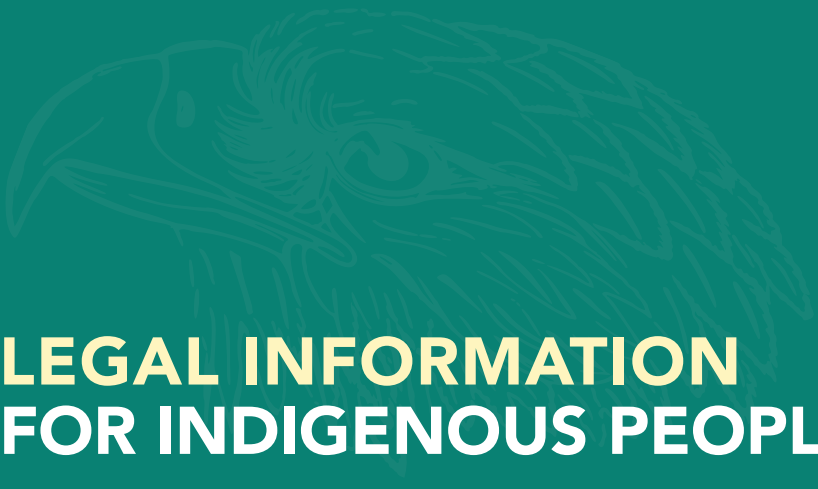


En route Bella Coola to Bella Bella, 2010

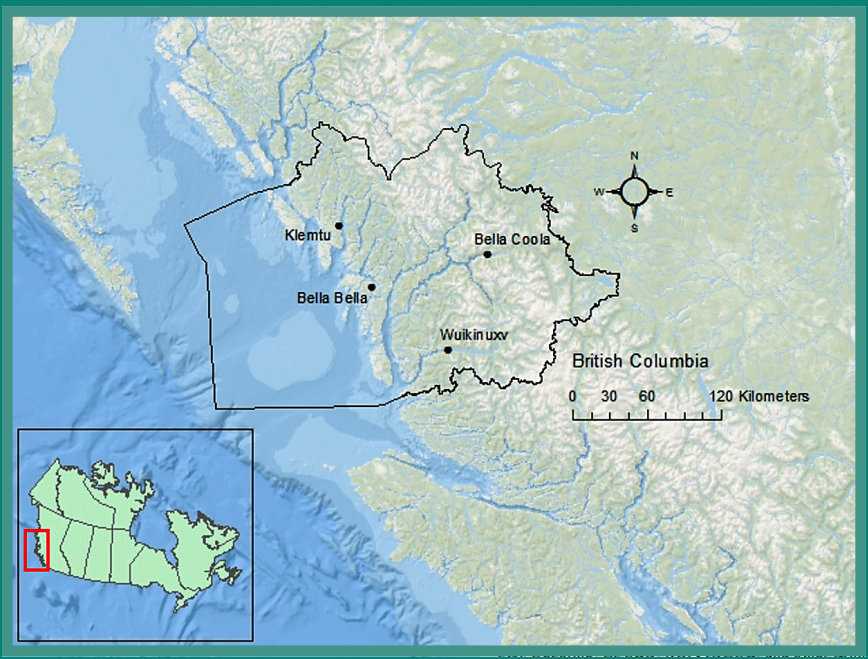
LEGAL INFORMATION FOR INDIGENOUS PEOPLE

A Project of the Bella Coola Legal Advocacy Program



LEGAL INFORMATION FOR INDIGENOUS PEOPLE

The Bella Coola Legal Advocacy Program ("BCLAP") provides free and confidential services in the communities of Bella Coola, Anahim Lake, Bella Bella, Klemtu and Wuikinuxv, the traditional territories of the Nuxalk, Ulkatcho, Heiltsuk, Kitasoo/Xai'xais and Wuikinuxv peoples, respectively.



Map of BCLAP Service Area

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This booklet available for download on Facebook @BCLegalAdvocates and on Clicklaw Wikibooks at http://wiki.clicklaw.bc.ca

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THE LAW FOUNDATION OF BRITISH COLUMBIA

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Great appreciation too, to the dedicated lawyers of the Circuit Courts, working above and beyond to increase access to justice in the remote communities.

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Amber Prince

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FOREWORD

As a member of a Nation, I know how daunting it can be to understand whether, how, and what laws apply. For Indigenous Peoples, unique, changing, and contested laws often apply. Indigenous people need to know: what laws may apply to them, the steps involved, the consequences of those laws, their rights, and the options to pursue their rights.

This Booklet was created by frontline advocates who understand the everyday legal issues that Indigenous people face. As a result, this Booklet provides critical and practical legal guidance that Indigenous people need. I have no doubt that this Booklet will be an invaluable resource for Indigenous people across BC.

Kinanâskomitin for this important resource,

Amber Prince
member, BC Human Rights Tribunal
and member, Sucker Creek (Cree) Nation (Treaty 8)

Introduction

The Bella Coola Legal Advocacy Program has provided services to people in Bella Coola and the neighbouring territories for nearly 15 years. People come in for help with everything from family and criminal matters to wills and estates, to employment standards, human rights, debt, housing, pensions, and more. This work inspired this resource. When we dealt with these different legal issues, we knew that our clients' legal situations would often be based on their being Indigenous and/or their living on reserve. At the same time, we were not finding many legal resources that comprehensively looked at this or provided much guidance. We wanted to create a booklet that would address this gap and be readily available to the people in our communities and beyond. This booklet offers a snap-shot of the legal issues people face and lays out the first steps for people navigating these legal situations.

Legal Information for Indigenous People

- provides quick access to basic legal information that is not always readily available
- offers a concise guide for people facing legal concerns
- eases the first hurdle for people - knowing what questions to ask
- makes complex information easier to understand.

Although the laws are often the same for Indigenous and non-Indigenous people, there are a number of important areas where this is not the case. Laws can vary for people based on their Indigeneity in matters of child protection, criminal justice and human rights. These areas of law offer different legal processes and remedies for Indigenous people to better support their specific situations. Laws can also vary for Indigenous people based on their living and working on reserve. Taxation, Wills & Estates and Matrimonial Property are all examples of this.

