wade's MQP.
2. If Wade became disabled in 2017 and all the doctors support the application for disability benefits as they believe Wade fits the definition of severe and prolonged what are the chances of success currently?
3. Are there any options or possible ways for Wade to qualify for CPP Disability benefits? Any provisions that could be used or actions that could be taken to allow for an application to have a possible chance of success.

Sam and Scott were married in 1986 and began living together. In 2004 they separated and began divorce proceedings. There was no mention of not pursuing CPP credits in the divorce agreement.

Year	Scotts Pensionable Earnings	Sam Pensionable Earnings
1986	0	25,899 M
1987	0	25, 900 M
1988	0	26, 500 M
1989	27, 700 M	27, 700 M
1990	27, 700	28, 900 M
1991	27, 700	30, 500 M
1992	0	32, 000 M
1993	0	33, 400 M
1994	0	34, 400 M
1995	0	34, 900 M
1996	35, 500 M	35, 500 M
1997	35, 800 M	35, 800 M
1998	36, 900 M	36, 900 M
1999	37, 400 M	37, 400 M
2000	37, 600 M	37, 600 M
2001	38, 300 M	38, 300 M
2002	39, 100 M	39, 100 M
2003	39, 900 M	39, 900 M
2004	40, 500 M	0

If your client was the lower income earner the credit split will be in their best interests. Out of Same or Scott who benefits from the credit split?

If Sam stopped working in 2004 due to what is now known to be disability but had no medical evidence from before 2006 would it be in Sam’s best interests to apply for the credit split why or why not?

THE LAW FOUNDATION OF BRITISH COLUMBIA

2021
PROVINCIAL ADVOCATES
TRAINING CONFERENCE

Legal Aid BC

Welfare cases for senior advocates

Arnie Nagy, Don McConnell, Madyson Powell, Andrew Robb, Alison Ward

Topic: Welfare & Benefits

Recording Link: https://youtu.be/TcGcYSOiSGE

CPP-D case

https://decisia.lexum.com/bceaat/sdpr/en/item/513549/index.do

Andrew Robb, lawyer
October 21, 2021

Legal Issue

- Can the Ministry reimburse a person receiving DA for an overpayment of CPP-Disability benefits, which the person received through no fault of their own, after the Ministry directed them to apply for CPP-D?

Summary of Facts

- The appellant participated in the Ministry's self-employment program for many years, earning income through her small business.
- In 2019, the Ministry told her she had to apply for CPP-D. Her CPP-D application was approved in 2020. Her CPP-D payments were deducted from her DA payments, as per Ministry policy.
- Shortly after she started to receive CPP-D, the federal government decided her self-employment income made her ineligible for further CPP-D payments. Her CPP-D payments were stopped, and she was told she should not have received the last two payments she received. The total CPP-D overpayment was about $2000.
- She asked the Ministry to reimburse her for the CPP-D overpayment, and the Ministry said no.

Steps Taken: Reconsideration

- The request for reconsideration included documents showing when and why the federal government assessed the overpayment. We argued that these documents showed the overpayment arose through no fault of the client.
- The request also cited a law called the Financial Administration Act (FAA). We argued the FAA gave the Ministry authority to reimburse the client for the CPP-D overpayment.
- The Reconsideration Decision did not address the FAA, and said there is no authority for the Minister to reimburse CPP-D overpayments, in any circumstances.

Steps Taken: EAAT

EAAT rescinded Ministry decision, saying:

- "Section 6(3) of the FAA says that the Ministry is responsible for the administration of its financial affairs, under the general direction of the Ministry of Finance and Treasury Board. Therefore, regarding allowances and supplements, the Ministry is expected to establish systems and rules regarding the collection of contributions from third parties, and such matters as the accounting for and payment of DA, including the establishment and application of processes to ensure that earned and unearned incomes are properly recorded and accounted for in establishing the amount that a client receives in any given month. When errors are made, they should be corrected."

- "The Panel notes that the situation in which the Appellant finds herself is exceedingly unfortunate and that the Ministry's practice in these circumstances is procedurally unfair."

More from the EAAT decision

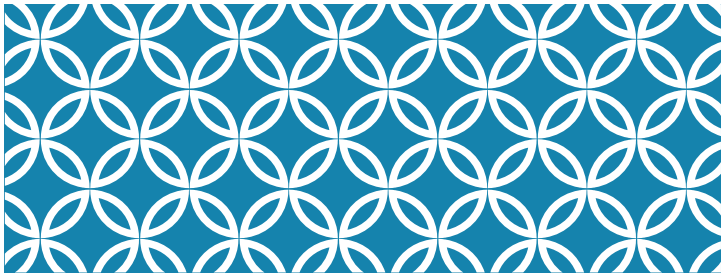
- "The Panel finds that all the evidence shows that the Appellant did not ultimately receive unearned income in the form of the CPPDB in the months of October and November 2020. Furthermore, the Panel notes that there are clear legislative requirements to apply the legislation fairly, and to remedy the situation when errors are made; in this case, to retroactively increase the Appellant's DA for the months of December 2020 and January 2021 to ensure she receives the DA to which she was entitled, and so that she is made whole and has the funds necessary to settle her account with Service Canada."

What was challenging about this case

- I am not aware of any previous cases where the EAAT told the Ministry to reimburse a person for amounts that were previously deducted from their DA payments.
- There is no authority in the normal rules (EAPWDA, EAPWDR) for the Ministry to reimburse a person in these circumstances.
- The client was emotional, and took the Ministry's decision very personally.

Lessons learned

- When a person has to pay back an overpayment from a government benefit program (such as CPP-D), and the overpaid amount has already been deducted from their IA/DA, it is possible for the Ministry to reimburse the person.
- In some cases where a person is facing an unfair situation, through no fault of their own, the EAAT will look for a way to help them, even if it means looking past the normal rules.



WELFARE LAW FOR SENIOR ADVOCATES

Don McConnell – SEIA - Nanaimo

SUMMARY OF LEGAL ISSUE

The Ministry of Social Development and Poverty Reduction (MSDPR) denied an individual ongoing Persons with Disabilities support and shelter benefits on the basis that the individual did not comply with requests for information – non-compliance

The MSDPR applied the Employment and Assistance Act for Persons with Disabilities - Act Sections 1, 1.1, 3, and 10 in this case

SUMMARY OF FACTS

- Individual (married) is an immigrant to Canada with ESL
- Came from a country where bias against religion and gender is common
- Left country of origin due to the belief that the individual would suffer at the hands of government officials
- Individual lost employment due to COVID - 2020
- Health became increasingly (mental and physical) compromised so PWD was applied for and individual was subsequently accepted for PWD designation as a single person as spouse was in another country looking after a sick relative
- Spouse of the individual came home after the travel ban for COVID was lifted and could not find employment
- Individual requested that the MSDPR add spouse to the ministry file – file review was initiated

SUMMARY OF FACTS CONT:

- Individual brought in several documents as requested by the MSDPR between February 2021 and May 2021
- The MSDPR requested more documents or information that changed from month to month – individual complied
- May 2021, in a MSDPR office face to face meeting to sign for the reapplication the couple noted that there were inaccuracies in the reapplication form and questioned the MSDPR staff person
- No changes were made to the document in the appointment but the couple believed that the reapplication would be corrected and signed
- Individual (family unit) was denied benefits effective June 2021
- Individual requested a reconsideration of the denial of benefits

STEPS TAKEN AND OUTCOMES

- Contacted a MSDPR worker to see if the client could reapply for income assistance as the Request for Reconsideration timeline has been exhausted – request refused - advised to request an extension – during COVID, timelines are more fluid
- Filed for an extension of the Request for Reconsideration as the client came to me after the deadline posted in the Request for Reconsideration document
- Wrote up an appeal argument and submitted to the Ministry within the extension time limit
- The clients Request for Reconsideration was accepted by the Ministry
- The Reconsideration, Litigation, and Administrative Fairness Branch made a decision within a week of turning it in – request approved
- The Ministry would now use an interpreter for communication, recognizing that there were barriers to the flow of information between the client and the Ministry

WHAT WAS CHALLENGING IN THIS CASE

- The client's accent was very challenging over the phone and in person
- English as a second language was also challenging as many times questions had to be restated and or changed in allow for clarity and understanding
- Documentation was problematic for the client as well – comprehension of the Ministry documents was limited
- It was necessary to have the client in office more than usual (rather than contact over the phone) as this was the only way for the pair of us to make each other understood
- Mental health impairment of the client (PTSD and anxiety) impacted how the client responded - the fear of perceived authority and process outcome made answering questions very difficult

A TAKE AWAY OR THINGS I HAVE LEARNED OVER THE YEARS

Read all documentation – people write these R4Rs and mistakes/oversights/bias's occur

Listen to your co-worker (if you are lucky enough to have one) mine advised me against taking the case as it was "obvious" the client was misrepresenting the case but this led me to question the contents of the case further

Talk to your lawyer advisor – I did in this case and successfully argued (to the advisor) that the case could win on the basis of accommodation and that the client was compliant

Listen to your gut – if things are not adding up, not making sense, etc look at the document again, talk to your client again, find info about other cultures, dive into the Ministry legislation and look in other directions to find out why the communication broke down

A unique IA application

When the IA applicant is the Executor of an estate

Arnie Nagy, advocate
Prince Rupert Unemployed Action Centre
October 21, 2021

Overview: facts

1. Client lived with his mother while she was sick and looked after her until she passed away. The mother owned the home where they lived.
2. Client had no source of income after his mother passed away and needed to apply for income assistance.
3. The mother's Will named the client as sole executor. As executor, he was responsible for his mother's estate, including the house he was living in as well as another rental home his mother owned.
4. Client's brother was on income assistance following the death of the mother and lived with the client in the mum's former home, now owned by her estate.
5. Client and his brother paid rent to the estate of $375 per month each. The tenants in the other rental house owned by the estate also paid rent

Overview continued (2)

6. Client would deposit the rent monies from both properties into his personal bank account so he could access it if needed for emergency repairs and other bills for both properties (e.g. property taxes, utilities, contractors to do repairs). If money was put into the mothers account, it would be frozen and he could not access any funds to maintain the properties.
7. As the executor, client would have to sign the Ministry's Intent to Rent for the shelter allowance he was applying for.
8. When he applied for income assistance, monies in his bank account totaled just over $9,000 which put him over the asset exemption level of $5000 at the time. (today it is $10,000).
9. Client took $5,000 dollars and deposited it into his brother's account, so he was under the maximum amount he was allowed.

Overview continued (3)

10. When client provided bank statements to the Ministry, and they saw the $5000 transfer to his brother, he was denied income assistance based on the fact this money was from his personal bank account; the Ministry thought he was disposing of assets, when in fact the money was an estate asset.
11. Meanwhile the rent from both houses was still being deposited into the client's bank account creating the same issue of having money over the $5000 limit allowed at the time.
12. The mother's Will had not been probated as issues arose with a surviving sibling (sister) over the Will.
13. Until this situation of receiving estate income could be resolved my client could not get income assistance.

Finding a solution was difficult

This proved to be a very challenging experience as no one in the Ministry or the policy department had seen this issue before. Working with the Community Relations and Service Quality manager over several months, we proposed different options to try and solve this. There was a lot of confusion in the policy department and getting to a resolution was difficult. We offered several solutions that the Ministry rejected, such as:

- We could open a separate account in client's name for the rent money to be deposited, it would be for estate purposes only. This was denied as the assets would still show as being in the client's name.
- We could set up an account in client's name where two people would have to sign the cheque to pay estate bills. This was also declined as there was no guarantee it would be used for estate purposes.
- We offered to provide bank statements to show the account was being used only for estate purposes, but this was also rejected.

Finally, a solution

After many months of trying, we finally found a solution, I had approached a friend who manages the local credit union and we came to this proposal, that the Ministry eventually accepted.

1. An account would be set up in the client's name but with the account designation of "Estate purposes only."
2. The credit union would monitor that account for any unusual activity that did not fit with "for-estate purposes only" expenses.
3. The client would swear a Declaration with a local Notary Public listing the bank account information and clearly stating that this account was only for the mother's estate and was being administered by her executor (my client) to meet estate expenses.
4. A copy of the sworn Declaration would be filed with the bank and kept on the account's file until the estate had been probated.

Sworn Declaration

CANADA) IN THE MATTER OF an application to the Government of British Columbia by for income assis

PROVINCE OF BRITISH COLUMBIA

TO WIT:

, Prince Rupert, in the Province of British Columbia, DO SOLEMNLY DECLARE THAT:

I am the applicant in this matter and, as such, have personal knowledge of the facts hereinafter stated, which facts I verily believe to be true and correct:

1. That I am the Executor of the Estate of _____, deceased (the "Estate") and as such manage the Estate assets on behalf of the Estate;
2. That on behalf of the Estate I have opened account (the "Account") at the Northern Savings Credit Union Prince Rupert branch for the express purpose of receiving Estate revenue, providing Estate maintenance and paying Estate expenses;
3. That I have no personal interest in the Account nor do I personally receive any financial benefit from the Account;
4. That I make this declaration in support of my application for income assistance;

AND I make this solemn Declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

DECLARED BEFORE ME at Prince Rupert in D/ the Province of British Columbia, this

Crisis Supplement reconsideration request

Madyson Powell, legal advocate
Together Against Poverty Society
October 21, 2021

Summary of Legal Issue

- SR: crisis supplement shelter
  -> denied
- Eligibility criteria:
  - unexpected expense
  - imminent risk to physical health or removal of a child
  - no other resources
- Reasons for denial:
  - Ongoing situation
  - "A crisis supplement may be provided only for the calendar month in which the application or request for the supplement is made."

Summary of Facts

1. IA client – approved for PWD in December 2020
2. June 2020- Client's roommate left unexpectedly
3. June 2020– August, moratorium on evictions
4. End of August 2020– moratorium lifted
5. September 2020– facing eviction, made CS request – DENIED

Reconsideration -> successful!

- Reiterated and expanded upon arguments about meeting legislated criteria
  - Roommate left unexpectedly, moratorium was lifted unexpectedly
  - No other resources
  - Homelessness to cause imminent risk to health (exacerbated by pandemic)
- Refuted denial reasons:
  - that this situation was ongoing
  - Ministry's application of S. 57 (2) of regs, ""A crisis supplement may be provided only for the calendar month in which the application or request for the supplement is made."
- CLT approved for CS up to PWD assistance rate

What was challenging/ Lessons learned

- Timing requesting a crisis supplement
  - finding the sweet spot for the crisis being "imminent" but still "unexpected"
- Pushing back on adjudicator's interpretation of legislation
- Legislation trumps policy when inconsistency exists

Administrative Underpayment reconsideration request

Madyson Powell, legal advocate
Together Against Poverty Society
October 21, 2021

Summary of Legal Issue

- SR: underpayment review request
  -> denied
- Annual Earnings Exemption (AEE)
- Temporary exemption of EI benefits for historical PWD clients
- Reporting obligations
- Duty to Accommodate/ providing written decisions

Summary of Facts

1. July 2020 - PWD client (prior to April 2020) reached AEE
2. August 2020 – client was laid off from work
3. Client was income in excess until November 2020 - MSO
4. Client continued to report monthly/ ask for assistance
5. November 2020 - Client tried to determine whether they were eligible for benefits again as they had made no further earnings
6. Inaccurate/ insufficient info from the Ministry
7. Client went without PWD until March 2021
8. March 2021, we submitted SR for a underpayment review
9. Denied!

Reason for denial

- EAPWD Regulation 23 (5)

Effective date of eligibility

23 (5) Subject to subsection (6), a family unit is not eligible for any assistance in respect of a service provided or a cost incurred before the calendar month in which the assistance is requested.

???

Reconsideration -> successful!

- Restated and expanded upon proving clients eligibility for benefits from November 2020 – March 2021
- Refuted Ministry's denial reason that claimed the client "requested" to go without assistance
  - Wasn't a request/ more of a reluctant acceptance
  - The acceptance was based on inaccurate info from the Ministry
  - The ministry did not issue a decision back in November 2020 that the client could have considered at the time

What was challenging/ Lessons learned

- Interpretation of legislation (again!)
- Clients/ advocates may be unaware of their ability to submit a SR for underpayment review
  - Underpayment review request letter
  - Not included on MySS options – systemic advocacy opportunity!
- Duty to accommodate
  - Ministry has a *proactive* duty to accommodate their clients. Should be assessing clients/ asking whether they would like decisions in writing to preserve a client's right to recon

Questions?

Contact information

- Don McConnell: don@seia.ca
- Arnie Nagy: advocate2.pruac@citywest.ca
- Madyson Powell: mpowell@tapsbc.ca
- Andrew Robb: andrew@disabilityalliancebc.org
- Alison Ward: award@clasbc.net

Thank you!

APPEAL NUMBER
2021-0151

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision (RD) dated July 13, 2021,which found that the Appellant is not eligible for the reimbursement of Canada Pension Plan Disability Benefit (CPPDB) amounts that had been deducted from the Appellant's Disability Assistance (DA) for the months of December 2020* and January 2021*.

** The issue in this appeal concerns the deduction of an amount from the Appellant's allowable total DA entitlement for each of the months of December 2020 and January 2021 because income received in a particular month is reported by the client on the 5th day of the month following the month in which it is received and affects the amount of DA paid by the Ministry in the month after it is reported. Therefore, any income received by a client in October 2020 and November 2020 will affect the amount of DA that the client is entitled to receive in December 2020 and January 2021 respectively.*

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWA), Sections 1, 5, 8 and 9

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 1, 7, 8, 24 and 29, Schedule A Sections 1(1), 2(1) and 4(2), and Schedule B, Sections 1(c) and (d), 4(1) and 6

Interpretation Act, Sections 8, 14(1), and 29

Financial Administration Act (FAA), Sections 6(3) and 16

All relevant legislation is provided in Appendix A.

APPEAL NUMBER
2021-0151

Part E – Summary of Facts

The Appellant is a sole recipient of DA and has been receiving DA benefits since 2002.

The evidence before the Ministry at the time of the Reconsideration Decision (RD) included:

- The Appellant's Request for Reconsideration (RFR), dated May 31, 2021, in which the Appellant stated, in part:
    - When she contacted the Ministry on June 3, 2021, she was told that the Ministry does not have the authority to repay Service Canada for the over-payment of the CPPDB she mistakenly received, which she says is incorrect because Section 16 of the FAA says that money received by the provincial government that is erroneously paid may be refunded, subject to any Treasury Board directives;
    - She initially received the CPPDB in the amounts of $958.37 per month for the months of October and November 2020, which she reported to the Ministry, and the Ministry subsequently deducted an equivalent amount from her DA;
    - Service Canada later determined that the October and November 2020 CPPDBs were not payable to her and that therefore she was required to repay them;
    - The Ministry's decision to deduct an offsetting amount from the DA to which she was otherwise entitled assumed that her CPPDB for October and November 2020 constituted money received from Service Canada, but because she was required to pay the benefits back to Service Canada, they did not have any value. As a result, the Ministry's decision to collect them from her by deducting an equivalent amount from her subsequent DA was an error;
    - She understands that the amount of DA to which she is entitled depends on the amount of income she receives from other sources, including the CPPDB, but because the CPPDB she received for October and November 2020 did not ultimately represent income for her, the Ministry's deduction from her DA in those months resulted in her receiving less than the correct amount; and,
    - It is clear to her that the Ministry does not have authority to repay the CPPDB that was deducted and subsequently clawed-back by Service Canada when an overpayment was assessed, but she would prefer that the Ministry make a refund payment directly to Service Canada instead of refunding her for the erroneous deductions from her DA;
- A letter from the Appellant to the Ministry dated April 20, 2021 (the April 20 Letter), in which the Appellant refers to an enclosed letter she received from Service Canada indicating that Service Canada has determined that an overpayment of the CPPDB had been sent to the Ministry on her behalf. The overpayment amount was identified as $1,916.74 and was considered an overpayment because the Appellant had reached her maximum allowable earnings of $5,000 ("*gross business revenue, rather than personal taxable income* after *business expenses*") for that year. The April 20 Letter also expresses "*the indescribable emotional toll*" this has had on the Appellant, particularly because Service Canada calculates income differently from the way the Ministry does. In the April 20 Letter the Appellant also asks that the Ministry repay the CPPDB amount owing to Service Canada on her behalf and that "*the ministry allow me to deduct from my employment income any income tax calculated on (CPPDB) [as employed PWD's are able to]*.";

- The Service Canada letter, dated April 8, 2021 and referred to above (the April 8 Letter), which also states, in part:

  "*The information in your file shows you started (earning self-employed income) in 2019, and reached the Allowable earnings bench mark of $5,800 in 2020 … A telephone conversation … confirmed your capacity to work on a regular basis. … Based on a successful work trial you are no longer eligible for disability benefits under the Canada Pension Plan as you no longer meet the criteria of the Canada Pension Plan legislation. Please be advised therefore that your disability benefits stopped at the end of September 2020.*";

- A letter from the Ministry to the Appellant dated May 16, 2019 (the May 16 Letter), in which the Ministry indicates that the Appellant might be eligible for the CPPB and asks her to:
  - Complete and return an enclosed Consent to Deduction of Payment form (the Consent Form), as required under EAPWDR Section 8, and that "*signing the … (Consent Form) is intended to prevent duplicate payment in the event you are found eligible for (the CPPDB)*"; and,
  - Obtain a Statement of Contributions from Service Canada and forward a copy to the Ministry.

  The Appellant is also told in the May 16 letter that she "*is not required to apply for (the CCPDB) at this time*.";

- The first three of five pages of a Consent Form completed by the Applicant and signed on June 21, 2019, indicating the date and amount of the initial payment and the amount and frequency of continuing payments of "*social assistance*" received by the Appellant;

- A letter from the Ministry to the Appellant dated July 26, 2019 (the July 26 Letter), in which the Ministry states that the Appellant might be eligible for the CCPDB and asking her to complete and submit to the Ministry an application for CPPDB form, a consent to disclosure of information form, and a medical report;

- A letter from the Ministry to the Appellant dated August 20, 2019 (the August 20 Letter), in which the Ministry provides the appellant with information regarding the next steps in the application for the CPPDB and asking her to provide the Ministry with a copy of Service Canada's decision letter once received;

- A letter from Service Canada to the Ministry dated July 9, 2020 (the July 9 Letter) asking the Ministry to identify the amounts that the Ministry did pay or will pay the Appellant in each month from September 2018 to July 2020. The Ministry has provided the amounts ($1,132.42 per month from September 2018 through March 2019 and $1,183.42 per month from April 2019 through July 2020) and a Ministry agent has signed and dated the completed letter; and,

- A letter from Service Canada to the Ministry dated July 16, 2020 (the July 16 Letter) indicating that Service Canada has approved the CCPDB for the Appellant and that "*an amount of $21,671.99 will be reimbursed (to the Ministry) for the period September 2018 to July 2020*".

APPEAL NUMBER
2021-0151

Additional Written Evidence Provided after the Reconsideration Decision

The Appellant did not provide any additional evidence or the reasons for her appeal in the Notice of Appeal (NOA).

On September 7, 2021, the Appellant's representative (the Representative) provided a submission on behalf of the Appellant (the Representative's Submission) in which the Representative:

- Summarizes the circumstances leading up to the Appeal from evidence included in the documents summarized above and the Ministry's decision as set out in the RD;
- Focusing on the Appellant's argument (as set out in the RFR) that FAA Section 16 applies in her circumstances, states that the Employment and Assistance Tribunal (the Tribunal) *"has previously found the FAA may apply to persons receiving DA*" citing and appending a January 27, 2020 appeal in which the Tribunal identified FAA Section 87 as part of the relevant legislation, and concluding that "*This case shows the FAA may apply to a person receiving DA. Since section 87 of the FAA may apply to persons receiving DA, there is no reason why (FAA) section 16 cannot apply.*"

Oral Evidence Presented at the Hearing

The Appellant was represented at the hearing by the Representative.

At the hearing the Representative summarized the evidence presented by the Appellant in the RFR and the Representative's Submission, and corrected a typographical error in the RFR, which the Representative acknowledged had been written with the Representative's assistance. In the RFR, the Appellant gives her reasons and numbers them. Reason #10 states "*It is clear that the Ministry **does not** have authority to repay (CPPDB) that were deducted, but then clawed back by Service Canada when an overpayment was assessed.*" (emphasis added). The Representative said that reason #10 should have read "*It is clear that the Ministry **has** authority to repay (CPPDB) that were deducted, but then clawed back by Service Canada when an overpayment was assessed.*"

The Representative provided some background information on the Appellant's circumstances that were not part of the written evidence provided to the Panel. The Representative said that the Appellant has several physical impairments, including Lyme disease, chronic fatigue syndrome and fibromyalgia, and that she has been using a wheelchair for 3 years. (The Appellant added that she also has massed cell disorder, which she said was "*very debilitating*").

The Representative also stated that the Appellant has been participating in the Ministry's Self-Employment Program (SEP) since 2012 and has been working since then as a registered professional. The Representative said that her annual income from self employment varies significantly from year-to-year as "*she can only do the job when she feels physically capable*", and that her gross income in any given year, which has been as high as $58,000, is substantially more than her net income due to the significant operating expenses she experiences. The Representative also said that her self-employed after expense earnings are exempt from earned income in determining the amount of DA she receives from the Ministry.

The Representative pointed out that the federal government's eligibility rules for the CPPDB are much more restrictive when it comes to employment income: a recipient becomes ineligible for the CPPDB when their cumulative gross business income exceeds $5,800, and therefore the Appellant had been found ineligible for the CPPDB in December 2020, effective at the end of September 2020. As a result, the CPPDB the Appellant had already received in October and November 2020 had to be repaid.

The Appellant added that, after learning that she was no longer eligible for the CPPDB, she tried several times to reach Service Canada for more information and was finally able to speak with a medical adjudicator (the Medical Adjudicator) in December 2020. The Medical Adjudicator confirmed that the $5,800 earnings limit was interpreted by the federal government to be based on gross business income, not net income after related expenses. The Appellant said that she was alarmed to learn that all the CPPDB she and the Ministry had received (i.e., the $958.37 per month for 4 months from August 2020 through November 2020 that were paid to her and the $21,671.99 the Ministry received in July 2020 for the period from September 2018 through July 2020) might have had to be repaid to Service Canada. However, for reasons that the Appellant did not understand, the Medical Adjudicator did not consider the Appellant's earnings before July 2020 and gave her credit for a three-month trial work period from July 2020 through September 2020, which is why Service Canada determined that she had overpaid for two months (October and November 2020).

The Appellant stated that she contacted the Ministry in December 2020 to try to have the amount of her DA adjusted to reflect the fact that she was no longer eligible for the CPPDB and was told that the Ministry's "*shared data match*" with Service Canada still showed that she was receiving a CPPDB of $958.37 per month, and as a result the equivalent deduction from her DA would continue to apply. The Appellant stated that she was severely stressed by the delay in having the Ministry made aware of the fact that she was no longer receiving the CPPDB. She was really concerned because the longer the error went on without being corrected and reported to the Ministry on the shared data match, the longer she would have her DA reduced by $958.37, a huge amount that she was no longer receiving.

The Appellant emphasized the unfairness of the situation she was in. She was required by the Ministry to apply for the CPPDB, the rules for CPPDB eligibility were very different from the Ministry's rules regarding income, and she was effectively being told to pay the $1,916,74 that Service Canada said she owed twice: first when the deductions were made to her DA in December 2020 and January 2021 and now again as Service Canada has demanded repayment.

At the hearing, the Ministry relied on the RD, and stated that the Ministry has no authority to recognize changes in a client's CPPDB amount for prior periods. The Ministry said that the Appellant's only avenue of recourse would be to approach Service Canada for a reconsideration of its decision.

In response to a question from the Panel regarding the shared data match, the Ministry said that it receives information from the federal government Service Canada monthly which lets the Ministry know whenever a client receives money from Service Canada and how much was paid.

In response to another question from the Panel, the Ministry confirmed that the payment of accrued CPPDB for the period from Sep 2018 through July 2020 totaling $21,671.99 was paid directly to the Ministry, and the monthly payments of $958.37 made by Service Canada between Aug 2020 and Nov 2020 were paid directly to the Appellant.

APPEAL NUMBER
2021-0151

Admissibility of New Evidence

Section 22(4) of the EAA says that a panel may consider evidence that is not part of the record that the panel considers to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal. Once a panel has determined which additional evidence, if any, is admitted under EAA Section 22(4), instead of asking whether the decision under appeal was reasonable at the time it was made, a panel must determine whether the decision under appeal was reasonable based on all admissible evidence.

The Panel considered the new written information contained in the Appellant's Submission regarding the applicability of the FAA to be argument. The Panel has included FAA Section 16, together with other relevant sections of the FAA and relevant sections of the *Interpretation Act* in Appendix A, as they have bearing on the Appellant's argument that FAA Section 16 should apply in this case (see "Panel Decision" section of this decision below for a full discussion).

The Panel considers the new verbal evidence provided by the Representative at the hearing regarding the Appellant's disabilities and reliance on an assistive device (the wheelchair) to be evidence that is not reasonably required for a full and fair disclosure of all matters relating to the decision under appeal as the Appellant has been receiving DA since 2002 and her eligibility for a Persons with Disabilities (PWD) designation is not at issue in this appeal.

The Panel considers the new verbal evidence provided by the Appellant at the hearing summarizing her conversation with the Medical Adjudicator in December 2020 concerning her ineligibility for CPPDB for the months of October and November and the implications of that decision to be reasonably required for a full and fair disclosure of all matters relating to the decision under appeal. Therefore, the Panel admitted this additional information in accordance with Section 22(4) of the EAA. While this evidence is not supported by any corroborating written evidence, the Panel assigns it full weight, as only two months of CPPDB were determined by Service Canada to have been paid in error and no evidence has been introduced to suggest that Service Canada's decision to limit the period of the Appellant's ineligibility for the CPPDB to two months (October and November 2020) was made for any other reason.

The Panel considers the new verbal evidence provided by the Appellant at the hearing summarizing her conversation with the Ministry in December 2020 concerning her ineligibility for CPPDB for the months of October and November and the implication of any future errors in the information contained in the shared data match, beyond November 2020 (i.e., that her DA would continue to be reduced by the amount of CPPDB that Service Canada said it was paying her) to be reasonably required for a full and fair disclosure of all matters relating to the decision under appeal. Therefore, the Panel admitted this additional information in accordance with Section 22(4) of the EAA.

APPEAL NUMBER
2021-0151

Part F – Reasons for Panel Decision

The issue under appeal is whether the Ministry's decision, which found that that the Appellant is not eligible for the reimbursement of CPPDB amounts that had been deducted from the Appellant's DA for the months of December 2020 and January 2021 because she is required to repay those amounts to Service Canada, is reasonably supported by the evidence or is a reasonable application of the applicable enactment in his circumstances.

The Ministry's position is that the EAPWDA and the EAPWDR do not contain provisions that would permit it to recalculate retroactively after a third party (Service Canada in this case) determines that the client has received an overpayment. When the Appellant received the CPPDB benefit in October and November 2020 the Ministry correctly applied the deduction to her DA and there are no legislative requirements to revisit those calculations.

The Appellant's position is that the Ministry's deductions from the DA to which she was entitled made by the Ministry in December 2020 and January 2021 assumed that her CPPDB for October and November 2020 constituted money received from CPP. In fact, since the CPPDB she received In October and November was not actually payable to her and because she is required to pay those amounts back to Service Canada, they did not have any value. As a result, her DA benefits for December 2020 and January 2021 should be increased accordingly.

The Panel's Decision

<u>As to Whether other Government Legislation Generally Applies</u>

Section 14(1) of the *Interpretation Act*, when read in conjunction with the definitions of "*enactment*" and "*government*" provided in Sections 1 and 29 of that Act, says that, unless specifically provided otherwise, all provincial legislation is binding on the provincial government.

As there are no provisions in the EAPWDA that say the *Interpretation* Act and the FAA do not apply, the Panel finds that these two Acts apply to the EAPWDA and EAPWDR and are binding on the Ministry.

<u>As to Whether any of the Provisions of the FFA Appy in this Appeal</u>

Section 16 of the FAA says that money received by the government that is erroneously paid or collected may be refunded from the consolidated revenue fund, subject to any Treasury Board directives.

The Panel notes that the money in question, which is the Appellant's CPPDB totaling $1,916.74 that Service Canada subsequently determined was paid in error, was originally paid by Service Canada directly to the Appellant, not the Ministry. Therefore, that money was not "*received by the government*" and, as a result, FAA Section 16 does not apply.

<u>As to Whether the Ministry's Decision was Reasonable</u>

Section 6(3) of the FAA says that the Ministry is responsible for the administration of its financial affairs, under the general direction of the Ministry of Finance and Treasury Board. Therefore, regarding allowances and supplements, the Ministry is expected to establish systems and rules regarding the collection of contributions from third parties, and such matters as the accounting for and payment of DA, including the establishment and application of processes to ensure that earned and unearned incomes

are properly recorded and accounted for in establishing the amount that a client receives in any given month. When errors are made, they should be corrected.

Regarding the CPPBD, the Ministry requires that any client eligible for the CPPDB apply for it and that the Ministry receive any retroactive amount of CPPDB that might apply directly from the federal government. The Ministry allows the client to receive any subsequent benefits directly from Service Canada, records those amounts, and deducts them from the DA that a client would otherwise receive.

Section 8 of the *Interpretation Act* says that "*every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.*" The Panel notes that the objectives of the Ministry with respect to the payment of assistance and other benefits are to ensure that clients receive all the benefits to which they are entitled under the EAPWDA and the EAPWDR; no more and no less.

EAPWDR Section says that "*unearned income*" means any income that is not earned income, and includes money received from any type or class of CPPDB. In its RD, the Ministry determined that it correctly applied the deduction to the Appellant's DA based on information provided by Service Canada, and there are no legislative requirements to revisit those calculations when a payment error is made by Service Canada and subsequent adjustments are made to the amount of the CPPDB to which a recipient is entitled.

The Panel notes that the situation in which the Appellant finds herself is exceedingly unfortunate and that the Ministry's practice in these circumstances is procedurally unfair. The Appellant was not told that she no longer qualified for the CPPDB until December 2020, over two months after her ineligibility had gone into effect.

To make matters worse, the available evidence indicates that the Appellant was not notified in writing of her ineligibility until she received the April 8 Letter, a full four months after she said she was verbally notified of the Service Canada decision, and six months after her ineligibility went into effect. At the hearing, the Appellant said that she contacted the Ministry by telephone in December 2020 to let the Ministry know that she was no longer receiving the CPPDB. The Ministry's decision to continue acting on inaccurate information in the shared data match database without following up with Service Canada, despite reliable evidence of a retroactive change in her in status, caused the Appellant a great deal of stress and anxiety.

The Panel finds that all the evidence shows that the Appellant did not ultimately receive unearned income in the form of the CPPDB in the months of October and November 2020. Furthermore, the Panel notes that there are clear legislative requirements to apply the legislation fairly, and to remedy the situation when errors are made; in this case, to retroactively increase the Appellant's DA for the months of December 2020 and January 2021 to ensure she receives the DA to which she was entitled, and so that she is made whole and has the funds necessary to settle her account with Service Canada.

Conclusion

The Panel finds that the Ministry's decision that the Appellant is not eligible for reimbursement of Canada Pension Plan Disability Benefit (CPPDB) amounts that had been deducted from the Appellant's Disability Assistance (DA) for the months of December 2020 and January 2021 was not reasonably supported by the evidence and was not a reasonable application of the applicable enactment(s) in the circumstances of the Appellant. Therefore, the Ministry's decision is rescinded, and the Appellant is successful in her appeal.

APPEAL NUMBER
2021-0151

APPENDIX A – RELEVANT LEGISLATION

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES ACT

Interpretation

1 (1) In this Act: …

"disability assistance" means an amount for shelter and support provided under section 5 *[disability assistance and supplements]* …

Disability assistance and supplements

5 Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

Employment-related programs and other programs

8 The minister may establish or fund employment-related programs and other programs for … recipients … who have difficulty finding or maintaining employment.

Employment plan

9 (1) For a family unit to be eligible for disability assistance … each recipient … in the family unit, when required to do so by the minister, must

(a) enter into an employment plan, and

(b) comply with the conditions in the employment plan …

(3) The minister may specify the conditions in an employment plan including, without limitation, a condition requiring the …recipient … to participate in a specific employment-related program that, in the minister's opinion, will assist the … recipient … to

(a) find employment, or

(b) become more employable …

EMPLOYMENT AND ASSISTANCE FOR PERSONS WIT DISABILITIES REGULATION

Definitions

1 (1) In this regulation: …

"earned income" means

(a) any money or value received in exchange for work or the provision of a service …

"employment-related program" means any of the following categories of programs that are established or funded under section 8 of the Act: …

(d) self-employment …

APPEAL NUMBER
2021-0151

"unearned income" means any income that is not earned income, and includes, without limitation, money or value received from any of the following: …

(f) any type or class of Canada Pension Plan benefits …

Effect of applicant applying for other sources of income

7 (1) In this section, **"income"** does not include

(a) earned income described in paragraphs (a), (d) or (e) of the definition in section 1, or

(b) income exempt under section 1 of Schedule B.

(2) A family unit is not eligible for disability assistance if an applicant in the family unit has applied for income from another source unless

(a) the applicant enters into a repayment agreement with the minister, …

(c) if the source of the other income is a benefit under the *Canada Pension Plan* (Canada), the applicant, in addition to the requirement under paragraph (a), satisfies the minister that the applicant has made a Consent to Deduction and Payment form under the *Canada Pension Plan* (Canada) directing that

(i) an amount up to the amount of disability assistance provided to or for the family unit under this section be deducted from the amount of the Canada Pension Plan benefit, and

(ii) the amount deducted be paid to the minister.

Requirement to apply for CPP benefits

8 If a family unit includes a recipient who may be eligible for a benefit under the *Canada Pension Plan* (Canada), for the family unit to continue to be eligible for disability assistance, the recipient, when requested by the minister, must complete a Consent to Deduction and Payment under the *Canada Pension Plan* (Canada) directing that

(a) an amount up to the amount of disability assistance provided to or for the family unit from the date that the recipient becomes eligible for the Canada Pension Plan benefit be deducted from the amount of that benefit, and

(b) the amount deducted be paid to the minister.

Amount of disability assistance

24 Disability assistance may be provided to or for a family unit, for a calendar month, in an amount that is not more than

(a) the amount determined under Schedule A, minus

(b)the family unit's net income determined under Schedule B.

APPEAL NUMBER
2021-0151

Reporting requirement

29 For the purposes of section 11 (1) (a) *[reporting obligations]* of the Act,

(a) the report must be submitted by the 5th day of the calendar month following the calendar month in which one or more of the following occur:

(i) a change that is listed in paragraph (b) (i) to (v); … , and

(b) the information required is … as requested in the monthly report form specified by the minister: …

(ii) change in income received by the family unit and the source of that income; …

SCHEDULE A

Disability Assistance Rates

Maximum amount of disability assistance before deduction of net income

1 (1) Subject to this section and sections 3 and 6 to 9 of this Schedule, the amount of disability assistance referred to in section 24 (a) *[amount of disability assistance]* of this regulation is the sum of

(a) the monthly support allowance under section 2 of this Schedule for a family unit matching the family unit of the applicant or recipient, plus

(b) the shelter allowance calculated under sections 4 and 5 of this Schedule.

Monthly support allowance

2 (1) A monthly support allowance for the purpose of section 1 (a) is the sum of

(a) the amount set out in Column 3 of the following table for a family unit described in Column 1 of an applicant or a recipient described in Column 2, plus

(b) the amount calculated in accordance with subsections (2) to (4) for each dependent child in the family unit.

Item	Column 1 **Family unit composition**	Column 2 **Age or status of applicant or recipient**	Column 3 **Amount ($)**
1	Sole applicant / recipient and no dependent children	Applicant / recipient is a person with disabilities	983.42

Monthly shelter allowance

4 (2) The monthly shelter allowance for a family unit to which section 14.2 of the Act does not apply is the smaller of

(a) the family unit's actual shelter costs, and

(b) the maximum set out in the following table for the applicable family size:

APPEAL NUMBER
2021-0151

Item	Column 1 **Family Unit Size**	Column 2 **Maximum Monthly Shelter**
1	1 person	$375

SCHEDULE B

Net Income Calculation

Deduction and exemption rules

1 When calculating the net income of a family unit for the purposes of section 24 (b) *[amount of disability assistance]* of this regulation …

(c) all earned income must be included, except … any earned income exempted under section … 4, and

(d) all unearned income must be included, except the deductions permitted under section 6 …

Small business exemption

4 (1) In this section, …

"permitted operating expenses" means costs, charges and expenses incurred by a person in the operation of a small business, under a self-employment program in which the person is participating, for the following:

(a) purchase of supplies and products;

(b) accounting and legal services;

(c) advertising;

(d) taxes, fees, licences and dues incurred in the small business;

(e) business insurance;

(f) charges imposed by a savings institution on an account and interest;

(f.1) payments, including principal and interest, on a loan that is

(i) not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 70.1 of this regulation, and

(ii) received and used for the purposes set out in the business plan;

(g) maintenance and repairs to equipment;

(h) gross wages paid to employees of the small business, but not including wages paid to

(i) the person participating, …

(i) motor vehicle expenses;

(j) premiums for employment insurance or workers' compensation benefits;

(k) employer contributions for employment insurance, workers' compensation or the *Canada Pension Plan*;

APPEAL NUMBER
2021-0151

(l) rent and utilities, excluding rent and utilities for the place of residence of the persons described in subparagraphs (i) or (ii) of paragraph (h) unless

(i) there is an increase for rent or utilities and the increase is attributable to the small business, and

(ii) the increase is not provided for in the calculation of the family unit's shelter allowance under Schedule A of this regulation;

(m) office expenses;

(n) equipment purchases or rentals.

(2) Earned income of a recipient of disability assistance is exempted from the total income of the recipient's family unit if

(a) the recipient is participating in a self-employment program, and

(b) the earned income is derived from operating a small business under the self-employment program in which the recipient is participating and

(i) is used for permitted operating expenses of the small business, or

(ii) is deposited in a separate account, established by the recipient in a savings institution, which account

(A) consists exclusively of funds reserved by the recipient for the purpose of paying permitted operating expenses of that small business, and

(B) the amount deposited does not increase the current balance of the separate account to a sum that exceeds $5 000, or

(iii) is used for costs of renovations to the recipient's place of residence up to but not exceeding $5 000 in total or a greater amount approved by the minister, if the renovations are part of a business plan accepted by the minister under section 70.1 of this regulation.

Deductions from unearned income

6 The only deductions permitted from unearned income are the following:

(a) any income tax deducted at source from employment insurance benefits;

(b) essential operating costs of renting self-contained suites.

