

## Indigenous Communities' Safety Project

Funded by:  
 Law Foundation of Ontario  
 Vancouver Foundation

## Project Purpose

Public legal information and education will also be disseminated through:

- A province-wide videoconference to reach 150 rural and remote Aboriginal communities
- Presentations at third-party conferences across BC
- Online publications and other written materials



## Beverley Jacobs

Beverley's Mohawk name is Gowehgyuseh. It means, "She is visiting." Her home community is Six Nations of the Grand River Territory in Southern Ontario, where she is currently practicing law on a part-time basis. She is working on an interdisciplinary PhD in Law, Indigenous Research Methodologies and Aboriginal Health at the University of Calgary, Alberta. She is a consultant/writer/researcher and has contracted recently with the BC Centre of Excellence of Women's Health and with the Ending Violence Association of BC as its Indigenous Communities Project Consultant.



## Who Will Benefit?

- Victims/survivors of domestic/sexual violence and child abuse/neglect.
- Aboriginal service providers, including leaders, advocates and intermediaries.
- Service agencies providing legal aid, access to justice and court services.

## Project Purpose

- provide knowledge sharing to Aboriginal leadership including governance leadership, service providers and the natural leadership
- work with 12 Aboriginal communities (First Nations and urban Aboriginal communities)
- focus on criminal justice, family justice and child protection laws, policies and practices that directly affect police and government responses to domestic and sexual violence and child abuse and neglect



## Project Managers

## Project Goals

- Encourage communities to discuss practical ways to improve safety and access to justice for women and children.
- Help communities develop community safety plans that will help keep women and children safe from domestic and sexual violence and child abuse and neglect.
- Empower Aboriginal communities across the province to respond to violence.
- Empower Aboriginal service providers to better assist Aboriginal communities—especially women and children—to keep themselves safe, to be aware of their legal rights and to access justice if they become victims.

## Is Your Community Ready?



## Project Goals

- Raise awareness about law and policy, including relevant aspects of the Criminal Code, the RCMP Primary Aggressor Policy, the provincial Violence Against Women Policy, the High Risk Domestic Violence Protocol and the Child Protection Domestic Violence Guidelines.
- Equip Aboriginal communities with the tools they need to identify lethal domestic violence-related risk factors, respond to disclosures and negotiate help.
- Equip service providers working in these communities with the knowledge they need to ensure that women and families know their rights and understand the laws and policies that can help keep them safe.

## Is Your Community Ready?

- Is the leadership (governance, service providers and natural leaders) supportive in addressing the issues of violence against Aboriginal women?
- Is the leadership willing to fully participate in a minimum of three days of training?
- Are there strong partnerships in the community among service providers?
- Does the community currently have partnerships/make referrals to non-Aboriginal services?
- How do service providers collaborate now and is there a debriefing process?
- Are there Elders/Traditional Knowledge Holders who can provide teachings about roles and responsibilities of men and women in community, healthy relationships, healthy sexual relationships?
- Will your leadership make it possible to implement a community safety plan post-training?

## Project Goals

- Help improve access to justice by putting information in the hands of the helping community and leadership.
- Help reduce re-victimization.
- Provide an alternative for victims of violence who do not feel comfortable seeking assistance from a non-Aboriginal person or service.
- Foster relationships with mainstream legal and justice communities that will encourage cross-sector, cross-culture collaborations in the future.
- Facilitate the creation of networks that encourage services to work together and encourage women to report domestic and sexual violence to police and access justice and child protection systems.