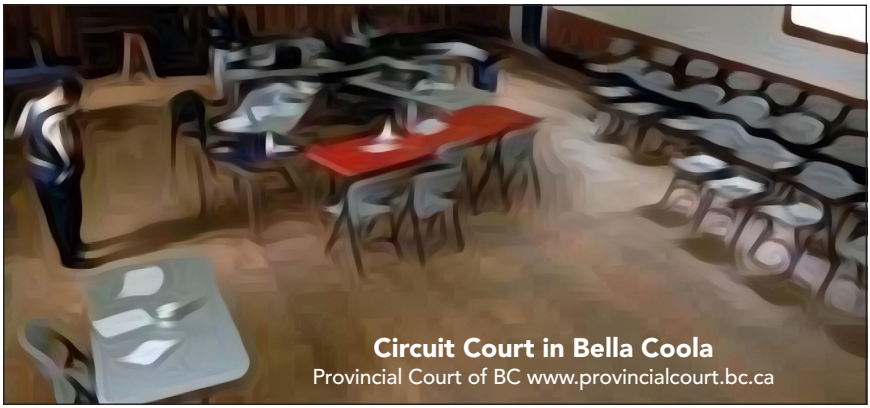
Although our clients are primarily Indigenous and living on reserve, the BCLAP often has to switch gears and assist both Indigenous and non-Indigenous people living off the reserve. Even when the laws are the same for everyone, people can still be unsure how best to proceed. *Legal Information for Indigenous People* is for this, too. This booklet is good to have on hand for when you, family or friends find yourselves in legal situations and are not sure what to do. This publication is not a replacement for seeking legal advice, however. For additional questions about your situation, please contact one of the many resources suggested here.

JUSTICE SYSTEMS

Circuit Courts
Legal Supports
Legal Aid Eligibility
If you are charged
Restorative Justice
Gladue Reports
Indigenous Court
Youth Criminal Justice

CIRCUIT COURT
In Remote Communities

Smaller and more remote communities are often on a Circuit Court system. In Bella Coola and Bella Bella, for example, the Provincial Circuit Court sits every 3 months for 3-4 days and every 6 months in Klemtu, for a day. What this means is that there is no regular sitting BC Provincial Court here. Rather, a traveling court team comes to town for regular scheduled sittings. "Court" means one room of trestle tables occupied by lawyers, clerks, Sheriffs and the Judge and rows of chairs filled with waiting community members.



Circuit Court in Bella Coola
Provincial Court of BC www.provincialcourt.bc.ca

In these communities a 3-month Circuit can mean people could wait for 3 months to have their matter started, much less resolved. Sometimes it can mean 3 months until people are able to speak with a lawyer for anything beyond summary advice on the telephone. Having said that, some matters can be resolved more quickly. Remand court happens monthly with video court appearances being heard in Vancouver Provincial Court. Criminal matters can go from First Appearance to trial within a year, and other dispositions even more quickly. Because the Circuit has 2 family counsel available, family matters can sometimes be resolved via collaborative mediated processes, and through access to the court for family conferences, etc.

Family, Child Protection, Criminal, *Motor Vehicle Act* and Small Claims are all heard at Circuit Court. Family matters include child guardianship, parenting time and responsibilities, child and spousal support, protection orders, etc. Regulatory offenses under the *Wildlife Act* (provincial) and *Fisheries Act* (federal) are also dealt with at Circuit Court. These can include harvesting offenses.

LEGAL SUPPORTS

For the remote communities of the Central Coast, understanding and engaging the law is impeded by physical isolation, overburdened circuit courts, rotating police forces and cultural differences in dispute resolution. Courts can raise a lot of anxiety. People need to understand what they are facing, what options are possible and what support is available.

There are a growing number of legal resources to support people who are

- being charged with a criminal or harvesting offense,
- dealing with the MCFD on a child protection concern, or
- coming before the court to ask for help with a contested family matter.

Legal Aid BC Lawyers

"Duty Counsel" lawyers can give you basic advice about your legal rights, obligations and the court process. You can also apply to Legal Aid BC to have a lawyer appointed to represent you for family, child protection, criminal matters and harvesting offenses.

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

If you need help applying for a legal aid lawyer, Legal Aid BC **Community Partners** and Law Foundation of BC **Legal Advocates** can help with your application. They can also provide legal information and advocacy on a wide range of matters. Legal Advocates such as these provide free and confidential services throughout the province.

For legal advocacy near you, see:
www.povnet.org/find-an-advocate and
www.legalaid.bc.ca/legal_aid/communityPartners

Coming up, this Indigenous-specific programming:

- Native Courtworkers, p.8
- Indigenous Justice Centres (IJC), p.8
- Restorative Justice Programs, p.9
- Gladue Services, p.10-11
- Indigenous Courts, p.12

LEGAL AID ELIGIBILITY

YOU ARE ELIGIBLE IF:

You have a legal problem in the following legal aid coverage areas:

- criminal charges
- harvesting offenses
- serious family problems
- child protection matters
- mental health
- prison issues
- immigration and refugee issues

Your net monthly household income is at or below financial guidelines (depends on legal issue and household size)

You match the criteria required for your specific legal aid coverage area

To Apply call 1-866-577-2525 Legal Aid BC

FAMILY MATTERS
You are eligible if:

You meet income requirements

Your family matter is urgent:
e.g. denial of access to child, violence, taking child from jurisdiction, etc.

You will need to have the following information:

- Proof of Income (pay stubs, social assistance slips, bank statements)
- Why/how your matter is urgent. Call a Legal Advocate for help with this.

LEGAL AID ELIGIBILITY

CHILD PROTECTION MATTERS

You are eligible if:

You meet income requirements → MCFD or a delegated Aboriginal agency has taken or threatened to take your child away from you

You will need to gather the following information:

- Proof of Income (pay stubs, social assistance slips, bank statements)
- Name of Social Worker
- Court dates or Investigation details

Get legal advice as soon as possible when dealing with Ministry of Children and Family Development (MCFD).

CRIMINAL MATTERS

You are eligible if:

You meet income requirements → Crown is seeking jail time

You will need to gather the following information:

- Your legal issue and the charges from the police
- Your Promise to Appear
- Proof of Income (pay stubs, social assistance slips, bank statements)
- Initial Sentencing Position issued by the Crown (states whether facing jail time)

You could get "early referral contracts" for legal advice, if the crown is not seeking jail.

Youth have a right to a Legal Aid lawyer but they need to call Legal Aid to get one referred.

HARVESTING OFFENCES

You are eligible if:

You meet income requirements → You are Indigenous (Status or non-Status) → The charge affects your ability to follow a traditional livelihood of hunting and fishing

You will need proof of income and the ticket information.

IF YOU ARE CHARGED
With a Criminal Offence

- **Do not** speak to the police.
- Get legal advice as soon as possible.
- You are **not required** to make or sign a statement with police.
- **Do not** talk in public or on any social media such as Facebook about the charges.

You can get legal information, legal advice and potentially legal representation from Legal Aid BC.
www.legalaid.bc.ca/legal_aid/criminalAndImmigrationDutyCounsel

Plain language publications about court matters: the "Defending Yourself" series, "Gladue and You," etc. available at www.legalaid.bc.ca/publications

Call a Native Court Worker, Community Partner or Legal Advocate to help you apply for Legal Aid.