INTERPRETATION ACT

Definitions

1 In this Act, or in an enactment:

"Act" means an Act of the Legislature, whether referred to as a statute, code or by any other name …

APPEAL NUMBER
2021-0151

"enactment" means an Act or a regulation or a portion of an Act or regulation …

Enactment remedial

8 Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

Government bound by enactments …

14 (1) Unless it specifically provides otherwise, an enactment is binding on the government.

Expressions defined

29 In an enactment: …

"government" … means Her Majesty in right of British Columbia …

"Legislative Assembly" means the Legislative Assembly of British Columbia constituted under the *Constitution Act*;

"Legislature" means the Lieutenant Governor acting by and with the advice and consent of the Legislative Assembly;

FINANCIAL ADMINISTRATION ACT

Duties and functions of ministers

6 (3) Each minister is responsible for the administration of the financial affairs of his or her ministry, under the general direction of the Minister of Finance and the Treasury Board.

Refunds

16 Money received by the government

(a) that is erroneously paid or collected …

may, subject to directives of the Treasury Board, be refunded from the consolidated revenue fund … in part or in full as circumstances require.

APPEAL NUMBER
2021-0151

Part G – Order

The panel decision is: (Check one) ☒**Unanimous** ☐**By Majority**

The Panel ☐**Confirms the Ministry Decision** ☒**Rescinds the Ministry Decision**

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? Yes☒ No☐

Legislative Authority for the Decision:

Employment and Assistance Act

Section 24(1)(a)☒ or Section 24(1)(b) ☒
Section 24(2)(a)☐ or Section 24(2)(b) ☒

Part H – Signatures

Print Name Simon Clews	
Signature of Chair	Date (Year/Month/Day) 2021/09/13

Print Name Anil Aggarwal	
Signature of Member	Date (Year/Month/Day) 2021/09/13
Print Name Barbara Sharp	
Signature of Member	Date (Year/Month/Day) 2021/09/17

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September 7, 2021

By email to eaat@eaat.ca

To the Employment and Assistance Appeal Tribunal,

Re: **NAME, EAAT appeal file number 2021-0151**
Hearing date: September 10, 2021, 1pm, by teleconference

We represent NAME in this Appeal. We are writing to provide written submissions in support of NAME'S appeal. We plan to refer to these written submissions during the appeal hearing.

The issue in this appeal is NAME'S request for the Ministry of Social Development and Poverty Reduction (the **Ministry**) to reimburse her, or Service Canada, for an overpayment of Canada Pension Plan-Disability (**CPP-D**) benefits received by NAME. The Ministry denied the request, in a Reconsideration Decision dated July 13, 2021 (the **Reconsideration Decision**). NAME submits the Reconsideration Decision should be rescinded because it was not a reasonable application of the applicable enactment in NAME's circumstances, as required by section 24(2)(a) of the Employment and Assistance Act, SBC 2002, c 40 (the **EAA**). The Reconsideration Decision did not even refer to or consider the applicable enactment, which in this case was the Financial Administration Act, RSBC 1996, c 138 (the **FAA**).

In this written submission, all references to page numbers refer to the 65-page Appeal Record prepared by the Tribunal, dated July 28, 2021.

Background

NAME has received disability assistance from the Ministry since approximately 2002. In or around 2019, the Ministry told her she may be eligible for CPP-D benefits, and she was required to apply for CPP-D, in order to maintain her eligibility to receive disability assistance. NAME complied with the Ministry's direction, and in July 2020, Service Canada determined she was indeed eligible for CPP-D.

On July 16, 2020 Service Canada notified the Ministry that NAME had been approved for CPP-D, retroactive to September 2018. Service Canada would therefore reimburse $21,671.99 to the Ministry, representing the amount

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of CPP-D benefits to which NAME was entitled for the period September 2018 to July 2020. Going forward, NAME would receive CPP-D benefits in the amount of $958.37 per month, and her disability assistance would be reduced by the same amount.

Since approximately 2012, NAME has been a member of the Ministry's Self-Employment Program, which allows her to earn a limited amount of self-employment income without any deduction from her disability assistance. Through her self-employment as a JOB, she has received gross income of up to $__ per year, and after paying business-related expenses her net income can be as high as $__ per year. These amounts are reported to the Ministry regularly, as required by the rules of the Self-Employment Program.

CPP-D's rules about self-employment income are different from the Ministry's: pursuant to Service Canada's policies, when NAME's **gross** self-employment income reached a total of $5800 per year, she was considered to be substantially gainfully employed, which meant she was no longer eligible for CPP-D. No one from either the Ministry or Service Canada notified NAME about the effect of her self-employment income on her eligibility for CPP-D, until after she started receiving CPP-D benefits. Service Canada stopped her CPP-D benefits in December 2020, and she has not received any CPP-D benefits since then.

By letter dated April 8, 2021, Service Canada confirmed NAME was required to repay an overpayment of CPP-D benefits in the amount of $1916.74, the amount of CPP-D benefits she received for October and November 2020. The basis for this decision was Service Canada's determination that NAME's gross business revenue for 2020 exceeded $5800 by October 2020.

NAME sent a copy of the April 8, 2021 letter from Service Canada to the Ministry. She asked the Ministry to reimburse Service Canada for her CPP-D overpayment.

On June 3, 2021 the Ministry denied NAME's request. A Ministry representative told her the Ministry had been required to deduct all the CPP-D benefits she received from her disability assistance, and there is no authority for the Ministry to repay CPP-D income that was previously deducted from a person's disability assistance. NAME subsequently received a written decision, which also said there is no authority to repay CPP-D income that was previously deducted (page 24 of the Appeal Record).

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Reconsideration Decision

NAME submitted her request for reconsideration on July 2, 2021. In her request for reconsideration (pages 29 and 30 of the Appeal Record), she says:

4. The Ministry is incorrect in stating there is no authority to repay CPP-Disability benefits that were deducted from my disability assistance payment. The authority is section 16 of BC's Financial Administration Act, RSBC 1996, c 138, which says:

> Money received by the government
> (a)that is erroneously paid or collected, or
> (b)for any purpose that is not fulfilled,
> may, subject to directives of the Treasury Board, be refunded from the consolidated revenue fund or the appropriate trust fund in part or in full as circumstances require.

NAME's request for reconsideration goes on to describe how section 16 of the FAA applies to her circumstances:

6. The Ministry's deductions from my disability assistance were based on the assumption that my CPP-Disability benefits for October and November 2020 constituted money received from CPP. But in fact, since the CPP-Disability benefits I received were not actually payable to me, and were required to be paid back to Service Canada, they did not have any value. These CPP-Disability payments should be seen as a debt, not a form of income.

7. Since my CPP-Disability for October and November 2020 actually had no value, the Ministry's decision to collect them from me by deducting an equivalent amount from my subsequent disability assistance payments was an error.

8. The purpose of the Ministry's deductions from my disability assistance payments was to ensure I received the correct amount of disability assistance. I understand the correct amount of disability assistance depends on the amount of income I receive from other sources, such as CPP-Disability benefits. But since the CPP-Disability benefits I received for October and November 2020 were not payable to me, and did not constitute income for me, the Ministry's deductions resulted in me receiving less than the correct amount of disability assistance.

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9. Since the deductions from my disability assistance payments were an error, and the purpose of those deductions was not fulfilled, section 16 of the *Financial Administration Act* applies, and the government may refund me for the amounts collected in error. I am not aware of any relevant directives of the Treasury Board.

The Reconsideration Decision (pages 11-12 of the Appeal Record) reviews the reasons why the CPP-D benefits NAME received for October and November 2020 were deducted from her disability assistance, but it does not refer to the FAA. The Reconsideration Decision does not address the Ministry's authority to reimburse benefits that were erroneously collected, for a purpose that was not fulfilled, which was the focus of NAME's request for reconsideration.

The Reconsideration Decision goes on to say:

> The EAPWD Act and Regulation does not contain provisions to retroactively recalculate eligibility after a recipient incurs an overpayment with a third party. When the CPPD benefit was received in October and November 2020, the ministry applied correctly to deduct it and there is no legislative requirement to revisit those calculations. (page 12 of the Appeal Record)

But this still does not address NAME's request for reconsideration. NAME asked the Ministry to exercise its discretion to reimburse Service Canada for her CPP-D overpayment, due to the unique circumstances of her situation. Even if there is no mandatory requirement for the Ministry to revisit its earlier decision to deduct her CPP-D benefits, the FAA gives the Ministry the discretion to do so.

The Financial Administration Act

NAME maintains the FAA applies to her circumstances, and the Reconsideration Decision failed to consider it. The EAAT has previously found the FAA may apply to persons receiving disability assistance: in appeal number 20-21, dated January 27, 2020, the EAAT cited section 87 of the FAA, which creates an estoppel defence when a person receives an overpayment from the Ministry through no fault of their own. A copy of the decision in appeal number 20-21 is attached to this letter, for the Panel's reference. In that case, the EAAT found the appellant was not entitled to rely on the estoppel defence because he should have known he was ineligible for some of the assistance he received. But the EAAT still found the FAA was relevant to the appeal. This case shows the FAA

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may apply to a person receiving disability assistance. Since section 87 of the FAA may apply to persons receiving disability assistance, there is no reason why section 16 cannot apply.

Section 24(2) of the EAA says the EAAT can confirm a decision of the Ministry if it finds the decision "is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the person appealing the decision." Otherwise, the EAAT must rescind the decision.

As in the EAAT's decision in 20-21, the applicable enactment in NAME's circumstances is the FAA. The Reconsideration Decision must be rescinded because it did apply the FAA in a reasonable way, or at all.

Conclusion

NAME does not suggest the FAA is relevant every time a person receiving disability assistance receives an overpayment of CPP-D, or some other government benefit. The FAA is relevant in NAME's case because the CPP-D overpayment arose through no fault of NAME's, simply because she complied with the Ministry's direction to apply for CPP-D. She had no way to find out, before she started receiving CPP-D benefits, that her gross business income would make her ineligible to receive CPP-D benefits for more than a few months.

The purpose of the Ministry's deductions from NAME's disability assistance payments was to ensure she received the correct amount of disability assistance. Since she was not actually entitled to the CPP-D payments she received in October and November 2020, that purpose was not fulfilled, so the Ministry may refund the deductions pursuant to the FAA. The Reconsideration Decision's failure to consider or apply the FAA was not reasonable.

All of which is respectfully submitted,

Andrew Robb
Staff Lawyer, Disability Law Clinic
Disability Alliance BC

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BRITISH COLUMBIA | Ministry of Social Development and Poverty Reduction

EMPLOYMENT AND ASSISTANCE REQUEST FOR RECONSIDERATION

SECTION 1 and 2 TO BE COMPLETED BY WORKER

SR NUMBER [redacted]

SECTION 1 REQUESTOR INFORMATION

REQUESTOR'S NAME [redacted]

CASE NUMBER [redacted]

REQUESTOR'S ADDRESS [redacted] Nanaimo, BC [redacted]

SECTION 2 DECISION TO BE RECONSIDERED

The Ministry has reviewed your case and considered all of the factors relevant to the eligibility criteria for Disability Assistance. You did not meet your reporting requirements, you did not provide accurate or complete information and/or you supplied false or misleading information. Based on the information reviewed, it has been determined that you are not eligible for assistance.

On February 2, 2021 you submitted a monthly report for March 2021. Your report included a spouse, who was not on your file. A review was started.

On February 4, 2021 you spoke with the Ministry. You explained that you added your spouse to your report as he returned to Canada in November 2020. You were advised that your spouse must be added to your file. You were informed that your spouse would need to provide Identification and a 60 day bank statement. You also disclosed that your brother was residing with you and paying the majority of your $1,791.34 mortgage payment. You stated that you were offered a part time job and your spouse may start college in February.

On February 12, 2021 you were advised to submit documentation to add your spouse to your file.

On February 25, 2021 you spoke with a Ministry worker and asked if you had to add your spouse. You confirmed that you were married and living together as husband and wife. You were advised that your spouse must be added to your file. You stated that you were not working, but your spouse obtained part time employment. You stated that you both were planning to attend college.

On March 3, 2021 you contacted the Ministry and you were reminded to submit the requested documents regarding your spouse.

On March 16, 2021 you were advised to submit documentation to add your spouse to your file.

On March 30, 2021 you contacted the Ministry and stated that it was the only day your spouse could sign any forms as he was in school. You were advised to submit the requested information.

On April 15, 2021 your file was signaled for information pertaining to your spouse.

On April 28, 2021 you submitted your spouses bank statement and unclear identification documents.

On April 29, 2021 the Ministry spoke with you and your spouse. You confirmed that you have been married since 2019. You stated that you purchased your home for about $328,000 10 years ago and your mortgage payment is approximately $1500 per month. You stated that your brother, his wife and their 4 children are living with you and pay $1500 per month for rent. You stated that you have no money in your bank account and were living off of your line of credit, but that it is depleted now. Your spouse reported that he has a $30,000 student loan with the Bank of [redacted] and maintains an account with this same bank. Your spouse would not disclose how much he had in his account. You reported that you have a student loan in Canada,that were not making payments on. You were unsure what the balance was. You and your spouse confirmed that you were both attending college as full time students taking personal health care worker courses. You stated that these courses are paid for by the BC government. Your spouse reported that he has a part time job ($19 per hour x 24 hours per week = $456 x 4 = $1824 monthly) . You stated that if you had to declare income then you would not be able to pay your bills. You stated that you did not want to add your spouse to your file. You stated that you have borrowed money from your brother, but did not disclose any amounts or provide information regarding other bills.

Ministry of Social Development and Poverty Reduction

EMPLOYMENT AND ASSISTANCE REQUEST FOR RECONSIDERATION

As a result of your eligibility interview, further information was requested. You were asked to provide clear copies of your spouses identification, student loan information and bank of [redacted] account information. A copy of your mortgage document, your student loan information. Course enrollment information for both you and your spouse as well as verification of funding.

On May 4, 2021 you attend your local office to sign your reapplication form. You stated that you did not wish to add your spouse to your file or declare his income. You stated that you do not wish to declare income from your brother as he is retiring soon and will not be able to pay after that happens. You stated that you should not have to declare money given to you from family to live in your home. Reporting obligations were explained to you. The requirement to add your spouse was also explained.

On May 7, 2021 you contacted the Ministry regarding assistance. You were advised that you must submit a stub declaring your rental income and your spouses employment income.

On May 12, 2021 you submitted a report for May. You did not declare your rental income.

On May 28, 2021 you were advised that you were not eligible to receive assistance. You were advised that you must declare all income that you receive.

You have been advised of your right to a reconsideration of this decision and have requested this be prepared. The following attachments have been included which complete this reconsideration package:

- Request for Reconsideration
- March 2021 monthly report.
- Letter dated February 12, 2021
- April 2021 monthly report.
- Letter dated March 16, 2021
- Letter dated April 15, 2021
- Employment and assistance for persons with disabilities review
- April paystubs
- April 2021 monthly report.
- May 2021 monthly report with paystubs
- Relevant Legislation
- Reconsideration and Appeal Process Brochure

RECONSIDERATION OR APPEAL SUPPLEMENT:
You may be eligible for a Reconsideration or Appeal supplement, please see attached brochure for details

ADVOCATE:
You have the right to an advocate to help you with your reconsideration. Please refer to http://www.povnet.org/ to find a list of local advocates in your area.

RETURN DATE:
This Request for Reconsideration form must be signed and returned by the date in Section 2, "Date requestor must submit form by".

If you can provide reasons and/or evidence why the Ministry's decision should be changed by this deadline, do so.

EXTENSION:
1. If you need more time to provide reasons or evidence, you may ask for an extension (more time).

To ask for an extension, write on this form that you need an extension, then sign and return it to the Ministry by the date in Section 2, "Date requestor must submit form by". To maximize the amount of time you have to provide reasons or evidence, submit the form on or just before that date. You may contact the reconsideration office to confirm the extension was approved, 778-698-7750.

2. Once the Ministry receives your signed Request for Reconsideration form, it will write its reconsideration decision within 10 business days (if no extension is requested) or 20 business days (if an extension is requested).

Ministry of Social Development and Poverty Reduction

EMPLOYMENT AND ASSISTANCE REQUEST FOR RECONSIDERATION

3. The reconsideration decision will be mailed to you, sent by MySelfServe or available for pick up in a Ministry office.

THE ACT AND / OR REGULATIONS THAT APPLY TO THIS DECISION ARE:
Employment and Assistance for Persons with Disabilities Act Section 1, 1,1, 3 and 10

MONTH DECISION EFFECTIVE (MMMM YYYY)	RELEVANT DATES:	DATE REQUESTOR INFORMED OF DECISION (EEEE, MMMM DD, YYYY)
May 2021		Friday, May 28, 2021
		DATE REQUESTOR MUST SUBMIT FORM BY (EEEE, MMMM DD, YYYY)
		Friday, June 25, 2021

BRITISH COLUMBIA | Ministry of Social Development and Poverty Reduction

EMPLOYMENT AN
REQUEST FOR RECON

SECTION 3 REASON FOR REQUEST FOR RECONSIDERATION

(TO BE COMPLETED BY THE REQUESTOR ONLY AFTER SECTIONS 1 AND 2 HAVE BEEN COMPLETED BY WORKER)

I AM REQUESTING AN EXTENSION TO SUBMIT MY REQUEST FOR RECONSIDERATION. I HAVE NOT BEEN ABLE TO CONTACT AN ADVOCATE UNTIL NOW. I AM SORRY THIS TOOK SO LONG.

Ministry of
Social Development
and Poverty Reduction

EMPLOYMENT AND ASSISTANCE
REQUEST FOR RECONSIDERATION

SECTION 4 NOTICE OF REQUEST FOR RECONSIDERATION

(ATTACH ADDITIONAL PAGES IF REQUIRED)

(TO BE COMPLETED BY THE REQUESTOR)

IMPORTANT: The request to have the Ministry decision reconsidered must be submitted to your Employment and Assistance Office within 20 business days of when you receive the decision concerning eligibility. (see "Date Client Informed of Decision" box on page 1)

I hereby give notice that I am dissatisfied with the Ministry decision regarding my request for assistance or supplement and wish to exercise my right to request a reconsideration of this decision. I have attached all relevant documents I wish to have considered.

REQUESTOR'S SIGNATURE	DATE (YYYY-MMM-DD)	TELEPHONE
[redacted]	2021,07,06	[redacted]

FOR MINISTRY USE ONLY:

Personal information on this form is collected under the authority of the *Employment and Assistance Act* and the *Employment and Assistance for Persons with Disabilities Act* and the *Child Care Subsidy Act*. This information will be used to assess your request for a reconsideration of a decision. The disclosure of personal information is subject to the provisions of the *Freedom of Information and Protection of Privacy Act*. For more information about the collection, use and disclosure of this information, please contact your local Employment and Assistance Office.

Request for Reconsideration
Ministry of Social Development Poverty Reduction
[redacted]
SR#: [redacted]
SIN#: [redacted]

Introduction:

[redacted] is a married female with PWD designation who has been denied ongoing monthly support by the Ministry of Social Development and Poverty Reduction on the basis of not meeting her reporting requirements. [redacted] has endeavored to supply the Ministry with all documentation and information but there are comprehension, ESL (thick accent hard to understand), and mental health conditions that have not been factored in.

Issue:

The decision of the Ministry of Social Development Poverty Reduction (MSDPR), which is at issue in this reconsideration request, is the appellant eligible for ongoing income assistance benefits:

"The Ministry has reviewed your case and considered all of the factors relevant to the eligibility criteria for Disability Assistance. You did not meet your reporting requirements; you did not provide accurate or complete information and/or you supplied false or misleading information. Based on the information reviewed, it has been determined that you are not eligible for assistance."

Law

Employment and Assistance for Persons with Disabilities Act Section 1, 1.1,3, and 10

Background information:

- Mrs. [redacted] is an immigrant from [redacted] and has lived in Canada since 2009
- Mrs. [redacted] is almost [redacted] years of age
- Mrs. [redacted] is a follower of the Baha'i faith
- Mrs. [redacted] lost both of her parents by the age of 16
- Her eldest brother and his family took her in – fed, clothed, housed, and sent her to school and did not make her pay for them supporting her for many years from 1987 to the early 2000's - about 17 years
- Mrs. [redacted] went to the last grade of school allowed for females in [redacted] – Grade 12
- Mrs. [redacted] worked as a photographer in a Muslim photography store for 8 years
- Mrs. [redacted] was paid minimally, just enough to afford to buy her clothing and sundries – not enough to pay for rent/food so her brother continued to provide her with a home
- Towards the end of Mrs. [redacted] employment in the photography store, the Muslim employer was harassed by government/political agents to the point that she voluntarily left her job and fled to [redacted]

Request for Reconsideration
Ministry of Social Development Poverty Reduction
[redacted]
SR#: [redacted]
SIN#: [redacted]

Background information cont:

- Mrs. [redacted] came to Canada in or about 2009 working as soon as she learned English and eventually started up her own business in 2019
- Mrs. [redacted] bought her home in Nanaimo in 2011
- Mrs. [redacted] married her husband in 2016
- Mrs. [redacted]s brother, came to Canada in 2016 so she invited him and his wife to live in her home rent free as this is what family does – [redacted]cultural and familial duty to family for all the years he supported her in Iran
- 2019 Mrs. [redacted]s husbands father became ill in [redacted] so her husband went home to care for him – the father-in-law subsequently died so Mrs. [redacted] husband tried to return to Canada
- Covid impacted her husband's return to Canada so there was an immediate loss of his income to the family home in Canada as he had no job in [redacted] and therefore could not send her support money
- Sometime between 2019 - 2020 Covid impacted her business and Mrs. [redacted] applied for income assistance as a single person as she had lost significant income (business downturn) and her husband was not in Canada affecting what had been a two-income household previously
- Mrs. [redacted] health began to deteriorate, she applied for PWD in 2020, and was given PWD designation in early 2020.
- Mrs. [redacted] has a severe anxiety disorder, depression, along with arthritis, osteoarthritis, and carpal tunnel in both wrists
- As stated by an assessor in the PWD Mrs. [redacted] has difficulty with English as a second language – described as" tangential" with" difficulty focusing" – **see PWD application**
- In late 2020 Mrs. [redacted] husband returned to Canada when travel was allowed
- Mrs. [redacted] husband could not find work due to Covid initially so Mrs. [redacted] applied to the Ministry to have her husband added to her file in early 2021
- Both Mrs. [redacted] and her husband have been in school for several months and have completed their studies to become more employable
- Mrs. [redacted] and her husband have both tried to maintain jobs but have had limited success due to Covid
- The Ministry asked for and received several documents between February and June 2021 and Mrs. [redacted] has tried to submit all documentation requested but the Ministry changed the requested documentation several times over the 5-month period

Request for Reconsideration
Ministry of Social Development Poverty Reduction
[redacted]
SR#: [redacted]
SIN#: [redacted]

Background information cont:

- Any Ministry requests for documentation over the phone or in person have been agreed to by Mrs. [redacted] but likely are due to her language barriers, level of written comprehension, and mental health issues she has not always understood what the required documents are or info required and agreed to any request by either submitting the incorrect info or not responding in an immediate manner

- The Ministry did not offer to support Mrs. [redacted] in her difficulty providing information by having an interpreter present in any of the interviews over the phone or in person

Argument:

1. Mrs. [redacted] was denied ongoing PWD support and shelter for her family unit on the basis of the Ministry interpreting her responses or perceived lack of response to repeated information and documentation requests as fraudulent, incomplete, inaccurate, and or misleading.

2. On the basis of failure by Mrs. [redacted] to comply with a Ministry directive to submit info, one question comes to mind; why has the Ministry not followed up with a more practical approach to requesting information from a person with designated mental health impairments in addition to being an immigrant in Canada? **See attached PWD application.**

3. It is suggested that the Ministry has not looked at the reasons why the appellant might not be able to produce the required information; that there may be a lack of comprehension of the written requests, a mental health impairment, and or difficulty with English as a second language.

4. Mrs. [redacted] first response to most situations with government officials is extreme anxiety. Anxiety built on the fear that what little she has will be removed as her country of origin treated her as a second-class citizen (being a female and a Baha'i follower) and so it is suggested she may have agreed with Ministry staff without fully understanding what she has agreed to. Please let me remind you that Mrs. [redacted] left [redacted] due to government officials harassing her employer.

5. Why has the Ministry not interpreted Mrs. [redacted] alleged lack of response, incorrect, responses, or fumbling/changing info as a response to trauma (anxiety response) suffered in her country of origin resulting in immigrating to Canada? Or that it may attributed to a lack of understanding due to ESL?

6. As it was obvious early in the review process that there were gaps in response to request for info why did the Ministry not change the manner of approaching Mrs. [redacted] for the info required for the file review?

7. That the appellant throughout the process of review of her file (for the purpose of adding her husband to her PWD file) was never offered an interpreter to assist her in regards to clarify the Ministry requirements or requests seems like a missed opportunity on the Ministry's part to support a disabled person.

8. There appears to be a lack of initiative or discretion to dig deeper into why an applicant appears to be non-compliant in respect of Ministry requests for information and this is in direct opposition to the Ministry Vision, Mission, and Values. Copy attached.

Request for Reconsideration
Ministry of Social Development Poverty Reduction
[redacted]
SR#: [redacted]
SIN#: [redacted]

Argument cont:

9. I have had several meetings with Mrs. [redacted] over the phone and in person in regards to this appeal submission and I must state that there were numerous times I had to repeat myself to the appellant to make her understand what I was asking for when she gave me info I did not ask for.

10. There were multiple times Mrs. [redacted] agreed to info that I had repeated back to her but then made a statement that refuted the previous answers. Phone conversations and messages were very difficult for either of us to understand one another with any clarity through this entire process of appeal due in part to her thick accent, misunderstanding what I was requesting, and my not understanding her responses to questions.

11. Many statements the Ministry has recorded or attributed to Mrs. [redacted] in the Request for Reconsideration package are completely wrong or taken out of context. I would suggest this is due in part to the appellant's anxiety, comprehension, and language barriers but not fraudulent.

12. When Mrs. [redacted] made any statements about her brother and his wife who live with her paying for certain things the Ministry representative interpreted the information as the brother paid rent or room and board or rent – this is incorrect.

13. The brother does not pay rent or room and board.

14. When Mrs. [redacted] signed the Employment and Assistance for Persons with Disabilities Review document in *May 2021*, she noted the form said that she had a roomer who paid *$1500.00* per month.

15. When the appellant questioned this amount on the form to the Ministry worker and explained that her brother was not a roomer and did not pay this amount, she fully expected that the info would be corrected after signing. **Copy of Employment and Assistance for Persons with Disabilities Review attached.**

16. What is correct is that the brother does pay for parts of bills when they come up but in no way is he responsible for a standard monthly amount of payment for any bill or required item. There is no bill that he pays on an ongoing basis nor is there a monthly amount that he is responsible for.

17. There is no agreement between Mrs. [redacted] and her brother to pay for anything in Mrs. [redacted] home as he supported her for several years in his home in [redacted]. By allowing him and his wife to live rent free in her home is the only thing for Mrs. [redacted] to do without expectation of compensation.

18. The social welfare system in Canada is very confusing to individuals arriving from other countries as what is accepted, normal, or culturally acceptable in the country of origin is not allowed in Canada and could possibly be illegal. **See attached 4-page Cultural Relativism.**

19. There is no standardized social welfare system in [redacted] as there is in Canada – people pay into programs if they happen to be in financial positions to donate to Islamic waqf (obligatory charity) institutions.

20. Alternately in [redacted] an individual employee has to pay into social programs for 30 years but if you belong to a particular faith, you will probably never receive it even though you have paid into it. **See attached 1-page Social Development -** [redacted]

Request for Reconsideration
Ministry of Social Development Poverty Reduction
[redacted]
SR#: [redacted]
SIN#: [redacted]

Argument cont:

21. As a Bahai follower Mrs. [redacted] would *never* be allowed to access any social welfare program in her country of birth due to discrimination of her faith.

22. It is correct that Mrs. [redacted] brother has paid for parts of bills in the previous few months in order to have utilities remain connected on an as needed basis but this is not a rental situation. The only reason that Mrs. [redacted] has even accepted the payment for a bill is to not discomfort her brother and his wife by having no electricity.

23. It is correct that Mrs. [redacted] has borrowed money against her line of credit to survive due to Covid. Current total of line of credit owing is in excess of $7000.00.

24. Mrs. [redacted] has also borrowed money from her brother to pay for bills but *has* to pay any money borrowed back.

25. Effective May 28, 2021 the Ministry cut off shelter and support benefits to Mrs. [redacted] for not submitting a stub with rental income on it.

26. As explained, there is no cause for Mrs [redacted] to report rental or room and board income as there is no income to report. Therefore Mrs. [redacted] has complied with the Ministry's most recent request for information regarding rental income.

27. Attached to this appeal document is additional *banking information, tax notice, utility billing, Hydro, and GST* info to further show that Mrs. [redacted] wants to display complete disclosure.

28. Mrs. [redacted] has reported to the best of her ability every request for information as directed by the Ministry.

29. It is the Ministry that has not performed its due diligence in relation to Mrs. [redacted] by not clarifying or taking more time and consideration of the appellant's comprehension, mental health issues, and ESL and has chosen instead cut her family unit off of income assistance benefits.

30. Mrs. [redacted] is a proud woman who wants to pay her own bills who has recently taken a job that is likely detrimental to both her mental and physical health as the Ministry denied her support and shelter benefits but did not take the time to reason out why Mrs. [redacted] may not have submitted required/requested documentation.

31. There is no logical reason for an intelligent woman like Mrs. [redacted] to not fully disclose to the Ministry as she is aware that the Ministry will take action to deny benefits which they have done.

32. Mrs. [redacted] has done the best that she can to comply with the Ministry's requests.

Request for Reconsideration
Ministry of Social Development Poverty Reduction
[redacted]
SR#: [redacted]
SIN#: [redacted]

Conclusion:

The Ministry was incorrect in their decision to deny Mrs. [redacted] PWD benefits on the basis of non-compliance. She did comply with info requests. What Mrs. [redacted] could not report is rental income which she does not receive.

The Ministry did not allow for the particular issues directly related to an immigrant to Canada, that the appellant has English as a second language with obvious comprehension problems, and who is a person with designated disabilities of which anxiety and depression directly impacting her.

It is hoped that this appeal will assist the Ministry staff in future to utilize the Ministry's Vison, Mission, and specifically the Values in relation to its treatment of immigrants and provide or at least suggest an interpreter/advocate in cases where clients appear to be non-compliant.

Much of the info used against the appellant in this case were not documents submitted by the appellant but information given over the phone or in person by the appellant to a Ministry worker. It is suggested that the appellant did not understand the question asked or that she gave an incorrect answer based on an incorrect understanding of the question asked. An interpreter would have clarified the info the Ministry required and a correct response would have been given by the appellant.

On the basis that Mrs. [redacted] has complied with the Ministry requests for information it is respectfully requested that the Ministry overturn the decision to deny benefits and to reinstate Mrs. [redacted] benefits.

Submitted by – Don McConnell Legal Advocate
Funded by the Law Foundation of BC

BRITISH COLUMBIA

August 5, 2021

RECON SR No: SR [redacted]
CASE No: EA [redacted]

[redacted]
Nanaimo BC [redacted]

Dear [redacted],

Re: Employment and Assistance Reconsideration Decision

Your request for reconsideration of the decision to deny you disability assistance for failing to provide information has been reviewed. Upon reconsideration of the information provided, the ministry has approved your request.

Enclosed is a copy of the Employment and Assistance Reconsideration Decision form, confirming this decision. If you would like a copy of the complete reconsideration decision package, which contains the documents that you provided with your Request for Reconsideration, and documents you received with the original decision, please contact the Reconsideration Branch at 778-698-7750.

If you have any questions, please contact your local Employment and Income Assistance Office. You may also contact an Employment Assistance Worker at **1-866-866-0800** or visit the ministry website at www.hsd.gov.bc.ca.

Sincerely,

Reconsideration Officer

Enclosure(s)

Ministry of Social Development and Poverty Reduction
Reconsideration, Litigation and Administrative Fairness Branch
PO Box 9963 Stn Prov Govt
Victoria BC V8W 9R4

BRITISH COLUMBIA | Ministry of Social Development and Poverty Reduction

EMPLOYMENT AND ASSISTANCE RECONSIDERATION DECISION

The collection, use and disclosure of personal information is subject to the provisions of the *Freedom of Information and Protection of Privacy Act*. If you have any questions about the collection, use and disclosure of this information, please contact your local Employment and Assistance Centre.

REQUESTOR INFORMATION

Requestor Name		Recon Service Request No.
[redacted]		[redacted]
Requestor Address [redacted]		
City: Nanaimo	Postal Code: [redacted]	Case No.: [redacted]

DECISION UNDER CONSIDERATION

You are requesting a reconsideration of the decision to deny you disability assistance for failing to provide information.

SUMMARY OF FACTS

The following is a summary of the key dates and information related to your Request for Reconsideration:

On May 28, 2021 you were advised that you were not eligible for disability assistance.

On July 7, 2021 you submitted a Request for Reconsideration and you were approved an extension to August 5, 2021.

On August 5, 2021 the ministry completed the review of your Request for Reconsideration.

APPLICABLE LEGISLATION

Employment and Assistance Act – Section 10 and 11
Employment and Assistance Regulation – Section 28 and 29

~ Please see the attached copy of the legislation in Appendix B ~

RECONSIDERATION DECISION

~ Please see the attached copy of the reconsideration decision in Appendix A ~

ENCLOSED: ☐ ALL DOCUMENTS CONSIDERED BY THE MINISTRY ☐ NOTICE OF APPEAL TO THE EMPLOYMENT AND ASSISTANCE APPEAL TRIBUNAL

SIGNATURE	NAME AND TITLE	DATE (YYYY MMM DD)
N.O.T	Reconsideration Officer	2021 Aug 5

If this decision is appealable to the Employment and Assistance Appeal Tribunal, and you wish to appeal this decision, you may complete the enclosed *Notice of Appeal to the Employment and Assistance Appeal Tribunal* form and return it to the Appeal Tribunal. This Reconsideration Decision and attached documents constitute the appeal record. A sealed copy of this appeal will be kept by the Ministry.

HSD101(05/06/29)

APPENDIX A – RECONSIDERATION DECISION

Upon review of the information relevant to your Request for Reconsideration, the ministry finds you should not be denied disability assistance for failing to provide information as requested by the ministry.

Background

You are a recipient of disability assistance with a dependent spouse. Your file opened February 20, 2020. Your spouse was added to your file April 29, 2021.

On May 28, 2021 the ministry denied your request for disability assistance noting you had failed to declare rental income of $1500 on your monthly report.

On July 7, 2021 you submitted your Request for Reconsideration. You requested an extension in order to receive assistance with your reconsideration request from an advocate.

On August 3, 2021 the ministry received your Request for Reconsideration submission. In part your advocate notes the difficulties with communication between you and the ministry. It is recommended the ministry provide an interpreter when dealing with you to ensure accuracy in your understanding of what the ministry is asking or requesting and in order for the information you provide to the ministry is also accurate. Further, your advocate notes you do not receive rental income or any regular, ongoing support from your brother and his family who reside with you. It was a misunderstanding with the ministry regarding rental income. Therefore, you should not be required to declare rental income.

Legislation

Section 11 of the Employment and Assistance for Persons with Disabilities (EAPWD) Act state for a family unit to eligible for disability assistance, a recipient must submit a form and notify any change in circumstances or information that may affect the eligibility of the family unit and signed by the recipient.

Section 29 of the EAPWD Regulation states the report must be submitted on the 5th of each month and the information required includes changes in the family unit's assets, all income received and the source of the income.

Section 10 of the Employment and Assistance for Persons with Disabilities Act states, for the purpose of auditing eligibility for disability assistance, the ministry may direct a recipient to supply information and if the recipient fails to comply with the direction the minister may declare the family unit ineligible for assistance for a prescribed period.

Section 28(1) of the Employment and Assistance for Persons with Disabilities Regulation states the family unit is ineligible for assistance until the recipient complies with the direction to supply the information.

Decision

The ministry finds you have declared on your monthly reports when you have received money as a gift and money as loan from your brother. It is important to note that money received from gifts are considered unearned income and exempt from your net income calculation. Loans are not considered earned or unearned income but are considered a cash asset. Further, gifts of money can be considered a cash asset in the second month after it is received. Therefore, it is important to note the ministry may request verification of your assets (ie bank statements) from you in order to determine if the assets you possess are within the $100,000 asset limit permitted for a recipient with Persons with Disabilities designation.

Further, the ministry has reviewed the requested information and is satisfied you have provided the information required in order to determine your current eligibility for disability assistance. The ministry is satisfied your brother does not pay you monthly rent and therefore you are not required to report you receive monthly rent. Accordingly, the ministry finds you should not be denied disability assistance for failing to provide information.

I trust this information will be useful in your understanding of the ministry's decision.

828 View Street, Lekwungen Territories, Victoria, BC, Canada V8W 1K2
Tel: (250) 361-3521 Fax: (250) 361-3541 Web: www.tapsbc.ca

November 30, 2020

Request for Reconsideration: Georgia Crawford SR# 1-XXXXXXX

Issue: Ms. Crawford submits that she meets the eligibility criteria for a crisis supplement pursuant to s.57 of the Employment and Assistance Regulation for Persons with Disabilities ("the Regulation"). As such, she requests that the Ministry of Social Development and Poverty Reduction ("the Ministry") reconsider its decision to deny her application for a crisis supplement for shelter for the amount of $1135.42.

Relevant Legislation:

Employment and Assistance for Persons with Disabilities Regulation

Crisis supplement

57 (1) The minister may provide a crisis supplement to or for a family unit that is eligible for disability assistance or hardship assistance if

(a) the family unit or a person in the family unit requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed and is unable to meet the expense or obtain the item because there are no resources available to the family unit, and

(b) the minister considers that failure to meet the expense or obtain the item will result in

(i) imminent danger to the physical health of any person in the family unit, or

(ii) removal of a child under the Child, Family and Community Service Act.

(2)A crisis supplement may be provided only for the calendar month in which the application or request for the supplement is made.

(4)A crisis supplement provided for food, shelter or clothing is subject to the following limitations:

(a)if for food, the maximum amount that may be provided in a calendar month is $40 for each person in the family unit;

Supported by:
The Law Foundation of British Columbia, United Way of Greater Victoria,
Province of British Columbia,
The Provincial Employees Community Services Fund,
and other generous donors.

(b)if for shelter, the maximum amount that may be provided in a calendar month is the smaller of

(i)the family unit's actual shelter cost, and

(ii)the sum of

(A)the maximum set out in section 2 of Schedule A and the maximum set out in section 4 of Schedule A, or

(B)the maximum set out in Table 1 of Schedule D and the maximum set out in Table 2 of Schedule D, as applicable, for a family unit that matches the family unit;

Relevant Policy:

BCEA Policy & Procedure Manual

Effective: May 1, 2018

The ministry may provide a crisis supplement to or for a *family unit* that is eligible for *income assistance*, *disability assistance*, or *hardship assistance* if all of the following apply:

- the family unit or a person in the family unit requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed

  An "unexpected" expense or item "unexpectedly" needed refers to an unforeseen situation that suddenly interferes with a person's ability to pay the expense or obtain the item.

  The overall circumstances which gave rise to the unexpected need should be considered.

  Examples include, but are not limited to:

  1. A roommate moves out with no warning and the client is held responsible for the full rent
  2. Unseasonably cold weather causes a heating bill to be unusually high
  3. A power outage results in the food in a fridge to spoil and need replaced
  4. A sudden illness results in a need to purchase over the counter medications instead of paying a hydro bill

- the family unit or person in the family is unable to meet the expense or obtain the item because there are no resources available to the family unit
- failure to meet the expense or obtain the item will result in imminent danger to the physical health of any person in the family unit or removal of a child under the *Child, Family and Community Service Act.*

A crisis supplement is intended to aid the client in an emergency when all other resources have been exhausted. A crisis supplement must not be provided to support an ongoing situation or as a

way to provide assistance that is prohibited by other regulatory direction. [see Policy – Limitations]

Background:

1. Ms. Crawford has been a client of the Ministry and in receipt of income assistance since 2009. In November 2020 she was designated a Person with a Disability (PWD) and started receiving PWD benefits.

2. Ms. Crawford lives in a two-bedroom apartment at 1234 Acorn Street. The rent is $924 per month which Ms. Crawford shared with a roommate, each paying $462. Ms. Crawford's portion of the rent is paid directly from the Ministry to her landlord.

3. At the end of June 2020, Ms. Crawford's roommate disappeared without notice leaving behind all her furniture and belongings.

4. On June 19, 2020, the provincial government announced that due to the COVID-19 pandemic, they were applying a moratorium on all evictions for non-payment of rent.

5. On July 1, 2020, Ms. Crawford paid her portion of the rent totalling $462. She was unable to pay her roommate's portion of the rent.

6. Ms. Crawford suffers from anxiety and depression as a part of her PWD designation. In July, these conditions were significantly exacerbated by the disappearance of her roommate and the COVID-19 pandemic.

7. On August 1, 2020, Ms. Crawford again paid $462 for rent. She was unable to pay any additional rent and still afford to pay for groceries and bills. That month, Ms. Crawford's landlord gave her a verbal warning that she would be evicted if she did not pay her arrears.

8. At the end of August, the provincial government announced that they would be lifting the moratorium on evictions and introduced repayment guidelines for landlords. The guidelines dictated that any arrears accrued from March 18, 2020 to August 17, 2020 would be subject to a repayment agreement and that tenants could be evicted for arrears occurring after August 17, 2020.

9. On September 1, 2020, Ms. Crawford again paid $462 for her September rent as she still did not have the resources to pay the other half of the rent.

10. On September 16th, 2020, Ms. Crawford submitted an urgent service request for a crisis supplement to cover her rent arrears.

11. On September 17th, Ms. Crawford was notified that her application for a crisis supplement for shelter was denied. Ms. Crawford subsequently requested a reconsideration of this decision.

12. Ms. Crawford has continued to pay $462 for October and November rent. Ms. Crawford received her first PWD cheque for the December assistance month.

Submission

13. For the reasons set out below, Ms. Crawford submits that she meets all eligibility requirements for a crisis supplement for shelter as per s.57 of the Regulation.

Unexpected need or expense

14. Ms. Crawford's roommate moved out suddenly and without notice at the end of June 2020. There is currently a missing person's file open with Vancouver Police Department for Ms. Crawford's former roommate. This event resulted in an unexpected expense for Ms. Crawford of having to pay her roommate's portion of the rent.

15. Ms. Crawford's circumstances are paralel to those described in the Ministry's policy guideline for crisis supplement eligibility requirements. The policy states that "a roommate moving out with no warning and the client is held responsible for the full rent" is to be used as an example of what constitutes an unexpected expense. We submit that this consistency with Ms. Crawford's situation exemplifies her eligibility under this criterion.