## Knowledge Sharing Workshop

There are four modules to the three-day workshops:

### History and Impacts of Colonization

How We Got Here: The History of Colonization  
Impacts of Colonization on Self, Family, Community and Nation  
Trauma on Self, Family, Community and Nation  
Community Willingness to End the Silence, Shame, Guilt

### Breaking the Silence

Becoming Aware of the Impacts  
Types of Violence  
Knowing the Risks  
When Women Stay and When Women Leave

### The Right to be Safe

Provincial Policies for Increasing Safety  
Laws Related to Sexual and Relationship Violence  
When The System Breaks down  
Protecting Children  
When Women Are Arrested  
Safety On The Road

### Healing

Healing from Violence  
Traditional Knowledge/Teachings  
Working Together for Safer Communities: The Importance of Coordination of Services  
Community Safety Planning

## **Project Consultant**

**Beverley Jacobs, LL.B., LL.M, PhD Student**

Indigenous Communities Project Consultant  
Ending Violence Association of BC

Email: [jacobs@endingviolence.org](mailto:jacobs@endingviolence.org)

Phone: 604-633-2506 ext. 16

Fax: 604-633-2507

## An Overview of the New *Family Law Act*

John-Paul Boyd  
Aaron Gordon Daykin Nordlinger

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

### Parentage

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

Determining parentage, the care of children and mobility issues.

### CHILDREN

### Guardianship

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

### Parentage

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

### Guardianship

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

## Guardianship

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

## Moving with a child

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

## Parenting arrangements

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

## Moving with a child

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

## Contact

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

## Children's property

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

## Making changes

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

## Ranked priorities

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

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

## CHILD SUPPORT

## The not-so-sweet hereafter

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

## Disqualifying minors

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

## Making changes

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

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

## SPOUSAL SUPPORT

## Reviews

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

## Standing

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

## Support in the afterlife

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

## Duration and amount

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

## Making changes

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

Family property, family debt and excluded property.

## PROPERTY AND DEBT

### Family debt

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

### Standing

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

### Excluded property

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

### Family property

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

### Presumptions

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

## Triggering event and valuation

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

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

## DISPUTE RESOLUTION PROCESSES

## Dividing family property unequally

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

## Dispute resolution processes

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

## Dividing excluded property

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

## Family dispute resolution

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

## Duties of professionals

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

## Conduct orders

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

## Family dispute resolution

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

## Enforcement

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

## Parenting coordinators

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

## General enforcement powers

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

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

## FAMILY VIOLENCE

### Best interests of child

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

### Protection orders

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

### Screening for violence

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

### Protection orders

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

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

## HIGHLIGHTS

## Children

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

## Spousal support

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

## Children

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

## Property and debt

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

## Child support

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

## Property and debt

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

## Court processes

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

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

## Working with LSS Intake



February 2, 2012

Wendy Thompson  
Provincial Supervisor, Legal Aid Applications  
Tel: 604-601-8093

1

## Who qualifies?

**A client qualifies for legal aid when:**

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

**Approved**

4

## How to apply for legal representation?

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



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

2

## What legal problems are eligible for coverage?

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



5

## Our clients



3

## Family Law



6

## Child removal



7

## Financial Eligibility

Personal Property (All case types)

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

10

## Immigration



8

## Appealing a refusal

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

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

11

## Financial Eligibility

Income chart(All case types)

Household Size	Monthly Net Income
1	\$1,450
2	\$2,030
3	\$2,600
4	\$3,170
5	\$3,750
6	\$4,330
7 or more	\$4,920

9

## Working Together

You can help your clients:

- ▶ Understand the intake process
- ▶ Prepare for the interview
- ▶ Organize documentation
- ▶ Make sure they follow up and provide intake with requested info

12

## More information

- ▶ Legal Services Society [www.legalaid.bc.ca](http://www.legalaid.bc.ca).
- ▶ Family Law in BC [www.familylaw.lss.bc.ca](http://www.familylaw.lss.bc.ca)

13

Presenter: Sherilyn Thompson  
Provincial Supervisor, Legal Aid Applications

- ▶ Phone: 604-601-6093
- ▶ Fax: 604-682-0787
- ▶ Email: [sherilyn.thompson@lss.bc.ca](mailto:sherilyn.thompson@lss.bc.ca)

14