Native Court Workers

http://www.nccabc.ca

1-877-811-1190 all BC
+Ext 362-Williams Lake
+Ext 356-Bella Bella/Klemtu

Native Courtworkers can assist you at every stage of the court process. The purpose of the Native Courtworker is to facilitate and enhance access to justice by assisting Indigenous people involved in the criminal justice system to obtain fair, just, equitable and culturally sensitive treatment.

Indigenous Justice Centres (I.J.C.)

Culturally-appropriate information, advice, support and representation for Indigenous people. The I.J.C.'s are continuously expanding their services to better meet the legal needs of Indigenous people in BC, so be sure to check in with the I.J.C.'s for help with Indigenous-based legal services to see if your issue is covered.

You qualify if:

- You are Indigenous or self-identify as Indigenous
- You have a legal issue that falls under either criminal or child protection
- You have been declined by Legal Aid BC

Call BCFNJC for an Indigenous Justice Centre near you.

1-877-602-4858 or
Remote communities call
Virtual I.J.C. 1-866-786-0081

BC FIRST NATIONS
JUSTICE COUNCIL

RESTORATIVE JUSTICE

Restorative Justice refers to justice systems that focus on accountability, healing and the restoration of balance. The justice systems of Indigenous people have traditionally drawn their justice practices from cultural values such as these. As colonization replaced Indigenous systems with a criminal justice system prioritizing punishment and incarceration, restorative justice outcomes for Indigenous peoples plummeted. There have been attempts to reform the justice system with diversion programs that take criminal matters from the courts and divert them to alternative processes. This is often seen with Youth offenders. More recently, we have seen more Indigenous community-based justice programs offering culturally-based responses to harms (crimes) that occur in their communities.

This can still involve the diversion of situations from the criminal justice system but, in addition, it can also involve placing these matters back within the Indigenous legal traditions of the community.

Restorative Justice practices can be different in every community.

Restorative Justice programs allow for justice processes such as restitution, healing circles, circle sentencing, peace keeping circles, participation in community or cultural events, isolation, banishment, etc.

Restorative Justice Resources in the Region:

- **Nuxalk Restorative Justice Program** provides culturally based services to court-involved community members.
- **Nuxalk Safety Committee** may make recommendations to the RCMP, the Court, Nuxalk Chief and Council, and Hereditary Leadership.
- **Heiltsuk Gvilas Community Justice Office** works to deal with justice issues in the community, to prevent and respond to conflict and harm. This is done through Heiltsuk value based processes that engages elders, adults, and youth. Heiltsuk Justice has an “open door” policy and provides services to all in the north central coast.
- **Williams Lake Restorative Justice** 250-392-9709
- **Youth** charges may be referred by police to diversion or Restorative Justice programs - called an extrajudicial measure.

For a listing of Restorative Justice Programs throughout the Province see the BC First Nations Justice Council website.
www.bcfnjc.com/directory-services

GLADUE REPORTS

"Gladue Reports document an offender's unique struggles as a survivor of colonialism. The purpose of these reports is to assist the court in finding alternatives to prison, and in turn, decrease the overrepresentation of Indigenous people in Canadian jails."

– Honourable Harry S. LaForme, *First Peoples Law Report*, Nov 24, 2021

Indigenous people have specific rights, Gladue rights, when they become involved with the criminal court. It is important to know about these rights and make use of them if you are facing jail time, either at bail hearings or sentencing after a conviction. Ask your lawyer about these rights. You want to have lawyer who knows about these rights. Call the BC First Nations Justice Council for help with this at 1-877-602-4858.

Gladue rights come from the Supreme Court of Canada decision *R. v. Gladue* (1999). This case involved the sentencing of an Indigenous woman convicted of manslaughter. In that decision, the Court said " In sentencing an aboriginal offender, the judge must consider: (A) The unique systemic or background factors which may have played a part in bringing the particular aboriginal offender before the courts; and (B) The types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his or her particular aboriginal heritage or connection."

If you identify as Indigenous and are charged with a crime, the judge must apply these Gladue principles when you're in a criminal court. This means the judge must consider your personal and unique circumstances as an Indigenous person when they make a number of decisions about you, such as your bail or sentence.

Gladue reports could include background factors that may have contributed to bringing an Indigenous offender before the courts, for example Residential school, 60's scoop, intergenerational trauma, etc.

If you do not want a Gladue Report, you are still covered by section 718.2(e) of the *Criminal Code*:

Courts are to consider Indigenous backgrounds and consider all available sanctions besides imprisonment. Sanctions must be reasonable and consistent with harm done to the victim or community.

GLADUE REPORTS

HOW TO OBTAIN A REPORT:

www.bcfnjc.com/information-for-the-public

- The Gladue reports program in BC is administered and managed by the BC First Nations Justice Council.
- Anyone who self-identifies as First Nations, Métis or Inuit has Gladue rights and can request a Gladue report.
- Gladue rights apply whether you live on or off reserve.
- The BCFNJC prepares Gladue reports for bail, sentencing, appeals, long-term offender hearings, dangerous offender hearings and parole hearings.
- Ask your lawyer to request a Gladue report.

Gladue Services 1-877-602-4858

BC FIRST NATIONS
JUSTICE COUNCIL

BCFNJC "Justice Through Self-Determination"

Please note they can take up to 8 weeks to complete. It is your **right** to request a report, but they are not **required**.

Caution: Gladue reports can be traumatic for some individuals and their families. Family and community members may be interviewed to help with the report.

Interested in becoming a Gladue Report Writer?

- Training is available through the Indigenous Perspectives Society: 250-391-0007
- Training is 10 weeks and costs $1800

www.ipsociety.ca

INDIGENOUS COURTS

If you identify as Indigenous and plead guilty or are found guilty of a crime, you might be able to have your bail or sentencing hearing in a First Nations/Indigenous Court in BC. Indigenous Courts are available to status and non-status people, First Nations, Métis, and Inuit, living on or off reserve. You have the choice to have your matter heard there. Talk to your lawyer or Indigenous Court duty counsel (1-877-601-6066) about what's best for you. You could be brought into an Indigenous Court by referral from a judge, defense lawyer, or Crown Counsel.



"In First Nations/Indigenous Court, the judge, your lawyer, Crown counsel (government lawyer), Indigenous community members, and your family work with you to come up with a healing plan. A healing plan is a way to help you, your community, and the victim of your crime move on. You have to accept responsibility for your actions and work on issues that may have contributed to get you in trouble with the law in the first place."

– *Gladue and You*, Legal Aid BC

The judge looks at the harm you caused to victims, your background, your needs now, and how a healing plan can be made for you and your community.