16. In addition to the disappearance of Ms. Crawford's roommate, the COVID-19 pandemic added to the complex and unexpected nature of this crisis. Although Ms. Crawford knew that she had arrears, she also was aware that there was a moratorium on evictions which protected her from the threat of imminent eviction.

17. Ms. Crawford was not able to anticipate when the moratorium on evictions would be lifted or the terms under which she would be required to pay her arrears as this information had not yet been released. On September 1, 2020, when the moratorium on evictions was lifted the threat of eviction became an immediate reality for Ms. Crawford.

18. Ms. Crawford submits that she was subject to two unexpected events, the unforeseen disappearance of her roommate and the inability to predict when the moratorium on evictions would be lifted and what would be the process would be for paying her arrears.

19. In addition, all of the above occurred during the COVID-19 health pandemic. On March 18, 2020, the BC government declared a state of emergency and the Provincial Health Officer urged British Columbians to practice social distancing to limit exposure and transmission of the virus. All of these factors contributed to the unpredictable circumstances Ms. Crawford faced.

No Resources Available

20. Ms. Crawford's only source of income is PWD assistance which is by definition a "program of last resort". To be eligible for PWD assistance, one must have exhausted all other potential

income sources and have limited assets. Ms. Crawford already struggles to meet her basic needs and therefore cannot afford to pay the full arrears without support.

21. Ms. Crawford has exhausted all other community and personal resources available to her.

Imminent threat to physical health or risk of removal of a child

22. Since the moratorium on evictions has been lifted, Ms. Crawford can be evicted for her outstanding rent accrued from September 1st - present.

23. Ms. Crawford will be at imminent risk of homelessness if she is unable to pay her rental arrears. While this would pose imminent danger to anyone's physical health, Ms. Crawford is particularly vulnerable as given her disabilities, low vacancy rates and the COVID-19 pandemic. Homelessness would pose a critical risk to both her physical and mental health.

24. In addition to the threat posed by homelessness, provincial health orders related to the pandemic stressed the importance of limiting interaction with people outside your household as much as possible. As Ms. Crawford is diagnosed with severe anxiety, the task of finding a new roommate during the state of emergency, was not achievable for Ms. Crawford.

25. Ms. Crawford submits that the COVID-19 health pandemic contributed to the unique nature of the situation she faced, posed additional risks to her physical health and that she acted prudently given the extraordinary circumstances she faced.

Crisis supplement provided in same month the request was made

26. Ms. Crawford was denied a crisis supplement with reference to s. 57(2) of the Regulation that states, "[a] crisis supplement may be provided only for the calendar month in which the application or request for the supplement is made." The adjudicator cited that since Ms. Crawford's roommate left in June but she did not request the crisis supplement until September, this section of the regulation would be a barrier to Ms. Crawford's eligibility.

27. We submit that s. 57(2) of the Regulation does not require that the crisis must occur in the same month during which the supplement request is made. Rather, it dictates that the supplement can only be provided in the month that the request is made, opposed to a future month, for instance. We therefor submit that the adjudicator erred in their application of this regulation as this regulation would not preclude Ms. Crawford's eligibility.

28. Furthermore, Ms. Crawford submits that in addition to the unexpected circumstance that occurred in June, another unexpected crisis arose on September 1, 2020 when the moratorium was lifted and her threat of eviction became imminent. This results in Ms. Crawford's crisis, her unexpected need, and her request all occurring in the same month.

Ongoing situation

29. Ms. Crawford's denial decision also states that a crisis supplement must not be provided for an ongoing situation which is a reflection of Ministry policy. Ms. Crawford has only requested one supplement to remedy this particular crisis. We therefore submit that her situation does not exemplify an ongoing situation.

30. In addition, since Ms. Crawford meets all of the legislated eligibility criteria, legislation should prevail ahead of policy if any inconsistency exists.

31. Ms. Crawford is now on PWD benefits and submits that she will be able to pay her full rent going forward if she does not able to find a new roommate.

Arrears

32. All of Ms. Crawford's arrears prior to September 1, 2020 are subject to the new provincial tenancy guidelines including repayment rules. This means that $924 of her arrears must be paid in equal allotments until July 10, 2021. However, Ms. Crawford has $1,386 in unpaid rent that she has accrued from after September 1, 2020 which she is obligated to pay immediately.

33. If Ms. Crawford is successful with her crisis supplement request for $1,135.42, she will have $250.58 in arrears that she will pay from her support benefit.

Conclusion:

21. Ms. Crawford faces both imminent threats to her physical and mental health, especially given her disabilities, due to unforeseen circumstances of her roommate's disappearance coupled with COVID-19 which resulted in unexpected additional rental expenses. Furthermore, Ms. Crawford has no other resources available, nor any other means to meet these rental expenses.

22. Ms. Crawford did submit her crisis supplement request in the same calendar month in which she requested to be paid that supplement (September 2020). We submit that the adjudicator erred in their application of the s. 57 (2) EAPWD regulation.

23. This crisis supplement request is the only one she has sought to remedy this crisis. Going forward, Ms. Crawford submits that she will be able to pay her full rent with her additional PWD income if she is unable to find a new roommate.

24. We urge the Ministry to reconsider its decision, and issue Ms. Crawford $1,135.42 as a crisis supplement for shelter to pay her outstanding rental arrears that are currently due.

Sincerely,

Madyson Powell – Legal Advocate
Together Against Poverty Society
(778)401-7800
mpowell@tapsbc.ca

BRITISH COLUMBIA

December 2, 2020

Reconsideration Service Request: [redacted]
Case: [redacted]

[redacted]

Dear [redacted]

Re: Employment and Assistance Reconsideration Decision

Upon review of the information provided, the ministry has approved your request for a crisis supplement to pay $1183.42 overdue rent. This is the maximum amount the ministry is permitted to issue in one month for a crisis supplement to pay shelter expenses, under section 57(4) of the Employment and Assistance for Persons with Disability (EAPWD) regulation.

Enclosed is a copy of the Employment and Assistance Reconsideration Decision form, confirming this decision. If you would like a copy of the complete reconsideration decision package, which contains the documents that you provided with your Request for Reconsideration, and documents you received with the original decision, please contact the Reconsideration Branch at 778-698-7750.

If you have any questions, please contact your local Employment and Income Assistance Office. You may also contact an Employment Assistance Worker at **1-866-866-0800** or visit the ministry website at www.hsd.gov.bc.ca.

Sincerely,

Reconsideration Officer

Ministry of Social Development and Poverty Reduction
Reconsideration, Appeals and Administrative Fairness Branch
PO Box 9963 Stn Prov Govt Victoria BC V8W 9R4

Ministry of Social Development and Poverty Reduction

EMPLOYMENT AND ASSISTANCE RECONSIDERATION DECISION

The collection use and disclosure of personal information is subject to the provisions of the *Freedom of Information and Protection of Privacy Act.* If you have any questions about the collection, use and disclosure of this information, please contact your local Employment and Assistance Office.

REQUESTOR INFORMATION

[redacted] [redacted]		Service Request [redacted]
Requestor Address [redacted]		
[redacted]	Postal Code [redacted]	Case [redacted]

DECISION UNDER CONSIDERATION

You are requesting a reconsideration of the decision to deny you a crisis supplement to pay $1183.42 overdue rent.

SUMMARY OF FACTS

These are the key dates and information related to your Request for Reconsideration:

On September 17, 2020 you were denied a crisis supplement.

On October 16, 2020 you submitted a Request for Reconsideration requesting an extension.

On November 30, 2020 you submitted additional information from your advocate.

On December 2, 2020 the ministry completed its review of your Request for Reconsideration.

APPLICABLE LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation - Section 57

~ Please see the attached copy of the legislation in Appendix B ~

RECONSIDERATION DECISION

~ Please see the attached copy of the Reconsideration Decision in Appendix A ~

ENCLOSED: ☐ ALL DOCUMENTS CONSIDERED BY THE MINISTRY ☐ NOTICE OF APPEAL TO THE EMPLOYMENT AND ASSISTANCE APPEAL TRIBUNAL

SIGNATURE	TITLE	DATE
[signature]	Reconsideration Officer	December 2, 2020

If this decision is appealable to the Employment and Assistance Appeal Tribunal, and you wish to appeal this decision, you may complete the enclosed *Notice of Appeal to the Employment and Assistance Appeal Tribunal* form and return it to the Appeal Tribunal. This Reconsideration Decision and attached documents constitute the appeal record. A sealed copy of this appeal will be kept by the Ministry.

HSD101(05/06/29)

APPENDIX A – RECONSIDERATION DECISION

After review of the information provided, the ministry has approved your request for a crisis supplement to pay $1183.42 overdue rent.

Our records show:

- You are a sole recipient with Persons with Disabilities Designation. Your file has been open since March 16, 2020.

- You receive $1535.42 per month for disability assistance. This amount includes $808.42 for a support allowance, $375 for a shelter allowance, $52 for a transportation supplement, and $300 for an emergency response supplement.

- On September 16, 2020, with the help of your advocate, you requested a crisis supplement to pay overdue rent. You explained you owed $1386 for three months of your roommate's portion of rent. You had been paying $462, half of the $924 total monthly rent when your roommate left suddenly in late June, without giving notice. You were able to continue paying your portion of the rent; however, you could not afford to also pay your roommate's half. You stated you had no funds and no alternative resources. You attempted to find another roommate, but you were unsuccessful. You stated you would become homeless if you were unable to pay the overdue rent, which would leave you particularly vulnerable and your physical and mental health would be at critical risk. You also indicated you planned to apply for the Homelessness Prevention Fund program for the balance not covered by the crisis supplement.

- On September 17, 2020 your request was denied. The ministry determined your need to pay rent was not unexpected. Your roommate left in June and you requested the supplement in September, meaning your overdue rent was an ongoing situation and not unexpected.

- On November 30, 2020, through your advocate, you submitted a Request for Reconsideration. You further explained how your situation was unexpected to you. Shortly after your roommate left in June 2020 the provincial government announced a moratorium on evictions for non-payment of rent, due to the Covid-19 pandemic. You continued to pay your portion of the rent during the eviction freeze however, you could not pay your roommate's portion. Your landlord gave you a verbal warning for eviction if the full rent continued to go unpaid. In addition, you explained you had been unable to find a new roommate as your anxiety increased significantly during the Covid-19 pandemic and the public health orders limiting contact with people outside your household. When the government lifted the moratorium, allowing eviction for unpaid rent after August 17, 2020, you did not have a roommate or a way to pay the additional rent. You indicated you could not have anticipated when the freeze on evictions would be lifted and that you would be at immediate risk of homelessness. You were not at risk of eviction and homelessness until the moratorium on evictions was lifted, and thus you submitted your request for a crisis supplement shortly after the risk unexpectedly became imminent.

Decision:

Crisis supplements address urgent situations that a person could not reasonably plan for or anticipate. Section 57 of the Employment and Assistance for Persons with Disabilities (EAPWD) Regulation says your request for crisis supplement must meet the following requirements:

1. The need for the item is unexpected or there is an unexpected expense **and**
2. There are no resources available **and**
3. Failure to obtain the item or meet the expense will result in imminent danger to physical health or the removal of a child under the *Child, Family and Community Service Act*. (CFCSA)

You explained that your roommate moving out was unexpected, and further, the timing of the province's moratorium on evictions and subsequent lifting of the moratorium were both unexpected. It is reasonable you could not anticipate having to pay your roommate's portion of the rent, or when the province would allow evictions for unpaid rent. The ministry is satisfied that your need to pay your roommate's overdue rent to prevent eviction was unexpected to you. ***Requirement #1 is met.***

The ministry previously determined you had no available resources to meet your need to pay overdue rent, as you had no saving and had exhausted all personal and community resources. ***Requirement #2 is met.***

The ministry previously determined there was an imminent risk to your physical health if your need to pay overdue rent was not met, as you were at risk for becoming homeless and your health conditions and the effect Covid-19 pandemic has had on the rental market leave you particularly vulnerable. ***Requirement #3 is met.***

Under section 57(4) of the EAPWD regulation, the maximum the ministry is permitted to issue in one month for a crisis supplement to pay shelter costs is the lesser of the actual cost or the monthly support and shelter rate for the family unit. Your family unit size is one and your monthly rate is $375 for shelter and $808.42 for support, for a total of $1183.42. This is the maximum that the ministry may issue for your crisis supplement request to pay overdue rent.

As your request meets the eligibility criteria under Section 57(1) of the EAPWD Regulation, the ministry has approved your request for a crisis supplement to pay $1183.42 overdue rent.

I trust the information provided will assist in understanding the ministry decision.

APPENDIX B – APPLICABLE LEGISLATION

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION:

Crisis supplement

57 (1) The minister may provide a crisis supplement to or for a family unit that is eligible for disability assistance or hardship assistance if

(a) the family unit or a person in the family unit requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed and is unable to meet the expense or obtain the item because there are no resources available to the family unit, and

(b) the minister considers that failure to meet the expense or obtain the item will result in

(i) imminent danger to the physical health of any person in the family unit, or

(ii) removal of a child under the *Child, Family and Community Service Act*.

(2) A crisis supplement may be provided only for the calendar month in which the application or request for the supplement is made.

(3) A crisis supplement may not be provided for the purpose of obtaining

(a) a supplement described in Schedule C, or

(b) any other health care goods or services.

(4) A crisis supplement provided for food, shelter or clothing is subject to the following limitations:

(a) if for food, the maximum amount that may be provided in a calendar month is $40 for each person in the family unit;

(b) if for shelter, the maximum amount that may be provided in a calendar month is the smaller of

(i) the family unit's actual shelter cost, and

(ii) the sum of

(A) the maximum set out in section 2 of Schedule A and the maximum set out in section 4 of Schedule A, or

(B) the maximum set out in Table 1 of Schedule D and the maximum set out in Table 2 of Schedule D,

as applicable, for a family unit that matches the family unit;

(c) if for clothing, the amount that may be provided must not exceed the smaller of

(i) $100 for each person in the family unit in the 12 calendar month period preceding the date of application for the crisis supplement, and

(ii) $400 for the family unit in the 12 calendar month period preceding the date of application for the crisis supplement.

(5) Repealed. [B.C. Reg. 248/2018]

(6) Repealed. [B.C. Reg. 248/2018]

(7) Despite subsection (4) (b), a crisis supplement may be provided to or for a family unit for the following:

(a) fuel for heating;

(b) fuel for cooking meals;

(c) water;

(d) hydro.

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Equity, Justice & Dignity

828 View Street,
Victoria B.C.
Canada, V8W 1K2

September 20, 2021

ATTN: Ministry of Social Development and Poverty Reduction
Request for Reconsideration for Angela Lemon - SR 1-XXXXXXX

Issue

1. Whether Ms. Lemon was entitled to assistance for the months of November 2020 – February 2021 which would result in a finding of an administrative underpayment by the Ministry.

Background

1. Ms. Lemon has been in receipt of disability assistance since the November 2002 for her various medical conditions of fibromyalgia, chronic pain, lupus and anxiety disorder.

2. On August 3rd 2020, Ms. Lemon submitted her monthly report showing her total July income with pay stubs that indicated that she had reached her annual earnings exemption (AEE).

3. On September 2nd 2020, Ms. Lemon submitted her next monthly report showing that in August, she had been laid off from her job due to the second wave of the COVID-19 pandemic and that she was still in need of assistance. Along with this report, she attached a letter from her employer confirming her lay-off and her Record of Employment.

4. On September 16th 2020, Ms. Lemon phoned the Ministry to inquire about her current and ongoing eligibility for disability assistance and was told by an Employment and Assistance Worker (EAW) that she was and would continue to be ineligible for assistance until March 2021 because she had exhausted her AEE for 2020.

5. On September 16th, the Ministry transitioned Ms. Lemon's file from PWD to Medical Services Only (MSO). Ms. Lemon did not receive any written or My Self-Serve correspondence regarding this switch.

6. On September 23rd 2020, Ms. Lemon submitted her monthly report showing her September income on which she declared that she was still in need of November's assistance. On this report she declared that she did not receive employment income and was in receipt of the Canada Emergency Response Benefit (CERB).

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7. On October 21st 2020, November disability assistance payment day, Ms. Lemon did not receive any assistance.

8. On November 3rd 2020, Ms. Lemon submitted her monthly report showing that she did not earn any employment income in October and was still in need of assistance. She also reported that she received Employment Insurance (EI) benefits in October as a result of her COVID-19 related lay off.

9. On November 3rd, Ms. Lemon received a phone call from the EAW who processed her monthly report. This worker informed Ms. Lemon that she could submit a service request to have her PWD benefits reinstated. Ms. Lemon subsequently initiated a service request to reestablish her benefit eligibility.

10. The Ministry responded to her service request with a phone call on November 10th asking Ms. Lemon to submit verifying documentation pertaining to her eligibility including: tenancy documents, bank statements from September 10-present and confirmation of EI.

11. On November 10th, while in the process of submitting the verifying documentation to the Ministry, Ms. Lemon received follow up My Self-Serve message from an EAW discussing the interaction of EI and PWD. The EAW described being unclear about the interaction between the two benefit systems and uncertain about how EI may affect her PWD eligibility. As a result of this uncertainty, Ms. Lemon agreed to withdraw her request for benefits. The service request was closed as a result.

12. Ms. Lemon did not receive a decision or any written or My Self-Serve correspondence documenting the closure of the service request.

13. In June 2021, Ms. Lemon visited TAPS seeking assistance about whether she should have been eligible for PWD from November 2020 – February 2021. An advocate supported her in submitting a new service request requesting that an administrative underpayment review be initiated to look into this matter.

14. On July 19th, the Ministry determined that Ms. Lemon was not eligible for an underpayment pursuant to EAPWD Regulation 23 (5) citing, “A family unit is not eligible for assistance before the calendar month in which it is requested. You requested to wait for the new AEE year, March 2021, to reopen your disability file”.

15. We subsequently requested a reconsideration of this decision.

Relevant Legislation

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Employment and Assistance for Persons with Disabilities Regulation

Modifications in relation to COVID-19 emergency — certain payments

2.01 (1) This section applies in relation to the provision of assistance for a calendar month after April, 2020 and before January, 2022 to or for

(a) a family unit that

(i)was eligible on April 2, 2020, or includes a person who was in a family unit that was eligible on April 2, 2020, for disability assistance or hardship assistance, or

(ii)includes a person with disabilities who was a person with disabilities on April 2, 2020, or

(b) a family unit that is described in section 2.1 (1) (a) of the Employment and Assistance Regulation.

(2) Section 10 (1) is to be read as though it also provided that the following assets are exempt for the purposes of section 10 (2):

(a) an income support payment under the *Canada Emergency Response Benefit Act*;

(a.1) a benefit under the *Canada Recovery Benefits Act*;

(b) employment insurance;

(c) pandemic pay.

(3)Section 1 (a) of Schedule B is to be read as though it also provided that the following are exempt from income when calculating the net income of a family unit for the purposes of section 24 (b) of this regulation:

(a) an income support payment under the *Canada Emergency Response Benefit Act*;

(a.1) a benefit under the *Canada Recovery Benefits Act*;

(b) employment insurance;

(c) pandemic pay.

(7)In this section:

"COVID-19 emergency" means the emergency that is the subject of

(a) the notice provided on March 17, 2020 by the provincial health officer under section 52 (2) of the *Public Health Act*, and

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(b) the declaration of a state of emergency made on March 18, 2020, and any extension of that declaration, under section 9 of the *Emergency Program Act*;

Monthly reporting requirement

29 For the purposes of section 11 (1) (a) *[reporting obligations]* of the Act,

(a) the report must be submitted by the 5th day of the calendar month following the calendar month in which one or more of the following occur:

(i) a change that is listed in paragraph (b) (i) to (v);

(ii) a family unit receives earned income as set out in paragraph (b) (vi);

(iii) a family unit receives unearned income that is compensation paid under section 29 or 30 of the *Workers Compensation Act* as set out in paragraph (b) (vii), and

(B.C. Reg. 332/2012)

(b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation:

(i) change in the family unit's assets;

(ii) change in income received by the family unit and the source of that Income;

(iii) change in the employment and educational circumstances of recipients in the family unit;

(vi) the amount of earned income received by the family unit in the calendar month and the source of that income; (B.C. Reg. 226/2014)

Employment and Assistance for Persons with Disabilities Act

Disability assistance and supplements

5 Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

Reporting obligations

11 (1) For a family unit to be eligible for disability assistance, a recipient, in the manner and within the time specified by regulation, must

(a) submit to the minister a report that

(i) is in the form prescribed by the minister, and

(ii) contains the prescribed information, and (B.C. Reg. 265/2002)

(b) notify the minister of any change in circumstances or information that

(i) may affect the eligibility of the family unit, and

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(ii) was previously provided to the minister.

(2) A report under subsection (1) (a) is deemed not to have been submitted unless the accuracy of the information provided in it is affirmed by the signature of each recipient.

Relevant Policy and Procedure

BCEA Policy and Procedure Manual

Earnings Exemptions

Effective: January 1, 2021

Annual Earnings Exemption – Disability Assistance

Disability assistance clients are eligible for an annual earnings exemption (AEE). The AEE allows individuals on disability assistance to use their earnings exemption on an annual, instead of monthly, basis and without a monthly maximum. The intent of AEE is to better assist individuals whose ability to earn fluctuates during the year, for example, due to medical conditions.

PWD designated clients in receipt of Medical Services Only coverage as a result of employment income should continue to submit monthly reports in order for the ministry to re-establish eligibility for disability assistance when:

1. the client's income falls below the disability assistance rate; or
2. the client is eligible for an annual earnings exemption in the new calendar year

Under the AEE, there is only an annual exemption limit – there is no monthly maximum. Once the family unit is eligible for earnings exemptions, the amount of a family unit's disability assistance is not impacted by earnings received up to the family unit's AEE limit. Once a family unit's AEE limit is reached, any additional earnings received will be deducted dollar for dollar from their disability assistance.

Assessing Eligibility – Income in Excess

Effective: October 9, 2008

Ministry staff are to follow these steps when identifying a client who may be income in excess:

1. Ensure all income is reported on the Case, Contact, Income tab in the system using the appropriate income types and include notes on the system.
2. Ensure there is supporting documentation for the income on the client's case.
3. Contact the client to advise that the earned and/or unearned income is more than the amount of assistance payable to the family unit. Ministry staff can send the

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applicable template letters as follows: Income in Excess Letter – Single Parent with Disabled Child (HR3225), Income in Excess Letter – PWD Earned and Unearned Income (HR3227) and for all other client categories, use Income in Excess – Earned and Unearned Income (HR3224). [see Forms and Letters]

4. Use office caseload management protocols to follow up with the client's ongoing eligibility.

Medical Services Only Clients Requesting Assistance

Effective: January 1, 2020

Recipients of Medical Services Only (MSO) who are requesting *income assistance*, *disability assistance* or *hardship assistance* may apply for assistance as follows:

- If they have not received income assistance in any of the preceding six months, complete an application by using the Eligibility Review process and signing an HR0080R.
- If they have received income assistance in any of the preceding six months, and their file is open, the ministry has discretion to use either the streamlined reapplication process, or where needed the, Eligibility Review process and signing an HR0080R.

[For more information, see Related Link – BCEA Streamlined Application (Returning within Six Months)]

Recipients of MSO who left disability assistance due to employment income (exhausting their annual earnings exemption) should continue to submit monthly reports in order for the ministry to re-establish their eligibility for disability assistance. MSO recipients may again be eligible for disability assistance at any time during the year if their financial circumstances change due to a loss of employment or a reduction in income, or at the beginning of the new exemption year, as they may be eligible for assistance with a new annual earnings exemption limit. [For more information, see Related Links - BCEA Application - Stage 1 – Prospecting - Medical Services Only Clients Requesting Assistance].

[For more information, see Related Links – Eligibility Review]

Duty to Accommodate

Effective: October 18, 2018

The ministry is committed to providing accommodation to clients for needs related to the grounds protected under the *Human Rights Code*. These procedures assist staff when working with clients who may be in need of or have requested an accommodation. Although in many cases the ministry may do so, the ministry's duty to

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accommodate does not mean that it must necessarily adopt the specific accommodation requested by the client. The manner in which the client's request can be accommodated will be determined through discussions between the ministry and the client. The parties must work together to reach a reasonable solution or accommodation. Staff should consult their supervisor if they require guidance. If a supervisor requires policy related guidance, they should consult their Policy and Program Implementation Manager. If it is service quality related, they should consult their Manager of Community Relations and Service Quality.

Duty to accommodate can take many forms. Staff must review each case individually to determine the appropriate accommodation, which may vary depending on the individual circumstances. Once an accommodation has been agreed upon, the ministry will create a duty to accommodate alert. These alerts can be amended and removed at any point, based on the client's individual accommodation needs. Certain accommodations may be more common for certain people, for example:

- Mental Health
    - Client requests all information or requests be provided in writing.
    - Client has Consent to Disclosure of Information – Service Authorization on file for Canadian Mental Health Association
    - Client may request additional time and help gathering required documents
    - Client requests information to be provided verbally, please use phone rather than MySS messages

The duty to accommodate may include but is not limited to the following:

Providing information or requests in writing

When required or requested by a client whose need arises from a protected ground under the Code, staff will accommodate the client's request to provide information or requests in writing. For example, a client who has difficulty remembering or is confused by verbal information because of a mental disability may require or request that information or requests sent by the ministry be provided in writing. Staff will accommodate this need.

Submission

16. The Ministry provided Ms. Lemon inaccurate information at various points during her attempts to understand her eligibility from August – November 2020. Firstly, she was told on September 16th that she would no longer be eligible for PWD benefits for the rest of 2020 as she had exhausted her AEE. Alternatively, Ministry policy instructs that once a recipient's AEE is exhausted, future earnings are to be deducted dollar-for-dollar for the subsequence assistance cheques. Since Ms. Lemon communicated extensively that she was laid off due to COVID-

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19 and would not be returning to work in 2020, it should have been communicated to her that having reached her AEE would no longer have prevented her from accessing her full benefit cheque.

17. On November 10th, an EAW did not provide Ms. Lemon with the knowledge that the Ministry was fully exempting EI benefits without them contributing to a recipients AEE pursuant to Section 2.01 of the EAPWD Regulation. During the COVID-19 Pandemic, CERB and EI are both considered exempt income for people who were PWD recipients on April 2nd, 2020. This information was not presented to Ms. Lemon, rather, she was led to believe that she may have to choose between accessing PWD benefits or CERB/ EI benefits. It was this misinformation that led Ms. Lemon to agree to withdrawing her service request for reinstated PWD benefits.

18. We further submit that the Ministry neglected to issue any written documentation via letter or My Self-Serve documenting Ms. Lemon's transition to MSO on September 16th and the closure of her service request on November 10th. Ministry policy and procedure instructs that staff can send a letter to the client to formalize the transition to MSO with the Income in Excess Letter – PWD Earned and Unearned Income (HR3227). Ms. Lemon did not receive this letter or any other written correspondence documenting this transition nor did she receive any written correspondence speaking to the reason for her service request closure on November 10th.

19. The Ministry has a proactive Duty to Accommodate their clients with disabilities to ensure that they are communicated to in such a way that supports the clients understanding of the ongoings of their file and eligibility status. As a PWD client with documented mental health deficits, the Ministry failed to ensure that Ms. Lemon was provided adequate information to make informed decisions about her file.

20. We submit that if Ms. Lemon was provided the Income in Excess Letter explaining her transition to MSO for the October benefit month, she would have been prepared to ensure her eligibility was reestablished for the November benefit month when she would have been eligible again. Additionally, when Ms. Lemon submitted the information to establish her November eligibility on September 23rd, the Ministry could have transitioned her back on to benefits independently. However, it was not until November 3rd, after November's payment date, that an EAW notified Ms. Lemon that she may have been eligible again.

21. The Ministry's "Medical Services Only Clients Requesting Assistance" policy instructs that PWD benefit recipients who are transitioned onto MSO due to earnings should continue to submit monthly reports in order for the Ministry to reestablish their eligibility for assistance. As Ms. Lemon continued to submit her

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reports and follow up with the Ministry with regards to her eligibility, we submit that she should have been deemed eligible for assistance when her September 23rd monthly report was processed and thus paid for her November assistance on the October 21st payment day.

Conclusion

22. We submit that Ms. Lemon would have been financially eligible for her full PWD benefit amount from the months of November 2020- February 2021 and the Ministry had all of the necessary documents to establish this on September 23rd, 2020.

23. The Ministry's only cited reason for denying our request for an underpayment for November 2021 – February 2021 assistance is their view that Ms. Lemon requested to wait for the new AEE year, March 2021, to reopen her disability file. We deny that Ms. Lemon "requested" to go without assistance for those months, rather, she reluctantly agreed to wait for benefits as her eligibility factors were not properly explained This withdrawal was based on misleading advice from the Ministry that led Ms. Lemon to believe that accessing benefits would put her PWD designation at risk.

24. We submitted that if the ongoings of Ms. Lemon's file during September – November 2020 were formalized with any written correspondence, she would have had the opportunity to review or reconsider decisions as well as better understand her eligibility at the time when her benefits were discontinued. Therefore, preventing the underpayment from occurring in the first place.

25. In light of the Ministry's failure to provide accurate information pertaining to the annual earnings exemption policy and the COVID-19 EI exemption; Ms. Lemon's cognitive impairments; the Ministry's lack of initiative inquire about, or provide appropriate accommodation for Ms. Lemon's disabilities, it is respectfully submitted that Ms. Lemon is entitled to payment of the previously withheld PWD assistance she was eligible for between November 2020 and February 2021 as per Section 24 of the *EAPWD Regulations.*

Sincerely,

Madyson Powell, Legal Advocate
Together Against Poverty Society
778-401-7800
mpowell@tapsbc.ca

BRITISH COLUMBIA

September 20, 2021

Service Request No:
Case No:

Dear

Re: Employment and Assistance Reconsideration Decision

Upon reconsideration, the ministry has approved your request for backdated disability assistance for the period of November 2020 to February 2021.

Enclosed is a copy of the Employment and Assistance Reconsideration Decision form, confirming this decision. If you would like a copy of the complete reconsideration decision package, which contains the documents that you provided with your Request for Reconsideration, and documents you received with the original decision, please contact the Reconsideration Branch at 778-698-7750.

If you have any questions, please contact your local Employment and Income Assistance Office. You may also contact an Employment Assistance Worker at **1-866-866-0800** or visit the ministry website at www.hsd.gov.bc.ca .

Sincerely,

Reconsideration Officer

CC: mpowell@tapsbc.ca

Ministry of Social Development and Poverty Reduction

Reconsideration, Litigation and Administrative Fairness Branch

PO Box 9963 Stn Prov Govt
Victoria BC V8W 9R4

BRITISH COLUMBIA | Ministry of Social Development and Poverty Reduction

EMPLOYMENT AND ASSISTANCE RECONSIDERATION DECISION

The collection, use and disclosure of personal information is subject to the provisions of the *Freedom of Information and Protection of Privacy Act*. If you have any questions about the collection, use and disclosure of this information, please contact your local Employment and Assistance Office.

REQUESTOR INFORMATION

		Request No.
Requestor Address		
	Postal Code	Case No.

DECISION UNDER CONSIDERATION

You are requesting reconsideration of the decision to deny you back dated disability assistance for the period of November 2020 to February 2021.

SUMMARY OF FACTS

The following is a summary of the key dates and information related to your Request for Reconsideration:

On July 22, 2021 you were advised your request was denied.

On August 20, 2021 you submitted a Request for Reconsideration. The ministry approved your request for an extension until September 20, 2021.

On September 20, 2021 the ministry completed its review of your Request for Reconsideration.

APPLICABLE LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation ~ Sections 1, 2.01 and 29
Schedule A, sections 1, 2 and 4
Schedule B, sections 1, 6, and 7

~ Please see the attached copy of the legislation in Appendix B ~

RECONSIDERATION DECISION

~ Please see the attached copy of the reconsideration decision in Appendix A ~

ENCLOSED: ☐ ALL DOCUMENTS CONSIDERED BY THE MINISTRY ☐ NOTICE OF APPEAL TO THE EMPLOYMENT AND ASSISTANCE APPEAL TRIBUNAL

SIGNATURE	TITLE	DATE
	Reconsideration Officer	September 20, 2021

If this decision is appealable to the Employment and Assistance Appeal Tribunal, and you wish to appeal this decision, you may complete the enclosed *Notice of Appeal to the Employment and Assistance Appeal Tribunal* form and return it to the Appeal Tribunal. This Reconsideration Decision and attached documents constitute the appeal record. A sealed copy of this appeal will be kept by the Ministry.

HSD101(05/06/29)

APPENDIX A – RECONSIDERATION DECISION

Upon reconsideration, the ministry has approved your request for backdated disability assistance for the period of November 2020 to February 2021.

Background:

- You are a sole recipient of disability assistance. Your file has been open since May 8, 2007.
- On September 2, 2020 you submitted your monthly report for October assistance. You said you were laid off from employment and between your savings, vacation pay and CERB you will be okay until your disability assistance restarts next year. The ministry noted that your file would switch to Medical Services Only because you had exceeded the Annual Earnings Exemption limit for 2020.
- On September 23, 2020 you submitted your monthly report for November assistance. You declared $2000 for CERB.
- On November 1, 2020 you submitted a monthly report and declared $982 for employment insurance. The ministry contacted you by phone, you advised you are struggling financially, and you are not sure when you will be back to work. You said you were previously told (by the ministry) that nothing could be done about it. The ministry created a service request to initiate a file review so that your file could be switched from Medical Services Only to disability assistance now that you were no longer receiving employment income.
- On November 10, 2020 the ministry noted that because you were eligible for disability assistance on April 2, 2020 your EI/CERB income was exempt. The ministry sent the following information to you in a my self serve message:

  As far as I can find on EI end, they don't attach special conditions to EI and collecting Income Assist / Disability, but instead warn applicants that your local IA ministry "may" make portions of EI repayable or deducted. EI due to Covid has been given some policy exemptions by BC SDPR, so I'd be figuring out exactly how we'll handle that in the course of your review - in all likehood, it will either not affect your total income or increase it somewhat.

  https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/reports/social-assistance.html

  I'd still recommend checking with them if you can slog your way through their phone queue, but that seemed to be the only page they had about social assistance vs. EI, and doesn't seem to have any Covid specific updates - in which case your EI income should be in the clear.

- On November 10, 2020 you replied to the ministry's message and wrote:

  I did get through and was told that you cannot be on disability and EI. On EI you have to be ready and able for work. If my Disability is turned back on I will have to apply for medical EI and that is not why I was laid off.

  I cannot risk losing $600 a month more on EI for my disability until my job restarts in the spring. I can scrape by and borrow more money to replace my bed and other things I need right now. I will wait for my disability to re open in March. I should be back to work by then.

- On December 17, 2020 the ministry closed your request for disability assistance as "withdrawn".

- On June 18, 2021 your advocate submitted a request for the back dated assistance that you would have been eligible (November 2020 to February 2021) as your EI payments were exempt. You provided bank statements confirming the EI payments you received and showing that you did not receive any employment income during this time. Your advocate indicated that despite having the information to determine you eligible for disability assistance, the ministry did not follow up and reinstate your benefits.

- On July 19, 2021 the ministry denied your request because there was no administrative error found. The ministry noted that you did not ask for assistance for the period of November 2020 to February 2021 because you "requested to wait for the new AEE year" and denied your request citing Section 23(5) of the EAPWD Regulation.

- On August 20, 2021 you submitted your request for reconsideration. The ministry approved your request for an extension until September 20, 2021.

- On September 20, 2021 your advocate provided your submission for reconsideration. In part they indicated:

    - You would have financially qualified for disability assistance for the months of November 2020 to February 2021 and the ministry had the necessary documents to establish this on September 23, 2020.
    - You did not ask to go without assistance for the months in question, you reluctantly waited for benefits because the eligibility factors were not properly explained.
    - There was no written decision provided at the time the benefits were discontinued nor were you offered reconsideration.

Legislation:

Under section 1 of the Employment and Assistance for Persons with Disabilities (EAPWD) Regulation, "unearned income" means any income that is not earned income, and includes, without limitation, money or value received from employment insurance. Additionally, unearned income is not limited to the types listed in Section 1 of EAPWD Regulation, it is income, within the ordinary meaning, that is not received for work or the provision of a service.

Section 29 of the Regulation says a person must report income by the fifth of the month after the month you receive it. The ministry uses this information to calculate your net income and eligibility for your next month's disability assistance. For example, you must report the income you received in July by August 5 and it affects your September assistance.

Section 2 and 4 of Schedule A outlines the maximum allowable rate of support and shelter for the size of the family unit before net income deductions. For a sole recipient with PWD designation, the rate of support between September 2020 and February 2021 was $808.42, and the rate of shelter was $375 for a total of $1183.42.

Schedule B of the EAPWD Regulation shows us how to calculate net income. Section 1 lists the types of income that are exempt from the net income calculation and says that a family unit's net income includes all earned and unearned income, except for the permitted exemptions and deductions under Schedule B. Section 7 lists unearned income that is exempt for the purposes of calculating net income.

Section 2.01 of the EAPWD Regulation applies when providing assistance for a calendar month after April 2020 and before March 2021. It states (in part) that employment insurance and income

support payments received under the Canada Emergency Response Benefit Act are exempt from income calculations ***if*** the family unit (or someone in the family unit) was eligible for income assistance, disability assistance or specified types of hardship assistance on April 2, 2020.

Decision:

It is important to note that the ministry previously denied your request for backdated disability assistance under Section 23(5) of the EAPWD Regulation which says a family unit is not eligible for any assistance in respect of a service provided or a cost incurred before the calendar month in which the assistance is requested. A review your file shows you asked for assistance each month when you submitted your monthly reports. Therefore Section 23(5) does not apply.

It is unfortunate that the ministry did not respond when you reported that you no longer had employment income as this situation may have been avoided. As you were eligible for disability assistance on April 2, 2020 the money you received from CERB/ EI is exempt when assessing your eligibility for disability assistance for November 2020 to February 2021 in accordance with Section 2.01 of the EAPWD Regulation.

As the ministry is satisfied you did not have income in excess of the ministry rates between September and December of 2020, the ministry approves your request for backdated disability assistance for the period of November 2020 to February 2021.

I trust this information will be useful in your understanding of the ministry's decision.

APPENDIX B – APPLICABLE LEGISLATION

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION:

Modifications in relation to COVID-19 emergency

2.01 (1) This section applies in relation to the provision of assistance for a calendar month after April, 2020 and before March, 2021 to or for

(a) a family unit that

(i) was eligible on April 2, 2020, or includes a person who was in a family unit that was eligible on April 2, 2020, for disability assistance or hardship assistance, or

(ii) includes a person with disabilities who was a person with disabilities on April 2, 2020, or

(b) a family unit that is described in section 2.1 (1) (a) of the Employment and Assistance Regulation.

(2) Section 10 (1) is to be read as though it also provided that the following assets are exempt for the purposes of section 10 (2):

(a) an income support payment under the *Canada Emergency Response Benefit Act*;

(b) employment insurance.

(3) Section 1 (a) of Schedule B is to be read as though it also provided that the following are exempt from income when calculating the net income of a family unit for the purposes of section 24 (b) of this regulation:

(a) an income support payment under the *Canada Emergency Response Benefit Act*;

(b) employment insurance.

(4) Section 6 of Schedule D is to be read as though it also provided that no deduction is to be made for the following when calculating the maximum amount of hardship assistance for which an applicant's family unit is eligible under section 2 of that Schedule:

(a) an income support payment under the *Canada Emergency Response Benefit Act*;

(b) employment insurance.

(5) This section is repealed on March 1, 2021.

[en. B.C. Reg. 102/2020, App. 2.]

Definitions

1 (1) In this regulation:

"unearned income" means any income that is not earned income, and includes, without limitation, money or value received from any of the following:

(a) money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;

(b) cooperative associations as defined in the *Real Estate Development Marketing Act*;

(c) war disability pensions, military pensions and war veterans' allowances;

(d) insurance benefits, except insurance paid as compensation for a destroyed asset;

(e) superannuation benefits;

(f) any type or class of Canada Pension Plan benefits;

(g) employment insurance;

(h) union or lodge benefits;

(i) financial assistance provided under the *Employment and Assistance Act* or provided by another province or jurisdiction;

(j) workers' compensation benefits and disability payments or pensions;

(k) surviving spouses' or orphans' allowances;

(l) a trust or inheritance;

(m) rental of tools, vehicles or equipment;

(n) rental of land, self-contained suites or other property except the place of residence of an applicant or recipient;

(o) interest earned on a mortgage or agreement for sale;

(p) maintenance under a court order, a separation agreement or other agreement;

(q) education or training allowances, grants, loans, bursaries or scholarships;

(r) a lottery or a game of chance;

(s) awards of compensation under the *Criminal Injury Compensation Act* or awards of benefits under the *Crime Victim Assistance Act*, other than an award paid for repair or replacement of damaged or destroyed property;

(t) any other financial awards or compensation;

(u) Federal Old Age Security and Guaranteed Income Supplement payments;

(v) financial contributions made by a sponsor pursuant to an undertaking given for the purposes of the *Immigration and Refugee Protection Act* (Canada) or the *Immigration Act* (Canada);

(w) tax refunds;

(x) gifts of money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;

(y) gifts in the form of payment by another person of a debt or obligation.

(2) For the purposes of the Act and this regulation, if a child resides with each parent for 50% of each month under

(a) an order of a court in British Columbia,

(b) an order that is recognized by and deemed to be an order of a court in British Columbia, or

(c) an agreement filed in a court in British Columbia,

the child is a dependent child of the parent who is designated in writing by both parents.

(3) For the purposes of the definition of "special care facility", the minister may approve as a specialized adult residential care setting a place that provides accommodation and care for adults and for which a licence under the *Community Care and Assisted Living Act* is not required.

Effective date of eligibility

23 (1) Except as provided in subsections (1.1), (3.11) and (3.2), the family unit of an applicant for designation as a person with disabilities or for both that designation and disability assistance

(a) is not eligible for disability assistance until the first day of the month after the month in which the minister designates the applicant as a person with disabilities, and

(b) on that date, the family unit becomes eligible under section 4 and 5 of Schedule A for that portion of that month's shelter costs that remains unpaid on that date.

(1.1) The family unit of an applicant who applies for disability assistance while the applicant is 17 years of age and who the minister has determined will be designated as a person with disabilities on the applicant's 18th birthday

(a) is eligible for disability assistance on that 18th birthday, and

(b) on that date, is eligible under section 4 and 5 of Schedule A for that portion of the month's shelter costs that remains unpaid on that date.