Indigenous Courts are in Duncan, Kamloops, Merritt, New Westminster, North Vancouver, and Prince George and there may be more locations in the future. Indigenous Court is usually held once a month at each location.

First Nations Court information taken from
https://aboriginal.legalaid.bc.ca/courts-criminal-cases/first-nations-court

For more details check out the Legal Aid BC online publication
"What's First Nations Court?"

YOUTH CRIMINAL JUSTICE

Youth involved in the criminal justice system are handled differently than adults. Special federal legislation – the *Youth Criminal Justice Act* (YCJA) – applies to people who were 12 to 17 at the time of the alleged crime. Youth who have been charged attend the Youth Justice Court, which is part of the Provincial Court of B.C.

If you are a youth charged with committing a crime, you should be aware of your rights, including the right to:

- Be told why you are being charged and what your rights are in a way that you understand.
- Talk to a lawyer, parent or other adult about your situation before you give a statement to police
- To have a lawyer, parent or other adult with you if you give a statement
- Not answer any questions about the crime and be warned that, if you do say something, it may be used against you in court

YCJA has special provisions that allow police and Crown to deal with a youth without using the formal youth court system. These are called extrajudicial measures and extrajudicial sanctions. Ask about local Restorative Justice or Indigenous Court.

Youth are automatically eligible for Legal Aid to pay for a lawyer. Call Legal Aid at 1-866-577-2525 to get one appointed.

Personal information of a youth offender is kept confidential. This means the identity of a youth offender cannot be published and access to youth records is very limited.

CHILDREN AND FAMILIES

Child Protection Law
Child Protection Resources
Jordan's Principle
Rights of Child
Family Law

CHILD PROTECTION LAWS

The legal landscape of child protection law is changing in Canada.

It is important to know about the different laws that could apply to your situation. There are different laws to consider in a child protection case.

Federal
An Act Respecting First Nations, Inuit and Métis Children, Youth and Families (Bill C-92)

Provincial:
Child, Family and Community Service Act (CFCSA)

Indigenous Laws
Nations have Indigenous laws and traditions and many have or will be enacting their own child protection laws.

"The Federal Act requires that the Indigenous laws and traditions of a child's own community be reflected in all aspects of caring for that child, even where the Indigenous community has not entered (or may not enter) a process to officially pass their own child welfare law."

– Ardith Walkem, *Wrapping Our Ways Around Them*

The Federal Act

- affirms the inherent right of Indigenous self-government, which includes jurisdiction in relation to child and family services;
- sets out national standards for the provision of child and family services in relation to Indigenous children; and
- sets out the best interests of Indigenous children, which includes factors such as:
  - their cultural, linguistic, religious and spiritual heritage
  - the nature and strength of their relationship with their parents, care providers, or extended family
  - the importance to the child of preserving their cultural identity and connections to the language and territory

The Federal Act also sets out the priority for placement of Indigenous children if necessary in the following order:

- One of the child's parents
- Another adult member of the child's family
- An adult from the same Indigenous community
- An adult from another Indigenous group
- Finally, any other adult.

CHILD PROTECTION LAWS
Provincial Law

Provincial child welfare law is called the *Child, Family and Community Service Act* (CFCSA). The *CFCSA* applies to all children in BC, on and off reserve.

The Ministry of Children and Family Development (MCFD) as well as Delegated or Semi-Delegated Aboriginal Agencies administer child services under the *CFCSA*.

If MCFD Social workers contact you with concerns about your child , it is important to get legal advice as soon as possible.

Social workers' roles include investigating reports of child abuse or neglect and they have authority to remove children from homes if children are at immediate risk. Get support and learn about your rights.



You and your family also could have Band supports available.

- Under the *CFCSA*, the MCFD must give notice to the Band when they become involved with a family
- Each Band has a designated representative or equivalent who is supposed to be notified if the MCFD is contacting you.
- You can insist that your Band representative be present for any questioning, meetings with social workers or court proceedings

For legal supports for Child Protection issues, see pages 18-20 for some local and provincial suggestions.

CHILD PROTECTION LAWS

When there is a Conflict between Laws

As a general rule:

- If the conflict is between federal and provincial law, the federal law prevails.
- If there is a conflict between the federal law and the law of the Indigenous Nation, the Nation's law is paramount with some limitations.
- If there is a conflict between two Nations' laws, the law from the community to which the child has stronger ties prevails.

Under the Federal Act, Provincial laws and policies continue to apply to the extent of a conflict or inconsistency with federal laws or Indigenous laws over child and family services. In which case, both the federal laws and Indigenous laws prevail over the *CFCSA*. The Federal Act was enacted in part to ameliorate the "unreasonable infringement" of the Indigenous right to self-determination and the right to self-government over child welfare matters.



This is an evolving area of law.
For more information, seek legal advice.



Atira Women's Resource Society: 604-331-1407 x.114

Email is volunteeradvocate@atira.bc.ca

Indigenous Community Legal Clinic: 1-888-684-7874

CHILD PROTECTION RESOURCES

Legal Aid BC

Free legal representation for child welfare matters (see page 5)

1-866-577-2525

Call a Legal Advocate for help with applications

Virtual Indigenous Justice Centre

1-866-786-0081

Eligibility:

- Be Indigenous or self-identify as Indigenous
- Legal issue that falls under "child protection"
- Been declined by Legal Aid

Legal Aid BC has published several resources such as "Parents Rights, Kids Rights," "Keeping Aboriginal Kids Safe," etc.

https://legalaid.bc.ca/publications

Wrapping Our Ways Around Them is a resource that empowers Indigenous Nations and community involvement in caring for Indigenous children. It provides advice to lawyers, judges, children, families, community members and social work teams.

https://legalaid.bc.ca/publications/pub/wrapping-our-ways-around-them



Nuxalk Nation Health and Wellness
Community Wellness worker
250-799-5809

Semi-Delegated Aboriginal Agencies in the region:

- **Heiltsuk Kaxla Society** (Bella Bella): **1-250-957-4325**
- **Denisiqi Services Society** (Ulkatcho Nation, Williams Lake): **1-250-392-6500**

MCFD social workers
(Bella Coola): **1-250-799-5395**

CHILD PROTECTION RESOURCES
For Parents

Parents Legal Centres (PLCs) help parents with child protection matters.
1-888-522-2752

- The PLC lawyer and advocate can help you address the social worker's concerns about your children's safety (child protection) early on.
- PLCs help parents resolve their child protection matters early and collaboratively, offering services at any stage of the child protection matter.
- The PLCs provide:
  - information and advice on options for resolving child protection issues out of court,
  - legal advice and representation, where appropriate, through collaborative processes such as mediation and family case planning conferences,
  - legal advice and representation at uncontested hearings,
  - an advocate who will support you and go with you to meetings and appointments, and
  - referrals to other services, including online resources and other public agencies

Legal Aid BC

Navigating the child welfare system can be a distressing experience and have a negative impact on your mental health. Please reach out to resources for support:



Contact the 24 Hour Residential School Crisis Line at 1-866-925-4419 if you require emotional support.