(1.2) A family unit of an applicant for disability assistance who has been designated as a person with disabilities becomes eligible for

(a) a support allowance under sections 2 and 3 of Schedule A on the disability assistance application date,

(b) for a shelter allowance under sections 4 and 5 of Schedule A on the first day of the calendar month that includes the disability assistance application date, but only for that portion of that month's shelter costs that remains unpaid on the date of that submission, and

(c) for disability assistance under sections 6 to 9 of Schedule A on the disability assistance application date. [B.C. Reg. 151/2018]

(2) Subject to subsections (3.01) and (3.1), a family unit is not eligible for a supplement in respect of a period before the minister determines the family unit is eligible for it.

(3) Repealed. [B.C. Reg. 340/2008, s. 2.]

(3.01) If the minister decides, on a request made under section 16 (1) *[reconsideration and appeal rights]* of the Act, to provide a supplement, the family unit is eligible for the supplement from the earlier of

(a) the date the minister makes the decision on the request made under section 16 (1) of the Act, and

(b) the applicable of the dates referred to in section 72 of this regulation.

(3.1) If the tribunal rescinds a decision of the minister refusing a supplement, the family unit is eligible for the supplement on the earlier of the dates referred to in subsection (3.01).

(3.11) If the minister decides, on a request made under section 16 (1) of the Act, to designate a person as a person with disabilities, the person's family unit becomes eligible to receive disability assistance at the rate specified under Schedule A for a family unit that matches that family unit on the first day of the month after the month containing the earlier of

(a) the date the minister makes the decision on the request made under section 16 (1) of the Act, and

(b) the applicable of the dates referred to in section 72 of this regulation.

(3.2) If the tribunal rescinds a decision of the minister determining that a person does not qualify as a person with disabilities, the person's family unit is eligible to receive disability assistance at the

rate specified under Schedule A for a family unit that matches that family unit on the first day of the month after the month containing the earlier of the dates referred to in subsection (3.11).

(4) If a family unit that includes an applicant who has been designated as a person with disabilities does not receive disability assistance from the date the family unit became eligible for it, the minister may backdate payment but only to whichever of the following results in the shorter payment period:

(a) the date the family unit became eligible for disability assistance;

(b) 12 calendar months before the date of payment.

(5) Subject to subsection (6), a family unit is not eligible for any assistance in respect of a service provided or a cost incurred before the calendar month in which the assistance is requested.

(6) Subsection (5) does not apply to assistance in respect of moving costs as defined in section 55.

Reporting requirement

29 For the purposes of section 11 (1) (a) *[reporting obligations]* of the Act,

(a) the report must be submitted by the 5th day of the calendar month following the calendar month in which one or more of the following occur:

(i) a change that is listed in paragraph (b) (i) to (v);

(ii) a family unit receives earned income as set out in paragraph (b) (vi);

(iii) a family unit receives unearned income that is compensation paid under section 29 or 30 of the *Workers Compensation Act* as set out in paragraph (b) (vii), and

(b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation, B.C. Reg. 87/2018:

(i) change in the family unit's assets;

(ii) change in income received by the family unit and the source of that income;

(iii) change in the employment and educational circumstances of recipients in the family unit;

(iv) change in family unit membership or the marital status of a recipient;

(v) any warrants as described in section 14.2 (1) of the Act;

(vi) the amount of earned income received by the family unit in the calendar month and the source of that income;

(vii) the amount of unearned income that is compensation paid under section 29 or 30 of the *Workers Compensation Act* received by the family unit in the calendar month.

Disability Assistance Rates- Schedule A

(section 24 (a))

Maximum amount of disability assistance before deduction of net income

1 (1) Subject to this section and sections 3 and 6 to 9 of this Schedule, the amount of disability assistance referred to in section 24 (a) *[amount of disability assistance]* of this regulation is the sum of

(a) the monthly support allowance under section 2 of this Schedule for a family unit matching the family unit of the applicant or recipient, plus

(b) the shelter allowance calculated under sections 4 and 5 of this Schedule.

(2) Despite subsection (1), disability assistance may not be provided in respect of a dependent child if support for that child is provided under section 8 (2) or 93 (1) (g) (ii) of the *Child, Family and Community Service Act*.

Monthly support allowance

2 (0.1) For the purposes of this section:

"deemed dependent children" , in relation to a family unit, means the persons in the family unit who are deemed to be dependent children under subsection (5);

"maximum adjustment" repealed; [B.C. Reg. 34/2017]

"warrant" has the meaning of warrant in section 14.2 *[consequences in relation to outstanding arrest warrants]* of the Act.

(1) A monthly support allowance for the purpose of section 1 (a) is the sum of

(a) the amount set out in Column 3 of the following table for a family unit described in Column 1 of an applicant or a recipient described in Column 2, plus

(a.1) Repealed [B.C. Reg. 193/2017]

(b) the amount calculated in accordance with subsections (2) to (4) for each dependent child in the family unit.

Item	Column 1 **Family unit composition**	Column 2 **Age or status of applicant or recipient**	Column 3 **Amount ($)**
1	Sole applicant/recipient and no dependent children	Applicant/recipient is a person with disabilities	808.42

Monthly shelter allowance

4 (1) For the purposes of this section:

"family unit" includes a child who is not a dependent child and who resides in the parent's place of residence for not less than 40% of each month, under the terms of an order or an agreement referred to in section 1 (2) of this regulation;

"warrant" has the meaning of warrant in section 14.2 *[consequences in relation to outstanding arrest warrants]* of the Act.

(2) The monthly shelter allowance for a family unit to which section 14.2 of the Act does not apply is the smaller of

(a) the family unit's actual shelter costs, and

(b) the maximum set out in the following table for the applicable family size:

Item	Column 1 Family Unit Size	Column 2 Maximum Monthly Shelter
1	1 person	$375

Net Income Calculation

(section 24 (b))

Deduction and exemption rules

1 When calculating the net income of a family unit for the purposes of section 24 (b) *[amount of disability assistance]* of this regulation,

(a) the following are exempt from income:

(i) any income earned by a dependent child attending school on a full-time basis;

(ii) Repealed [B.C. Reg. 96/2017];

(iii) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 2 (c).]

(iv) a family bonus, except the portion treated as unearned income under section 10 (1) of this Schedule;

(iv.1) the Canada child benefit, except the portion treated as unearned income under section 10 (1) of this Schedule;

(v) the basic child tax benefit;

(vi) a goods and services tax credit under the *Income Tax Act* (Canada);

(vii) a tax credit under section 8 *[refundable sales tax credit]*, 8.1 *[low income climate action tax credit]* or 8.2 *[BC harmonized sales tax credit]* of the *Income Tax Act* (British Columbia);

(viii) individual redress payments granted by the government of Canada to a person of Japanese ancestry;

(ix) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to a person infected by the human immunodeficiency virus;

(x) individual payments granted by the government of British Columbia to a person infected by the human immunodeficiency virus or to the surviving spouse or dependent children of that person;

(xi) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to thalidomide victims;

(xii) money that is

(A) paid or payable to a person if the money is awarded to the person by an adjudicative panel in respect of claims of abuse at Jericho Hill School for the Deaf and drawn from a lump sum settlement paid by the government of British Columbia, or

(B) paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. C980463, Vancouver Registry;

(xiii) the BC earned income benefit;

(xiv) money paid or payable under the 1986-1990 Hepatitis C Settlement Agreement made June 15, 1999, except money paid or payable under section 4.02 or 6.01 of Schedule A or of Schedule B of that agreement;

(xv) a rent subsidy provided by the provincial government, or by a council, board, society or governmental agency that administers rent subsidies from the provincial government;

(xvi) Repealed. [B.C. Reg. 197/2012, Sch. 2, s. 11 (a).]

(xvii) money paid or payable to a person in settlement of a claim of abuse at an Indian residential school, except money paid or payable as income replacement in the settlement;

(xviii) post adoption assistance payments provided under section 28 (1) or 30.1 of the Adoption Regulation, B.C. Reg. 291/96;

(xix) a rebate of energy or fuel tax provided by the government of Canada, the government of British Columbia, or an agency of either government;

(xx) money paid by the government of British Columbia, under a written agreement, to a person with disabilities or to a trustee for the benefit of a person with disabilities to enable the person with disabilities to live in the community instead of in an institution;

(xxi) Repealed. [B.C. Reg. 85/2012, Sch. 2, s. 7.]

(xxii) payments granted by the government of British Columbia under section 8 *[agreement with child's kin and others]* of the *Child, Family and Community Service Act*;

(xxiii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program;

(xxiv) Repealed. [B.C. Reg. 85/2012, Sch. 2, s. 7.]

(xxv) payments granted by the government of British Columbia under an agreement referred to in section 93 (1) (g) (ii) of the *Child, Family and Community Service Act*, for contributions to the support of a child;

(xxvi) a loan that is

(A) not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 70.1 of this regulation, and

(B) received and used for the purposes set out in the business plan;

(xxvii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's

(A) Autism Funding: Under Age 6 Program, or

(B) Autism Funding: Ages 6 — 18 Program;

(xxviii) Repealed. [B.C. Reg. 148/2015, App. 2, s. 1 (a).]

(xxix) payments made by a health authority or a contractor of a health authority to a recipient, who is a "person with a mental disorder" as defined in section 1 of the *Mental Health Act*, for the purpose of supporting the recipient in participating in a volunteer program or in a mental health or addictions rehabilitation program;

(xxx) a refund provided under Plan I as established under the Drug Plans Regulation;

(xxxi) payments provided by Community Living BC to assist with travel expenses for a recipient in the family unit to attend a self-help skills program, or a supported work placement program, approved by Community Living BC;

(xxxii) a Universal Child Care Benefit provided under the *Universal Child Care Benefit Act* (Canada);

(xxxiii) money paid by the government of Canada, under a settlement agreement, to persons who contracted Hepatitis C by receiving blood or blood products in Canada prior to 1986 or after July 1, 1990, except money paid under that agreement as income replacement;

(xxxiv) money withdrawn from a registered disability savings plan;

(xxxv) a working income tax benefit provided under the *Income Tax Act* (Canada);

(xxxvi) Repealed. [B.C. Reg. 180/2010, s. 2 (b).]

(xxxvii) the climate action dividend under section 13.02 of the *Income Tax Act*;

(xxxviii) money paid or payable to a person under the *Criminal Injury Compensation Act* as compensation for non-pecuniary loss or damage for pain, suffering mental or emotional trauma, humiliation or inconvenience that occurred when the person was under 19 years of age;

(xxxix) money that is paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. S024338, Vancouver Registry;

(xl) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Family Support Services program;

(xli) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Supported Child Development program;

(xlii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Aboriginal Supported Child Development program;

(xliii) money paid or payable from a fund that is established by the government of British Columbia, the government of Canada and the City of Vancouver in relation to recommendation 3.2 of the final report of the Missing Women Commission of Inquiry;

(xliv) payments granted by the government of British Columbia under the Temporary Education Support for Parents program;

(xlv) a BC early childhood tax benefit;

(xlvi) child support;

(xlvii) orphan's benefits under the *Canada Pension Plan Act* (Canada);

(xlviii) money or other value received, by will or as the result of intestacy, from the estate of a deceased person;

(xlix) gifts;

(l) education and training allowances, grants, bursaries or scholarships, other than student financial assistance;

(li) money withdrawn from a registered education savings plan;

(lii) compensation paid or payable under section 17 *[compensation in fatal cases]* or 18 *[addition to payments]* of the *Workers Compensation Act* to a dependant, as defined in section 1 of that Act, who is a child, as defined in section 17 of that Act;

(liii) money that is paid or payable by or for Community Living BC to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by Community Living BC, an employee of Community Living BC or a person retained under a contract to perform services for Community Living BC;

(liv) money that is paid or payable by the government of British Columbia to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by the minister, the ministry, an employee of the ministry or a person retained under a contract to perform services for the ministry;

(liv.1) money that is paid or payable by the government of British Columbia to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by the Minister of Children and Family Development, that ministry, an employee of that ministry or a person retained under a contract to perform services for that ministry;

(liv.2) money that is paid or payable by the government of British Columbia to or for a person because the person was a resident of Woodlands School;

(lv) a disabled contributor's child's benefit paid or payable under the *Canada Pension Plan*;

(lvi) payments granted under an agreement referred to in section 94 of the *Child , Family and Community Service Act*;

(lvii) money that is paid or payable, in respect of a child, from property that comes into the control of, or is held by, the Public Guardian and Trustee;

(lviii) money that is paid or payable from a settlement in respect of Treaty No. 8 agricultural benefits;

(lviv) money that is paid or payable from a settlement under

(A) the Cadboro Bay Litigation Settlement Agreement, dated for reference November 1, 2017, between the Esquimalt Nation and Canada, or

(B) the settlement agreement, dated for reference October 30, 2017, between the Songhees Nation and Canada;

(lx) money that is paid or payable under the Memorial Grant Program for First Responders established under the authority of the *Department of Public Safety and Emergency Preparedness Act* (Canada),

(b) any amount garnished, attached, seized, deducted or set off from income is considered to be income, except the deductions permitted under sections 2 and 6,

(c) all earned income must be included, except the deductions permitted under section 2 and any earned income exempted under sections 3 and 4, and

(d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 3, 7 and 8.

Deductions from unearned income

6 The only deductions permitted from unearned income are the following:

(a) any income tax deducted at source from employment insurance benefits;

(b) essential operating costs of renting self-contained suites.

Exemptions — unearned income

7 (0.1) In this section:

"disability-related cost" means a disability-related cost referred to in paragraph (a), (b), (c) or (e) of the definition of disability-related cost in section 12 (1) *[assets held in trust for person with disabilities]* of this regulation;

"disability-related cost to promote independence" means a disability-related cost referred to in paragraph (d) of the definition of disability-related cost in section 12 (1) of this regulation;

"intended registered disability savings plan or trust" , in relation to a person referred to in section 12.1 (2) *[temporary exemption of assets for person with disabilities or person receiving special care]* of this regulation, means an asset, received by the person, to which the exemption under that section applies;

"structured settlement annuity payment" means a payment referred to in subsection (2) (b) (iii) made under the annuity contract referred to in that subsection.

(1) The following unearned income is exempt:

(a) the portion of interest from a mortgage on, or agreement for sale of, the family unit's previous place of residence if the interest is required for the amount owing on the purchase or rental of the family unit's current place of residence;

(b) $50 of each monthly Federal Department of Veterans Affairs benefits paid to any person in the family unit;

(c) a criminal injury compensation award or other award, except the amount that would cause the family unit's assets to exceed, at the time the award is received, the limit applicable under section 10 *[asset limits]* of this regulation;

(d) a payment made from a trust to or on behalf of a person referred to in section 12 (1) *[assets held in trust for person with disabilities]* of this regulation if the payment is applied exclusively to or used exclusively for

(i) disability-related costs,

(ii) the acquisition of a family unit's place of residence,

(iii) a registered education savings plan, or

(iv) a registered disability savings plan;

(d.1) subject to subsection (2), a structured settlement annuity payment made to a person referred to in section 12 (1) of this regulation if the payment is applied exclusively to or used exclusively for an item referred to in subparagraph (i), (ii), (iii) or (iv) of paragraph (d) of this subsection;

(d.2) money expended by a person referred to in section 12.1 (2) *[temporary exemption of assets for person with disabilities or person receiving special care]* of this regulation from an intended registered disability savings plan or trust if the money is applied exclusively to or used exclusively for disability-related costs;

(d.3) any of the following if applied exclusively to or used exclusively for disability-related costs to promote independence:

(i) a payment made from a trust to or on behalf of a person referred to in section 12 (1) of this regulation;

(ii) a structured settlement annuity payment that, subject to subsection (2), is made to a person referred to in section 12 (1) of this regulation;

(iii) money expended by a person referred to in section 12.1 (2) of this regulation from an intended registered disability savings plan or trust;

(e) the portion of Canada Pension Plan Benefits that is calculated by the formula (A-B) x C, where

A = the gross monthly amount of Canada Pension Plan Benefits received by an applicant or recipient;

B = (i) in respect of a family unit comprised of a sole applicant or a sole recipient with no dependent children, 1/12 of the amount determined under section 118 (1) (c) of the *Income Tax Act* (Canada) as adjusted under section 117.1 of that Act, or

(ii) in respect of any other family unit, the amount under subparagraph (i), plus 1/12 of the amount resulting from the calculation under section 118 (1) (a) (ii) of the *Income Tax Act* (Canada) as adjusted under section 117.1 of that Act;

C = the sum of the percentages of taxable amounts set out under section 117 (2) (a) of the *Income Tax Act* (Canada) and section 4.1 (1) (a) of the *Income Tax Act*;

(f) a tax refund;

(g) a benefit paid under section 22, 23, or 23.2 of the *Employment Insurance Act* (Canada) to any person in the family unit.

(2) Subsection (1) (d.1) and (d.3) (ii) applies in respect of a person only if

(a) the person has entered into a settlement agreement with the defendant in relation to a claim for damages in respect of personal injury or death, and

(b) the settlement agreement requires the defendant to

(i) make periodic payments to the person for a fixed term or the life of the person,

(ii) purchase a single premium annuity contract that

(A) is not assignable, commutable or transferable, and

(B) is designed to produce payments equal to the amounts, and at the times, specified in the settlement agreement,

(iii) make an irrevocable direction to the issuer of the annuity contract to make all payments under that annuity contract directly to the person, and

(iv) remain liable to make the payments required by the settlement agreement.

(2.1) Repealed. [B.C. Reg. 204/2015, App. 2, s. 4 (b).]

(3) Repealed. [B.C. Reg. 197/2012, Sch. 2, s. 13 (f).]

THE LAW FOUNDATION OF BRITISH COLUMBIA

2021
PROVINCIAL ADVOCATES TRAINING CONFERENCE

Legal Aid BC

Family maintenance enforcement program

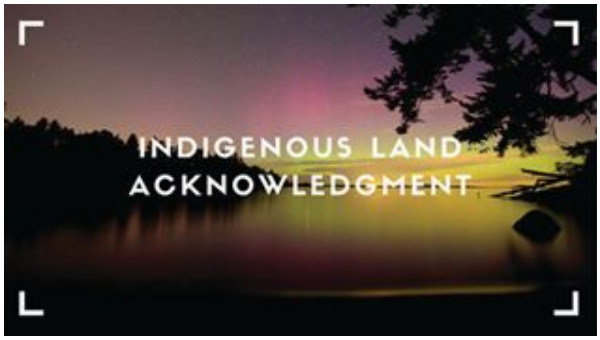
Ana Rogic, Colin Millar

Topic: Families & Children

BC Family Maintenance Agency

BCFMA (FMEP)
Provincial Advocates Training Conference
October 12, 2021

BC Family Maintenance Agency



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BC Family Maintenance Agency

AGENDA

- BCFMA – Who we are
- Clients and Cases
- Enrolment
- Collection of Payments
- Client Service
- Challenges
- Questions and Answers

3

BC Family Maintenance Agency

BCFMA – Who we are

The BCFMA was incorporated in June 2019. The responsibility for the operation of the Family Maintenance Enforcement Program (FMEP) was transferred from a contracted service to the BCFMA on November 1, 2019.

The BCFMA works directly with the Government of British Columbia to support the goals of increasing access to Justice, reducing child poverty and delivering services to citizens in a customer focused way. The Agency will build a foundation for services that is predictable, sustainable and able to change and expand as required.

VISION: Healthy and thriving families achieve their full potential and secure the best possible future for their children

MISSION: British Columbians who experience separation and divorce are supported in achieving and maintaining the best financial outcomes for their family

4

BC Family Maintenance Agency

- **The BCFMA is a free service available to families in BC who are entitled to receive support or are obligated to pay support. Enrolment is voluntary.**
- **The BCFMA supports over 34,000 families and collects approximately $215 million each year for families and is responsible for all aspects of facilitating payments to Recipients.**
- **The Family Maintenance Enforcement Act (FMEA) provides the legislative authority for the BCFMA to take administrative action to recover funds owed to Recipients.**
- **We do not obtain orders or agreements and can only monitor and collect on already established orders/agreements(filed in court).**
- **In many cases, payments are made voluntarily and we always seek to establish voluntary payments before we move to consider other actions. However, if a Payor does not comply with support obligations, we will take steps to collect ongoing payments and/ or arrears.**

5

BC Family Maintenance Agency

Clients and Cases

- **Median child support order is $346**
- **Median spousal support order is $1000**
- **Approximately 3.0% of the BCFMA cases are spousal support only orders**
- **The BCFMA ensures that ongoing support is paid throughout a child's life. This can include children at or over the age of majority. As a percentage, over 30% of children are at or over the age of majority. 59% of children enrolled are over the age of 14.**
- **There are approximately 120,000 children, Recipients and Payors enrolled in the BCFMA**

6

BC Family Maintenance Agency

Collection of Payments

- Payors are contacted within 30 days of enrolment and we always look to obtain voluntary payments first.
- Common Collection Mechanisms:
  - Notice of Attachment – wages, bank accounts, federal funds, ICBC, WCB
  - Drivers Licence Cancellation
  - Registration of a lien on the land title
  - Credit Bureau Reporting
- Court Enforcement is always a last resort – less than 3% of cases

7

BC Family Maintenance Agency

Client Service

Better client service supports our clients in what are often challenging circumstances.

Cornerstones of Client Service

- Treat all clients with fairness and respect
- Set high standards for call response times and response quality
- Understand that our clients come from many different backgrounds and experiences and this needs to inform our service delivery
- Ensure our communications are clear and easily understood
- Offer multiple points of access (phone, e-messages, postal service)
- Build long term relationships with clients – some clients enroll when children are infants through post-secondary education

8

BC Family Maintenance Agency

Challenges/Opportunities

Access to court to change support when circumstances change

- We cannot change court orders, only the court can do this
- Parties may need new orders when their circumstances change; loss of employment or a change in the circumstances of the children
- There are limited resources available to assist with changing orders

Delays in dealing with other jurisdictions

- Court delays in other jurisdictions compound issues here
- Receiving information in a timely manner from other jurisdictions can be an issue

Ensuring that our services meet the changing needs of families.

- There are many more families with split/shared parenting time. How do we best serve our clients is a continuing focus for the BCFMA.

9

BC Family Maintenance Agency

10

BC Family Maintenance Agency

11

THE LAW FOUNDATION OF BRITISH COLUMBIA

2021
PROVINCIAL ADVOCATES
TRAINING CONFERENCE

Legal Aid BC

Temporary foreign workers: current issues and resources

Natalie Drolet, Ravneet Kaur Riar

Topic: Immigration & Refugees

Recording Link: https://youtu.be/J6KBnA0PfMA

migrant workers centre

Temporary Foreign Workers: Current issues and resources

Law Foundation Provincial Training Conference: October 14, 2021

Natalie Drolet
Executive Director – Staff Lawyer

Ravneet Kaur Riar
Staff Lawyer

About Migrant Workers Centre

- Established in 1986, Migrant Workers Centre is a non-profit organization that is dedicated to legal advocacy for migrant workers in BC.
- MWC facilitates access to justice for migrant workers by providing free legal education, advice and full representation.
- MWC also works to advance fair immigration policy and improved labour standards through law and policy reform and test case litigation.

MWC: Legal Services

Examples of legal services we provide:

- Some applications for permanent residency
- Work permits, temporary resident visas, and restoration of status
- Open work permits for vulnerable workers
- Temporary resident permits for victims of trafficking in persons
- Employment Standards Branch, Human Rights Tribunal, WorkSafeBC, Small Claims Court, and other employment-related complaints

Agenda

1. Immigration law:

- Impacts of COVID-19 and related public policies
- PR streams for TFWs
- Immigration remedies for protection
- Common immigration problems

2. Employment law

- Overview of Employment Standards
- Temporary Foreign Worker Protection Act

Risk Factors for Temporary Foreign Workers

- Socio-economic conditions in country of origin
- Precarious immigration status in Canada
- Work authorization tied to a single employer
- Social isolation
- Language barriers
- Unfamiliarity with Canadian laws
- Limited access to information and services
- Lack of monitoring and enforcement

Impacts of COVID-19

The COVID-19 pandemic has impacted migrant workers in different ways:

- Heightened risk of exposure to COVID-19
- Heightened employer control over workers
- Heightened risk of termination from employment/loss of status

Covid-19: Public policy allowing visitors to apply for a work permit

- In effect until February 28, 2022
- Eligibility:
  - remained in Canada with status since application submission
  - apply for an employer-specific work permit before February 28, 2022
  - be a visitor with valid status when they apply for the work permit (including maintained status)
- Those who held work authorization in the last 12 months may request interim authorization to work using the webform.
- More information at: https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/service-delivery/coronavirus/temporary-residence/work-permit/visitor-work-permits.html

Covid-19: Public policy allowing for interim work authorization

- Due to COVID-19, applicants don't need to wait until the work permit application is approved to start a new job or work for a new employer. They just need an email from IRCC that says they have permission to change jobs.
- In effect since May 12, 2020, and remains in effect until it is revoked.
- Eligibility:
  - In Canada with valid temporary status
  - Held a work permit (or was authorized to work without a work permit) when application for work permit was submitted
  - Submitted a new employer-specific work permit application
  - Applied for public policy exemption using the web form
- More information: https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/service-delivery/coronavirus/temporary-residence/work-permit/changing-employment.html

Covid-19: Public policy exemption for restoration of status

- This public policy was **in effect until August 31, 2021.** Not extended.
- Normally, if status expired less than 90 days ago, TFWs may be able to apply for restoration – if approved, they will receive new work permit (or visitor record).
- Under the Covid-19 public policy exemption, period for restoration was extended until August 31, 2021.
- As of September 1, 2021, TFWs can no longer restore their status if it expired more than 90 days ago.
- Adverse impact on temporary foreign workers.

Entry requirements for TFWs

TFWs may enter Canada if:

- they qualify as a fully vaccinated traveller: This means that they don't need a valid job offer to be eligible to travel to Canada with an open work permit or approval for an open work permit, if you qualify as a fully-vaccinated traveller.
- More information on who qualifies as fully vaccinated: https://travel.gc.ca/travel-covid/travel-restrictions/covid-vaccinated-travellers-entering-canada#determine-fully

OR

- they're coming for a non-discretionary purpose or that they meet one of the travel restriction exemptions

Entry requirements for TFWs

- Regular travel document requirements for air travel and entry to Canada continue to apply
- Fully vaccinated travelers are exempt from quarantine and Day-8 testing.

IRCC link to find out if TFWs can travel to Canada: https://travel.gc.ca/travel-covid/travel-restrictions/wizard-start

Pilots & Pathways to Permanent Residence

There is precedence for regularization programs and pathways to PR, but barriers continue:

- Introduced as pilots or temporary measures
- High language and education requirements
- Often do not include workers without status or an opportunity to restore their status
- Myriad of programs create confusion for workers

PR Streams

Temporary resident to permanent resident pathway

- Opened on 6 May 2021 and ends on 5 November 2021
- List of eligible occupations can be found here: https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/policies-operational-instructions-agreements/public-policies/trpr-canadian-work-experience.html
- English-speaking stream:
  - Cap of 20,000 applications for workers in the health care sector: Open
  - 30,000 for workers in all other essential occupations: Closed
- No cap on French speaking-streams: Open
- 1 year of work experience or the equivalent in part-time hours (1,560 hours) completed in the last 3 years
- Language requirement: Canadian Language Benchmark 4 in English or French
- NO educational requirement

PR Streams

Home Child Care Provider Pilot and Home Support Worker Pilots

- 5-year pilot: June 18, 2019 until June 17, 2024
- Cap of 2,750 applications for each pilot for each year
- HCCP closed for this year (cap reached in April 2021). HSW open.
- NOC C: Home Child-Care Providers (NOC 4411) & Home Support Workers and related occupations (NOC 4412)
- Language requirement: Canadian Language Benchmark level 5
- Educational requirements: completed one-year post-secondary (or higher) educational credential
- Applicants can apply for occupation-specific work permits, and their spouses and children can apply for an open work permit.
- No LMIA required.

PR Streams

Agri-food Pilot

- 3- year pilot
- 15 May 2020 until 14 May 2023
- For experienced and non-seasonal agricultural workers in specific industries and occupations.
- Language requirement: Canadian Language Benchmark level 4
- Educational requirements: completed secondary education
- Indeterminate job offer from employer

PR Streams

B.C. Provincial Nominee Program – Entry-Level, Semi-Skilled

- 9 months work experience in eligible occupation with the same employer
- Eligible occupations: Tourism and hospitality, long-haul trucking, food processing
- Job offer must remain valid throughout the registration and application process.
- Secondary education and licensing/certification required for job.

Open Work Permit for Vulnerable Workers

- Temporary Foreign Workers can receive a new open work permit with urgent processing if they are currently experiencing abuse or face a risk of abuse in the context of their employment in Canada
- Abuse includes: physical, sexual, psychological, financial
- Available to migrant workers in Canada who:
  - Currently hold a valid employer-specific work permit
  - Have applied to renew their employer-specific work permit and are on implied status
- Duration: up to 12 months
- Also available to spouse/children in Canada
- No application fees
- Target processing time of 5 days

Temporary Resident Permits (TRPs) for Victims of Trafficking in Persons

- Survivors who have lost status in Canada or are inadmissible can regain their status and access health care, social assistance and an open work permit
- Available to migrant workers who have experienced fraudulent or coercive recruitment for the purpose of exploitation, labour exploitation, and/or restrictions on their freedom.
- TRPs can be issued to allow the migrant worker to “reflect” on what they want to do to stabilize lives, recover from physical and/or mental trauma, escape the influence of their trafficker(s), and/or facilitate their participation in an investigation or prosecution.
- Duration: up to 6 months initially
- No application fees for first application

Immigration Remedies: temporary protection

Temporary Resident Permit for Victims of Trafficking in Persons (VTIP TRP), s. 24 of IRPA (2006)	Open Work Permit for Vulnerable Workers (VWOWP), s. 207.1 IRPR (2019)
2-part test (preliminary assessment): 1. Might the individual be a victim of trafficking in persons? • Fraudulent or coerced recruitment for the purpose of exploitation; • Coerced into employment (or other activity); • Exploitative employment conditions (or other activity); OR • Freedom restricted 2. Is there a **"purpose"** for issuing a TRP?	Is the individual experiencing abuse, or are they at risk of abuse in the context of their employment in Canada? Abuse means: • Physical abuse • Sexual abuse • Psychological abuse • Financial abuse **NO "PURPOSE" TEST**

Filing an application for an immigration remedy

VWOWP and VTIP TRP

1. Evidence of abuse or trafficking (not an exhaustive list):
   - **a sworn statement** (Statutory Declaration) by the applicant
   - a letter, statement, or report from an abuse support organization, medical doctor, health-care professional, etc.
   - hard copies of email messages, photos showing injuries or working conditions, witness testimonies
   - Proof of payments made to employer
2. If the applicant is no longer employed, it is helpful to file relevant complaints against the employer. For example: a police or CBSA report or a copy of an official complaint to the employment standards branch.
3. If the applicant is still working and fears retaliation, indicate why and what type of legal actions they plan to pursue.

Filing an application for an immigration remedy

4. Basing submissions directly in the language of the IRCC operational guidelines. For example: examples of abuse and demonstrate how it applies to the applicant using verbatim language.
5. Application submitted online and limits on size of documents. Provide clear copies of documents and make sure the quality hasn't deteriorated due to reduction of size.
6. Supporting documents that are in a language other than English or French must be accompanied by an official translation of the original document, or of a certified copy of the original document in English or French. Failure to do this can lead to delays.
7. Interviews :
   - Quite rare since Covid-19.
   - Applicants are often required to provide their own interpreter.
   - Representatives are not necessarily welcome to attend interviews – only clarify the applicant's answers; cannot act as counsel.

Immigration Remedies: permanent protection

Application for permanent residence based on Humanitarian & Compassionate grounds (H&C)

- available to individuals who do not have legal status in Canada
- until client receives first-stage approval, status is not regularized & no access to work authorization, health care, or social assistance

Common Immigration Issues

Who is a "representative"?

A representative could:

- explain and give advice on immigration or citizenship options
- help choose the best immigration program
- fill out and submit immigration or citizenship application
- communicate with the Government of Canada on the applicant's behalf
- represent applicant in an immigration or citizenship application or hearing
- advertise that they can give immigration or citizenship advice

You are not a representative if you merely help clients with parts of their application, such as:

- helping them to use IRCC website to find information
- access a computer, scanner or printer
- navigate IRCC e-services
- view and use electronic forms or to download/upload documents

Types of representatives

UNCOMPENSATED REPRESENTATIVES - do not charge fees or receive any other form of consideration or compensation

- Friends, family members or other third parties
- consultants, lawyers and Quebec notaries, and students-at-law under their supervision

COMPENSATED REPRESENTATIVES: charge a fee or receive some other form of consideration in exchange for the representation that they provide

- consultants who are members in good standing of the Immigration Consultants of Canada Regulatory Council (ICCRC)
- lawyers and paralegals- members in good standing of a Canadian provincial or territorial law society AND notaries who are members in good standing of the Chambre des notaires du Québec

Paid representatives must be authorized – that means they must be appointed by filling out IMM 5476.

Acting as a Representative

- If you provide advice to clients on which program to apply for, complete or update their application or act as the client when dealing with IRCC, you are acting as their representative.
- Applicants are **responsible for all the information** in their application, even if the representative completes it for them. Thus, it is important to be mindful of this when assisting clients with immigration issues.
- If clients have a paid representatives, advise them to make sure they are registered.

Unauthorized Work

- Unauthorized work includes:
  - Working in Canada without a valid work permit; or
  - Working in Canada for a different employer or different job than is stated on the worker's work permit.
- Example: Training period with a new employer
- If a worker is found to have engaged in unauthorized work, they will lose their status in Canada
- If the worker has engaged in unauthorized work, we encourage them to seek legal advice about applying for restoration of status
  - IRCC allows TFWs to "restore" their status within 90 days of losing status
  - Applications for restoration are made through a new work permit application

Misrepresentation

- The threshold for misrepresentation is broad:

  IRPA, 40. (1) A permanent resident or a foreign national is inadmissible for misrepresentation

  (a) For directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act

- If a worker is found to have engaged in misrepresentation, they can be removed from Canada and receive an exclusion order barring them entry to Canada for 5 years

Misrepresentation

Examples of misrepresentations include:

- Declaring false employment information (i.e. omitting periods of unauthorized work on a work permit application form);
- Providing documentation with false or erroneous information; or
- Failing to properly declare marital status, or a dependant

Employment Law in BC

Minimum standards of work	**Employment Standards Branch**
Workplace safety or injuries, bullying or harassment	**WorkSafeBC**
Human Rights Issues	**BC Human Rights Tribunal**
Employment contract	**Court**
Employment insurance	**Service Canada**

Employment Standards - Overview

- ESA establishes minimum standards for wages, hours of work, holidays, leave, termination and other working conditions.
- "Employment Standards Branch" (ESB): is responsible for administering the ESA.
- ESB website: contains information regarding workers' rights, including "factsheets" about specific industries, and complaint forms for filing a complaint at the ESB.
- **6 months** to bring a claim.
- 12-month recovery period.
- Employee or employer may appeal the decision to the Employment Standard's Tribunal.
- If employer does not pay within specified time, the matter will go to ESB enforcement to try to collect the money.

Who is covered by the ESA?

- Most employees in BC are protected by the Employment Standards Act (ESA). An employee is someone "receiving or entitled to wages for work performed for another".
- Some occupations are completely excluded from the ESA
  - Example: architects, lawyers, accountants, veterinarians, sitters, etc.
- Certain employees are excluded from various parts of the ESA
  - Example: "farm workers" are excluded from protections for overtime work.
- Federally regulated businesses and industries and independent contractors are excluded from the ESA. Unionized workers receive some ESA protections but must seek recourse for violations using the process outlined in their collective agreement.

Remember to check the Regulation!

ESA

Rules cover:

- Recruitment & hiring
- Wages, payment of wages, and deductions
- Hours of work, overtime, and breaks
- Days off, statutory holidays, and vacation
- Terminating employment

Covid-19 changes to Employment Standards

Leave related to COVID-19

- Covid-19 vaccine paid leave
  - 3 hours of paid leave to be vaccinated against Covid-19
- Covid-19 paid sick leave
  - 3 days of paid sick leave from May 20, 2021 and December 31, 2021 if unable to work for any of the following reasons:
    - Diagnosis of Covid-19
    - In quarantine or self-isolation
    - Directed by employer not to work
- Covid-19-related unpaid, job-protected leave
  - For as long as needed
  - For reasons related to Covid-19

No False Representations (ESA s. 8)

- No false representations: employers cannot influence workers to accept a job by misrepresenting any of the following:

  (a) the availability of a position;
  (b) the type of work;
  (c) the wages;
  (d) the conditions of employment.

Recruitment & Hiring

- It is illegal for employment agencies to charge workers recruitment or placement fees (ESA s. 10 / TFWPA s. 21)
- Lawyers and Immigration Consultants can charge fees to foreign workers for assistance with immigration

Payment & Deductions

- Deductions from wages: (ESA s. 21)
  - Income tax, CPP, EI
  - With a written agreement: room and board, money borrowed from employer

Temporary Foreign Worker Protection Act

- Applies to employees under the Temporary Foreign Worker Program, Home Child Care Provider Pilot and Home Support Worker Pilot
- Prohibits the taking of passport or documents, misrepresentation of employment opportunities, threatening deportation, retaliation for participating in an investigation or complaint, charging of recruitment fees.
- Recruiters must apply for a license.
- Employers must register with the province.
- Fully in force as of September 17, 2020.
- Employees can file a complaint with the ESB within 2 years.
- List of licensed recruiters published online:
  https://services.labour.gov.bc.ca/licensing/TFW_IssuancePublication

Filing a Complaint with the ESB

- **Administrative process**
  - If voluntary resolution is not reached, complaints proceed to investigation, rather than a mediation / oral hearing
  - ESB Officers will review payroll records for investigations related to unpaid wages

IMPORTANT:

Before any action is taken that might alert employer to the complaint, make sure that client's immigration status is secure. If there are any issues of unauthorized work, employer may retaliate against client by calling the CBSA tip line and reporting them. If possible, client should disclose unauthorized work and apply for restoration first (*keep in mind 6 month deadline for filing complaint*).

Filing a Complaint with the ESB

1. Ensure that form is complaint is filed within 6 months. If you are approaching the deadline and have not gathered all evidence, you can still submit the complaint and provide further evidence later.
2. Make it clear in the complaint submission if the number of hours are estimates, as credibility assessments are being done on the basis of documentary evidence.
3. Provide evidence to substantiate claims, including if you are claiming amounts for recruitment fees, misrepresentation, or unlawful deductions.
4. Provide a sworn statement from the worker, especially if evidence for a certain claim is lacking
5. Although ESB officers are supposed to conduct an investigation, don't assume that they will be looking for all violations. Highlight the violations you know have occurred, including those that might not involve any financial remedy for the worker (proper wage statements, pay at least twice a month, etc).

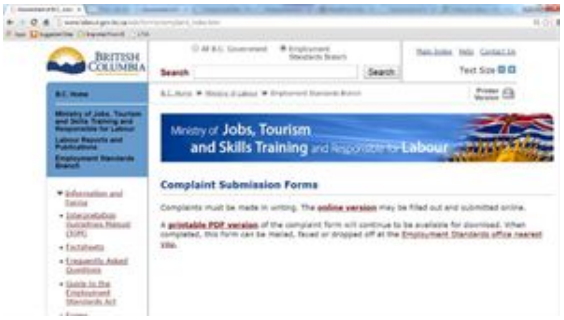
Filing a Complaint with the ESB

What else to include:

- ESB Complaint form
- Representation authorization signed by client
- Client's work permit (redacted)
- Employment contract, LMIA
- Client's record of hours worked
- Client's bank statements (with personal information redacted)
- Pay slips
- Any other documents that prove work completed or basis of claim
- Calculations of amount owed (GROSS total)

How to Contact the ESB

- Web site: https://www2.gov.bc.ca/gov/content/employment-business/employment-standards-advice/employment-standards
- Toll Free Info-line:
  - 1-833-236-2700
- Branch offices (10 locations)



Case Study

1. What additional information would you need in order to identify any potential legal issues/remedies?

2. What questions would you ask Rosa?

Keeping a detailed record

- The dates, times, and locations where the employee worked
- A description of the employees' tasks and any incidents throughout their shifts
- Was anyone a witness to the employees' work/incident at work? If so, make a record of this information and ask for written statements from these people (include name, address, phone no.)
- If the employee contacted others for help keep a written record of whom they called, what was said, and what if any action was taken
- Text messages, emails, voice mails from the employer
- Photos, particularly for overtime work

Illuminate
ENDING HUMAN TRAFFICKING

migrant workers centre

Labour trafficking partnership with The Salvation Army's Illuminate to provide case management support at-risk migrant workers in BC:

- Comprehensive safe exit from exploitive employers
- Psychosocial support & case planning for recovery
- Access to counseling, criminal, and civil justice
- Focus on weekends and AFTER HOURS service
- Services are voluntary, non-religious, and free of cost
- Coverage for translation also available

To reach Illuminate, call 604-347-9500 or e-mail connect@illuminateht.com

migrant workers centre

AMNESTY FOR UNDOCUMENTED WORKERS

T. 604-669-4482 / 888-669-4482
E. info@mwcbc.ca
W. https://mwcbc.ca
facebook.com/MWCBC
@MWCBC

THE LAW FOUNDATION OF BRITISH COLUMBIA

2021
PROVINCIAL ADVOCATES TRAINING CONFERENCE

Legal Aid BC

Debt law: an overview of key issues

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Topic: Debt

Recording Link: https://youtu.be/rHL9hjnfStg

Debt law workshop

October 25, 2021

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Debt law: introduction

Dealing with legal issues about debt is complex.

"Debt law" is not one area of law: many pieces of legislation interact and affect legal issues about debt.