KUU-US Crisis Line Society
INDIGENOUS CRISIS LINE

24/7 365 Days A Year

HELP IS ONLY A PHONE CALL AWAY

1-800-588-8717

JORDAN'S PRINCIPLE

Jordan's Principle is a legal rule that ensures that all Indigenous children living in Canada can access the products, services and supports they need, when they need them. Funding can help with a wide range of health, social and educational needs, including the unique needs that Indigenous Two-Spirit and LGBTQQIA children and youth and those with disabilities may have.

CRITERIA FOR ACCESS

The child must be under 19 years old, a permanent resident of "Canada," and meet one of the following criteria:

- Registered or eligible to be registered under the *Indian Act*; or
- Has a parent or guardian registered or eligible to be registered under the *Indian Act*; or
- Recognized by their Nation for the purposes of Jordan's Principle; or
- Is ordinarily resident on reserve.

Who can submit a request?

- Parent or guardian of an Indigenous child
- Indigenous child over the age of 16
- Authorized representative of the child, parent, or guardian

To apply:

- Contact your local Jordan's Principle Service Coordinator

and

- Contact a Legal Advocate before making an application

Visit www.jordansprinciplehubbc.ca for more info



Ensuring First Nations children receive the public services they need when they need them

RIGHTS OF CHILD

Children have rights and can become parties to Court proceedings when they have the capacity to instruct counsel (usually 12 or older). This means a lawyer can advocate on the child's best interests during the court proceedings.

The **Child Youth Legal Center** can provide legal help for young people who are experiencing problems relating to family law and child protection. They can also help find legal representation for children.

Call: 1-877-462-0037



Legal Rights of a Child

Participatory rights and access to counsel are important elements of access to justice. A child's views should be heard in proceedings that affect their lives. The *CFCSA* outlines legal rights of children in care, which include the right to:

- be informed about their plans of care;
- be consulted and express their views about significant decisions affecting them;
- receive guidance and encouragement to maintain their cultural heritage;
- privacy during discussions with a lawyer or government personnel;
- be informed of their rights, and the procedures available for enforcing their rights.

Indigenous children have other rights under the *CFCSA*, including the right to:

- receive support to learn about and practise their Indigenous traditions, customs and languages, and
- belong to their Indigenous communities.

FAMILY LAW

Courts use the BC *Family Law Act* to make decisions on family law issues. Most of BC's family laws are the same for Indigenous and Non-Indigenous people, living on or off reserve. When making guardianship, parenting and access agreements, Courts consider the best interests of the child. The best interests of a child includes the protection of the child's physical, psychological and emotional safety, security and well-being.

When considering the best interests of Indigenous children, the courts may also consider the child's heritage, traditions and culture. Also, the courts may look at someone's Indigenous heritage or life circumstances when they are making decisions about legal issues such as guardianship, parenting arrangements and contact with a child.

Legal Aid BC Resources

- See Family Duty Counsels at Court locations for advice https://legalaid.bc.ca/legal_aid/familyDutyCounsel
- Apply for Legal Aid for urgent family matters 1-866-577-2525
- Speak with a family lawyer about your situation for free 1-866-577-2525
- Read the family law guide "Living Together or Living Apart" at https://family.legalaid.bc.ca/publications/living-together-or-living-apart

Child Support Issues

Parents and guardians have a legal duty to financially support their children. Even though it is paid to one parent, child support is the legal right of the child.

If you have a child support order and the other parent is not paying, you can register with the BC Family Maintenance Enforcement Program (FMEP) to help enforce the support order 1-800-663-3933 or www.fmep.gov.bc.ca.

On the other hand, if you have not been paying the support you have been ordered to pay, it is important to get help to address your debt and discuss applying for a support order that accurately reflects your current income. Call a Legal Advocate for help. See page 52 for more about Debt issues.

FAMILY LAW
Divorce

Must be filed in BC Supreme Court, located in Williams Lake, Campbell River, and many other locations.

- The couple must have been separated for one year.
- Couples living together meet this requirement as long as they have an **intention to be separated.**
- A spouse can seek a divorce prior to being separated for one year if there has been adultery or a spouse has been mentally or physically cruel.
- You do not need your spouse's permission to get a divorce.
- You will need an original copy of your Marriage Certificate (order a new one from Vital Statistics if you no longer have it).
- A Divorce will cost $210 to start and another $80 to complete (4-6 months) - checks are to be made payable to the Ministry of Finance.
    - Fees can be waived for low income spouses

If there is **no money or property** in dispute, you can get an "uncontested divorce"

Legal Advocates can help.
Find one near you:

www.povnet.org/find-an-advocate

If you have **minor children**, you can call a Family Law Advocate for help with an uncontested divorce.

For Bella Coola and Anahim Lake:
- Call Williams Lake: **250-392-4118**

For Bella Bella and Klemtu:
- Call Port Alberni: **250-723-8281 ext223**

For elsewhere in BC:
- **www.lawfoundationbc.org/public-resources/contact-list**

FAMILY LAW
Family Homes on Reserve and Matrimonial Interests or Rights Act (FHRMIRA or Bill S-2)

FHRMIRA provides basic rights and protections to individuals on Reserve during a marriage or common-law relationship breakdown: separation, divorce, or death. Many of the legal protections relating to matrimonial real property applicable off reserve are now available to individuals on reserves.

RIGHTS PROTECTED UNDER THE ACT:

- Spouses or common-law partners are entitled to a fair division of matrimonial real property, interests, or rights.
- Each spouse has an equal right to occupancy of the family home during the conjugal relationship, no matter whose name is on it and no matter if FN or Band member.
- Spousal consent required for the sale or disposal of family home.
- An application for division must be made within three years after the day on which the parties ceased to cohabit.
- Courts can order the transfer of or enforce agreements about matrimonial real property between spouses or common-law partners.
- Courts can order that a spouse or common-law partner be excluded from the family home on an urgent basis through Exclusive Occupation Orders.

For more information:

1-877-234-9813

https://nalma.ca/matrimonial-real-property/resources-for-individual-rights

KNOW YOUR RIGHTS

Government Authorities
Police Encounters
Police Custody and Arrests
DFO & COS
RCMP Complaints
Justice System Complaints
MCFD Social Workers
ICBC
Rights as a Tenant
Freedom of Information

GOVERNMENT AUTHORITIES
Think Before You Speak

The *Canadian Charter of Rights and Freedoms* (the "Charter") is part of the *Constitution Act, 1982* of Canada. Sections 7 to 14 of the Charter set out rights that protect Canadians when dealing with the justice system. They ensure that individuals who are involved in proceedings are treated fairly, especially those charged with a criminal offence. These sections are where your legal rights come from: right to silence, right to a lawyer, right against unreasonable searches, etc.



What do the RCMP, the MCFD, and ICBC all have in common?



They are all government agencies who investigate situations where there may be fault or liability or safety concerns. They all have jobs to do. However, with each of these agencies you are well advised to know your rights before you speak.

You are always allowed to say, **"I want to speak with a lawyer before I speak with you."**

This is not an admission of guilt or fault, just a way to make sure you are safeguarding your rights. Get legal advice to learn about your rights and responsibilities when you are being confronted by government agencies.

Knowing what each authority does is helpful so you can know why they might be contacting you and how much information you may want to give or when you may want to get legal advice first.

POLICE ENCOUNTERS

"The RCMP must suspect you of committing a crime, have seen you committing a crime, or you must be driving a vehicle before they can stop you and question you."

BC FIRST NATIONS
JUSTICE COUNCIL
www.bcfnjc.com

When responding to a police officer on the street:

- Be polite, note the officer's badge number or name
- Ask if you are free to go: **If YES** – leave
  If NO – ask if you are under arrest

If you are under arrest:

Ask WHY: it is your right to know why you are being arrested

Ask for a lawyer and then remain silent: you have the right to do both

REMEMBER

You do not have to answer their questions at any point. You always have the right to silence even if you have to speak to clear something up or be dismissed.

"I want to remain silent. I want to speak to a lawyer."

You do not have to identify yourself to a police officer, unless:


You are under arrest


You are driving – if you do not have your license on you, you can provide your name and date of birth


You are issued a ticket

POLICE CUSTODY AND ARRESTS

If you are **arrested** or **detained**, you are protected by Section 10 of the **Charter**.

- **You have the right to silence** - speak to a lawyer before the police
- The police **must inform you of the reasons for your arrest or detainment**
- You have the **right to retain and speak to a lawyer** without delay and the police are required to inform you of this right

If you are arrested, or detained and under investigation by the police, call the **Brydges Line at Legal Aid BC** (24/7)

1-866-458-5500

If you are released on bail or with a Promise to Appear, there may be conditions attached (rules for behaviour):

- Reporting to a bail supervisor
- Not being able to leave town
- Must avoid certain areas or people
- Cannot carry a weapon
- No consumption of alcohol

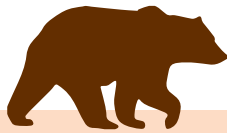
If you think your conditions are **too restrictive** (unfair or unrealistic) call your lawyer for help as soon as possible because breaching conditions can mean another criminal charge.

DFO & COS
Government Authorities: On Land & Water

DEPARTMENT OF FISHERIES AND OCEANS (DFO)

DFO officers conduct regular patrols on land and sea to catch violations of the *Fisheries Act*. A DFO officer's job is to ensure that individuals who are fishing are doing so subject to a recreational or a commercial fishing license. Indigenous people have an inherent and Constitutional right to fish.

CONSERVATION OFFICERS "C.O."



C.O.'s enforce multiple federal and provincial statutes related to hunting, gathering (e.g. wood, medicines), trapping and human-wildlife conflict. Indigenous people have established rights to harvest for food, social and ceremonial purposes in their traditional areas.

Further, C.O.'s have legal powers of search and seizure, similar to those of police officers. In certain circumstances, a C.O.'s conduct may violate your civil liberties. If you believe a C.O.'s actions constitute misconduct you can submit a complaint within one year to the Conservation Officer Service.

If you are questioned by DFO or a C.O. for a harvesting activity, indicate that you are exercising your Indigenous right to harvest and present your status card. Although these are government authorities with a job to do, you have rights same as with any police agency.

https://bccla.org/wp-content/uploads/2019/02/powers-of-conservation-officers.pdf

RCMP COMPLAINTS



"You deserve to be treated with dignity and respect by all people working within the justice system. Formal complaint processes exist for police, lawyers and judges." – BCFNJC*

IF YOUR RIGHTS ARE VIOLATED BY THE POLICE:

Document the time, place and details of what happened. Document police names or badge numbers. Try to get contact information for witnesses. Take pictures of in juries and upload them, Seek legal advice.

COMPLAINTS PROCESS

Making a Complaint about the Police

The **Civilian Review and Complaints Commission** for the RCMP is an independent agency that reviews complaints made by the public about the on-duty conduct of RCMP members.

Complaints can be filed at their website:
www.crcc-ccetp.gc.ca/en/make-complaint

*Information taken from the BC First Nations Justice Council website: www.bcfnjc.com

The Independent Investigations Office of BC (IIO) conducts investigations into on- and off- duty police-related incidents of serious harm and death. Serious harm is defined in Part 11 of the *Police Act* as injury that may result in death, may cause serious disfigurement or may cause substantial loss or impairment of mobility of the body as a whole or of the function of any limb or organ. The IIO will make a determination whether any officer may have committed an offense. The IIO does not have jurisdiction over conduct complaints against a police officer (such as the Civilian Review and Complaints Commission). Anyone who wishes to provide information pertaining to an IIO investigation can call the witness line at 1-855-446-8477.**

**Information taken from IIO website https://iiobc.ca

JUSTICE SYSTEM COMPLAINTS
Processes

MAKING A COMPLAINT ABOUT A LAWYER IN BC

If you have concerns about a lawyer, you may file a complaint. The Law Society reviews all complaints they receive. More information about the complaints process and the kind of complaints the Law Society will investigate can be found at their website:

www.lawsociety.bc.ca/
complaints-lawyer-discipline-and-public-hearings/complaints-en

MAKING A COMPLAINT ABOUT A JUDGE IN BC

You can make a formal complaint about a provincial court judge or justice (including a judicial justice, judicial case manager and justice of the peace) if you believe their conduct is improper. Please note that you cannot complain about their decision in a case. Complaints can be mailed, faxed, or filed online through their website:

www.provincialcourt.bc.ca/
complaints-and-appeals/complaint-process

Complaints information from the
BC First Nations Justice Council website: www.bcfnjc.com

BC FIRST NATIONS
JUSTICE COUNCIL

MCFD SOCIAL WORKERS
Investigation Process

The *CFCSA* gives Ministry Social Workers (SW) certain powers when they investigate child protection concerns, up to and including the removal of your child from your home.