- Special rules apply to secured creditors (e.g. mortgage debt owed to a bank; car loan secured against a car, etc.) – beyond scope of this workshop
- Special rules apply to alleged overpayments of government benefits (e.g. welfare, EI, Canada Child benefit, Canada Pension Plan) – beyond scope of this workshop
- When it comes to collection of debts, some creditors such as government and Family Maintenance Enforcement Program, have 'superpowers" as creditors: beyond scope of this workshop

Debt: sample client situations

Debt issues can present themselves in your work in many ways. Each engages different laws and rules. For example, your client may:

- receive letters from creditors or calls from a collection agent
  - BC's *Business Practices and Consumer Protection Act* regulates debt collectors, and provide some rights and remedies: https://www.consumerprotectionbc.ca/consumer-help/debt-collection/
- be unable to make full payments on their bills, but with some ability to pay
  - For financial remedies, refer to the non-profit Credit Counselling Society: www.nomoredebts.org
  - The Credit Counselling Society may give some information about bankruptcy, but only a licensed Trustee in Bankruptcy can help someone declare bankruptcy.
  - The federal Office of the Superintendent in Bankruptcy licenses Trustees in Bankruptcy and administers bankruptcy laws: https://www.ic.gc.ca/eic/site/bsf-osb.nsf/eng/home

Debt: sample client situations (2)

Or, your client may:

- have received court documents because a creditor is suing them on an alleged debt:
  - Refer to a lawyer for legal advice and help responding to court documents
- have questions about an alleged overpayment of government benefits:
  - knowing whether they can dispute the alleged overpayment, or apply to have it written off, requires good knowledge of the benefit scheme involved (e.g. EI law, for EI overpayments).
- have already declared bankruptcy, but has had their discharge from bankruptcy refused and wants to know what to do
  - Resource: BC Supreme Court Discharge from Bankruptcy Guidebook https://supremecourtbc.ca/sites/default/files/web/Discharge%20from%20Bankruptcy%20v3.pdf

Debt: sample client situations (3)

Or your client may:

- Owe a specific debt such as a **student loan** they can't easily pay and wonder what rights they have to debt management or forgiveness.
  - This requires knowledge of the *Canada Student Financial Assistance Act*, and provincial student loan policy, which provides repayment assistance of various sorts, and often changes
  - For example, student loans can be forgiven based on 'severe and permanent disability' : see https://www.canada.ca/en/services/benefits/education/student-aid/grants-loans/repay/assistance/severe-disability.html
- Have consumer law questions, such as whether they can cancel a particular contract, or have other rights
  - Consumer Protection BC licenses certain sectors and regulates some types of consumer contracts: https://www.consumerprotectionbc.ca
  - Consumer Protection BC also offers information and referrals to other resources, so can be a good place to start on consumer law problems

Debt: Sample client situations (4)

- Or, your client may:
  - Wonder if old debts ever die: are there deadlines for collection of debts?
  - Have a judgment against them, and worry about what a creditor might do. What limits are there on debt collection rights?
  - Be in crisis because they have had their wages garnished, or CPP or other benefits taken from their bank account, and want to know what they can do

Debt law resources for advocates

a) **People's Law School clicklaw wikibook: Consumer and Debt law**
https://wiki.clicklaw.bc.ca/index.php?title=Consumer_and_Debt_Law

- Designed for advocates and community workers
- 250 pages, about 45 different topics

b) **UBC Law Students' Legal Advice Program (LSLAP) manual**:
https://www.lslap.bc.ca/manual.html

Updated yearly, written by law students and supervising lawyers for law students in LSLAP clinics

- 22 chapters, including one on Consumer Protection, and one called Creditors' Remedies and Debtors' Assistance

c) **PovNet debt list:**

- provincial list with members including representatives of the Credit Counselling Society.
- Apply to join PovNet list at https://www.povnet.org/online-community or email Nicky@povnet.org

Outline:

- Dealing with debt collectors: rights under the Business Practices and Consumer Protection Act
- Limitation periods
- How can unsecured debts be collected: rights and remedies to collection
  - Payment hearings and payment orders
  - Garnishing orders against wages:
  - Garnishing orders and bank accounts
  - What assets are exempt from seizure
  - Special rules for government benefits that have statutory protection

Rights against debt collectors: *Business Practices and Consumer Protection Act*

- The BPCPA licenses and regulates "debt collectors" Does not include in-house collections, lawyers acting for creditors, and government collectors (e.g. Revenue Services BC)
- Collector must provide written notice of the original and current amount of the debt, including a breakdown of the current amount owing; identity of original and current creditor, and authority of collector to collect, five days prior to calling a person. Source: BPCPA section 115.
- Collector must not harass the debtor, their friends, family, acquaintances, or employer. Source: BCCPA s.114
- Collector must comply with limits set on communication
  - Cannot contact at work (with exceptions);
  - Must communicate only in writing (or via lawyer), if asked by debtor;
  - Cannot further communicate if debtor is disputes the debt in writing (copied to creditor and debt collector)

  Source: BPCPA section 114(c)

What debt collectors can/can't do

(chart copied from https://www.consumerprotectionbc.ca/2014/10/getting-calls-from-a-debt-collector/)

Debt collectors can:

- Call you on a Sunday between 1 and 5 p.m.
- Call you at work to request your home address, phone number and email address (if they don't have it)
- Make one attempt to contact you at work to collect a debt (but only if they have your home contact information and have been unable to make contact)
- Contact your employer in certain circumstances
- Contact a member of your family or household, relative, neighbour, friend or acquaintance to try to get your home address, phone number or email

Debt collectors can't:

- Call you after 9 p.m. or before 7 a.m.
- Discuss details of your debt with someone else (unless they have your permission)
- Collect more than what is owing on the debt (aside from interest at the rate in your original credit agreement)
- Contact you in a way that costs you money
- Use threatening, profane or intimidating language
- Exert undue, excessive or unreasonable pressure to collect a debt
- Publish or threaten to publish your failure to pay (except to a credit reporting agency)

Rights against debt collectors: Remedies

If a debt collector contravenes rules in BCPCA, including boundaries set by the client on communication, possible remedies are:

- Seek negotiated/financial solution
- Written complaint to Consumer Protection BC (which regulates the debt collector;s license)
- Starting civil court action for harassment against collector: BPCPA s.171
  - See BC Supreme Court case *Roach v Total Credit Recovery*, 2007 BCSC 530
- Request prosecution by Crown Counsel (in extreme cases)

Rights against debt collectors: BPCPA s 116(4)

Section 116 (4) A collector **must not** continue to communicate with a debtor

(a)except in writing, if the debtor

(i)has notified the collector to communicate in writing only, **and**

(ii)has provided a mailing address at which the debtor may be contacted,

(b)except through the debtor's lawyer, if the debtor

(i)has notified the collector to communicate only with the debtor's lawyer, and

(ii)has provided an address for the lawyer, **or**

(c)if the debtor has notified **the collector and the creditor** that the debt is in dispute and that the debtor would like the creditor to take the matter to court.

Fact pattern: Roxana

A woman named Roxana calls your office on intake; she is really stressed.

She says she owes about $4000 on an old credit card debt from about 3 years ago, around the time her son was first born. Roxana moved a lot and she thought the creditor had forgotten about all about it, but a collection agent has been phoning her almost every day for the past three weeks, asking her to pay. She's says she's a single mum and can't afford to pay anything.

When she told the debt collector that, they sent her a budget sheet to fill out. She hasn't done that yet.

- What can you tell Roxana?

Roxana: more information

Roxana's credit card debt is from about 3 years ago. If she hasn't made a payment in 3 years, or agreed in writing that she owes it, it *might* be too late for the creditor to sue her. You need to know:

- What limitation period applies to credit card debts in BC?
- When did she last make a payment?
- When did she last acknowledge responsibility for the in writing?

Be careful! If you write to a collection agent and/or a creditor, **make sure you don't acknowledge in writing that the person owes the money**. If you do, the limitation period could restart (Limitation Act, section 24). A written acknowledgement by the person *or their agent* can restart a limitation period.

Tip: Use language referring to "the alleged debt"

Limitation Period issues

Limitation periods: basics

A "limitation period" is the deadline to start legal action (e.g. about an event or debt)

Most limitation periods in BC governed by the *Limitation Act*, SBC 2012 c.13

- An older version of the *Act* applies in certain cases

Missing a limitation date creates a defence to the claim

Calculating a limitation period can be very tricky: give legal information, not legal advice

Limitation Period for Unsecured Debts

BC has a 2 year limitation period for unsecured debt claims discovered since June 1, 2013

- See: *Limitation Act* section 6

Limitation period runs from the date on which the claim was, or ought to have been, "discovered"

- Limitation periods don't run against minors, or people under legal disabilities

Limitation periods are re-started by Acknowledgement (s.24)

- Signed written acknowledgment by self or agent restarts the limitation period timer; and
- A partial payment on the debt also restarts the limitation period
- Debts to the BC government carry a 6 year limitation period
  - See *Financial Administration Act* s.86.1

Acknowledgments and payments made **after** the limitation period do NOT restart limitation periods under the *Limitation Act*.

Limitation period for judgments

1. Creditors have 10 years from the date of a BC judgment to enforce: *Limitation Act*, section 7
2. Creditor may gain another 10 years by suing a debtor on the basis of the first judgment; must be started before the 10 years elapses.

Fact pattern: Frankie

Frankie calls you on intake today.

They say they have applied for income assistance and that the Ministry has told them they must open a bank account to have their welfare deposited by electronic funds transfer.

Frankie says they have not had a bank account for many years, because ICBC obtained a judgment against them for about $100 000, 12 years ago. They don't want to open a bank account because they are worried that, if they do, ICBC will garnish money from their bank account.

- What can you tell Frankie?

Enforcement of unsecured debts: rights and remedies

Collection of unsecured debts: rights & remedies

- To forcibly collect money from a debtor, an unsecured creditor must first have a court judgment (e.g. in Provincial (Small Claims) Court, or BC Supreme Court)
- Small Claims Court's jurisdiction is claims & enforcement up to $35 000
- Options for enforcing a judgment in Small Claims Court include:
  - payment hearings: ask for order for installment payments
  - garnishing orders, most commonly against wages or bank accounts
  - Order for seizure and sale of assets.
- Resource: JES Online help guide Small Claims BC https://smallclaimsbc.ca/after-trial/enforcing-orders

Small Claims payment hearings

- Either the debtor or creditor can apply for a payment hearing
- Debtor should provide detailed budget statement showing their financial situation and ask the judge for a payment schedule they can actually afford
- **If the debtor obeys the payment schedule, the creditor cannot use other methods to collect the debt** (*Small Claims Rules*, Rule 11(6))
- If the debtor misses a payment, either creditor or debtor can request a new payment hearing to change the payment schedule. Once a payment is missed, creditor can take other steps to collect the debt

Garnishing orders

- If a creditor has a judgment, a "garnishing order" is a way the creditor can get money someone else owes the debtor
- It is most common to garnish wages or bank accounts.
- Two step process
  1. creditor applies to court for order to garnish specific funds, then serves the order on the "garnishee." Garnishee pays money into court (unless reasons for it to refuse e.g. government benefits with statutory protection)
  2. once the court receives the money, the creditor applies to court for payment of the money out of court. Debtor receives notice of this application.
- There are strict rules and timelines that must be followed to get a garnishment order
- Resource: JES Online help guide Small Claims BC https://smallclaimsbc.ca/after-trial/garnishing-and-seizing

Garnishment of wages: limits and remedies

- BC's *Court Order Enforcement Act* sets limits on the amount of wages that can be garnished
- limit is 30% of net income (but up to 50% if for child or spousal support orders)
- a garnishing order applies only to wages payable within the next seven days. Multiple garnishing orders can be expensive: filing fees are charged to the creditor
- if having wages garnished causes the debtor serious financial hardship, they can apply to court to have the garnishing order released, & a payment plan substituted
  - Court Order Enforcement Act s 5
  - Resource: Peoples Law School https://www.peopleslawschool.ca/creditor-garnish-wages-or-bank/

Mario: fact pattern

- Mario calls you on intake this morning. He says RBC visa has obtained a judgment against him two months ago for credit card debt of $25 000. He is a single father of one, and earns $2100 per month. He agrees he owes the money, but is really worried that if RBC visa garnishes his wages, he won't be able to afford his rent and he and his daughter will get evicted. This is his only debt.
- What can you tell Mario?

Garnishment of bank accounts

- Garnishing orders can also be issued against bank accounts
- Joint bank accounts cannot be garnished unless the creditor has a judgment against both account holders
- The *Court Order Enforcement Act d*oes not limit the amount that can be garnished from a bank account
- Up to the whole judgment debt can be garnished
- A debtor whose bank account is garnished can apply to the court to have the garnishing order released based on financial hardship, and have a payment plan substituted (Court Order Enforcement Act, section 5)
- Resource: Peoples Law School https://www.peopleslawschool.ca/creditor-garnish-wages-or-bank/

Limits on collection: *Indian Act* section 89

Creditors cannot seize or attach the real or personal property of someone with Indian status if the property is situated on a reserve, unless the creditor is a band, or also has Indian status (*Indian Act*, s 89(1))

- If the creditor is an Indian or band, the *Indian Act* protections do not apply.
- Exceptions:
  - "conditional sales agreements" can be enforced on reserve (e.g. secured loan where the lender keeps title to the security such as a car) (*Indian Act*, s 89(2))
  - Leasehold interests in on-reserve land are not exempt from enforcement (*Indian Act,* s 89(3))
- It is not always clear what constitutes "personal property situated on reserve;" - client may need legal advice

Limits on collection: government benefits

- Most government benefits can't be garnished at source. The legislation the benefits are paid under specifically states they cannot be garnished.
  - e.g. welfare, CPP, EI, OAS, GIS, WCB, CVAP, Canada Child tax benefit
  - exceptions: some kinds of benefits may be withheld for money owed to the government, or if FMEP is enforcing
- Statutory protection e.g.: BC's *Employment and Assistance Act* says:

section 29 (1) *Income assistance, hardship assistance and supplements are exempt from garnishment, attachment, execution or seizure under any Act.*

(2) Subsection (1) does not prevent income assistance, hardship assistance or a supplement being retained by way of a deduction or set off under this Act, the Financial Administration Act or a prescribed enactment.

Limits on collection: government benefits

Two other situations are fairly common, but should have remedies:

a) Benefits are deposited to a bank account & a creditor tries to garnish (or garnishes) the account

b) Protected benefits in a bank account are collected (set off) by the bank for other money the account-holder owes the bank (e.g. a credit card debt with the same bank). This can happen even though the bank has no judgment against the debtor.

- See: Detailed handout materials on Sched, with template letter to bank, and case law addressing both situations

Fact pattern: Jaspreet

- You have a new client named Jaspreet. She is 75 and receives Old Age Security and GIS benefits of $1550/month. During the pandemic, Jaspreet didn't want to have to cash cheques, so she started having her benefits directly deposited in her bank account with ABC Bank. She has a credit card with ABC Bank too, and owes about $10 000 on it.
- Today she went to ABC Bank to withdraw her rent, and discovered ABC Bank has taken $1200 of this month's benefits out, and applied it to her credit card debt. She says she won't be able to pay her rent or buy food this month.

What do you tell Jaspreet? Can you help her get that money back?

Seizure of assets: what assets are exempt

- Unsecured creditors with a judgment may apply to court for an order allowing them to seize and sell assets
- Only Court Bailiffs can execute orders for seizure and sale of assets
- Some assets are exempt from seizure:
  - Assets that a debtor owns jointly (unless the judgment is against all joint owners of the asset);
  - Personal and real property of a person with Indian status if situated on reserve (unless the creditor also has Indian status or is a band);
  - If there is a lien on the item (e.g. a vehicle loan secured against an RV), the lien holder is paid out first. If the secured asset is seized, the judgment creditor is only entitled to the amount remaining after the lien holder is paid out.
  - The *Court Order Enforcement Act* and *Regulation* set out other important exemptions for assets that can't be seized (see next slide)

Court Order Enforcement Act and Regulation: exempt assets

The following assets are exempt from seizure and sale under BC's *Court Order Enforcement Act* ss 70 to 78, and the *Court Order Enforcement Act Exemption Regulation*:

- Necessary clothing of the debtor & the debtor's dependants;
- Medical and dental aids required by the debtor and the debtor's dependants;
- $4,000 for household furnishings and appliances;
- $5,000 for one motor vehicle ($2000 if the debt is for child or spousal support);
- $10 000 for tools and other personal property of the debtor that are used by the debtor to earn income from the debtor's occupation.
- Equity in the debtor's principal residence of $12 000 if located in the Capital Regional District or the Metro Vancouver Regional District; and $9 000 elsewhere in BC.
- RRSPS and RRIFs may be exempt, some exceptions apply

Fact pattern: Mei

- Mei calls you on intake this morning. She says that a visa card company recently obtained a judgment against her for $45,000. She usually works as a self-employed housecleaner, but she had a family crisis last year and was out of work for a while, during which she had to live off his credit card.
- Mei is back at work now, but is really worried that the creditor might try to seize some of her belongings. She needs her van and expensive vacuums and appliances, and other cleaning supplies for work; she thinks they are worth about $30 000 in all.

Mei wants your help with this. What can you tell him?

Fact pattern: Jamie

- Jamie has been your client for a while. They call you today and let you know that a debt collector has been calling them often about an old credit card they used to have when they lived in Vancouver 6 years ago. Jamie hasn't used the card since then or paid anything, and thought the credit card company had forgotten all about it too. They told the debt collector they're on welfare and can't afford to pay anything. Jaime says they just have an old car worth $2 000, and the stuff in their apartment.

Jamie wants your help with this. What can you do to help them?

Fact pattern: Lorne

- Lorne is employed as a truck driver by JZ and Sons Long Haul Trucking. Lorne has several creditors and feels the world is closing in on him. Yesterday, one of the credit card companies he owes started a Small Claims action against him. Lorne has a reasonably steady income, though he does have some lay off times. He has a wife who has a small home day care business, and they have two school age children. Together, Lorne and his wife bring in about $3500 net, but after rent of $1800 and other living expenses, he finds he seldom has more than $200 or $300 to pay on all his debts. In 2010 he was involved in a car accident and ICBC said it was his fault. His premiums went up after that. He hasn't heard from ICBC since then, but he fears he may owe them some money. He also has several credit card debts totaling $20,000, a bank loan for $12,000, and a loan from a payday lender for $1500.

Questions?

Alison Ward: award@clasbc.net

(insert date)

Via Fax: 604-xxx xxxx
URGENT

XXX Bank
Address

Attention: Ms Whoever, Branch Manager

Dear Ms. Whoever

Re: **Client's name**
Bank Account #: XXXXXXX
Visa Account number: Xxx xxxxxxx xxxx

Mr. Client has contacted our office regarding the above _____ visa account that he holds with XXX Bank. I am assisting him as his advocate in this matter.

Mr Client subsists on benefits for Persons with Disabilities ("PWD benefits") from the BC Ministry of Social Development and Poverty Reduction ("MSDPR") in the amount of $XXX.XX per month. As a search of your records will confirm, MSDPR electronically deposits this amount to his account each month. We are advised that this is Mr. Client's only source of income. We **attach** a copy of a recent electronic Notice of Deposit from MSDPR confirming deposit of welfare benefits into his account.

We understand from Mr. Client that on (date), XX Bank debited the amount of $xxx.xx from his bank account, due to an alleged debt that he owes to XX Visa. This set-off of funds was not legally permissible as the funds taken from Mr. Client's account are welfare benefits that are protected by law from set off and execution.

The *Employment and Assistance for Persons with Disabilities* legislation governs the provision of PWD benefits in BC. Section 20 of the *Employment and Assistance for Persons with Disabilities Regulation* B.C. Reg. 265/2002, provides:

> **No garnishment, attachment, execution or seizure**
>
> **20** (1) Disability assistance, hardship assistance and supplements are exempt from garnishment, attachment, execution or seizure under any Act.
>
> (2) Subsection (1) does not prevent disability assistance, hardship assistance or a supplement being retained by way of a deduction or set off under this Act, the *Financial Administration Act* or a prescribed enactment.

Courts have confirmed that statutorily-protected benefits do not lose their statutory protection after being directly deposited into a bank account. We refer you to the decision of the Ontario Court of Justice in *McIntosh* v *Laronde*, a copy of which is **attached**.

Urgent Action Requested

We require that XX Bank immediately credit to Mr. Client's account the full amount of funds that was set off against his account on (date). In addition, we request that XX Bank refrain from debiting any further amounts from Mr. Client's account based on the nature of the funds in his account.

This is an **urgent** matter. Without his PWD benefits, Mr. Client has no money for food or other necessities of life. His rent is due on (date).

Unless these funds are immediately credited back to Mr. Client, he is at risk of being evicted for non-payment of rent. In addition, his health is suffering because of lack of access to appropriate nutrition. The stress of this event has also exacerbated his underlying heart condition, resulting in at least increased blood pressure and nosebleeds for which he has had to make a medical appointment.

We thank you in advance for your attention to this matter and trust you will act promptly.

Yours truly,

(Advocate name, Name of Agency)

Encls.
cc: Community Relations and Service Quality Manager, MSDPR Region for the client's region
Via facsimile to XXX Visa
client

Benefits protected by statute from attachment and set-off

*Prepared by Alison Ward, lawyer, Community Legal Assistance Society, updated October 21, 2021

*NOTE: The discussion in this paper **does not apply to situations where FMEP or the government (Federal or Provincial) is the creditor**.

Statutory benefits are not usually protected from collection when the creditor collecting a debt is the government, and special rules apply when the creditor is FMEP.

You've probably all heard clients ask the question: "I owe money to the bank. Can they take away my welfare benefits? Or my EI? Or my child tax benefit?

Do you know the answer to this question? Do you think it's a simple answer? If you think it's simple, think again……

Some benefits issued by government are paid under legislation that provides those benefits with statutory protection from some collection actions by creditors. Some other monies, such as RRSPs, and some private pension monies are also given protection from enforcement by statute. The focus of the discussion on this paper is what protection, exactly, is given to benefits paid by government under legislation that provides them with protection from some collection action.

Let's look at two examples.

1. Section 29 of the BC *Employment and Assistance Act* says:

29 (1) Income assistance, hardship assistance and supplements are exempt from garnishment, attachment, execution or seizure under any Act.

(2) Subsection (1) does not prevent income assistance, hardship assistance or a supplement being retained by way of a deduction or set off under this Act, the Financial Administration Act or a prescribed enactment.

2. Section 42 of the *Employment Insurance Act* says:

Benefits not assignable

***42.** (1) Subject to subsections (2) and (3), benefits are not capable of being assigned, charged, attached, anticipated or given as security and any transaction appearing to do so is void.*

(2) Any amounts payable under this Act by any person and required to be credited to the Employment Insurance Operating Account may be recovered out of any benefits payable to that person, without affecting any other mode of recovery.

> *(3) If the Government of Canada, a provincial or municipal government or any other prescribed authority pays a person an advance or assistance or a welfare payment for a week that would not be paid if unemployment benefits were paid for that week, and unemployment benefits subsequently become payable to that person for that week, the Commission may, subject to the regulations, deduct from those or any subsequent benefits and pay to the government or the prescribed authority an amount equal to the amount of the advance, assistance or welfare payment paid, if the person had, on or before receiving the advance, assistance or welfare payment, consented to the deduction and payment by the Commission.*

What this type of statutory protection means, exactly, is a rather complicated area of law.

What benefits have statutory protection?

The Acts that govern the following types of benefits give them some statutory protection:

1. Income Assistance, PPMB benefits and supplements: refer to section 29 of the B.C. *Employment and Assistance Act* at http://www.bclaws.ca/civix/document/id/lc/statreg/02040_01#29

2. PWD benefits and supplements: refer to section 20 of the B.C. *Employment and Assistance for Persons with Disabilities Act* at http://www.bclaws.ca/civix/document/id/complete/statreg/02041_01#section20

3. CPP benefits: refer to section 65 of the *Canada Pension Plan* at http://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-8/latest/rsc-1985-c-c-8.html

4. OAS, GIS and survivor's benefits: refer to section 36 of the *Old Age Security Act* at http://laws-lois.justice.gc.ca/eng/acts/O-9/page-13.html#h-35

5. Federal Child Tax benefits: refer to section 122.61(4) of the *Income Tax Act* at http://www.canlii.org/en/ca/laws/stat/rsc-1985-c-1-5th-supp/latest/rsc-1985-c-1-5th-supp.html

6. Employment Insurance benefits: refer to section 42 of the *Employment Insurance Act* at http://www.canlii.org/en/ca/laws/stat/sc-1996-c-23/latest/sc-1996-c-23.html

7. Workers Compensation benefits: refer to section 120 of the B.C. *Workers Compensation Act* at https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/19001_03#section120

8. Crime Victim Assistance Act benefits: refer to section 21 of the B.C. *Crime Victim Assistance Act* at https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/01038_01#section21

9. Child care subsidy funds: refer to section 8 of the B.C. *Child Care Subsidy Act* at http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96026_01#section8

10. Some private employment pension benefits: refer to section 70 of the B.C. *Pension Benefits Standards Act* at http://www.bclaws.ca/civix/document/id/complete/statreg/00_12030#section70

11. Funds in RRSPs, Registered Retirement Income funds (RRIFs) and Deferred Profit Sharing Plan (DPSPs) (all as defined in the federal *Income Tax Act*) have *some* protection: refer to section 71.3 of the *Court Order Enforcement Act* at http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96078_01#section71.3

Each of these statutes offers some statutory protection to the benefits issued under them. Those levels of protection vary among types of benefits.

One thing they have in common though, is that the above benefits are generally protected from being taken **at source** by creditors serving a garnishing order on the body that issue these benefits. For example, if a bank gets a garnishing order against CPP benefits owing to John Doe, and serves the garnishing order on Service Canada, CPP will not act on it. Such benefits cannot be garnished at source.

A trickier question arises once statutorily protected benefits are deposited in bank accounts.

Issue: Once statutorily protected funds are in a bank account, are they still exempt from garnishment or set-off?

Terminology:

What is a garnishing order?

A **GARNISHING ORDER** is an order made by a court that says that someone who owes money to the debtor must pay it to the creditor. In practice the money is paid to the court. The court holds onto the money and if there are no problems will then release it to the creditor.

What is set-off?

A **SET-OFF** happens without the need for a court order. It can happen when you owe money to a person or Bank for one purpose, and they owe you money for another. For example, if you have a CIBC account with $3000 in it, and you owe $1000 in old debt on a CIBC visa card. In that situation a CIBC might take money from your bank account to apply to your visa debt. This can only happen if you agreed to allow the bank to do this in the credit card agreement, or other loan contract.

The Problem

Once statutorily protected benefits are placed in a bank account:

a) a creditor may be able to obtain a garnishing order from the Court against funds in the bank account. Note that in general, joint accounts cannot be garnished if the creditor has a claim against only one of the joint account holders (this is true whether or not the funds in the account have statutory protection); and

b) an institutional creditor such as the Bank may set off the money in the bank account against other debts the person owes to the Bank (without a court order).

Possible Solutions

If statutory benefits are garnished from a bank account, or set off against by a bank, the person whose benefits were taken may have a legal remedy. They can argue that the funds should be returned to them because they are still statutorily protected benefits, even though they had been put in the bank.

How and where you would make this argument depends on whether the funds were taken through a garnishing order or set off.

a) **Funds taken by a Garnishing Order from Court**:

The person can apply to the Court Registry that made the garnishing order, to have the garnishing order set aside, and the money returned to the person, on the grounds that the monies seized are statutorily protected benefits that are exempt from garnishment.

See the case of *Metropolitan Toronto (Municipality)* v. *O'Brien*, [1995] O.J. No 4896 (copy **attached**) for a precedent from the Ontario Court of Justice holding that OAS and CPP benefits are still exempt from garnishment once deposited into a bank account. There are also two 2014 cases from the BC Provincial (Small Claims) Court that find welfare and OAS benefits do not lose their protection after being deposited into a bank account: *Cash Stop Loans* v *Dickson*, BCPC 0273 (welfare benefits) and *Cash Stop Loans* v. *Bayley*, 2014 BCPC 0274 (re OAS benefits).

b) **Funds taken by Set –Off**

The first step in this situation is to contact the bank manager or customer service department. Explain to them that the funds taken represent statutorily protected benefits and must be returned to the person. You may want to send the Bank representative a copy of the legislation that states that the funds are protected. You may also want to send the Bank a copy of a precedent case, *McIntosh* v. *Laronde*, [1998] O.J. 5988 (copy **attached**). In *McIntosh* v. *Laronde,* the Ontario Court of Justice found that Ontario welfare benefits that were deposited into a bank account, did not lose their statutory

protection. The creditor who had had the funds from her bank account seized, was ordered to pay the money back to the income assistance recipient.

While you may start by dealing with the bank over the phone, it is best to follow up by sending them a letter outlining your position that the client's money must be returned, and the legal reasons for your opinion. Your argument will be easier to make if the only deposits to the bank account in question were from protected government programs. If protected benefits and other non-protected monies (such as child support or wages) were deposited to the account, it will be more difficult to argue that 100% of the funds that were set-off are protected.

If the creditor won't return the funds, and the funds are income assistance or other benefits with statutory protection from attachment or set-off, the person can apply to the Provincial (Small Claims) Court for an order that the funds be returned to them on the basis that they are protected from set-off and seizure. If there is no pre-existing court file between the creditor and the debtor, the client would have to start by completing a Notice of Claim, naming both the creditor and the bank as defendants. The client could then bring on an Application to a Judge to try and get the Court to deal quickly with their issue. Courts in BC have made decisions to return statutorily protected benefits that were set off from bank accounts; unfortunately, as far as I am aware, none of these decisions have been reported. You will therefore want to rely on the Ontario cases cited above to support your client's claim for return of their protected funds.

Where the funds that are set off against are income assistance or PWD benefits, you may also consider having your client apply to the Ministry of Social Development and Poverty Reduction ("MSDPR") for a crisis supplement to tide them over until their benefits are (hopefully) returned to them.

Because a client whose welfare benefits have been set off against will often be eligible for a crisis supplement (i.e., their resulting needs are unexpected as the set off itself was unexpected), MSDPR has a financial interest in ensuring that wrongful set offs against welfare benefits do not occur. Your regional Community Relations and Service Quality Manager ("CRSQ") at MSDPR may be willing to intervene with banks where set offs have occurred against welfare benefits, to assert that those funds are protected by their governing legislation, as set out above. Therefore, it may be very useful in dealing with such situations, to make the CRSQ for your region aware of any wrongful set off against welfare benefits. You can do this by copying MSDPR's CRSQ for your region on any letter you write to the bank or credit union involved and asking the CRSQ to intervene directly with the bank or credit union if you find the bank or credit union is not responsive to your efforts to resolve the problem on your client's behalf.

McIntosh v. Laronde

Between
James R. McIntosh, respondent, and
Mabel Laronde, appellant
[1998] O.J. No. 5988

165 D.L.R. (4th) 178
31 C.P.C. (4th) 256
File No. DV253/96 Sudbury

Ontario Court of Justice (General Division)
Divisional Court - Sudbury, Ontario

Campbell, Farley and Desotti JJ.

Heard: April 1, 1988.
Judgment: May 22, 1998

(9 pp.)

Creditors and debtors — Seizure or attachment of debtors' property — Exemptions — Disability allowance.

This was an appeal by the debtor from the dismissal of her motion to set aside the seizure of her monthly family benefits disability allowance. This was the debtor's sole source of income and the money was deposited directly into her account. The creditor seized $198.04 from this account. The motions judge dismissed the debtor's motion on the ground that section 143.1(1) of the Courts of Justice Act protected against garnishment of social assistance but not against seizure.

HELD: Appeal allowed. The creditor was ordered to repay the money that had been seized. The debtor's social benefits did not lose their character as social benefits and did not become subject to seizure merely because they were deposited in a bank account. Protection from creditors continued after the benefit was paid into a bank account provided that the bank account's purpose was to receive the benefit. The exemption was not lost merely because of the modern convenience of electronic depositing. Any other interpretation would undermine the underlying social purpose of welfare legislation.

Statutes, Regulations and Rules Cited:

Courts of Justice Act, R.S.O. 1990, c. F.2, s. 143.1(1).

Family Benefits Act, R.S.O. 1990, c. F.2, s. 5(1)(b).

Counsel:

James McIntosh, in person.
Trevor Leech, for the appellant.

The judgment of the Court was delivered by

1 CAMPBELL J.:— This cases raises the general issue; to what extent is a welfare recipient protected against seizure, by creditors, of funds received under a provincial welfare disability allowance?

2 The specific question is this: when a family benefits disability allowance is deposited electronically into a bank account, and the allowance is the sole source of the funds in the account,

are the funds in the bank account immune from seizure under s. 5(1)(b) of the Family Benefits Act, R.S.O. 1990, c. F2?

3 The Act provides as follows:

- 1.

  In this Act,
  "allowance" means an allowance provided on the basis of need under this Act and the Regulations.

- recipient" means a person to whom an allowance is provided.

- 5(1)

  An allowance,

  - (a)

    is not subject to alienation or transfer by the recipient; and

  - (b)

    is not subject to attachment or seizure in satisfaction of any claim against the recipient.

4 Mabel Laronde's sole income is a monthly family benefits disability allowance of $690.46 deposited directly by electronic means in her bank account by the Ontario Ministry of Community and Social Services. All the money in the account comes from her disability allowance. No other funds are paid into the account. An examination of the account shows the deposit of $690.46 on the last day of every month, followed by the withdrawal of modest sums during the month for the expenses of daily living. The evidentiary record discloses very little about Ms. Laronde's personal circumstances. We are told that she is in her early sixties, that she has some sort of disability, and lives with her sister in a small apartment in rent-geared-to-income housing in North Bay. During some months Ms. Laronde's expenses are lower than others and she accumulates a small surplus in the account for "rainy day" purposes. Sometimes she withdraws cash from the account and if she does not spend it all at once she re-deposits what she does not then spend. During some months her expenses are higher and the balance in the account reduces. At the time her account was seized, on December 22, 1995, she had a balance of $198.04 in her account.

5 Ms. Laronde and her sister became indebted to James R. McIntosh, a North Bay lawyer, as a result of some estate litigation and they ended up owing him a balance of $9,789.20 for his unpaid legal account. Again, the evidentiary record is sparse but it appears that she and her sister and some other beneficiaries of an estate ended up each having a fractional right to a family cottage on an island in Lake Temagami which is for some reason exempt from seizure. There is no evidence as to the exact nature of Ms. Laronde's interest in the family cottage and no evidence that she has any assets other than her welfare bank account and whatever rights she has in relation to the cottage. What is clear from the record though is that she has established her entitlement to the family benefits disability allowance through need.

6 Mr. McIntosh,, after a number of unsuccessful demands for payment, filed a notice of execution with the Sheriff who notified Ms. Laronde's bank. On December 22, 1995, the bank froze the $198.04 in Ms. Laronde's bank.

7 Ms. Laronde, through the local legal aid clinic, moved unsuccessfully in motions court to have the notice of seizure set aside, on the grounds that the seizure violated s. 143.1(1) of the Courts of Justice Act, R.S.O. 1990, c. F.2, as amended, which provides that no family benefits allowance may be garnisheed, even if it has been paid into a bank account. The learned motions judge, [1996] O.J. No. 2231, dismissed the motion on the grounds that s. 143.1(1) protects against garnishment but not against seizure.

8 Although it is arguable that the function of a garnishment is to effect a seizure and that a purposive interpretation of s. 143.1(1) protects against seizure as well as garnishment, it is not necessary to decide that point because a close examination of the record shows that the appellant, in addition to s. 143.1(1), relied also on s. 5(1)(b) of the Family Benefits Act, although this supplementary argument might not have been made clear to the learned motions judge. In our view this case is governed by s. 5(1)(b) of the Family Benefits Act and by the principle enunciated by O'Brien J. in Metropolitan Toronto (Municipality) v. O'Brien (1995), 23 O.R. (3d) 543. Although that case involved the exemption from garnishment of an old age security benefit, nothing turns on the difference. The principle is that protection from creditors continues after the benefit is paid into a bank account provided that the bank account's purpose is to receive the benefit. O'Brien J. held that the exemption is not lost merely because of the modem convenience of electronic depositing:

- Metro's counsel concedes the exemptions apply so long as the money is in the possession of the debtor, and also concedes the funds are not subject to garnishee at the source from the Federal Government. She argues, however, the exemption is lost when the funds are electronically deposited with the garnishee.
- Counsel relies on a number of authorities which hold that when a customer pays money into a bank account the money ceases to be that of the customer and in its place the relationship of creditor/debtor is created which merely entitles the customer to the return of an equivalent amount when demanded: see Foley v. Hill (1848), [1843-60] All E.R. Rep. 16 at p. 19, 2 H.L. Cas. 28.
- Counsel argues that when the deposit was made in this case the money ceased to be the debtor's and any exemption from garnishee was lost.
- I do not accept that argument. The funds payable to the debtor in this case are pension funds intended to be paid to him over an extended period and are designed to provide for his infirmity and disability. I reject the submission that the exemption, otherwise available, is lost merely because of the modem convenience of electronic depositing. Such a result in my view would be unreasonable on the facts of this case. Here, the bank records clearly indicate the only money ever deposited into the debtor's account with the garnishee bank came from pension funds, exempt from garnishee.
- A somewhat analogous situation was dealt with in Bonus Finance Ltd v. Smith, [1971] 3 O.R. 732, 21 D.L.R. (3d) 544 (H.C.J.), per Houlden J. In that matter, a judgment creditor attempted to garnishee pension funds payable from a fund registered under the Pension Benefits Act, 1965, S.O. 1965, c. 96. Crown Trust was the administrator of the trust funds. Section 21(1)(b) of the Act provided pension benefits did not confer on the employee (the judgment debtor) any right or interest in the pension benefits capable of being assigned or alienated and s. 22b provided moneys payable under the plan were exempt from seizure or attachment.
- Houlden J. refused the garnishee order relying on the exemption provisions contained in the Act.
- I conclude the exemption continued in this case notwithstanding the deposit.

9 We agree that social benefits do not lose their character as social benefits and do not become subject to seizure merely because they are deposited in a bank account. We would only add that any other interpretation would defeat the object and purpose of the statutory exemption, which is to ensure that the modest sums made available to disability pensioners to let them subsist from day to day should not be seized by creditors.

10 The use of bank account and electronic deposits is an administratively convenient and secure way to make welfare payments. Any other interpretation would also undermine the underlying social purpose of welfare legislation like the Family Benefits Act, so well expressed by Brennan J. in Goldberg v. Kelly (1970), 90 S. Ct. 1011 at p. 1019, 397 U.S. at p. 265:

- We have come to recognize that forces not within the control of the poor contribute to their poverty. This perception, against the background of our traditions, has significantly influenced the development of the contemporary public assistance system. Welfare, by meeting the basic demands of subsistence, can help bring within the reach of the poor the same opportunities that are available to others to participate meaningfully in the life of the community. At the same time, welfare guards against the societal malaise that may flow from a widespread sense of unjustified frustration and insecurity. Public assistance, then, is not mere charity, but a means to "promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity." The same governmental interests that counsel the provision of welfare, counsel as well its uninterrupted provision to those eligible to receive it;

11 If mere deposit in a bank account subjects welfare payments to seizure, the use of bank accounts and electronic deposits would cease to be a convenience for welfare authorities and the recipients and would become a hazard for many recipients of public assistance who already have enough difficulty managing their money. It would require very express statutory language to remove from this vulnerable class of people the protection afforded by s. 5(1)(b) of the Family Benefits Act.

12 The appeal is therefore allowed and it is ordered that Mr. McIntosh repay to the appellant the $198.04 together with interest of $27.68 plus filing fees of $1 80.00 for a total of $405.72.

CAMPBELL J.
FARLEY J.:— I agree.
DESOTTI J.:— I agree.

Re

Municipality of Metropolitan Toronto and O'Brien; Canadian Imperial Bank of Commerce, Garnishee [Indexed as: Metropolitan Toronto (Municipality) v. O'Brien]

23 O.R. (3d) 543

[1995] O.J. No. 4896

Ontario Court (General Division),

O'Brien J.

April 21, 1995

Debtor and creditor -- Garnishment -- Old age security and Canada Pension Plan payments electronically transferred into judgment debtor's bank account -- Moneys exempt from garnishment -- Old Age Security Act, R.S.C. 1985, c. O-9, s. 36(1) -- Canada Pension Plan, R.S.C. 1985, c. C-8, s. 65(1).

The Municipality of Metropolitan Toronto ("Metro") provided O, who was totally blind and confined to a wheelchair, with food, lodging, and other services at a home for the aged. O did not pay for the services, and Metro obtained a default judgment in the amount of $12,218.90 against him. To enforce its judgment, Metro served a notice of garnishment on a branch of the CIBC where O had a bank account. The bank manager advised Metro that it would not be remitting any funds since the money in O's account was exempt from seizure as Old Age Security and the Canada Pension Plan payments, which had been electronically transferred into O's account. Metro applied for an order under rule 60.08 of the Rules of Civil Procedure requiring CIBC to pay all amounts it paid from O's account since the notice of garnishment was served.

Held, the motion should be dismissed with costs.

Both the Old Age Security Act and the Canada Pension Plan provide that benefits payable shall not be assigned, charged, attached, anticipated or given as security and any transaction purporting to do so is void. This exemption from seizure was not lost merely because of the modern convenience of electronic depositing. The only money in O's bank account came from pension funds, and the account was thus exempt from garnishment.

Cases referred to

Bonus Finance Ltd. v. Smith, [1971] 3 O.R. 732, 21 D.L.R. (3d) 544, 16 C.B.R. (N.S.) 87 (H.C.J.); Foley v. Hill (1848), [1843-60] All E.R. Rep. 16, 2 H.L. Cas. 28; Wayfarer Holidays Ltd. v. Hoteles Barcelo (1993), 12 O.R. (3d) 208, 18 C.P.C. (3d) 36 (Gen. Div.)

Statutes referred to

Canada Pension Plan, R.S.C. 1985, c. C-8, s. 65(1)
Old Age Security Act, R.S.C. 1985, c. O-9, s. 36(1)
Pension Benefits Act, 1965, S.O. 1965, c. 96, ss. 21(1)(b), 22b [enacted 1967, c. 72, s. 1]
Rules and regulations referred to
Rules of Civil Procedure, R.R.O. 1990, Reg. 194, rule 60.08(16)

MOTION under rule 60.08 of the Rules of Civil Procedure requiring payment pursuant to a notice of garnishment.

Jacqueline P. Wigle, for creditor.

Rita A. Chrolavicius, for debtor.

Anne C. Thomas, for garnishee.

O'BRIEN J.: -- Metropolitan Toronto ("Metro") seeks an order under rule 60.08 of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194 requiring C.I.B.C. to pay all amounts it paid from the debtor's account in one of its branches since notice of garnishee was served on it October 30, 1992.

The issue involved is the exemption from garnishee, of funds payable to the debtor under the Old Age Security Act, R.S.C. 1985, c. O-9, and the Canada Pension Plan, R.S.C. 1985, c. C-8.

Metro obtained default judgment against the debtor in the amount of $12,218.90 for food, lodging and other services rendered to the debtor while he was a resident of Cummer Lodge, a home for the aged operated by Metro. The debtor was in that institution from May 1990 until May 1992. He now resides in a similar facility operated by Extendicare Nursing Homes, a privately operated facility.

The debtor is confined to a wheelchair and is totally blind. His only source of income is from Old Age Security benefits, Canada Pension Plan and Guaranteed Income Supplement. He has no assets. He deposes he has $112 remaining each month for personal and telephone expenses after paying his nursing home costs.

When he was in the Metro facility his only income was from two disability pensions and totalled $1,126 per month.

He apparently entered into an agreement with Metro to pay for some or all of the cost of his care while in the Metro facility. Metro obtained a default judgment against him on September 28, 1992 on the basis payment was not made. Metro then served a notice of garnishment on the garnishee in connection with an account the debtor had with that bank. Service on the garnishee was October 21, 1992; at that time the balance in the debtor's account was minus 43 cents.

The garnishee responded to the notice of garnishee by writing to Metro on November 30, 1992. The bank's manager advised it would not be remitting funds pursuant to the notice as all funds credited to the debtor's account were pension funds from Old Age Security and Canada Pension Funds and were exempt

from seizure. He agreed to remit any funds other than from those sources, which were deposited. He has since deposed there were no such funds.

Since that time the maximum balance in the debtor's account has never exceeded the sum of $1,124. The funds are received from the plans and deposited electronically in the debtor's account, according to his instructions; monthly payments are made to the Extendicare facility where he now resides. There is never any significant surplus of funds in his account.

Exemptions under the Applicable Acts

Both Acts provide benefits payable shall not be assigned, charged, attached, anticipated or given as security and any transaction purporting to do so is void.

These provisions are contained in the Acts as follows: Old Age Security Act, s. 36(1); Canada Pension Plan, s. 65(1).

Metro's counsel concedes the exemptions apply so long as the money is in the possession of the debtor, and also concedes the funds are not subject to garnishee at the source from the Federal Government. She argues, however, the exemption is lost when the funds are electronically deposited with the garnishee.

Counsel relies on a number of authorities which hold that when a customer pays money into a bank account the money ceases to be that of the customer and in its place the relationship of creditor/debtor is created which merely entitles the customer to the return of an equivalent amount when demanded: see Foley v. Hill (1848), [1843-60] All E.R. Rep. 16 at p. 19, 2 H.L. Cas. 28.

Counsel argues that when the deposit was made in this case the money ceased to be the debtor's and any exemption from garnishee was lost.

I do not accept that argument. The funds payable to the debtor in this case are pension funds intended to be paid to him over an extended period and are designed to provide for his infirmity and disability. I reject the submission that the exemption, otherwise available, is lost merely because of the modern convenience of electronic depositing. Such a result in my view would be unreasonable on the facts of this case. Here, the bank records clearly indicate the only money ever deposited into the debtor's account with the garnishee bank came from pension funds, exempt from garnishee.

A somewhat analogous situation was dealt with in Bonus Finance Ltd. v. Smith, [1971] 3 O.R. 732, 21 D.L.R. (3d) 544 (H.C.J.), per Houlden J. In that matter, a judgment creditor attempted to garnishee pension funds payable from a fund registered under the Pension Benefits Act, 1965, S.O. 1965, c. 96. Crown Trust was the administrator of the trust funds. Section 21(1)(b) of the Act provided pension benefits did not confer on the employee (the judgment debtor) any right or interest in the pension benefits capable of being assigned or alienated and s. 22b provided moneys payable under the plan were exempt from seizure or attachment.

Houlden J. refused the garnishee order relying on the exemption provisions contained in the Act.

I conclude the exemption continued in this case notwithstanding the deposit.

I dismiss this application on this basis.

If I am wrong on this point, I would also dismiss the application on the basis of discretion available under rule 60.08(16) and on the basis the relief sought is an equitable remedy. On the facts of this case I conclude it would be inequitable to grant the garnishee order: see Wayfarer Holidays Ltd. v. Hoteles Barcelo (1993), 12 O.R. (3d) 208 at p. 212, 18 C.P.C. (3d) 36 (Gen. Div.).

In my view, the garnishee acted commendably in refusing to honour the garnishee and taking the risk that by paying the monthly pension funds out to a nursing home it would face this type of application.

The garnishee could have taken the position that it was bound to keep the money until the garnishee proceedings were dealt with. At the very least this would have caused great inconvenience to the debtor, and might well have led to his removal from the home. The garnishee notice was served in October 1992. This matter was finally heard in April 1995.

The arrangements under provincial legislation were not explored in detail on this motion, it may be the legislation prevents expulsion of a resident for non-payment; that is not clear.

The garnishee notice was served by Metro on October 30, 1992. The matter was finally heard April 12, 1995.

The motion is dismissed. Costs payable to debtor and garnishee fixed at $1,500 each.

Motion dismissed.

THE LAW FOUNDATION OF BRITISH COLUMBIA

2021
PROVINCIAL ADVOCATES TRAINING CONFERENCE

Legal Aid BC

How-to guide for gender & name change forms

Adrienne Smith

Topic: Other

Provincial Name and Gender Change training

Adrienne Smith Law

Adrienne Smith

Outline

1. Resources and forms
2. Overview
3. Barriers and cultural competency
4. Name Change Application
5. Commissioner for Oaths
6. Gender Change Applications
7. Youth and out of province births
8. Applications without a birth document
9. Federal Documents

Resources

- Step by Step instructions (comprehensive, text)
- Visual guide (plain language)
- lawyer@cwhwc.com
- Legal info for trans people (general)
  Information about colonial naming
- Law society rules for remote commissioning
- Dropbox link with templates and forms

Links and forms

- Name change info page
- Name change form
- Online portal BC

- Gender forms BC
- Other province Vital Statistics contacts

Name Change Office

- **Vital Statistics Agency: Name Change Office**
- Attn: Confidential Services
  PO Box 9657 Stn Prov Govt
  Victoria, B.C.
  V8W 9P3

- Telephone: 250 952-2681 (Victoria & Outside B.C.)
  Toll free: 1 888 876-1633 (within B.C.)

Gender Change Office

- **Vital Statistics Agency: Gender Change Office**
- 478 Bernard Avenue, #305
  Kelowna, B.C.
  V1Y 6N7

- Telephone: 250 712-7562

Health Insurance BC

- **Health Insurance B.C.**
- PO Box 9035 Stn Prov Gov
  Victoria, B.C.
  V8W 9E3

- Toll Free: 1 800 663-7100 (MSP)

Other contacts

- ICBC Drivers Services Locations
- Vancouver Fingerprinting info/appointments
- Commissionaires fingerprinting locations
- Transcare BC (locating physicians)
  Phone: Toll-free (BC): 1-866-999-1514
  Outside of BC or unable to call a toll-free number: 604-675-3647
  Email: transcareteam@phsa.ca

Commissioning Oaths

- Apply to be a Commissioner for taking Oaths
  - N.B. this does not give you the power to certify or verify documents
  - There is an exam and a $50 fee
  - Not transferrable between people or organizations

Order in Council Administration Office
Ministry of Attorney General
PO Box 9280 Stn Prov Govt
Victoria, BC V8W 9J7
Fax: 250 387-4349
Phone: 250 387-5378
Email: BCCommAff@gov.bc.ca

Laws

- *Vital Statistics Act* RSBC 1996 c 479
- *Name Act* RSCB 1996 c 328
- *Evidence Act*, RSBC 1996, c.124

Overview – the basics

- Trans people are entitled to an immediate accommodation in name, pronouns, and gender markers.
- The legal change systems is difficult to navigate, unclear, and expensive.
- Names are changed where you live.
- Genders are changed where you were born.
- Provincial documents are changed before Federal documents.

Name Change

Jurisdiction
- Where you live (3 month requirement)

Goal
- Change of name certificate
- Replacement foundational ID

Types
- Adult
- Minor

Name Change

Parts
- Form vsa529 (p1-5; or online)
- ID (certified copies of 2 pieces)
- **Original** Birth Certificate, marriage, previous change certificates
- Fingerprint **receipt** (except youth)
- Oath (p 6)
- Fee

Addition requirements for youth

- Adult applicant (parent with custody)
- Consent of all parents with custody(p 7-10)
  - Signature of all parents with custody, or
  - Court documents severing custody, or
  - affidavit and proof of incapacity, or
  - social worker affidavit re: trauma related to name, for children and youth in care. (NB leg change coming!)
- Handwritten letter from youth

Name Change danger

- If the applicant has a warrant out for their arrest they will be arrested when they go for fingerprints.
- People in custody cannot get electronic fingerprints taken. Call for assistance.
- Deadnaming is a human rights violation. See *Dawson v VPB* (No. 2) 2015 BCHRT 54.

Gender Change

Jurisdiction
- Where you were born.

Goal
- Replacement foundational ID (usually birth certificate).

Types
- Born in BC;
- Born in another Canadian Province;
- Born outside Canada.

Gender Change

Parts

- Application form
  - vsa509a (adult)
  - vsa590c (minor)
  - Bcsc590a_w without birth document
- ID (certified copies of 2 pieces)
- **Original** Birth Certificate
- Physician confirmation Form vsa510p (letter)
- Fee
- NB Proof of sterilization, Gazette publication and court order no longer required.
- NB new X option now available.

Gender change - danger

- Many foreign jurisdictions do not allow name or gender changes.
- People who may file a refugee claim should NOT contact their birth jurisdiction to update a gender marker.
- If X markers or gender changes are not permitted in a foreign jurisdiction, it is likely unsafe to travel there with a X or a marker that has been changed.
- Anyone with an X could experience additional difficulties with police and at borders.
- Health and Education databases in BC (especially if held locally) cannot accommodate the X properly.
- Misgendering is a human rights violation. See *Dawson v VPB* (No. 2) 2015 BCHRT 54.

Gender change out of province

- Applicants born outside BC need to change their birth records where they were born.
- Other Canadian provinces may require:
  - Application form;
  - Stat dec (BC lawyers can commission out of province stat decs);
  - A physician form, letter, or report. Most accept the BC Physician confirmation Form vsa510p);
  - A fee
  - Identification including **Original** birth certificate.

What to expect

- After a name change is processed the applicant will get a confirmation letter, and in a separate envelope, a Change of Name Certificate.
- After a gender change is processed the applicant will get a confirmation letter from Vital Statistics.
- If the applicant is changing both- wait until both are confirmed before ordering a new birth certificates.
- Provinces do check with each other.

Next steps

Once you have a new birth certificate (if this is possible for your applicant):

- Notify Health Insurance BC of the change
- Go to an ICBC Drivers services location to get a new BCID or BCDL; and a new Service Card.
  - Service cards for temporary residents with no picture can still be changed
  - Avoid the combined BCID or BCDL and Service card: folks need two pieces of government issued ID and there is no charge for separate cards

Document change danger

- Travel by airplane must be booked in the same name and gender as a person's identity documents.
- It is inadvisable to carry any ID or documents with a deadname or birth sex assignment once change– especially at the border or when abroad.
- Characters and diacritic marks cannot be displayed on any ID. The Yukon government allows indigenous names and BC should too. Please reach out for support.
- It is possible to have different markers on provincial and federal ID (for example- correct for driving, but passport in assigned sex for safety when travelling).

Practice Tips

- Law Society ID verification rules can be difficult for trans people – who need to give you their deadname and sex assignment.
- Explain why you need these and how you will keep the info safe to make sure you do not expose them to danger by outing them.
- Do not load deadname information to a file management system or on any visible files.
- Use chosen/social names for records and files.
- Ask pronouns and give yours.
- Do not assume anyone's sex assignment or gender identity when completing gender forms- ask them which marker they want.

Practice Tips

- Verify ID
- Assure people the process is complex and assure them you will help.
- Identify the correct forms.
  - Ask the person's goal
  - Ask re residency, birthplace, parenting situation, age if relevant.
  - Inquire if they want to change name AND gender.
- Offer to fill out forms out together.
- Troubleshoot barriers (cost, literacy, video capability for stat dec, lawyer/notary/commissioner, ID, doctor, criminal record etc. Plan to address these.

Practice Tips

- Provide clients with a list of required items;
- Verify the address for each type of application;
- Provide postage or offer to mail from your office;
- Tell people what to expect next;
- Help to make a list of all the offices your client will need to visit;
- Offer to help with Federal documents once they get confirmation from the province.

Law Reform Advocacy

Contact the Attorney General to advocate for:

- funding to remove costs to applicants;
- expand fee waivers and reduce means testing;
- abolish the application system to remove barriers to trans inclusion (a self-serve online change registry without fees or professional gatekeeping).
- Better access for children and youth.

Information and Instruction Guide

for

Commissioners for Taking Affidavits for British Columbia

BRITISH COLUMBIA | Ministry of Attorney General

A. General

A Commissioner for Taking Affidavits may administer oaths and affirmations and take affidavits and statutory declarations as permitted or required by law. This authority, however, may be limited by special restrictions, terms or conditions in the appointment order, which is why it is important for commissioners to read their appointment orders carefully so they are aware of any limitations that apply to their appointments.

Note: An appointment as a Commissioner for Taking Affidavits does not authorize a person to certify or verify documents.

What is an Oath?

Generally speaking, an oath is a solemn promise, either to do something or that something is true. It is the way a person signifies that they are bound in conscience to act faithfully and truthfully. An oath usually includes an appeal to God, or to a sacred object, to witness the person's words and to impose punishment if the person does not act truthfully. Under the *Interpretation Act*, "oath" includes an affirmation, a statutory declaration or a solemn declaration made under the British Columbia *Evidence Act* or the Canada *Evidence Act*.

What is an Affirmation?

An affirmation is a solemn and formal declaration that an affidavit is true or that a person will tell the truth.

What is an Affidavit?

An affidavit is a statement of facts made in writing, which is confirmed by the oath or affirmation of the person making it before someone who has the authority to administer an oath or affirmation.

What is a Statutory Declaration?

Like an affidavit, a statutory declaration is a statement of facts made in writing. The statement is verified by the solemn declaration of the person making the statement. Statutory declarations may be required pursuant to various statutes. The form of a statutory declaration is mandated by the Canada *Evidence Act* and the British Columbia *Evidence Act*, as follows:

> *I, [name], solemnly declare that [state the facts declared to], and I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same legal force and effect as if made under oath.*

B. How to Take an Affidavit or Statutory Declaration

1. ***Identity of the Person Making the Statement***
   Whether you are administering an oath, affirmation or declaration, you must be satisfied you know the identity of the person making the written statement (who may be referred to as the deponent, affirmant or declarant). Ask the person whether they are the same person the affidavit (statutory declaration) names as making the written statement. If the person is someone you do not know personally, the person should be required to produce some reliable means of identification (such as a government-issued ID that includes the person's name, current address, signature and photograph).

2. ***Capacity of the Person Making the Statement***
   You must also be satisfied that the person making the written statement (who may be referred to as the deponent, affirmant or declarant) understands the contents of the document and appreciates the significance of making the affidavit or statutory declaration. If you have any concerns about someone's understanding of the statements in the document or of the nature of the process they are about to engage in, such concerns may be addressed by asking them to summarize one or two items in the statement or by explaining to them that affidavits and statutory declarations may be used to establish legal rights, they may be used as evidence in court and, under the *Criminal Code* of Canada, it is an offence to make a false statement.
   If you have any reason to think the person does not understand the contents of the statement or does not appreciate the significance of the undertaking (or is not acting of their own free will), you should not proceed.
   If an apparent lack of understanding is due to a language barrier, the affidavit or statutory declaration may be taken with the assistance of an interpreter, according to instructions in this guide. (See page 4: **7.** Procedure When Person Making Statement Does Not Understand English.)

3. Administering the Oath, Affirmation or Solemn Declaration

- **In the case of an affidavit being affirmed,** address the person as follows:

  "Do you, John Doe, solemnly affirm and declare that the contents of this affidavit are true to the best of your knowledge, information and belief?"

- **In the case of an affidavit being sworn,** hand the person making the statement a Bible (or New or Old Testament, whichever they prefer) and address them as follows:

  "Do you, John Doe, swear that the contents of this affidavit are true to the best of your knowledge, information and belief, so help you God?"

  Note: There are as many oaths as there are faiths and it is a good idea to first ask whether the person would feel bound by an oath on the Bible. If not, ask what form of oath would bind their conscience.

  If the oath requested is not one with which you are familiar, seek the advice of the Order in Council Administration Office.

- **In the case of a statutory declaration,** address the person as follows:

  "Do you, John Doe, declare that the contents of this declaration are true to the best of your knowledge, information and belief, knowing that it is of the same force and effect as if it were made under oath?"

  Whether making an affidavit or a statutory declaration, in each case the person must answer: "Yes" or "I do" or "So help me God," as appropriate.

  Under the *Criminal Code* of Canada, it is an offence (with a maximum penalty of two years imprisonment) to sign a document purporting to be an affidavit or statutory declaration sworn or declared before you, when in fact the document was not so sworn or declared.

4. Signature of the Person Making the Statement

Ask the person to sign the affidavit in your presence. If the document is already signed, ask the person to sign the document again in your presence.

A Commissioner for Taking Affidavits cannot take an affidavit or statutory declaration if the person signing the affidavit or declaration is not present. The commissioner must actually view the act of signing and so it must occur in the commissioner's presence.

5. Completing the Jurat (Ordinary Form)

The jurat is the part of the oath, affirmation or declaration that must be completed by the Commissioner for Taking Affidavits. The jurat should include the date the statement was sworn (affirmed/declared), the place where the statement was sworn (affirmed/declared) and the signature of the commissioner before whom the statement was sworn (affirmed/declared).

The following information must appear, legibly, below your signature:

1. Your name.
2. The designation: A Commissioner for Taking Affidavits for British Columbia.
3. The expiry date of your appointment.

It is strongly recommended that commissioners obtain a rubber stamp with this information on it to affix beneath their written signature in the jurat. If a stamp is not used, this same information must be printed neatly beneath your signature. This is important so you can be readily identified and located if necessary. The Chief Justice of the Supreme Court of B.C. has directed that all affidavits that are prepared for filing in the Supreme Court *must* include the commissioner's name, written or typed legibly, under their signature.

Example of an Affidavit Verified by Oath, with Ordinary Form of Jurat

Affidavit of Jane Doe

I, Jane Doe, of the City of Victoria in the Province of British Columbia, make an Oath and say:

1. THAT …

_____

Signature of Jane Doe

Sworn/Affirmed/Declared before me at the City of Victoria, in the Province of British Columbia, this___day of_____, 20___.

_____

(Commissioner's Signature)

A Commissioner for Taking Affidavits for the Province of British Columbia

_____

(Commissioner's stamp or printed name
and expiry date)

6. Additional Requirements

Alterations

Ideally, an affidavit or statutory declaration should not contain any alterations, corrections or interlineations (inserted words written between the lines). If such changes are necessary, each change should be initialled by both the person making the statement and the commissioner. Furthermore, check marks should be inserted at the beginning and end of each change to identify the portion to which each set of initials applies.

Exhibits and Schedules

If an affidavit or statutory declaration contains a reference to an attached schedule or exhibit, the attachment should bear these words:

> This is exhibit (letter or number) referred to in the affidavit (or statutory declaration) of _____ sworn (affirmed/declared) before me this _____ day of _____, at _____
>
> _____
> A Commissioner for Taking Affidavits for British Columbia

This is usually affixed to the document by means of a rubber stamp. You must be sure all the blanks are filled in and then sign it immediately after taking the affidavit or statutory declaration.

7. Procedure When Person Making Statement Does Not Understand English

If the person making the affidavit or statutory declaration does not understand the English language, you may only proceed with the assistance of an interpreter. The interpreter must be sworn (or affirmed, making the necessary changes) as follows:

> "Do you swear that you well understand_____ (the language of the person making the statement), that you will well and truly interpret the contents of this affidavit/statutory declaration to_____ (name of person) and that you will well and truly interpret to him/her the oath/affirmation/solemn declaration about to be administered to him/her, so help you God?"

The interpreter would then interpret the contents of the document, following which the commissioner would administer the oath (affirmation/declaration) in English to the person making the statement. The interpreter would repeat the oath (affirmation/declaration) to the person making the statement in that person's spoken language and translate the response to the question in English.

In these circumstances, the jurat (inserted before your signature) should read as follows:

> Sworn/Affirmed/Declared before me at the City/Town/Community of_____ in the Province of British Columbia this ____ day of ____, 20__ through the interpretation of_____ (name of interpreter) of the City/Town/ Community of _____ (residence of interpreter) in the Province/Territory of _____ (residence of interpreter), said _____ (name of interpreter) having been first sworn truly and faithfully to interpret the contents of this affidavit/affirmation/declaration to the deponent/declarant, and truly and faithfully, to interpret the oath/affirmation/declaration about to be administered to them.

Note: If an affidavit is being taken for court purposes, you must consult Supreme Court rule 51(6), which imposes additional requirements on the taking of an affidavit when the person making the affidavit does not understand the English language.

8. Procedure When Person Making Statement is Visually Impaired or Illiterate

If the person making the affidavit or statutory declaration is visually impaired or illiterate, the document must be read to them and they must be asked whether they understand what was read. The oath, affirmation or solemn declaration may only be administered if you are satisfied that they understand what was read to them. In these circumstances, the following must be inserted before your signature:

> As _____ (name of deponent/affirmant/declarant) is visually impaired/illiterate,
>
> (a) this affidavit/statutory declaration was read to him/her in my presence;
>
> (b) he/she seemed perfectly to understand it; and
>
> (c) he/she made his/her signature (or mark) in my presence.

C. Frequently Asked Questions

Where does a commissioner's authority come from?
Appointments are made pursuant to section 56 of the British Columbia *Evidence Act*. Sections 56 through 69 of the *Evidence Act* pertain to Commissioners for Taking Affidavits.

Can commissioners take their own affidavits?
No.

Can the powers of a Commissioner for Taking Affidavits in British Columbia be exercised outside of the province?

Yes. Section 59 of the *Evidence Act* essentially provides that a Commissioner for Taking Affidavits for British Columbia may provide services outside of the province for use in British Columbia.

Can a commissioner refuse to take an affidavit or statutory declaration?
Yes. An appointment as a commissioner authorizes an individual to take affidavits and statutory declarations, but does not require them to do so. A commissioner may refuse to take an affidavit for any valid reason, such as:

1. The person wishing to make the statement has no identification and is unknown to the commissioner.
2. The person does not appear to understand the contents of the affidavit or statutory declaration.
3. The commissioner has reason to believe the person is not acting of their own free will.

If, for any reason, a commissioner is not comfortable taking an affidavit or statutory declaration, the person wishing to make the affidavit or declaration should be advised to contact a lawyer.

How long does an appointment as a commissioner last?
Appointments are generally granted for a term of three years. Commissioners have no authority to act as commissioners after their appointments have expired.
Once an appointment is expired, it is void and the legal rights sought to be established through a document signed after the expiration date may be jeopardized.

Can an appointment be revoked?
Yes. Section 62 of the *Evidence Act* provides that the Attorney General may revoke the appointment of a Commissioner for Taking Affidavits for British Columbia.

Can a commissioner charge a fee for service?
No. Commissioners are restricted to providing services free of charge, except where fees are specifically allowed under other statutes.

What obligation do commissioners have if there is a change in their name, address or employment?
To keep official records current, changes in name, position, company name or company address must be reported to:

Order in Council Administration Office
Ministry of Attorney General
PO Box 9280 Stn Prov Govt
Victoria, BC V8W 9J7
Fax: 250 387-4349
Phone: 250 387-5378
Email: BCCommAff@gov.bc.ca

Commissioner appointments are not transferable between employers or volunteer organizations. If you change employer or volunteer organization you must notify the office to have your appointment cancelled.

Note: The Order in Council Administration Office does not send out renewal notices.

If you wish to renew your appointment, submit a completed application form and examination with the fee (if applicable) to the Order in Council Administration Office at least eight weeks prior to the expiry date of your current appointment.

As forms and documents are governed by statutes that the Order in Council Administration Office does not administer, the office cannot provide advice as to whether a particular form or document can be witnessed by a Commissioner for Taking Affidavits.

Order in Council Administration Office staff do not administer oaths or affirmations, take affidavits or statutory declarations or provide any other commissioner services.

Published May 2016. Revised January 2020.


BRITISH
COLUMBIA

BRITISH COLUMBIA | Vital Statistics Agency

APPLICATION FOR CHANGE OF NAME

UNDER THE PROVISIONS OF THE BRITISH COLUMBIA *NAME ACT*

Read these instructions carefully before filling out this application. Applications cannot be processed until **ALL** required documentation is submitted. A legal change of name takes at least 4 to 6 weeks to process. Applications submitted with incomplete forms or missing documentation take significantly longer.

Newly married? You do not need to complete a legal change of name to use your spouse's surname (last name). Section 3 of the *Name Act* allows you to assume your spouse's surname upon marriage. Your marriage certificate is the legal document that provides proof of your right to assume your spouse's surname.

Are there situations when I should legally change my surname after marriage?

- Yes, if you want to update your immigration or citizenship documents to reflect a new name or a married surname.

Take into consideration that if you were born in B.C., changing your surname legally will change your surname on your birth certificate and your current marriage certificate. If you were born or married outside of B.C. but within Canada, contact your birth/marriage province to find out how it will affect your records.

How to Fill Out the Application for Change of Name

1 ELIGIBILITY - Eligible applicants are:

1. Age 19 or older. **Note -** If you are under 19 but are a parent with custody of your child, you may apply to change your name or that of your child, without consent from your parent(s).
2. Changing their own name, or are a parent changing the name of their minor child(ren) (18 years of age or younger).
3. Currently living in B.C. and have done so for at least three months immediately prior to the date of application.

2 COMPLETING THIS FORM

Select the pages you need to complete using the table below as a guide. If you fill out the form by hand, print clearly and use black or blue ink only. Applications completed with pencil will not be accepted. If you are including more than one child in your application, photocopy or print additional copies of applicable pages in Part 2.

If you are...	
An adult (19 years of age or older) changing your name only	• Part 1A (pg 5) and Part 1B (pg 6). • Fees section (pg 3). • Search Application (pg 4) **only** if missing a B.C. birth or marriage document.
A parent changing BOTH your name AND the name of your child(ren) who is/are 18 years of age or younger	• Part 1A (pg 5) and Part 1B (pg 6) with **your** information - not your child's. • Part 2A and 2B (pg 7-8). Complete a separate Part 2A and 2B for each child included in the change of name application. • Pages 9 and 10 (if you are requesting a waiver of parental consent). • Fees section (pg 3). • Search Application (pg 4) **only** if missing a B.C. birth or marriage document.
A parent and are NOT changing your own name, but ARE changing the name of your child(ren) who is/are 18 years of age or younger	• Part 1A (pg 5) and Part 1B (pg 6) with **your** information - not your child's. • Part 2A and 2B (pg 7-8). Complete a separate Part 2A and 2B for each child included in the change of name application. • Pages 9 and 10 (if you are requesting a waiver of parental consent). • Fees section (pg 3). • Search Application (pg 4) **only** if missing a B.C. birth document.

How do I get a certified copy of a document?

Take the original document to an authorized person listed in step 4 on page 3. The authorized person will photocopy the original, then certify that it is a copy of the original document by stamping and signing it. **(For a fee of $17, a Service BC representative will witness your signature on the statutory declaration and certify any original documents that are required to be submitted with your application. To find a location near you, visit http://www.servicebc.gov.bc.ca.)**

TIP: The same person who witnesses your signature on the statutory declaration(s) required for your application can provide you with certified copies. Signatures and certified copies are valid for six months only.

3 SUPPORTING DOCUMENTS

Submit **ALL** the supporting documentation that applies to your situation.

Tip: Highlight or put a check mark next to documents that you need to include with your application.

If you are an adult changing your own name and you...	Submit...
Were born in Canada	All **original** birth certificates with a registration number.
Were born **outside** of Canada	**Certified copies** of **BOTH** sides of your **MOST RECENTLY ISSUED** Permanent Resident Card or Canadian Citizenship Card/Certificate.
Have changed your name before	All **original** Canadian change of name certificates.
Got married in British Columbia (not applicable if divorced or widowed)	All **original** British Columbia marriage certificates with a registration number or a photocopy if the marriage certificate already lists the **exact** proposed name. **NOTE - We CANNOT accept commemorative certificates, marriage licences, or certificates issued by a church.**
Got married in another Canadian province (not including B.C.)	A **photocopy** of a marriage certificate is only required if it explains the use of a surname on a document submitted or written on your application.
Got married outside of Canada	A **photocopy** of a marriage certificate is only required if it explains the use of a surname on a document submitted or written on your application.
For **all** adult applicants	A **photocopy** of the receipt provided by the official who took your fingerprints electronically. **The date on the receipt must be within 30 days of the date your application is received in our office.** A **photocopy** of your picture ID.

If you are a parent changing the name of your child(ren)...	Submit…
And the child(ren) was/were born **in Canada**	All **original** birth certificates **with a registration number and showing parentage.**
And the child(ren) was/were born **outside of Canada**	**Certified copies** of the following: • **BOTH** sides of each child's **MOST RECENTLY ISSUED** Permanent Resident Card or Canadian Citizenship Card/Certificate. • Birth certificate or adoption papers from the country of birth **showing parentage.** Provide certified English translations if these are not in English.
Have documents that are not in English	**Certified** English translation of the documents.
And the name either parent uses now is different from the one listed on your child(ren)'s birth certificate	**Documentation** showing how you came to have your current name. (i.e. marriage certificates, change of name certificates, letter of explanation.)
And you are married	A **photocopy** of your marriage certificate.
Have changed the name of your child(ren) before	All **original** Canadian change of name certificates.
For each child **12 to 18 years of age**	A letter **handwritten in ink** by your child(ren) providing his/her reasons for wanting a change of name. Have each child sign and date his/her letter. Each child 12-18 must also sign in Part 2A - Child's Consent.
All parents	A **photocopy** of picture ID (e.g. driver's licence) for **all parents** listed on each child's birth registration showing their current addresses. The applicant's address must match the residential address on Part 1A (page 5).

Important Information for Parents Changing the Name of Children (18 or Younger)

Who Can Apply as a Parent?

A person who is legally documented on a birth certificate as a parent of the child. Legal guardianship is not sufficient.

Consent of the Other Parent/Guardian(s) When Changing the Name of Children 18 Years of Age and Younger

If the other parent/guardian(s) will not or cannot provide consent, you must request that Vital Statistics waive their consent. Review *Obtaining a Waiver of Parental Consent* on pages 9 and 10 for information about requesting a waiver.

4 STATUTORY DECLARATION

Sign the statutory declaration(s) in front of one of the authorized persons listed below:

- Service BC representative (**For a fee of $17, a Service BC representative will witness your signature on the statutory declaration and certify any original documents required to be submitted with your application. Visit http://www.servicebc.gov.bc.ca for locations.**)
- Practicing lawyer or articled law student
- Notary public
- Individual appointed by the Attorney General as a commissioner for taking affidavits

Note - These individuals charge for their services and their fees can vary. All applicants must sign the statutory declaration on page 6 **at the same time as it is certified**. Dates signed must match. **Any parent applicant using the statutory declaration on page 9 *must also sign at the same time that it is certified***. Statutory declarations are valid for six months only.

5 FINGERPRINTING

Anyone who is **BOTH** 18 years of age or older **AND** changing his or her name must have fingerprints taken as part of a criminal record check - *Name Act* (RSBC 1996 c. 328). **PARENTS -** If you are changing the name of your child(ren) only and not your own name, you do **NOT** need to get your fingerprints taken.

Where can I have my electronic fingerprints taken?

- Most RCMP detachments
- Vancouver Police
- Victoria Police
- Any RCMP-accredited fingerprinting company or its affiliate who submit fingerprints electronically for the purposes of criminal record checks. For a list of accredited companies, visit: http://www.rcmp.gc.ca/en/where-do-get-a-criminal-record-check.

What do I submit with my Change of Name Application?

Fingerprinting officials collect a fee for taking fingerprints in addition to the criminal record check fee of $25, and will provide you with a receipt for your payment. Include a photocopy of the original receipt given with your application.

Important Notes

- Fingerprints are only used for the purpose required by the *Name Act* and confirmation of the criminal record check should be *returned to the applicant directly* from the RCMP.
- **Do NOT send Vital Statistics a copy of your fingerprints or criminal record check results.**
- The date on the receipt must be **within 30 days of the date your application is received** in our office.

6 PAYMENT & FEES

Submit payment for your application **in Canadian funds** using the table below to calculate the amount owed. Fees below do not include the cost of obtaining certified copies or translations, having your signature witnessed on a statutory declaration, or replacing documents following the change of name.

☑ **Adult** (19 years of age or older)	$137 Name Change Fee
☐ **Adult** (19 years of age or older) with dependent child (18 years old or younger)	$137 Name Change Fee $ 27 For **each child**
☐ **Child** only (18 years of age or younger)	$137 Name Change Fee for first or only child $ 27 For each additional child
☐ **Birth Search** (Fill out application on page 4.)	$ 27 For **each search** (B.C. events only)
☐ **Marriage Search** (Fill out application on page 4.)	$ 27 For **each search** (B.C. events only)

Payment Method:

☐ Certified Cheque (No personal or postdated cheques) ☐ Money Order ☑ Visa ☐ MasterCard ☐ American Express

Amount Enclosed $ 164.00

Interac/Cash payment may be made in person at any Service BC office. If paying by certified cheque or money order, make payable to the **Minister of Finance**.

X _____
Card holder signature

Michael E Rat
PRINT card holder name as shown on credit card

Note: Credit card information is not retained. Upon authorization of the payment request, all credit card information is destroyed.

Credit Card # 1111 1111 1111 1111 Expiry date 11/21

Applications missing information or documentation are held for 90 days. If you do not respond to a request for information within 90 days, your file will be cancelled and the fee of $137 will be retained to cover the cost of processing your application to date.

7 SUBMIT YOUR APPLICATION

Place **all** documentation and the completed application into a suitably-sized envelope and submit it with payment in person at a Service BC office or by mail to the address below:

Vital Statistics Agency
ATTN: CONFIDENTIAL SERVICES
PO Box 9657 Stn Prov Govt
Victoria BC V8W 9P3

For your nearest Service BC location, visit:
www.servicebc.gov.bc.ca

Search Applications for Birth or Marriage Events that Occurred in British Columbia

If you do not have an original birth or marriage certificate to submit with your Application for Change of Name, you can request that Vital Statistics search for the event instead of ordering the certificate **if the birth and/or marriage occurred in British Columbia**. Simply fill out the application(s) below and then check the box(es) beside Search Fee $27 when completing the Application for Change of Name. **Include $27 for each search** requested when you are submitting your application.

If you need Vital Statistics to search BIRTH events for several people in a family (e.g. Mom, plus one or more children), photocopy or print additional copies of this page. A search application must be completed for each person requiring a search for a BIRTH event.

Please search for the following BIRTH event that occurred in British Columbia:

Full name of person named in birth event, as listed at time of birth or following a previous change of name (NOT a married surname)

Surname (Last Name)	First Name	Middle Name(s)
Rat	Micheal	Eugene

	Month (e.g. Feb)	Day	Year	City/Town/Village	Province	Sex
Date of Birth	January	01	1980			
Place of Birth				Mouseville	BRITISH COLUMBIA	M

FATHER/ PARENT INFO

Surname (Last Name)	First Name	Middle Name(s)
Rat	Ratbert	Cornelius

Birthplace (City, Province/State, Country): Mouseville, BC Canada

MOTHER/ PARENT INFO

Surname (Last Name) as listed on current birth or change of name certificate	First Name	Middle Name(s)
Rat-Ratus	Rathanne	Rodenta

Birthplace (City, Province/State, Country): Field, BC

Please search for the following MARRIAGE event that occurred in British Columbia:

	Month (e.g. Feb)	Day	Year	City/Town/Village	Province
Date of Marriage					
Place of Marriage					BRITISH COLUMBIA

Provide your **SPOUSE'S** information below.

Spouse's Last Name (at the time of marriage)	Spouse's First Name	Spouse's Middle Name(s)

Spouse's Birthplace (City, Province/State, Country)

General Information

After your change of name application has been processed:

- Vital Statistics will send a *Certificate of Change of Name* to your mailing address. This certificate will show your previous name as provided in your foundation identity document, and your new name. If you have included your child(ren) in your application, their names will also be listed on the certificate.
- Your Canadian birth certificate will be amended to list your new name. If you were born in Canada, you will need to order a new birth certificate from your birth province. Be sure to advise them of your recent change of name when placing the order for your new certificate(s). BC Vital Statistics will send an electronic notification to other provinces following the registration of a change of name.

  Note - Certificates issued in British Columbia are printed in uppercase lettering only.
- If you were married in Canada, your name change *may* affect your current marriage certificate. Contact your marriage province for advice. A name change does not affect a surname assumed by marriage.
- You are responsible for notifying other agencies of your name change and for replacing all applicable documents and identification, such as your BC Driver's Licence or BC Identification card, BC Services Card, Canadian Passport, etc.

What happens to documents submitted with your application?

Document	Returned	Not Returned
B.C. and other Canadian birth certificates		Destroyed
B.C. marriage certificates		Destroyed
Certificates from previous name change(s)	✔ Stamped with "Historical Document. Not to be accepted as proof of current legal name."	
Out-of-province marriage certificates	✔	
Certified documents (e.g. **copies** of immigration papers)		Kept on file

BRITISH COLUMBIA | Vital Statistics Agency

Part 1 (A) — Adult or Parent Information
APPLICATION FOR CHANGE OF NAME

PARENTS - Enter your information in Part 1(A) and 1(B) even if you are only changing your child's name and not your own. Provide your child's information in Part 2 (pg 7).

☑ **Check this box if you are not changing your name**

OFFICE USE ONLY
AFS #
REG. #

Adult's full name as currently listed on birth certificate, **most recently issued** immigration or citizenship documents,or change of name certificate. (NOT YOUR SURNAME BY MARRIAGE)

Surname (Last Name)	First Name	Middle Name(s)
Rat	Michael	Eugene

Full name as you would like it to appear following the legal change of name (Leave this line blank if you are not changing your name.)

Surname (Last Name)	First Name	Middle Name(s)
Rat	Micki	Ella

Date of birth (MMM DD YYYY)	Sex	Place of Birth: City/Town	Province/State, Country
01 | 01 | 1980	M	Mouseville	BC

Marital status
- ☐ Married
- ☐ Divorced
- ☐ Widowed
- ☑ Never Married

Spouse's Surname:
Date of Marriage (MMM DD YYYY):
Place of Marriage (City/Town):
Province/State, Country:

Is this application changing your surname to the surname of your spouse? **You MUST check a box below.**
- ☐ No
- ☐ Yes. I understand that if I was born in Canada this will change my name on my birth certificate, and may change my marriage certificate.

Personal Health Number (PHN) (Used to confirm residency in B.C.): 1111-111-111

How can we contact you?

Preferred Number (Phone No. including area code)	Alternate Contact Number (Phone No. including area code)	Preferred Email Address
(604) 111-1111		mickey@hushmail.com

Place(s) of residence for last three months **(ALL fields must be completed)**

Suite/Apt No.	Street No.	Street Name	City/Town	Province	Postal Code	From (MMM DD YYYY)	To
1	111	111A Street	Vancouver	B.C.	V0A 0A0	mar 15 2019	PRESENT
				B.C.			

Address for Letters or Certificate

Mail to: ☐ Above Address ☑ Alternate Address Below: **(if different from above)**

Name/Organization: Rats Helping Rats Assistance Society

Suite/Apt No.	Street No.	Street Name	City/Town	Province/State, Country	Postal/ZipCode
	111	Helper Street	Vancouver	BC	V0B 0A0

Documentation (Check applicable for each section.)		Notes	Office Use Only
Proof of Birth	**If born in Canada** - Original birth certificate with a registration number. ☐ Enclosed ☑ $27.00 Search Fee (If you were born in British Columbia and do not have a birth certificate, complete a Search Application on page 4.)	Provide certified copies of **BOTH** sides of your **MOST RECENTLY ISSUED** Permanent Resident Card or Canadian Citizenship Card/ Certificate.	
	If born outside of Canada - Certified copy of immigration or citizenship documents. ☐ Enclosed		
Proof of Marriage	Marriage certificate with registration number *(not applicable if divorced or widowed)*. ☐ N/A ☐ Original enclosed (If married in B.C.) ☐ Photocopy enclosed (If married outside of B.C, a photocopy may be required to show continuity of usage of names.) ☐ Photocopy enclosed (If B.C. marriage certificate already lists your **exact** proposed name.) ☐ $27.00 Search fee (If you were married in B.C. and do not have a marriage certificate, complete a Search Application on page 4.)	If you are changing your child's surname to that of your spouse, provide a photocopy of your marriage certificate.	
Proof of Electronic Fingerprinting	Photocopy of the receipt you received from the fingerprinting agency for electronic fingerprinting (18 years of age or older). ☐ N/A ☑ Enclosed - **The date on the receipt must be within 30 days of the date your application is received in our office.**	If you are 18 years of age or older, provide a photocopy of the receipt for your payment for electronic fingerprinting.	
Previous Name Change	**Have you previously had a legal change of name in Canada?** ☑ No ☐ Yes – The **original** Canadian change of name certificate(s) is/are enclosed. ☐ Yes – I do NOT have the **original** Canadian change of name certificate(s).	Returned to you stamped with: "Historical Document. Not to be accepted as proof of current legal name".	

BRITISH COLUMBIA | Vital Statistics Agency

Part 1 (B) - Adult or Parent Information
APPLICATION FOR CHANGE OF NAME

Statutory Declaration

Check applicable:

- ☑ **I am applying as a single applicant to change my name only.** Complete Section 2.
- ☐ **I am a parent applying for myself and my child(ren)'s name change(s).** Complete Sections 1 & 2.
- ☐ **I am a parent applying on behalf of my child(ren) only. I am not changing my name.** Complete Sections 1 & 2.

Section 1 - To be completed by the applicant parent

Only a parent recognized on the child's birth certificate or those being listed on the child's immigration documentation can apply to change a child's name. However ALL PARENTS and/or CUSTODIAL GUARDIANS must sign consent to a child's name change.

Write your **INITIALS** beside any/**all** situations that apply to you:

_____ I have included **all** custodial/guardianship court order(s) for my child(ren) within this application.

_____ The court order(s) included is(are) a **final order** OR the court order(s) included is(are) **still valid and in effect**.

_____ List any *future* court dates: .....

OR

_____ I **do not** have any custodial/guardianship court order(s) for my child(ren).

_____ The other parent **was not recorded** on the child(ren)'s birth registration(s) and **there is no custodial/guardianship court order** in place for my child(ren).

_____ The other parent and I are **still married** and **there is no custodial/guardianship court order** in place for my child(ren).

_____ The other parent and I **were married but no longer live together**, and **there is no custodial/guardianship court order** in place for my child(ren).

_____ The other parent and I **were never married** and **there is no custodial/guardianship court order** in place for my child(ren).

Section 2 - To be completed by ALL applicants

I Michael Eugene Rat (Applicant's full name) have read the application and to the best of my knowledge, information and belief, the statements made are true in substance and in fact.

AND

I understand that any documentation submitted to support this application may be verified for validity and/or authenticity with the issuing authority and I provide my consent to the Vital Statistics Agency to complete this verification.

AND

I understand that the Vital Statistics Agency must use the exact name recorded on my birth certificate, immigration or citizenship document, or change of name certificate, and if I record a name other than that name on my application form the Vital Statistics Agency will amend my application to match.