- SWs must follow certain rules and policies when they do their work and make decisions.
- If you feel the SW has acted wrongly you can try to resolve your concern directly with the SW or their supervisor.
- You can also call the MCFD dispute resolution person to discuss concerns and learn about your options at 1-877-387-7027.
- Ask a Legal Advocate or Lawyer for help.

Over the course of the investigation, Social Workers can:

1. **Contact parents, guardians or other third parties in your child's life** to ask about the child's safety.
2. **Ask to see your child**
   - If you don't let them see your child, they could decide to remove your child from your home, so it is generally best to cooperate. You can ask that a Band representative or other support person be present.
3. **Question your children**
   - They can talk to your child alone (without you). If you are notified of an intended interview, you can ask that a Band Representative or support person be present for any meetings.
   - They may talk to your child at school or outside of your home without telling you.
4. **Interview people who know your child** (teachers, friends, family)
5. **Examine personal records** for information about your child (medical records, school reports, court documents or other records in the possession of governmental bodies)
6. **If there is a safety concern** Social Workers can look at a range of options to determine if the child stays with the parent or work out an agreement with the parent, family member or community member for temporary care.
7. **Remove your child** from your home **without warning**, and without a court order **if they think your child needs protection**.
8. **If a child is removed**, there will be a Court hearing where there may be an agreement for care of the child or a Judge will decide what is in the best interest of the child.

INSURANCE CORPORATION OF BRITISH COLUMBIA (ICBC)

If you have been involved in a vehicle accident in some way, you may be contacted by ICBC as they investigate.

ICBC's job is to assign fault, and you should get legal advice before you speak with an ICBC agent. Anything you say to an ICBC representative can be used against you in the determination of fault and potentially in court.

There can be serious consequences for being assigned fault in an ICBC claim:

- You may be given higher premiums
- You may be found in breach of your insurance conditions which could void your coverage
- You could have a claim filed against you by other parties involved in the accident

If you get an alcohol-related ticket, prohibition or conviction, you will likely be required to do the Responsible Driver Program (RDP) Mandatory Course ($$) and use a Breathalyzer Ignition Lock (more $$) before you can get your license back. Contact a Legal Advocate to help get you legal advice about disputing the ticket and to see if you can dispute the Office of Superintendent of Motor Vehicles' RDP requirements.

If you are the one injured in an accident, you can file a claim for compensation for injuries sustained during the accident. This includes the drivers and the passengers. Speak with a lawyer to see if you have a claim and to help you negotiate a fair settlement. The lawyer gets paid out of the settlement. Contact a Legal Advocate for information and to connect you to lawyer.

Do not sign anything until you get legal advice.

RIGHTS AS A TENANT
On and Off Reserve

Each Band has jurisdiction to create and administer its own housing bylaws. Bylaws can lay out the terms of rental agreements, including the rights and responsibilities of the Tenants and of the Landlord (the Band). Housing policies often cover the responsibilities for repairs or damages, the process for evictions and the Tenant's procedures to dispute a Band housing decision. If you have an issue with your rental, you can get a copy of the Housing policies from the Band Office and talk to the Housing Manager. If that does not resolve your issue, follow your Band's dispute processes: for example, you could speak with the Band Manager, Housing Committee and then Chief and Council. For problems you still cannot resolve, call a legal advocate or lawyer.



Learn about the ***Family Homes on Reserve and Matrimonial Interests or Rights Act***. If you are married or common-law and your partner passes away, you have the right to stay in the family home for 180 days (at least), even if you are renting and/or not a Band member.

Caution On Reserve:

When renting a house from an individual Band member who owns the home, it is difficult to assert any rights as a tenant or as the landlord. The Band Housing policies only cover housing rented from the Band. Non-Band (private) landlords and tenants are often left to "work it out." Contact a legal advocate for help.

Rights as a Tenant Off Reserve are governed by the *Residential Tenancy Act* (RTA). The best resource to understand your rental rights and responsibilities is the TRAC booklet "Tenant Survival Guide."

Call a TRAC (Tenant Resource Advisory Centre) legal advocate at 604-255-0546 or https://tenants.bc.ca/contact

https://wiki.clicklaw.bc.ca/index.php/Tenant_Survival_Guide

Note: The RTA does not apply On Reserve.

FREEDOM OF INFORMATION
Access to Information and Privacy Laws

Freedom of Information laws give you the right to access general records and personal information held by government institutions, both federal and provincial. You can request personal information about yourself and about children under 18 (or 19 for provincial government requests) that you are responsible for.

FEDERAL LAWS:

There are two federal laws under which you can make requests for information. "The ***Access to Information Act*** gives Canadian citizens, permanent residents and any person or corporation present in Canada a right to access records of government institutions that are subject to the Act... to make government information publicly available. ... The ***Privacy Act*** gives Canadian citizens, permanent residents and individuals present in Canada the right to access their personal information held by government institutions that are subject to the Act..." - Government of Canada website

To access to Canadian government records:

- Online: You can file most *Access to Information* Requests or Personal Information Requests online at https://atip-aiprp.apps.gc.ca/atip/welcome.do
- By phone: For general information about *Access to Information* or *Privacy Act* requests, or to ask for a request form to be mailed to you, phone the Canadian government customer service line at 1-800-622-6232
- By mail: complete an Access to Information Request form or Personal Information Request form and send it to the Access to Information and Privacy (ATIP) coordinator for the government body that holds the information you want. The forms and list of all ATIP coordinators, including their phone numbers, are at www.tbs-sct.canada.ca/tbsf-fsct/350-57-eng.asp and www.tbs-sct.canada.ca/tbsf-fsct/350-58-eng.ASP

PROVINCIAL LAWS: BC's ***Freedom of Information and Protection of Privacy Act*** **(FOIPPA)** gives you access to records that BC government ministries or agencies hold and to personal information about you or dependents under 19.

To access BC government records under *FOIPPA*:

- Call (toll-free) 1 833 283 8200, or email FOI.Requests@gov.bc.ca
- Or file a request online at https://www2.gov.bc.ca/gov/content/governments/about-the-bc-government/open-government/open-information/freedom-of-information/submit-a-general-freedom-of-information-request
- Call for help to request BC records: Office of the Information and Privacy Commissioner of BC 250 387 5629

PROTECTIONS

Aboriginal Rights
Hunting & Fishing
Human Rights

ABORIGINAL RIGHTS

Aboriginal rights are unique legal rights held only by Indigenous peoples. They are protected by section 35 of the Constitution, the highest law of Canada. Aboriginal rights protect activities and practices that are important to the distinctive cultures of Indigenous peoples - for e.g. fishing, hunting and Indigenous spiritual practices. Aboriginal rights are held by Indigenous communities and exercised by members of those communities.