AND

I have enclosed all original birth certificates, marriage certificates (B.C. only) and historical change of name certificates in my possession and I understand that any Canadian birth certificates and B.C. marriage certificates will not be returned on completion of the name change.

AND

I understand that all previously issued birth certificates, B.C. marriage certificates and change of name certificates will be cancelled under Section 40.1 (1)(h) of the *Vital Statistics Act,* and that to use any cancelled certificates may constitute a fraudulent action.

AND

I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath.

X [Mickey's deadname signature here, witnesses]
Signature of Applicant

29 (Day) 01 (Month) 2021 (Year) *

* Dates must match

Declared before me at Vancouver and Mouseville by video
City

in the Province of British Columbia, this 29th (Day) day of January (Month) 2021 (Year) *

X [Commissioner's signature here]
Signature of Service BC Representative, Lawyer, Articled Law Student, Notary Public, or Commissioner for Taking Affidavits
(Note - Authorized individuals charge a fee for witnessing your signature.)

OFFICIAL STAMP/SEAL

Documentation		Notes	Office Use Only
All Applicants	Photocopy of applicant's picture ID (e.g. driver's licence) showing their current address. **A copy of a recent utility bill in the applicant's name (e.g. BC Hydro bill) is acceptable proof of the current address if it is not listed on identification.** ☑ Photocopy of picture ID is enclosed	**The address listed on the applicant's picture ID must match the residential address provided in Part 1A on page 5.**	

This information is collected by the Vital Statistics Agency under section 26(c) of the *Freedom of Information and Protection of Privacy Act,* and will be used to fulfill the requirements of the *Vital Statistics Act* for the release of change of name information. Should you have any questions about the collection of this personal information, please contact:
Manager, Vital Statistics Agency, 250 952-2681, PO Box 9657, Stn Prov Govt, Victoria BC V8W 9P3

BRITISH COLUMBIA | Vital Statistics Agency

Part 2 (A) - Child's Information (18 Years of Age or Younger)
APPLICATION FOR CHANGE OF NAME

Child's full name as currently listed on birth certificate, **most recently issued** immigration or citizenship documents, or change of name certificate
Surname (Last Name) | First Name | Middle Name(s)

Child's full name as it will appear following the legal change of name (Names on Part 2A and Part 2B must match **exactly**.)
Surname (Last Name) | First Name | Middle Name(s)

Date of birth MMM DD YYYY	Sex	Place of birth City/Town	Province/State and Country

Has your child previously had a legal change of name in Canada? (Check applicable)

- ❑ No
- ❑ Yes - **ALL original** Canadian change of name certificates are enclosed.(This certificate will be stamped "Historical Document. Not to be accepted as proof of current legal name" and and will returned to you upon completion of this application.)
- ❑ Yes - I do NOT have the **original** Canadian change of name certificate(s).

Indicate what identification you have enclosed to prove your child's parentage

Child born in Canada:
- ❑ Original Canadian birth certificate showing parentage
- ❑ $27.00 Search fee (My child was born in British Columbia but I do not have their birth certificate. I have completed a Search Application on page 4)

Child born outside of Canada - CERTIFIED COPIES of:
- ❑ **BOTH SIDES** of child's **MOST RECENTLY ISSUED** Permanent Resident Card or Canadian Citizenship Card/Certificate
- ❑ Child's original birth certificate showing parentage
- ❑ English translation of birth certificate if not in English

CHILD'S CONSENT - Children 12 to 18 years of age **MUST** provide: ☑ **Letter** ☑ **Signature**

I hereby give my consent to change my name as stated in this application

Child's Signature X _____ Signature of Witness X _____

* Date MMM DD YYYY ← * Dates must match → * Date MMM DD YYYY

❑ **Letter handwritten in ink by child is attached.**

CONSENT OF OTHER PARENT/GUARDIAN(S)

If the other parent/guardian(s):
- consents to the change of name, they must complete Part 2B - "Other Parent's Consent" on page 8.
- is/are not listed on the birth registration, complete section I below.
- is/are listed on the birth registration but you have a valid reason to waive their consent, complete section II below.

I. Other Parent is Not Listed

❑ No other parent is recorded on the birth registration of the child whose name is to be changed.

Applicant's Signature X _____ Date MMM DD YYYY

II. Request for Waiver (A - E) See pages 9 and 10 for information about reasons for waivers and what to submit with your request.

I request that the consent of the other parent/guardian(s): _____ be waived for the following reason(s):
Last Name(s) First Name(s)

A ❑ The other parent/guardian(s) cannot be located after a reasonable, diligent and adequate search has been conducted as demonstrated by statutory declaration and supporting evidence maintained in the change of name file. **A custody or guardianship order is required for this option. Obtain an order prior to making application.**

B ❑ The other parent/guardian(s) is/are deceased, proven by a copy of a government-issued death certificate maintained in the change of name file.

C ❑ The other parent/guardian(s) is/are unreasonably withholding consent to the change of name.

D ❑ The other parent/guardian(s) is/are mentally disordered, as demonstrated by statutory declaration and supporting evidence.

E ❑ Exceptional circumstances make it unreasonable to seek the consent of the other parent/guardian(s). **Unless you can provide a valid court ordered restraining order/no contact order between the other parent/guardian(s) and the child(ren) this option does not apply.**

Applicant Signature X _____ Date MMM DD YYYY

CONSENT OF SPOUSE OF APPLICANT (Only if Child's surname is changing to that of the Applicant's Spouse.)

I, _____, am the spouse of the applicant and hereby give my consent for the above-listed child to change his/her surname to be the same as mine.
Name (Printed)

Signature of Applicant's Spouse X _____ Signature of Witness X _____

* Date MMM DD YYYY ← * Dates must match → * Date MMM DD YYYY

BRITISH COLUMBIA | Vital Statistics Agency

Part 2 (B) - Consent of Other Parent/Guardian(s)
APPLICATION FOR CHANGE OF NAME

If more than one child is included in the change of name application, or if there is more than one other parent/guardian, please photocopy or print additional copies of this page.

Full name(s) of other parent/guardian(s) as listed on the birth registration of child or within court orders.

Surname (Last Name)	First Name	Middle Name(s)

Suite/Apt No.	Street No.	Street Name	City/Town

Province/State, Country	Postal/Zip Code	Phone No. (including area code)

Child's full name as it will appear following the legal change of name (Names on Part 2A and Part 2B must match **exactly**.)

Surname (Last Name)	First Name	Middle Name(s)

Child's date of birth MMM DD YYYY	Sex	Child's place of birth City/Town	Province/State, Country

Anyone can witness the signature of the other parent/guardian(s), but the other parent/guardian(s) and the witness must sign **at the same time**. Signatures are valid for six months only.

Consent of Other Parent/Guardian(s)

I _____ have read the information provided on this page and to the best of my
Name(s) of Other Parent/Guardian(s)

knowledge, information and belief, the statements made are true in substance and in fact.

AND

I understand that any documentation submitted to support this application may be verified for validity and/or authenticity with the issuing authority and I provide my consent to the Vital Statistics Agency to complete this verification.

AND

I have enclosed all original birth certificates and historical change of name certificates in my possession for each child named in this application. I understand that any Canadian birth certificates will not be returned on completion of the name change.

AND

I understand that all previously issued birth certificates and change of name certificates for each child named in this application will be cancelled under Section 40.1 (1)(h) of the *Vital Statistics Act*, and that to use any cancelled certificates may constitute a fraudulent action.

AND

I understand that by consenting to change the name(s) for my child, I will still remain listed as a parent on my child's birth registration, if I am currently listed.

X _____ * Date MMM DD YYYY
Signature(s) of Other Parent/Guardian(s)

X _____ * Date MMM DD YYYY
Signature of Witness

* Dates must match

Full name, address, and phone number of **witness** to signature(s) of other parent/guardian(s)

Surname (Last Name)	First Name	Middle Name(s)

Suite/Apt No.	Street No.	Street Name	City/Town

Province/State, Country	Postal/Zip Code	Phone No. (including area code)

Documentation		Notes	Office Use Only
Other Parent/ Guardian(s) Consenting to Child's Change of Name	Photocopy of other parent/guardian(s') picture ID (e.g. driver's licence) showing their current address. **A copy of a recent utility bill in the name of the other parent/ guardian(s) (e.g. BC Hydro bill) is acceptable proof of the current address if it is not listed on identification.** ❑ Photocopy of picture ID is enclosed	The address(es) listed on the picture ID of the other parent/ guardian(s) **must match** the residential address provided above.	

This information is collected by the Vital Statistics Agency under section 26(c) of the *Freedom of Information and Protection of Privacy Act*, and will be used to fulfill the requirements of the *Vital Statistics Act* for the release of change of name information. Should you have any questions about the collection of this personal information, please contact:
Manager, Vital Statistics Agency, 250 952-2681, PO Box 9657, Stn Prov Govt, Victoria BC V8W 9P3.

BRITISH COLUMBIA | Vital Statistics Agency

Request to Waive Consent of Other Parent/Guardian(s)

Statutory Declaration

This statutory declaration **MUST** be completed if the applicant is asking for a waiver of consent of the other parent/guardian(s) unless the other parent/guardian(s) is(are) deceased. See pages 7 and 10 for further details. Your Statutory Declaration must include **ALL** of the following information:

If you require more space, attach a separate sheet of paper.

1. Explain in detail all attempts that have been made to gain the consent of the other parent/guardian(s), including contact with relatives, friends, proof of attempted contact or conversation threads regarding the change of name through social media (e.g. Facebook), texting, email threads etc.
2. When was your last contact with the other parent/guardian(s)?
3. What is the last known contact information you have for the other parent/guardian(s)? **(Include full addresses, phone numbers, email addresses, or state that all contact information is unknown.)**
4. Do you receive child support from the other parent/guardian(s)?
5. Are you registered with the Family Maintenance Enforcement Program (FMEP)? **If yes, submit a copy of the most recent statement.**
6. Outline any reasons why you feel the change of name is in your child(ren)'s best interest.
7. If the custody/guardianship order submitted with your application is not a final order, state whether or not it is still valid and in effect. As well, include any future court dates.

IMPORTANT - Select one:
❑ **I authorize** or ❑ **I do not authorize** the Vital Statistics Agency to use the contact information provided with my application and/or supporting documentation when contacting the other parent/guardian(s) to seek approval for the application.

CANADA:
PROVINCE OF BRITISH COLUMBIA.
TO WIT:

In the Matter of

I, ... (Applicant's Name) of ..... (City)

in the Province of British Columbia, do solemnly declare that

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____

I verify that all supporting documents represent current circumstances and are in effect as of this date. And I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath and by virtue of the *Canada Evidence Act*.

Declared before me at _____ in the Province of British Columbia, this _____ (Day) day of _____ (Month) _____ (Year) *

X _____
Declarant's Signature

* _____ (Day) _____ (Month) _____ (Year)

* Dates must match

X _____
Signature of Service BC Representative, Lawyer, Articled Law Student, Notary Public or Commissioner for Taking Affidavits
(Note - Authorized individuals charge a fee for witnessing your signature.)

OFFICIAL STAMP/SEAL

BRITISH COLUMBIA | Vital Statistics Agency

Obtaining a Waiver of Parental/Guardian(s) Consent
Under the British Columbia *Name Act*

The following is a list of grounds on which a waiver of parental/guardian consent may be approved and the documents required. Choose the one that best applies to your situation and provide **ALL** of the requested information. **If information cannot be provided, include a letter of explanation.**

A) The other parent/guardian(s) cannot be located after a reasonable, diligent and adequate search has been conducted as demonstrated by the statutory declaration and supporting evidence maintained in the change of name file.

- ❑ Custody/guardianship order. Obtain an order from the courts prior to applying to legally change the name(s) of your child(ren).
- ❑ In your statutory declaration list the full mailing address, phone numbers, email addresses and any other contact information for the parent/guardian(s) whose consent is(are) to be waived.
- ❑ If you are unaware of the whereabouts of the other parent/guardian(s):
  - ❍ Include a list of the efforts you have made to determine their location; **AND**
  - ❍ Provide proof of attempted contact or conversation thread regarding the change of name through social media (e.g. Facebook), texting, email etc.

  In your statutory declaration, you must include **ALL** of the information listed at the top of page 9, "Statutory Declaration-Request to Waive Consent of Other Parent/Guardian(s)".
- ❑ If you are registered with the Family Maintenance Enforcement Program (FMEP), include a copy of your latest statement. If you are not registered with FMEP, include a statement indicating that you do or do not receive support from the other parent/guardian(s).
- ❑ Children 12 years of age or older must write a brief letter in their own words describing why they would like their name to be changed. The letter must be **handwritten in ink**, and **signed and dated by the child**.

B) The other parent/guardian(s) is(are) deceased, proven by a copy of a government-issued death certificate maintained in the change of name file.

- ❑ A copy of a government-issued death certificate of the person whose consent is to be waived.

C) The other parent/guardian(s) is(are) unreasonably withholding their consent.

- ❑ In your statutory declaration, you must include **ALL** of the information listed at the top of page 9, "Statutory Declaration-Request to Waive Consent of Other Parent/Guardian(s)".
- ❑ Provide proof of attempted contact or conversation thread regarding the change of name through social media (e.g. Facebook), texting, email etc.
- ❑ If you are registered with the Family Maintenance Enforcement Program (FMEP), include a copy of your latest statement. If you are not registered with FMEP, include a statement indicating that you do or do not receive support from the other parent.
- ❑ Children 12 years of age or older must write a brief letter in their own words describing why they would like their name to be changed. The letter must be **handwritten in ink**, and **signed and dated by the child**.

D) The other parent/guardian(s) is(are) mentally disordered, as demonstrated by statutory declaration and supporting evidence

- ❑ A letter from a physician/court order stating the person whose consent is to be waived is incapable of understanding what they would be signing.
- ❑ Children 12 years of age or older must write a brief letter in their own words describing why they would like their name to be changed. The letter must be **handwritten in ink**, and **signed and dated by the child**.

E) Exceptional circumstances make it unreasonable to seek the consent of the other parent/guardian(s). Unless you can provide a valid court ordered restraining order/no contact order between the other parent/guardian(s) and the child(ren) this option does not apply.

- ❑
  - ❍ A court ordered no contact order; ***OR***
  - ❍ A court ordered restraining order; ***OR***
  - ❍ A letter from the police indicating you would be in danger if you attempted to contact the parent/guardian(s) whose consent is required.
- ❑ Children 12 years of age or older must write a brief letter in their own words describing why they would like their name to be changed. The letter must be **handwritten in ink**, and **signed and dated by the child**.

NOTE: Requirements identified in this information sheet are a guide only and the registrar general of the Vital Statistics Agency has the authority to ask for additional information.

Statements made in a statutory declaration are considered the equivalent of statements made in a Court of Law and may provide the basis for action against the applicant if they are proven to be fraudulent.

This information is collected by the Vital Statistics Agency under section 26(c) of the *Freedom of Information and Protection of Privacy Act,* and will be used to fulfill the requirements of the *Vital Statistics Act* for the release of change of name information. Should you have any questions about the collection of this personal information, please contact:
Manager, Vital Statistics Agency, 250 952-2681, PO Box 9657, Stn Prov Govt, Victoria BC V8W 9P3

BRITISH COLUMBIA | Vital Statistics Agency

APPLICATION FOR CHANGE OF NAME

UNDER THE PROVISIONS OF THE BRITISH COLUMBIA *NAME ACT*

Read these instructions carefully before filling out this application. Applications cannot be processed until **ALL** required documentation is submitted. A legal change of name takes at least 4 to 6 weeks to process. Applications submitted with incomplete forms or missing documentation take significantly longer.

Newly married? You do not need to complete a legal change of name to use your spouse's surname (last name). Section 3 of the *Name Act* allows you to assume your spouse's surname upon marriage. Your marriage certificate is the legal document that provides proof of your right to assume your spouse's surname.

Are there situations when I should legally change my surname after marriage?

- Yes, if you want to update your immigration or citizenship documents to reflect a new name or a married surname.

Take into consideration that if you were born in B.C., changing your surname legally will change your surname on your birth certificate and your current marriage certificate. If you were born or married outside of B.C. but within Canada, contact your birth/marriage province to find out how it will affect your records.

How to Fill Out the Application for Change of Name

1 ELIGIBILITY - Eligible applicants are:

1. Age 19 or older. **Note -** If you are under 19 but are a parent with custody of your child, you may apply to change your name or that of your child, without consent from your parent(s).
2. Changing their own name, or are a parent changing the name of their minor child(ren) (18 years of age or younger).
3. Currently living in B.C. and have done so for at least three months immediately prior to the date of application.

2 COMPLETING THIS FORM

Select the pages you need to complete using the table below as a guide. If you fill out the form by hand, print clearly and use black or blue ink only. Applications completed with pencil will not be accepted. If you are including more than one child in your application, photocopy or print additional copies of applicable pages in Part 2.

If you are...	
An adult (19 years of age or older) changing your name only	• Part 1A (pg 5) and Part 1B (pg 6). • Fees section (pg 3). • Search Application (pg 4) **only** if missing a B.C. birth or marriage document.
A parent changing BOTH your name AND the name of your child(ren) who is/are 18 years of age or younger	• Part 1A (pg 5) and Part 1B (pg 6) with **your** information - not your child's. • Part 2A and 2B (pg 7-8). Complete a separate Part 2A and 2B for each child included in the change of name application. • Pages 9 and 10 (if you are requesting a waiver of parental consent). • Fees section (pg 3). • Search Application (pg 4) **only** if missing a B.C. birth or marriage document.
A parent and are NOT changing your own name, but ARE changing the name of your child(ren) who is/are 18 years of age or younger	• Part 1A (pg 5) and Part 1B (pg 6) with **your** information - not your child's. • Part 2A and 2B (pg 7-8). Complete a separate Part 2A and 2B for each child included in the change of name application. • Pages 9 and 10 (if you are requesting a waiver of parental consent). • Fees section (pg 3). • Search Application (pg 4) **only** if missing a B.C. birth document.

How do I get a certified copy of a document?

Take the original document to an authorized person listed in step 4 on page 3. The authorized person will photocopy the original, then certify that it is a copy of the original document by stamping and signing it. **(For a fee of $17, a Service BC representative will witness your signature on the statutory declaration and certify any original documents that are required to be submitted with your application. To find a location near you, visit http://www.servicebc.gov.bc.ca.)**

TIP: The same person who witnesses your signature on the statutory declaration(s) required for your application can provide you with certified copies. Signatures and certified copies are valid for six months only.

3 SUPPORTING DOCUMENTS

Submit **ALL** the supporting documentation that applies to your situation.

Tip: Highlight or put a check mark next to documents that you need to include with your application.

If you are an adult changing your own name and you...	Submit...
Were born in Canada	All **original** birth certificates with a registration number.
Were born **outside** of Canada	**Certified copies** of **BOTH** sides of your **MOST RECENTLY ISSUED** Permanent Resident Card or Canadian Citizenship Card/Certificate.
Have changed your name before	All **original** Canadian change of name certificates.
Got married in British Columbia (not applicable if divorced or widowed)	All **original** British Columbia marriage certificates with a registration number or a photocopy if the marriage certificate already lists the **exact** proposed name. **NOTE - We CANNOT accept commemorative certificates, marriage licences, or certificates issued by a church.**
Got married in another Canadian province (not including B.C.)	A **photocopy** of a marriage certificate is only required if it explains the use of a surname on a document submitted or written on your application.
Got married outside of Canada	A **photocopy** of a marriage certificate is only required if it explains the use of a surname on a document submitted or written on your application.
For **all** adult applicants	A **photocopy** of the receipt provided by the official who took your fingerprints electronically. **The date on the receipt must be within 30 days of the date your application is received in our office.** A **photocopy** of your picture ID.

If you are a parent changing the name of your child(ren)...	Submit…
And the child(ren) was/were born **in Canada**	All **original** birth certificates **with a registration number and showing parentage.**
And the child(ren) was/were born **outside of Canada**	**Certified copies** of the following: • **BOTH** sides of each child's **MOST RECENTLY ISSUED** Permanent Resident Card or Canadian Citizenship Card/Certificate. • Birth certificate or adoption papers from the country of birth **showing parentage.** Provide certified English translations if these are not in English.
Have documents that are not in English	**Certified** English translation of the documents.
And the name either parent uses now is different from the one listed on your child(ren)'s birth certificate	**Documentation** showing how you came to have your current name. (i.e. marriage certificates, change of name certificates, letter of explanation.)
And you are married	A **photocopy** of your marriage certificate.
Have changed the name of your child(ren) before	All **original** Canadian change of name certificates.
For each child **12 to 18 years of age**	A letter **handwritten in ink** by your child(ren) providing his/her reasons for wanting a change of name. Have each child sign and date his/her letter. Each child 12-18 must also sign in Part 2A - Child's Consent.
All parents	A **photocopy** of picture ID (e.g. driver's licence) for **all parents** listed on each child's birth registration showing their current addresses. The applicant's address must match the residential address on Part 1A (page 5).

Important Information for Parents Changing the Name of Children (18 or Younger)

Who Can Apply as a Parent?

A person who is legally documented on a birth certificate as a parent of the child. Legal guardianship is not sufficient.

Consent of the Other Parent/Guardian(s) When Changing the Name of Children 18 Years of Age and Younger

If the other parent/guardian(s) will not or cannot provide consent, you must request that Vital Statistics waive their consent. Review *Obtaining a Waiver of Parental Consent* on pages 9 and 10 for information about requesting a waiver.

4 STATUTORY DECLARATION

Sign the statutory declaration(s) in front of one of the authorized persons listed below:

- Service BC representative (**For a fee of $17, a Service BC representative will witness your signature on the statutory declaration and certify any original documents required to be submitted with your application. Visit http://www.servicebc.gov.bc.ca for locations.**)
- Practicing lawyer or articled law student
- Notary public
- Individual appointed by the Attorney General as a commissioner for taking affidavits

Note - These individuals charge for their services and their fees can vary. All applicants must sign the statutory declaration on page 6 **at the same time as it is certified**. Dates signed must match. **Any parent applicant using the statutory declaration on page 9 *must also sign at the same time that it is certified***. Statutory declarations are valid for six months only.

5 FINGERPRINTING

Anyone who is **BOTH** 18 years of age or older **AND** changing his or her name must have fingerprints taken as part of a criminal record check - *Name Act* (RSBC 1996 c. 328). **PARENTS -** If you are changing the name of your child(ren) only and not your own name, you do **NOT** need to get your fingerprints taken.

Where can I have my electronic fingerprints taken?

- Most RCMP detachments
- Vancouver Police
- Victoria Police
- Any RCMP-accredited fingerprinting company or its affiliate who submit fingerprints electronically for the purposes of criminal record checks. For a list of accredited companies, visit: http://www.rcmp.gc.ca/en/where-do-get-a-criminal-record-check.

What do I submit with my Change of Name Application?

Fingerprinting officials collect a fee for taking fingerprints in addition to the criminal record check fee of $25, and will provide you with a receipt for your payment. Include a photocopy of the original receipt given with your application.

Important Notes

- Fingerprints are only used for the purpose required by the *Name Act* and confirmation of the criminal record check should be *returned to the applicant directly* from the RCMP.
- **Do NOT send Vital Statistics a copy of your fingerprints or criminal record check results.**
- The date on the receipt must be **within 30 days of the date your application is received** in our office.

6 PAYMENT & FEES

Submit payment for your application **in Canadian funds** using the table below to calculate the amount owed. Fees below do not include the cost of obtaining certified copies or translations, having your signature witnessed on a statutory declaration, or replacing documents following the change of name.

❑ **Adult** (19 years of age or older)	$137 Name Change Fee
❑ **Adult** (19 years of age or older) with dependent child (18 years old or younger)	$137 Name Change Fee $ 27 For **each child**
❑ **Child** only (18 years of age or younger)	$137 Name Change Fee for first or only child $ 27 For each additional child
❑ **Birth Search** (Fill out application on page 4.) ❑ **Marriage Search** (Fill out application on page 4.)	$ 27 For **each search** (B.C. events only) $ 27 For **each search** (B.C. events only)

Payment Method:

❑ Certified Cheque (No personal or postdated cheques) ❑ Money Order ❑ Visa ❑ MasterCard ❑ American Express

Amount Enclosed $ _____

Interac/Cash payment may be made in person at any Service BC office. If paying by certified cheque or money order, make payable to the **Minister of Finance**.

X _____
Card holder signature

_____
PRINT card holder name as shown on credit card

Note: Credit card information is not retained. Upon authorization of the payment request, all credit card information is destroyed.

Credit Card #_____ Expiry date _____

Applications missing information or documentation are held for 90 days. If you do not respond to a request for information within 90 days, your file will be cancelled and the fee of $137 will be retained to cover the cost of processing your application to date.

7 SUBMIT YOUR APPLICATION

Place **all** documentation and the completed application into a suitably-sized envelope and submit it with payment in person at a Service BC office or by mail to the address below:

Vital Statistics Agency
ATTN: CONFIDENTIAL SERVICES
PO Box 9657 Stn Prov Govt
Victoria BC V8W 9P3

For your nearest Service BC location, visit:
http://www.servicebc.gov.bc.ca

Search Applications for Birth or Marriage Events that Occurred in British Columbia

If you do not have an original birth or marriage certificate to submit with your Application for Change of Name, you can request that Vital Statistics search for the event instead of ordering the certificate **if the birth and/or marriage occurred in British Columbia**. Simply fill out the application(s) below and then check the box(es) beside Search Fee $27 when completing the Application for Change of Name. **Include $27 for each search** requested when you are submitting your application.

If you need Vital Statistics to search BIRTH events for several people in a family (e.g. Mom, plus one or more children), photocopy or print additional copies of this page. A search application must be completed for each person requiring a search for a BIRTH event.

Please search for the following BIRTH event that occurred in British Columbia:

Full name of person named in birth event, as listed at time of birth or following a previous change of name (NOT a married surname)

Surname (Last Name)	First Name	Middle Name(s)

	Month (e.g. Feb)	Day	Year	City/Town/Village	Province	Sex
Date of Birth				Place of Birth	**BRITISH COLUMBIA**	

FATHER/ PARENT INFO

Surname (Last Name)	First Name	Middle Name(s)

Birthplace (City, Province/State, Country)

MOTHER/ PARENT INFO

Surname (Last Name) as listed on current birth or change of name certificate	First Name	Middle Name(s)

Birthplace (City, Province/State, Country)

Please search for the following MARRIAGE event that occurred in British Columbia:

	Month (e.g. Feb)	Day	Year	City/Town/Village	Province
Date of Marriage				Place of Marriage	**BRITISH COLUMBIA**

Provide your **SPOUSE'S** information below.

Spouse's Last Name (at the time of marriage)	Spouse's First Name	Spouse's Middle Name(s)

Spouse's Birthplace (City, Province/State, Country)

General Information

After your change of name application has been processed:

- Vital Statistics will send a *Certificate of Change of Name* to your mailing address. This certificate will show your previous name as provided in your foundation identity document, and your new name. If you have included your child(ren) in your application, their names will also be listed on the certificate.
- Your Canadian birth certificate will be amended to list your new name. If you were born in Canada, you will need to order a new birth certificate from your birth province. Be sure to advise them of your recent change of name when placing the order for your new certificate(s). BC Vital Statistics will send an electronic notification to other provinces following the registration of a change of name.

  Note - Certificates issued in British Columbia are printed in uppercase lettering only.
- If you were married in Canada, your name change *may* affect your current marriage certificate. Contact your marriage province for advice. A name change does not affect a surname assumed by marriage.
- You are responsible for notifying other agencies of your name change and for replacing all applicable documents and identification, such as your BC Driver's Licence or BC Identification card, BC Services Card, Canadian Passport, etc.

What happens to documents submitted with your application?

Document	Returned	Not Returned
B.C. and other Canadian birth certificates		Destroyed
B.C. marriage certificates		Destroyed
Certificates from previous name change(s)	✔ Stamped with "Historical Document. Not to be accepted as proof of current legal name."	
Out-of-province marriage certificates	✔	
Certified documents (e.g. **copies** of immigration papers)		Kept on file

BRITISH COLUMBIA | Vital Statistics Agency

Part 1 (A) — Adult or Parent Information
APPLICATION FOR CHANGE OF NAME

PARENTS - Enter your information in Part 1(A) and 1(B) even if you are only changing your child's name and not your own. Provide your child's information in Part 2 (pg 7).

❑ **Check this box if you are not changing your name**

OFFICE USE ONLY
AFS #
REG. #

Adult's full name as currently listed on birth certificate, **most recently issued** immigration or citizenship documents,or change of name certificate. (NOT YOUR SURNAME BY MARRIAGE)

Surname (Last Name)	First Name	Middle Name(s)

Full name as you would like it to appear following the legal change of name (Leave this line blank if you are not changing your name.)

Surname (Last Name)	First Name	Middle Name(s)

Date of birth (MMM DD YYYY)	Sex	Place of Birth (City/Town)	Province/State, Country

Marital status
❑ Married
❑ Divorced
❑ Widowed
❑ Never Married

Spouse's Surname

Date of Marriage (MMM DD YYYY)

Place of Marriage (City/Town)

Province/State, Country

Is this application changing your surname to the surname of your spouse? **You MUST check a box below.**

❑ No ❑ Yes. I understand that if I was born in Canada this will change my name on my birth certificate, and may change my marriage certificate.

Personal Health Number (PHN) (Used to confirm residency in B.C.)

How can we contact you?

Preferred Number (Phone No. including area code)	Alternate Contact Number (Phone No. including area code)	Preferred Email Address

Place(s) of residence for last three months **(ALL fields must be completed)**

Suite/Apt No.	Street No.	Street Name	From (MMM DD YYYY)

City/Town	Province	Postal Code	To
	B.C.		PRESENT

Suite/Apt No.	Street No.	Street Name	From (MMM DD YYYY)

City/Town	Province	Postal Code	To (MMM DD YYYY)
	B.C.		

Address for Letters or Certificate

Mail to: ❑ Above Address ❑ Alternate Address Below: **(if different from above)**

Name/Organization

Suite/Apt No.	Street No.	Street Name

City/Town	Province/State, Country	Postal/ZipCode

Documentation (Check applicable for each section.)		Notes	Office Use Only
Proof of Birth	**If born in Canada** - Original birth certificate with a registration number. ❑ Enclosed ❑ $27.00 Search Fee (If you were born in British Columbia and do not have a birth certificate, complete a Search Application on page 4.)	Provide certified copies of **BOTH** sides of your **MOST RECENTLY ISSUED** Permanent Resident Card or Canadian Citizenship Card/ Certificate.	
	If born outside of Canada - Certified copy of immigration or citizenship documents. ❑ Enclosed		
Proof of Marriage	Marriage certificate with registration number *(not applicable if divorced or widowed)*. ❑ N/A ❑ Original enclosed (If married in B.C.) ❑ Photocopy enclosed (If married outside of B.C, a photocopy may be required to show continuity of usage of names.) ❑ Photocopy enclosed (If B.C. marriage certificate already lists your **exact** proposed name.) ❑ $27.00 Search fee (If you were married in B.C. and do not have a marriage certificate, complete a Search Application on page 4.)	If you are changing your child's surname to that of your spouse, provide a photocopy of your marriage certificate.	
Proof of Electronic Fingerprinting	Photocopy of the receipt you received from the fingerprinting agency for electronic fingerprinting (18 years of age or older). ❑ N/A ❑ Enclosed - **The date on the receipt must be within 30 days of the date your application is received in our office.**	If you are 18 years of age or older, provide a photocopy of the receipt for your payment for electronic fingerprinting.	
Previous Name Change	**Have you previously had a legal change of name in Canada?** ❑ No ❑ Yes – The **original** Canadian change of name certificate(s) is/are enclosed. ❑ Yes – I do NOT have the **original** Canadian change of name certificate(s).	Returned to you stamped with: "Historical Document. Not to be accepted as proof of current legal name".	

BRITISH COLUMBIA | Vital Statistics Agency

Part 1 (B) - Adult or Parent Information
APPLICATION FOR CHANGE OF NAME

Statutory Declaration

Check applicable:

- ❒ **I am applying as a single applicant to change my name only.** Complete Section 2.
- ❒ **I am a parent applying for myself and my child(ren)'s name change(s).** Complete Sections 1 & 2.
- ❒ **I am a parent applying on behalf of my child(ren) only. I am not changing my name.** Complete Sections 1 & 2.

Section 1 - To be completed by the applicant parent

Only a parent recognized on the child's birth certificate or those being listed on the child's immigration documentation can apply to change a child's name. However ALL PARENTS and/or CUSTODIAL GUARDIANS must sign consent to a child's name change.

Write your **INITIALS** beside any/**all** situations that apply to you:

_____ I have included **all** custodial/guardianship court order(s) for my child(ren) within this application.

_____ The court order(s) included is(are) a **final order** OR the court order(s) included is(are) **still valid and in effect**.

_____ List any *future* court dates: .....

OR

_____ I **do not** have any custodial/guardianship court order(s) for my child(ren).

_____ The other parent **was not recorded** on the child(ren)'s birth restration(s) and **there is no custodial/guardianship court order** in place for my child(ren).

_____ The other parent and I are **still married** and **there is no custodial/guardianship court order** in place for my child(ren).

_____ The other parent and I **were married but no longer live together**, and **there is no custodial/guardianship court order** in place for my child(ren).

_____ The other parent and I **were never married** and **there is no custodial/guardianship court order** in place for my child(ren).

Section 2 - To be completed by ALL applicants

I _____ have read the application and to the best of my knowledge, information and belief, the statements made are true
Applicant's full name

in substance and in fact.

AND

I understand that any documentation submitted to support this application may be verified for validity and/or authenticity with the issuing authority and I provide my consent to the Vital Statistics Agency to complete this verification.

AND

I understand that the Vital Statistics Agency must use the exact name recorded on my birth certificate, immigration or citizenship document, or change of name certificate, and if I record a name other than that name on my application form the Vital Statistics Agency will amend my application to match.

AND

I have enclosed all original birth certificates, marriage certificates (B.C. only) and historical change of name certificates in my possession and I understand that any Canadian birth certificates and B.C. marriage certificates will not be returned on completion of the name change.

AND

I understand that all previously issued birth certificates, B.C. marriage certificates and change of name certificates will be cancelled under Section 40.1 (1)(h) of the *Vital Statistics Act,* and that to use any cancelled certificates may constitute a fraudulent action.

AND

I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath.

X _____ *
Signature of Applicant — Day Month Year

Declared before me at _____
City

* Dates must match

in the Province of British Columbia, this _____ day of _____ *
Day — Month Year

OFFICIAL STAMP/SEAL

X _____
Signature of Service BC Representative, Lawyer, Articled Law Student, Notary Public, or Commissioner for Taking Affidavits
(Note - Authorized individuals charge a fee for witnessing your signature.)

Documentation		Notes	Office Use Only
All Applicants	Photocopy of applicant's picture ID (e.g. driver's licence) showing their current address. **A copy of a recent utility bill in the applicant's name (e.g. BC Hydro bill) is acceptable proof of the current address if it is not listed on identification.** ❒ Photocopy of picture ID is enclosed	**The address listed on the applicant's picture ID must match the residential address provided in Part 1A on page 5.**	

This information is collected by the Vital Statistics Agency under section 26(c) of the *Freedom of Information and Protection of Privacy Act,* and will be used to fulfill the requirements of the *Vital Statistics Act* for the release of change of name information. Should you have any questions about the collection of this personal information, please contact:
Manager, Vital Statistics Agency, 250 952-2681, PO Box 9657, Stn Prov Govt, Victoria BC V8W 9P3

BRITISH COLUMBIA | Vital Statistics Agency

Part 2 (A) - Child's Information (18 Years of Age or Younger)
APPLICATION FOR CHANGE OF NAME

Child's full name as currently listed on birth certificate, **most recently issued** immigration or citizenship documents, or change of name certificate
Surname (Last Name) | First Name | Middle Name(s)

Child's full name as it will appear following the legal change of name (Names on Part 2A and Part 2B must match **exactly**.)
Surname (Last Name) | First Name | Middle Name(s)

Date of birth MMM DD YYYY	Sex	Place of birth City/Town	Province/State and Country

Has your child previously had a legal change of name in Canada? (Check applicable)

- ❑ No
- ❑ Yes - **ALL original** Canadian change of name certificates are enclosed.(This certificate will be stamped "Historical Document. Not to be accepted as proof of current legal name" and and will returned to you upon completion of this application.)
- ❑ Yes - I do NOT have the **original** Canadian change of name certificate(s).

Indicate what identification you have enclosed to prove your child's parentage

Child born in Canada:
- ❑ Original Canadian birth certificate showing parentage
- ❑ $27.00 Search fee (My child was born in British Columbia but I do not have their birth certificate. I have completed a Search Application on page 4)

Child born outside of Canada - CERTIFIED COPIES of:
- ❑ **BOTH SIDES** of child's **MOST RECENTLY ISSUED** Permanent Resident Card or Canadian Citizenship Card/Certificate
- ❑ Child's original birth certificate showing parentage
- ❑ English translation of birth certificate if not in English

CHILD'S CONSENT - Children 12 to 18 years of age **MUST** provide: ☑ **Letter** ☑ **Signature**

I hereby give my consent to change my name as stated in this application

Child's Signature X _____ Signature of Witness X _____

* Date MMM DD YYYY ← * Dates must match → * Date MMM DD YYYY

❑ **Letter handwritten in ink by child is attached.**

CONSENT OF OTHER PARENT/GUARDIAN(S)

If the other parent/guardian(s):
- consents to the change of name, they must complete Part 2B - "Other Parent's Consent" on page 8.
- is/are not listed on the birth registration, complete section I below.
- is/are listed on the birth registration but you have a valid reason to waive their consent, complete section II below.

I. Other Parent is Not Listed

❑ No other parent is recorded on the birth registration of the child whose name is to be changed.

Applicant's Signature X _____ Date MMM DD YYYY

II. Request for Waiver (A - E) See pages 9 and 10 for information about reasons for waivers and what to submit with your request.

I request that the consent of the other parent/guardian(s): _____ be waived for the following reason(s):
Last Name(s) First Name(s)

A ❑ The other parent/guardian(s) cannot be located after a reasonable, diligent and adequate search has been conducted as demonstrated by statutory declaration and supporting evidence maintained in the change of name file. **A custody or guardianship order is required for this option. Obtain an order prior to making application.**

B ❑ The other parent/guardian(s) is/are deceased, proven by a copy of a government-issued death certificate maintained in the change of name file.

C ❑ The other parent/guardian(s) is/are unreasonably withholding consent to the change of name.

D ❑ The other parent/guardian(s) is/are mentally disordered, as demonstrated by statutory declaration and supporting evidence.

E ❑ Exceptional circumstances make it unreasonable to seek the consent of the other parent/guardian(s). **Unless you can provide a valid court ordered restraining order/no contact order between the other parent/guardian(s) and the child(ren) this option does not apply.**

Applicant Signature X _____ Date MMM DD YYYY

CONSENT OF SPOUSE OF APPLICANT (Only if Child's surname is changing to that of the Applicant's Spouse.)

I, _____, am the spouse of the applicant and hereby give my consent for the above-listed child to change his/her surname to be the same as mine.
Name (Printed)

Signature of Applicant's Spouse X _____ Signature of Witness X _____

* Date MMM DD YYYY ← * Dates must match → * Date MMM DD YYYY

BRITISH COLUMBIA | Vital Statistics Agency

Part 2 (B) - Consent of Other Parent/Guardian(s)
APPLICATION FOR CHANGE OF NAME

If more than one child is included in the change of name application, or if there is more than one other parent/guardian, please photocopy or print additional copies of this page.

Full name(s) of other parent/guardian(s) as listed on the birth registration of child or within court orders.

Surname (Last Name)	First Name	Middle Name(s)

Suite/Apt No.	Street No.	Street Name	City/Town

Province/State, Country	Postal/Zip Code	Phone No. (including area code)

Child's full name as it will appear following the legal change of name (Names on Part 2A and Part 2B must match **exactly**.)

Surname (Last Name)	First Name	Middle Name(s)

Child's date of birth MMM DD YYYY	Sex	Child's place of birth City/Town	Province/State, Country

Anyone can witness the signature of the other parent/guardian(s), but the other parent/guardian(s) and the witness must sign **at the same time**. Signatures are valid for six months only.

Consent of Other Parent/Guardian(s)

I _____ have read the information provided on this page and to the best of my
Name(s) of Other Parent/Guardian(s)

knowledge, information and belief, the statements made are true in substance and in fact.

AND

I understand that any documentation submitted to support this application may be verified for validity and/or authenticity with the issuing authority and I provide my consent to the Vital Statistics Agency to complete this verification.

AND

I have enclosed all original birth certificates and historical change of name certificates in my possession for each child named in this application. I understand that any Canadian birth certificates will not be returned on completion of the name change.

AND

I understand that all previously issued birth certificates and change of name certificates for each child named in this application will be cancelled under Section 40.1 (1)(h) of the *Vital Statistics Act*, and that to use any cancelled certificates may constitute a fraudulent action.

AND

I understand that by consenting to change the name(s) for my child, I will still remain listed as a parent on my child's birth registration, if I am currently listed.

X _____ * Date MMM DD YYYY
Signature(s) of Other Parent/Guardian(s)

X _____ * Date MMM DD YYYY
Signature of Witness

* Dates must match

Full name, address, and phone number of **witness** to signature(s) of other parent/guardian(s)

Surname (Last Name)	First Name	Middle Name(s)

Suite/Apt No.	Street No.	Street Name	City/Town

Province/State, Country	Postal/Zip Code	Phone No. (including area code)

Documentation		Notes	Office Use Only
Other Parent/ Guardian(s) Consenting to Child's Change of Name	Photocopy of other parent/guardian(s') picture ID (e.g. driver's licence) showing their current address. **A copy of a recent utility bill in the name of the other parent/ guardian(s) (e.g. BC Hydro bill) is acceptable proof of the current address if it is not listed on identification.** ❑ Photocopy of picture ID is enclosed	The address(es) listed on the picture ID of the other parent/ guardian(s) **must match** the residential address provided above.	

This information is collected by the Vital Statistics Agency under section 26(c) of the *Freedom of Information and Protection of Privacy Act*, and will be used to fulfill the requirements of the *Vital Statistics Act* for the release of change of name information. Should you have any questions about the collection of this personal information, please contact:
Manager, Vital Statistics Agency, 250 952-2681, PO Box 9657, Stn Prov Govt, Victoria BC V8W 9P3.

BRITISH COLUMBIA | Vital Statistics Agency

Request to Waive Consent of Other Parent/Guardian(s)

Statutory Declaration

This statutory declaration **MUST** be completed if the applicant is asking for a waiver of consent of the other parent/guardian(s) unless the other parent/guardian(s) is(are) deceased. See pages 7 and 10 for further details. Your Statutory Declaration must include **ALL** of the following information:

If you require more space, attach a separate sheet of paper.

1. Explain in detail all attempts that have been made to gain the consent of the other parent/guardian(s), including contact with relatives, friends, proof of attempted contact or conversation threads regarding the change of name through social media (e.g. Facebook), texting, email threads etc.
2. When was your last contact with the other parent/guardian(s)?
3. What is the last known contact information you have for the other parent/guardian(s)? **(Include full addresses, phone numbers, email addresses, or state that all contact information is unknown.)**
4. Do you receive child support from the other parent/guardian(s)?
5. Are you registered with the Family Maintenance Enforcement Program (FMEP)? **If yes, submit a copy of the most recent statement.**
6. Outline any reasons why you feel the change of name is in your child(ren)'s best interest.
7. If the custody/guardianship order submitted with your application is not a final order, state whether or not it is still valid and in effect. As well, include any future court dates.

IMPORTANT - Select one:
❑ **I authorize** or ❑ **I do <u>not</u> authorize** the Vital Statistics Agency to use the contact information provided with my application and/or supporting documentation when contacting the other parent/guardian(s) to seek approval for the application.

CANADA:
PROVINCE OF BRITISH COLUMBIA.
TO WIT:

In the Matter of

I, ... (Applicant's Name) of ..... (City)

in the Province of British Columbia, do solemnly declare that

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____

I verify that all supporting documents represent current circumstances and are in effect as of this date. And I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath and by virtue of the *Canada Evidence Act*.

Declared before me at _____ in the Province of British Columbia, this _____ (Day) day of _____ (Month) _____ (Year) *

X _____
Declarant's Signature

* _____ (Day) _____ (Month) _____ (Year)

* Dates must match

X _____
Signature of Service BC Representative, Lawyer, Articled Law Student, Notary Public or Commissioner for Taking Affidavits
(Note - Authorized individuals charge a fee for witnessing your signature.)

OFFICIAL STAMP/SEAL

BRITISH COLUMBIA | Vital Statistics Agency

Obtaining a Waiver of Parental/Guardian(s) Consent
Under the British Columbia *Name Act*

The following is a list of grounds on which a waiver of parental/guardian consent may be approved and the documents required. Choose the one that best applies to your situation and provide **ALL** of the requested information. **If information cannot be provided, include a letter of explanation.**

A) The other parent/guardian(s) cannot be located after a reasonable, diligent and adequate search has been conducted as demonstrated by the statutory declaration and supporting evidence maintained in the change of name file.

- ❑ Custody/guardianship order. Obtain an order from the courts prior to applying to legally change the name(s) of your child(ren).
- ❑ In your statutory declaration list the full mailing address, phone numbers, email addresses and any other contact information for the parent/guardian(s) whose consent is(are) to be waived.
- ❑ If you are unaware of the whereabouts of the other parent/guardian(s):
  - ❍ Include a list of the efforts you have made to determine their location; **AND**
  - ❍ Provide proof of attempted contact or conversation thread regarding the change of name through social media (e.g. Facebook), texting, email etc.

  In your statutory declaration, you must include **ALL** of the information listed at the top of page 9, "Statutory Declaration-Request to Waive Consent of Other Parent/Guardian(s)".
- ❑ If you are registered with the Family Maintenance Enforcement Program (FMEP), include a copy of your latest statement. If you are not registered with FMEP, include a statement indicating that you do or do not receive support from the other parent/guardian(s).
- ❑ Children 12 years of age or older must write a brief letter in their own words describing why they would like their name to be changed. The letter must be **handwritten in ink**, and **signed and dated by the child**.

B) The other parent/guardian(s) is(are) deceased, proven by a copy of a government-issued death certificate maintained in the change of name file.

- ❑ A copy of a government-issued death certificate of the person whose consent is to be waived.

C) The other parent/guardian(s) is(are) unreasonably withholding their consent.

- ❑ In your statutory declaration, you must include **ALL** of the information listed at the top of page 9, "Statutory Declaration-Request to Waive Consent of Other Parent/Guardian(s)".
- ❑ Provide proof of attempted contact or conversation thread regarding the change of name through social media (e.g. Facebook), texting, email etc.
- ❑ If you are registered with the Family Maintenance Enforcement Program (FMEP), include a copy of your latest statement. If you are not registered with FMEP, include a statement indicating that you do or do not receive support from the other parent.
- ❑ Children 12 years of age or older must write a brief letter in their own words describing why they would like their name to be changed. The letter must be **handwritten in ink**, and **signed and dated by the child**.

D) The other parent/guardian(s) is(are) mentally disordered, as demonstrated by statutory declaration and supporting evidence

- ❑ A letter from a physician/court order stating the person whose consent is to be waived is incapable of understanding what they would be signing.
- ❑ Children 12 years of age or older must write a brief letter in their own words describing why they would like their name to be changed. The letter must be **handwritten in ink**, and **signed and dated by the child**.

E) Exceptional circumstances make it unreasonable to seek the consent of the other parent/guardian(s). Unless you can provide a valid court ordered restraining order/no contact order between the other parent/guardian(s) and the child(ren) this option does not apply.

- ❑
  - ❍ A court ordered no contact order; ***OR***
  - ❍ A court ordered restraining order; ***OR***
  - ❍ A letter from the police indicating you would be in danger if you attempted to contact the parent/guardian(s) whose consent is required.
- ❑ Children 12 years of age or older must write a brief letter in their own words describing why they would like their name to be changed. The letter must be **handwritten in ink**, and **signed and dated by the child**.

NOTE: Requirements identified in this information sheet are a guide only and the registrar general of the Vital Statistics Agency has the authority to ask for additional information.

Statements made in a statutory declaration are considered the equivalent of statements made in a Court of Law and may provide the basis for action against the applicant if they are proven to be fraudulent.

This information is collected by the Vital Statistics Agency under section 26(c) of the *Freedom of Information and Protection of Privacy Act,* and will be used to fulfill the requirements of the *Vital Statistics Act* for the release of change of name information. Should you have any questions about the collection of this personal information, please contact:
Manager, Vital Statistics Agency, 250 952-2681, PO Box 9657, Stn Prov Govt, Victoria BC V8W 9P3

BRITISH COLUMBIA | Ministry of Health

PHYSICIAN'S OR PSYCHOLOGIST'S CONFIRMATION OF CHANGE OF GENDER DESIGNATION

SHADED AREA FOR OFFICE USE ONLY
AFS# :

PHYSICIAN'S OR PSYCHOLOGIST'S INFORMATION (PLEASE PRINT CLEARLY)

SURNAME FOLLOWED BY GIVEN NAME(S)		
Badger, Humphrey		
MAILING ADDRESS		POSTAL CODE
555 Burrow Place		V0A 0A0
TITLE (*if any*)	TELEPHONE # (*include area code*)	
Doctor	(604) 2222222	

DECLARATION OF PHYSICIAN OR PSYCHOLOGIST

The physician's or psychologist's declaration is in support of the request to change the applicant's "Sex" designation on their provincially issued identification by witnessing or certifying that the person identifies themself as a particular gender.

1. I hereby certify that I am:

   ☑ a practising registrant of the College of Physicians and Surgeons of British Columbia. BC MSP # [some numbers]

   ☐ a practising registrant of the College of Psychologists of British Columbia. Registrant # _____

   ☐ a practising registrant, authorised in another province or territory, to practise a health profession equivalent to that practised by person referred to above.

   Your profession and registration #: _____ (**PLEASE PROVIDE COPY OF LICENCE.**)

2. I support the application of Michael Rat (Applicant's Name) 1111 111 111 (Applicant's Personal Health #)

   and (12345678) (BC Driver's License # or BC Identification) who is requesting the change in gender designation

   FROM ☐ Female ☑ Male ☐ X **TO** ☑ Female ☐ Male ☐ X

3. I confirm that the applicant's gender identity does *not* align with the "Sex" designation on the applicant's provincial government-issued identification.

4. I understand the consequences of making a false declaration.

   X _____ (Signature of Physician or Psychologist) 29/01/2021 (Date (dd/mm/yyyy))

Making a false or misleading statement on this form may result in prosecution under section 69 of the *Motor Vehicle Act*. A person who contravenes section 69 is liable to a fine of up to $20,000 and/or to imprisonment.

PROVINCIAL GOVERNMENT-ISSUED IDENTIFICATION

This form may be used to support changes to the "Sex" field on all of the following provincial government-issued identification held by the applicant:

- BC Birth Certificate
- BC Driver's Licence
- BC Identification Card
- Combined BC Driver's Licence and Services Card
- Photo BC Services Card
- Non-Photo BC Services Card

RESOURCES FOR PHYSICIANS OR PSYCHOLOGISTS

For additional resources, professionals may refer to the guidelines established by the World Professional Association for Transgender Health (WPATH), Standards of Care at www.wpath.org.

PRIVACY INFORMATION

When this form is submitted to Health Insurance BC and/or the Insurance Corporation of BC, the applicant's personal information is collected to update his/her Medical Services Plan (MSP), and/or the provincial government-issued identification listed in the box above.

Legislation Governing the Collection of Personal Information

- **The Insurance Corporation of BC** collects personal information under the authority of section 25 of the *Motor Vehicle Act,* sections 3 and 9 of the *Identification Card Regulation*, and section 26 of the *Freedom of Information and Protection of Privacy Act* (FIPPA). Information may be disclosed pursuant to section 33 of FIPPA.
- **Health Insurance BC** collects information under the authority of the *Medicare Protection Act* and section 26 of FIPPA. Information may be disclosed pursuant to section 33 of FIPPA.
- **The BC Vital Statistics Agency** collects information on this form under section 26(c) of the *Freedom of Information and Protection of Privacy Act*, and uses it to fulfill the requirements of the *Vital Statistics Act* for the release of gender designation information. Should you have any questions about the collection of this personal information, please contact: Manager, Vital Statistics Agency, 250 952-2681, PO Box 9657, Stn Prov Govt, Victoria BC V8W 9P3.

If you have questions about the collection and use of personal information for changing a BC Services Card or BC Driver's Licence, contact:

Telephone:	
Victoria	250 387-6121
Vancouver	604 660-2421
Toll free in B.C.	1 800 663-7867

If you have questions about the collection and use of personal information for changing gender designation on a birth registration, contact Vital Statistics, Confidential Services at 250 952-2681.

This form is subject to verification and audit by the Province of British Columbia and the Insurance Corporation of BC.

BRITISH COLUMBIA | Ministry of Health

PHYSICIAN'S OR PSYCHOLOGIST'S CONFIRMATION OF CHANGE OF GENDER DESIGNATION

SHADED AREA FOR OFFICE USE ONLY
AFS# :

PHYSICIAN'S OR PSYCHOLOGIST'S INFORMATION (PLEASE PRINT CLEARLY)

SURNAME FOLLOWED BY GIVEN NAME(S)	
MAILING ADDRESS	POSTAL CODE: V0A 0A0
TITLE (*if any*)	TELEPHONE # (*include area code*): (604)111-1111

DECLARATION OF PHYSICIAN OR PSYCHOLOGIST

The physician's or psychologist's declaration is in support of the request to change the applicant's "Sex" designation on their provincially issued identification by witnessing or certifying that the person identifies themself as a particular gender.

1. I hereby certify that I am:

   ❒ a practising registrant of the College of Physicians and Surgeons of British Columbia. BC MSP # _____

   ❒ a practising registrant of the College of Psychologists of British Columbia. Registrant # _____

   ❒ a practising registrant, authorised in another province or territory, to practise a health profession equivalent to that practised by person referred to above.

   Your profession and registration #: _____ (**PLEASE PROVIDE COPY OF LICENCE.**)

2. I support the application of _____ _____
   Applicant's Name — Applicant's Personal Health #

   and (_____) who is requesting the change in gender designation
   BC Driver's License # or BC Identification

   FROM ❒Female ❒Male ❒X **TO** ❒Female ❒Male ❒X

3. I confirm that the applicant's gender identity does *not* align with the "Sex" designation on the applicant's provincial government-issued identification.

4. I understand the consequences of making a false declaration.

   X _____ 29/01/2021
   Signature of Physician or Psychologist — Date (dd/mm/yyyy)

Making a false or misleading statement on this form may result in prosecution under section 69 of the *Motor Vehicle Act*. A person who contravenes section 69 is liable to a fine of up to $20,000 and/or to imprisonment.

PROVINCIAL GOVERNMENT-ISSUED IDENTIFICATION

This form may be used to support changes to the "Sex" field on all of the following provincial government-issued identification held by the applicant:

- BC Birth Certificate
- BC Driver's Licence
- BC Identification Card
- Combined BC Driver's Licence and Services Card
- Photo BC Services Card
- Non-Photo BC Services Card

RESOURCES FOR PHYSICIANS OR PSYCHOLOGISTS

For additional resources, professionals may refer to the guidelines established by the World Professional Association for Transgender Health (WPATH), Standards of Care at www.wpath.org.

PRIVACY INFORMATION

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Legislation Governing the Collection of Personal Information

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If you have questions about the collection and use of personal information for changing a BC Services Card or BC Driver's Licence, contact:

Telephone:	
Victoria	250 387-6121
Vancouver	604 660-2421
Toll free in B.C.	1 800 663-7867

If you have questions about the collection and use of personal information for changing gender designation on a birth registration, contact Vital Statistics, Confidential Services at 250 952-2681.

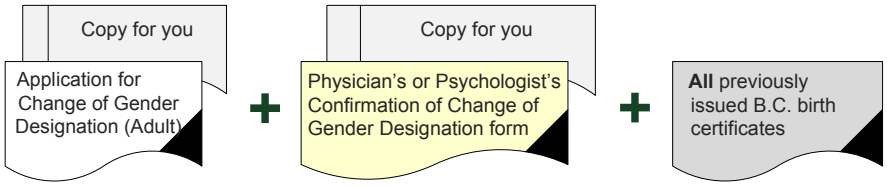
This form is subject to verification and audit by the Province of British Columbia and the Insurance Corporation of BC.

Instructions for the APPLICATION FOR CHANGE OF GENDER DESIGNATION (ADULT)

The Application for Change of Gender Designation can be used to request an update of your **B.C. Birth Certificate**.

What You'll Need

A completed 'Application for Change of Gender Designation (Adult)'
plus
'Physician's or Psychologist's Confirmation of Change of Gender Designation' form
plus
Any previously issued B.C. birth certificates
plus
A copy of each original document for your records (the originals will not be returned to you)



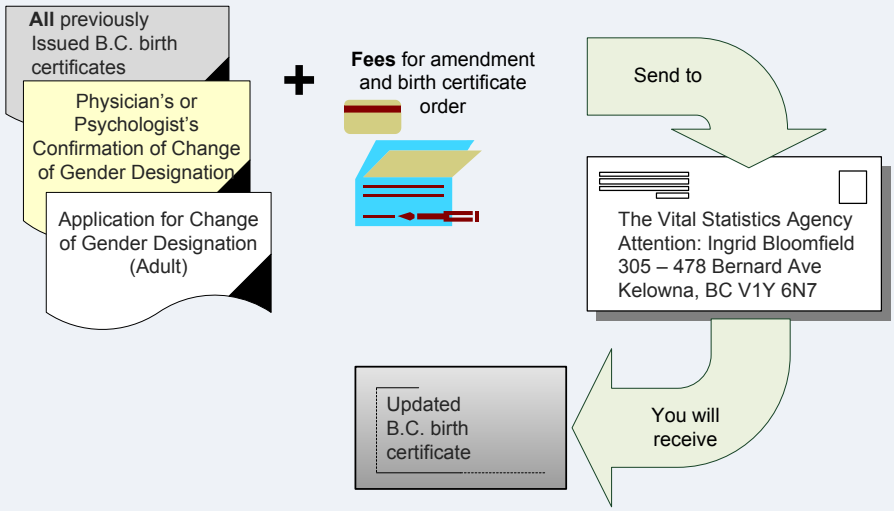
To update your B.C. BIRTH CERTIFICATE

Send:

- Your 'Application for Change of Gender Designation (Adult)'
- Your **ORIGINAL** 'Physician's or Psychologist's Confirmation of Change of Gender Designation' form
- **All** B.C. birth certificates Issued prior to the amendment
- Fees for amendment and birth certificate order

To:

The Vital Statistics Agency
Attention: Ingrid Bloomfield
305 – 478 Bernard Ave
Kelowna, BC V1Y 6N7



BRITISH COLUMBIA | Vital Statistics Agency

APPLICATION FOR CHANGE OF GENDER DESIGNATION (ADULT) – CHANGING B.C. BIRTH CERTIFICATE

APPLICANT INFORMATION

FOR OFFICE USE ONLY

LEGAL SURNAME FOLLOWED BY LEGAL GIVEN NAME(S)

Rat Michael, Eugene

MAILING ADDRESS: 1 111 111A Street

POSTAL CODE: V0A 0A0

BIRTHDATE (dd/mm/yyyy): 01/01/1980

TELEPHONE NUMBER, INCLUDING AREA CODE: (604) 111-1111

The birth certificate is a foundation identity document which is required by many institutions to access programs and services, such as obtaining a passport or driver's licence.

I, Michael Eugene Rat solemnly declare that

(**Print** current legal name in full)

I make this application to change my gender designation captured as "Sex" on my B.C. birth certificate

FROM ☐ Female ☑ Male ☐ X **TO** ☑ Female ☐ Male ☐ X

Check the applicable boxes and sign below to confirm that you have read and acknowledge the corresponding statements. (For male and female, check boxes 1 and 2 only. For gender X, check all four boxes.)

☑ 1. I have assumed, identify with and intend to maintain the gender identity that corresponds with the requested change in gender designation.

☑ 2. I am providing a "Physician's or Psychologist's Confirmation of Change of Gender Designation" form (VSA 510p).

☑ 3. I understand that the Province of British Columbia cannot guarantee acceptance of a birth certificate with an "X" designation by organizations or governments and that the "X" marker is not universally accepted.

☐ 4. I understand that as the holder of a birth certificate, it is my responsibility to check with organizations and program areas that I intend to transact with about their application or enrolment requirements regarding birth certificates with an "X" designation.

X _____ 29/01/2021

SIGNATURE OF APPLICANT — DATE (dd/mm/yyyy)

B.C. BIRTHS ONLY - DETAILS OF BIRTH AS CURRENTLY REGISTERED

BIRTH DETAILS

SURNAME*				* NOTE: Provide your surname at birth/adoption or following a legal change of name even if you currently use a surname by marriage.
GIVEN NAME(S) & SEX	First	Middle Name(s)		Sex
DATE & PLACE OF BIRTH	Month (e.g. Feb) MMM / Day DD / Year YYYY	City		BRITISH COLUMBIA

FATHER / PARENT DETAILS

SURNAME			
GIVEN NAME(S)	First	Middle Name(s)	
BIRTH PLACE	City	Province/State	Country

MOTHER / PARENT DETAILS

SURNAME†			† NOTE: Surname as per current birth or change of name certificate.
GIVEN NAME(S)	First	Middle Name(s)	
BIRTH PLACE	City	Province/State	Country

† The mother's maiden surname is the last name she was given at birth, or if a legal change of name has been completed, her new last name as noted on the Certificate of Change of Name. In Canada, the mother's birth surname or surname following a legal change of name is always listed on the child's birth registration and the parental birth certificate, even if she is married.

PRIVACY INFORMATION

This information is collected by the Vital Statistics Agency under section 26(c) of the *Freedom of Information and Protection of Privacy Act*, and will be used to fulfill the requirements of the *Vital Statistics Act* for the release of gender designation information. Should you have any questions about the collection of this personal information, please contact: Manager, Vital Statistics Agency, 250 952-2681, PO Box 9657, Stn Prov Govt, Victoria BC V8W 9P3.

This form is subject to verification and audit by the Province of British Columbia.

See reverse (page 2) for fee information and to order new B.C. birth certificates.

B.C. BIRTH CERTIFICATE CONTACT INFORMATION

ENQUIRIES & CREDIT CARD ORDERS

Telephone: **250 952-2681** (Victoria & Outside B.C.)
Toll Free: **1 888 876-1633** (within B.C.)

Website: www2.gov.bc.ca/gov/content/life-events

ADDRESS ALL DOCUMENTS TO:

Vital Statistics Agency
ATTENTION: Ingrid Bloomfield
305 - 478 Bernard Ave
Kelowna BC V1Y 6N7

B.C. BIRTH CERTIFICATE SERVICES/ FEES

The $27 amendment fee charged when you change the gender designation on your birth registration does not include a new birth certificate.

To order a new birth certificate(s), enter a quantity of 1 or 2 beside your selection below and add its cost to the amendment fee in the "Payment Methods" section at the bottom of this page. Different document types are mailed in separate envelopes. **All birth certificates issued before the amendment must be returned to Vital Statistics.**

Qty. (Limit 2 of each)	Description of Birth Documents	Cost Based on Delivery Type		Estimated Date of Delivery Once the Amendment is Complete	
		Mail	Courier	Mail	Courier**
	Individual information only - Includes the subject of the birth certificate's name, sex, place and date of birth. (12.5 cm x 17.7 cm)	$27	$60	Prints in 2 - 5 business days; **add** mailing time from Victoria B.C. to you.	Prints next business day; **add** courier delivery time from Victoria B.C. to you.
	***Parental information included** - Includes the subject of the birth certificate's name, sex, place and date of birth, plus names and birthplaces of parents listed on the registration. (12.5 cm x 17.7 cm)	$27	$60	Prints in 2 - 5 business days; **add** mailing time from Victoria B.C. to you.	Prints next business day; **add** courier delivery time from Victoria B.C. to you.
	Registration Photocopy - A certified photocopy of the original birth registration completed at the time of birth. This document is seldom required for applications.	$50	$60	Prints within 20 business days; **add** mailing time from Victoria B.C. to you.	Prints next business day; **add** courier delivery time from Victoria B.C. to you.

*Children (18 and under) require a birth certificate with **parental information included** for passport, school enrollment, and many other applications.

**Courier service is not made to post office boxes, apartment complexes, homes that use Super Box (community) mailboxes, or to basement suites. Instead, a delivery notice with instructions is left at the mailing address and the envelope is delivered to the nearest postal outlet. ID and signature are required upon pick up.

PAYMENT METHODS

☐ Cheque† ☐ Money Order† ☑ Visa ☐ MasterCard ☐ American Express

†**Postdated cheques are not accepted.** Make cheques or money orders payable to the Minister of Finance. Interac/Cash payments can be made in person at a Service BC office. (Visit www.servicebc.gov.bc.ca to find a location near you.)

AMOUNT ENCLOSED:

Amendment Fee $ **27.00**

New Certificate(s) $ 27.00
(See Services/Fees above)

Total Amount Enclosed $ **54.00**

NB do not issue birth certificate until name change app complete

X _____
Card holder signature

Michael E Rat
PRINT card holder name as shown on Credit Card

Credit Card # 1111 1111 1111 1111

Expiry date 11/21

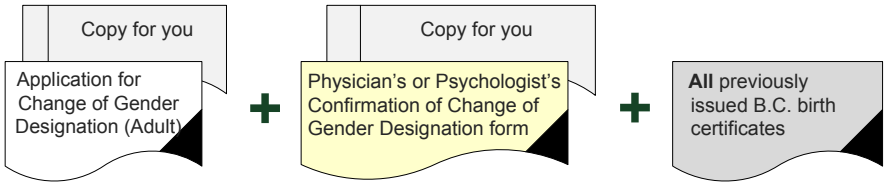
Note: Credit Card information is not retained. Upon authorization of the payment request, all credit card information is destroyed.

Instructions for the APPLICATION FOR CHANGE OF GENDER DESIGNATION (ADULT)

The Application for Change of Gender Designation can be used to request an update of your **B.C. Birth Certificate**.

What You'll Need

A completed 'Application for Change of Gender Designation (Adult)'
plus
'Physician's or Psychologist's Confirmation of Change of Gender Designation' form
plus
Any previously issued B.C. birth certificates
plus
A copy of each original document for your records (the originals will not be returned to you)



To update your B.C. BIRTH CERTIFICATE

Send:

- Your 'Application for Change of Gender Designation (Adult)'
- Your **ORIGINAL** 'Physician's or Psychologist's Confirmation of Change of Gender Designation' form
- **All** B.C. birth certificates Issued prior to the amendment
- Fees for amendment and birth certificate order

To:

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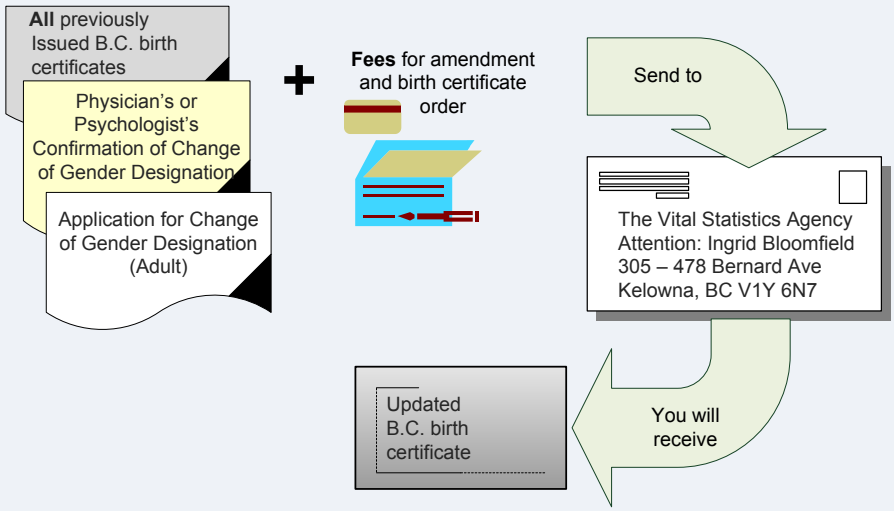
Kelowna, BC V1Y 6N7



BRITISH COLUMBIA | Vital Statistics Agency

APPLICATION FOR CHANGE OF GENDER DESIGNATION (ADULT) – CHANGING B.C. BIRTH CERTIFICATE

APPLICANT INFORMATION

FOR OFFICE USE ONLY

LEGAL SURNAME FOLLOWED BY LEGAL GIVEN NAME(S)

MAILING ADDRESS

POSTAL CODE: V0A 0A0

BIRTHDATE (dd/mm/yyyy): DD / MM / YYYY

TELEPHONE NUMBER, INCLUDING AREA CODE: (604) 111-1111

The birth certificate is a foundation identity document which is required by many institutions to access programs and services, such as obtaining a passport or driver's licence.

I, _____ solemnly declare that
(**Print** current legal name in full)

I make this application to change my gender designation captured as "Sex" on my B.C. birth certificate

FROM ❑Female ❑Male ❑X **TO** ❑Female ❑Male ❑X

Check the applicable boxes and sign below to confirm that you have read and acknowledge the corresponding statements. (For male and female, check boxes 1 and 2 only. For gender X, check all four boxes.)

❑ 1. I have assumed, identify with and intend to maintain the gender identity that corresponds with the requested change in gender designation.

❑ 2. I am providing a "Physician's or Psychologist's Confirmation of Change of Gender Designation" form (VSA 510p).

❑ 3. I understand that the Province of British Columbia cannot guarantee acceptance of a birth certificate with an "X" designation by organizations or governments and that the "X" marker is not universally accepted.

❑ 4. I understand that as the holder of a birth certificate, it is my responsibility to check with organizations and program areas that I intend to transact with about their application or enrolment requirements regarding birth certificates with an "X" designation.

X _____ DD/MM/YYYY 29/01/2021
SIGNATURE OF APPLICANT — DATE (dd/mm/yyyy)

B.C. BIRTHS ONLY - DETAILS OF BIRTH AS CURRENTLY REGISTERED

BIRTH DETAILS	SURNAME*				*NOTE: Provide your surname at birth/adoption or following a legal change of name even if you currently use a surname by marriage.
	GIVEN NAME(S) & SEX	First	Middle Name(s)		Sex
	DATE & PLACE OF BIRTH	Month (e.g. Feb) MMM / Day DD / Year YYYY	City		BRITISH COLUMBIA
FATHER / PARENT DETAILS	SURNAME				
	GIVEN NAME(S)	First	Middle Name(s)		
	BIRTH PLACE	City	Province/State	Country	
MOTHER /PARENT DETAILS	SURNAME†				†NOTE: Surname as per current birth or change of name certificate.
	GIVEN NAME(S)	First	Middle Name(s)		
	BIRTH PLACE	City	Province/State	Country	

†The mother's maiden surname is the last name she was given at birth, or if a legal change of name has been completed, her new last name as noted on the Certificate of Change of Name. In Canada, the mother's birth surname or surname following a legal change of name is always listed on the child's birth registration and the parental birth certificate, even if she is married.

PRIVACY INFORMATION

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Website: www2.gov.bc.ca/gov/content/life-events

ADDRESS ALL DOCUMENTS TO:

Vital Statistics Agency
ATTENTION: Ingrid Bloomfield
305 - 478 Bernard Ave
Kelowna BC V1Y 6N7

B.C. BIRTH CERTIFICATE SERVICES/ FEES

The $27 amendment fee charged when you change the gender designation on your birth registration does not include a new birth certificate.

To order a new birth certificate(s), enter a quantity of 1 or 2 beside your selection below and add its cost to the amendment fee in the "Payment Methods" section at the bottom of this page. Different document types are mailed in separate envelopes. **All birth certificates issued before the amendment must be returned to Vital Statistics.**

Qty. (Limit 2 of each)	Description of Birth Documents	Cost Based on Delivery Type		Estimated Date of Delivery Once the Amendment is Complete	
		Mail	Courier	Mail	Courier**
	Individual information only - Includes the subject of the birth certificate's name, sex, place and date of birth. (12.5 cm x 17.7 cm)	$27	$60	Prints in 2 - 5 business days; **add** mailing time from Victoria B.C. to you.	Prints next business day; **add** courier delivery time from Victoria B.C. to you.
	***Parental information included** - Includes the subject of the birth certificate's name, sex, place and date of birth, plus names and birthplaces of parents listed on the registration. (12.5 cm x 17.7 cm)	$27	$60	Prints in 2 - 5 business days; **add** mailing time from Victoria B.C. to you.	Prints next business day; **add** courier delivery time from Victoria B.C. to you.
	Registration Photocopy - A certified photocopy of the original birth registration completed at the time of birth. This document is seldom required for applications.	$50	$60	Prints within 20 business days; **add** mailing time from Victoria B.C. to you.	Prints next business day; **add** courier delivery time from Victoria B.C. to you.

*Children (18 and under) require a birth certificate with **parental information included** for passport, school enrollment, and many other applications.

**Courier service is not made to post office boxes, apartment complexes, homes that use Super Box (community) mailboxes, or to basement suites. Instead, a delivery notice with instructions is left at the mailing address and the envelope is delivered to the nearest postal outlet. ID and signature are required upon pick up.

PAYMENT METHODS

❑ Cheque† ❑ Money Order† ❑ Visa ❑ MasterCard ❑ American Express

†**Postdated cheques are not accepted.** Make cheques or money orders payable to the Minister of Finance. Interac/Cash payments can be made in person at a Service BC office. (Visit www.servicebc.gov.bc.ca to find a location near you.)

AMOUNT ENCLOSED:

Amendment Fee $ **27.00**

New Certificate(s) $ _____
(See Services/Fees above)

Total Amount Enclosed $ **27.00**

X _____
Card holder signature

_____
PRINT card holder name as shown on Credit Card

Credit Card # _____

Expiry date _____

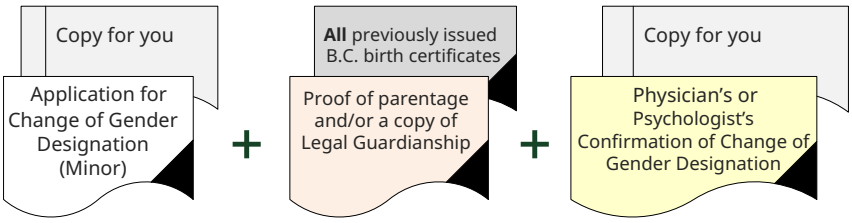
Note: Credit Card information is not retained. Upon authorization of the payment request, all credit card information is destroyed.

Instructions for the APPLICATION FOR CHANGE OF GENDER DESIGNATION (MINOR)

The Application for Change of Gender Designation (Minor) can be used to request an update to your **B.C. BIRTH CERTIFICATE** if you are a minor (under 19 years of age).

What You'll Need

A completed 'Application for Change of Gender Designation (Minor)'
plus
Proof of parentage and/or a copy of Legal Guardianship
plus
Any B.C. birth certificates issued prior to this application
plus
'Physician's or Psychologist's Confirmation of Change of Gender Designation'
plus
A copy of each **original** document for your records (the originals will **NOT** be returned to you)



Proof of parentage and/ or legal guardianship

The child's parental birth certificate listing the parents and copies of any orders of guardianship issued by the Courts are considered proof of parentage and/or legal guardianship.
IMPORTANT: ALL parents and guardians are required to provide consent on the application.

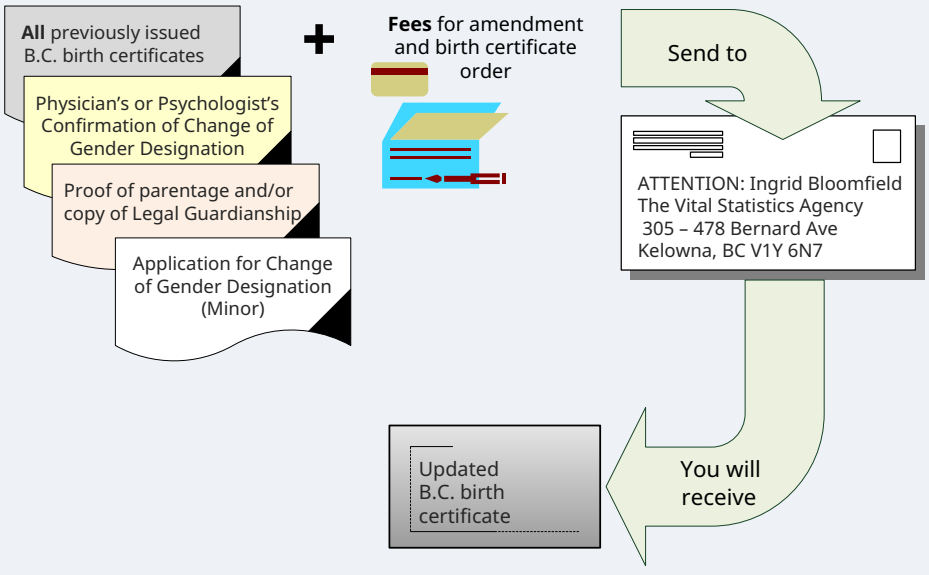
To update your **B.C. BIRTH CERTIFICATE**

Send:

- Your 'Application for Change of Gender Designation (Minor)'
- Your proof of parentage and/or copy of Legal Guardianship
- Your **ORIGINAL** 'Physician's or Psychologist's Confirmation of Change of Gender Designation'
- **All** B.C. birth certificates Issued prior to this application
- Fees for amendment and birth certificate order

To:

ATTENTION: Ingrid Bloomfield
The Vital Statistics Agency
305 – 478 Bernard Ave
Kelowna, BC V1Y 6N7



BRITISH COLUMBIA | Vital Statistics Agency

APPLICATION FOR CHANGE OF GENDER DESIGNATION (MINOR) – CHANGING B.C. BIRTH CERTIFICATE

APPLICANT INFORMATION

LEGAL SURNAME FOLLOWED BY LEGAL GIVEN NAME(S)	FOR OFFICE USE ONLY: AFS#

MAILING ADDRESS	CITY/TOWN/VILLAGE, PROVINCE/STATE, COUNTRY	POSTAL/ZIP CODE
		V0A 0A0

BIRTHDATE (DD/MM/YYYY)	TELEPHONE NUMBER (INCLUDING AREA CODE)
DD / MM / YYYY	111-1111

The birth certificate is a foundation identity document which is required by many institutions to access programs and services, such as obtaining a passport or driver's licence.

I, _____ solemnly declare that I make this application to change my gender
(**PRINT** CURRENT LEGAL NAME IN FULL)

designation captured as "Sex" on my B.C. birth certificate

FROM ❑ Female ❑ Male ❑ X **TO** ❑ Female ❑ Male ❑ X

Check the applicable boxes and sign below to confirm that you have read and acknowledge the corresponding statements. (For male and female, check boxes 1 and 2 only. For gender X, check all four boxes.)

❑ 1. I have assumed, identify with and intend to maintain the gender identity that corresponds with the requested change

❑ 2. I am providing a "Physician's or Psychologist's Confirmation of Change of Gender Designation" form (VSA 510p).

❑ 3. I understand that the Province of British Columbia cannot guarantee acceptance of a birth certificate with an "X" designation by organizations or governments and that the "X" marker is not universally accepted.

❑ 4. I understand that as the holder of a birth certificate, it is my responsibility to check with organizations and program areas that I intend to transact with about their application or enrolment requirements regarding birth certificates with an "X" designation.

X _____ DD / MM / YYYY
SIGNATURE OF APPLICANT DATE (DD/MM/YYYY)

I, _____ hereby give consent for _____ to change their gender designation
NAME OF PARENT OR LEGAL GUARDIAN * NAME OF APPLICANT

FROM ❑ Female ❑ Male ❑ X **TO** ❑ Female ❑ Male ❑ X

X _____ DD / MM / YYYY
SIGNATURE OF PARENT OR LEGAL GUARDIAN* DATE (DD/MM/YYYY)

I, _____ hereby give consent for _____ to change their gender designation
NAME OF PARENT OR LEGAL GUARDIAN * NAME OF APPLICANT

FROM ❑ Female ❑ Male ❑ X **TO** ❑ Female ❑ Male ❑ X

X _____ DD / MM / YYYY
SIGNATURE OF PARENT OR LEGAL GUARDIAN* DATE (DD/MM/YYYY)

***GUARDIANS MUST PROVIDE LEGAL DOCUMENTATION PROVING GUARDIANSHIP.**

DETAILS OF BIRTH AS CURRENTLY REGISTERED

SURNAME ON BIRTH RECORD	GIVEN NAME(S) ON BIRTH RECORD	SEX

BIRTHDATE (DD/MM/YYYY)	BIRTHPLACE (CITY/TOWN/VILLAGE)
DD / MM / YYYY	**BRITISH COLUMBIA**

SURNAME OF FATHER/PARENT	GIVEN NAME(S)	BIRTHPLACE OF FATHER/PARENT (CITY, PROVINCE/STATE, COUNTRY)

MAIDEN SURNAME* OF MOTHER/PARENT	GIVEN NAME(S)	BIRTHPLACE OF MOTHER/PARENT (CITY, PROVINCE/STATE, COUNTRY)

*The mother's maiden surname is the last name she was given at birth, or if a legal change of name has been completed, her new last name as noted on the Certificate of Change of Name. In Canada, the mother's birth surname or surname following a legal change of name is always listed on the child's birth registration and the parental birth certificate, even if she is married.

PRIVACY INFORMATION

This information is collected by the Vital Statistics Agency under section 26(c) of the *Freedom of Information and Protection of Privacy Act*, and will be used to fulfill the requirements of the *Vital Statistics Act* for the release of gender designation information. Should you have any questions about the collection of this personal information, please contact:
Manager, Vital Statistics Agency, 250 952-2681, PO Box 9657, Stn Prov Govt, Victoria BC V8W 9P3.

This form is subject to verification and audit by the Province of British Columbia.

SEE PAGE 2 OF THIS FORM FOR AMENDMENT FEE INFORMATION AND TO ORDER A NEW B.C. BIRTH CERTIFICATE

PLEASE NOTE:

The $27 amendment fee charged when you change the gender designation on your birth registration does ***not*** include a new B.C. birth certificate. You must order a new certificate if you wish to have a birth certificate displaying the changed gender designation.

B.C. BIRTH CERTIFICATE SERVICES/FEES

To order a new birth certificate(s), enter a quantity of 1 or 2 beside your selection below and add its cost to the amendment fee in the "Payment Methods" section at the bottom of this page. Different document types are mailed in separate envelopes. **All birth certificates issued before the amendment must be returned to Vital Statistics.**

Qty. (Limit 2 of each)	Description of Birth Documents	Cost Based on Delivery Type		Estimated Date of Delivery Once the Amendment is Complete	
		Mail	Courier	Mail	Courier†
#	**Individual information only** - Includes the subject of the birth certificate's name, sex, place and date of birth. (12.5 cm x 17.7 cm)	$27	$60	Prints in 2 - 5 business days; **add** mailing time from Victoria B.C. to you.	Prints next business day; **add** courier delivery time from Victoria B.C. to you.
#	***Parental information included** - Includes the subject of the birth certificate's name, sex, place and date of birth, plus names and birthplaces of parents listed on the registration. (12.5 cm x 17.7 cm)	$27	$60	Prints in 2 - 5 business days; **add** mailing time from Victoria B.C. to you.	Prints next business day; **add** courier delivery time from Victoria B.C. to you.
#	**Registration Photocopy -** A certified photocopy of the original birth registration completed at the time of birth. This document is seldom required for applications.	$50	$60	Prints within 20 business days; **add** mailing time from Victoria B.C. to you.	Prints next business day; **add** courier delivery time from Victoria B.C. to you.

* Children (18 and under) require a birth certificate with **parental information included** for passport, school enrollment, and many other applications.

† Courier service is not made to post office boxes, apartment complexes, homes that use Super Box (community) mailboxes, or basement suites. Instead, a delivery notice with instructions is left at the mailing address and the envelope is delivered to the nearest postal outlet. ID and signature are required upon pick up.

B.C. BIRTH CERTIFICATE CONTACT INFORMATION

ENQUIRIES & CREDIT CARD ORDERS

Telephone: **250 952-2681** (Victoria & Outside B.C.)

Toll Free: **1 888 876-1633** (within B.C.)

Website: www.gov.bc.ca/vitalstatistics

ADDRESS ALL DOCUMENTS TO:

ATTENTION: Ingrid Bloomfield
Vital Statistics Agency
305 - 478 Bernard Ave
Kelowna BC V1Y 6N7

PAYMENT METHOD

❑ Cheque or Money Order payable to the Minister of Finance. **(Postdated cheques are not accepted.)**

❑ Credit Card: Please bill my: ❑ Visa ❑ MasterCard ❑ American Express

Interac/Cash payments can be made in person at a Service BC Centre. Visit www.servicebc.gov.bc.ca to find a location near you.

Card holder name: _____
PRINT card holder name as shown on credit card

Card holder signature: X _____

Amount Enclosed:

Ammendment Fee	$ 27.00
New Certificate(s) (See Services/Fees above)	$ _____
Total Amount Enclosed	$ 27.00

Credit Card #: _____ Expiry date: _____

Note: Credit card information is not retained. Upon authorization of the payment request, credit card information is destroyed.