Indigenous people may rely on an Aboriginal right as a defense to charges of illegal fishing or hunting. If you have been charged, it is best to talk to a lawyer. Key issues include: were you exercising the right in your community's territory? Is the right an historic practice that is important to your community? Did the government interfere in how you can exercise the right? If yes, you may have a defense.



Aboriginal rights can be limited - or "infringed" - by governments. However, governments have to prove an infringement is legally justified. This involves asking: was the aboriginal right given priority over other users? Is the infringement as minimal as possible? Did the government consult with the Indigenous rights holders? If yes, the government's law may still be legally valid even though it infringes an Aboriginal right.



Treaty rights are Aboriginal rights that have been written down and defined in a treaty. They are also constitutionally protected and can be used as a legal defense.

HUNTING & FISHING

Indigenous people have rights to fish, hunt, trap and gather for sustenance and for ceremony within their traditional territories.

- You do not need to obtain license or a permit.
- While harvesting, carry your Status card to support this right and firearms license (P.A.L.) if using a gun.
- For commercial fishing, you need to obtain a commercial fishing license from the Department of Fisheries and Oceans.

Indigenous harvesters may be subject to Provincial public health, safety and conservation regulations.

If Non-Status or Métis, carry proof of citizenship or membership in a Nation, or Métis harvester card and a letter of permission from the First Nation (if you're harvesting in a First Nation's territory).

CHARGED WITH A HARVESTING OFFENCE?



YOU MAY HAVE A DEFENCE BASED ON YOUR INDIGENOUS RIGHTS

Speak to a lawyer to decide your best course of action



IF YOU CANNOT AFFORD A LAWYER:

- **Legal Aid BC**: Indigenous Harvesting rights cases may be covered (see page 5)
- **Indigenous Community Legal Clinic**: 1-888-684-7874
- A **Legal Advocate** may be able to help access legal advice and representation
- Your **community** may be able join your defense and/or help pay for a lawyer if you do not qualify for Legal Aid

HUMAN RIGHTS

Human rights are protected in BC by the *BC Human Rights Code*. The Code prohibits discrimination based on Indigenous identity, race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity or expression, or age.



Discrimination means being treated badly because you have one or more of those characteristics. The Code protects against discrimination in five main areas of daily life: work, housing, public services, membership in unions or associations and publications.



If you feel you have been discriminated against in one of those areas, you can make a complaint to the BC Human Rights Tribunal. The Tribunal is a special kind of court focused only on human rights issues. It can decide if discrimination has occurred, and order the party that is responsible for the discrimination to pay for any damage or harm they have caused.



Filing a complaint to the Human Rights Tribunal will take some time. It will involve providing evidence (witnesses, documents) to support the claim, and participating in a hearing where evidence is presented and questions can be asked about the evidence. The Tribunal will make a decision at the end of the hearing.



The Human Rights Tribunal has a website with very helpful information: www.bchrt.bc.a



“While the *BC Human Rights Code* can’t address all the inequity and injustices faced by Indigenous people, it can be used to hold people and institutions accountable for discrimination.” – "Our Human Rights," BC Aboriginal Association of Friendship Centers and Community Legal Assistance Society

https://www.bchrc.net/wp-content/uploads/2021/06/IHRC_BOOKLET-June-17-2021.pdf

HUMAN RIGHTS

The addition of Indigenous identity as a ground of discrimination differs from Aboriginal Rights as protected under s. 35 of the *Constitution Act, 1982*. Section 35 creates the opportunity to establish rights specific to an Indigenous community's traditional practices (hunting, fishing etc.). Human rights are broader rights and something everyone has (like the right to discrimination free housing and health care). Indigenous identity as a ground of discrimination means you can bring a human rights claim on the basis of differential treatment due to your Indigenous identity.

BC HUMAN RIGHTS TRIBUNAL

If you are Indigenous, you can self-identify as Indigenous on the complaint form and ask the Tribunal to contact you. The Tribunal will call to discuss:

- the process and process options,
- Indigenous protocols, such as an elder or smudge
- Indigenous ways to deal with the complaint.

The Tribunal has mediators who can help the parties agree about how to solve the complaint. Mediation is voluntary. An Indigenous party can tell the Tribunal that they want:

- a traditional ceremony before or after the mediation, such as a smudge, prayer, or song
- an Indigenous mediator
- an Indigenous dispute resolution approach

The BC Human Rights Clinic, part of the Community Legal Assistance Society (CLAS), provides free legal help with human rights complaints.

For more info or to book an appointment visit: www.bchrc.net
or call: 604-622-1100
Toll free: 1-855-685-6222

CLAS Community Legal Assistance Society www.clasbc.net

DEATH AND TAXES

Wills
Estates
Representation Agreements
Taxation

WILLS
On and Off Reserve

On Reserve: to be valid, a will under the *Indian Act* must:

1. Be in writing (*audio/video wills/oral instructions are not accepted)
2. Be signed by the will-maker
3. Give away something the will-maker owns
4. Be intended to take effect upon death
5. Have 2 adult witnesses (not beneficiaries or their spouses)
6. Be dated

The person writing the will must be:

- A "Status Indian" under the *Indian Act*
- considered "ordinarily resident on-reserve"
- 16 and older
- Free from pressure or influence

In addition to these requirements, it is important to include the following in your will:

- Name executor and alternate to manage your estate
- Who you want to care for your children
- Funeral directions
- Make gifts of specific assets (e.g., your house, boat, car, jewelry, art, television etc.)
- The residue/remainder (what is left over after payments of debts and gifts of your estate)

For step by step directions use the template in "Writing Your Own Will - ***A Guide for First Nations People Living on Reserve*** (Revised 2019)." https://afoabc.org/wp-content/uploads/2021/03/AFOA-BC-Wills-and-Estates-Booklet-2019.pdf. For questions contact Indigenous Services Canada, Estates Unit, 1.888.917.9977 or BCEstates@sac-isc.gc.ca

Indigenous people on reserve can leave their home to people who are members of their band or entitled to be, as long as the house is located on a Certificate of Possession lot ("CP"). A CMHC house cannot be given away in a will. Check with your Band's housing department to find out what happens to a CMHC house or Custom allotment in the event you pass away.

Off reserve the law for writing wills is the Provincial legislation *Wills and Estates Succession Act* (WESA). There is an online template at MyLawBC that can help you make a simple will that says what you want to happen after you die: www.mylawbc.com/pathways/make-a-will.

For Legal Advice about Wills, call **Access Pro Bono Justice** to schedule a free 1/2 hour phone appointment with a lawyer 1-877-762-6664.

ESTATES
On and Off Reserve

An **Estate** is all of the money and property (and debts) left after someone dies. Estates fall under federal jurisdiction with Indigenous Services Canada (ISC) when someone passes away who is "ordinarily resident" on reserve (meaning if they were living away from the reserve, it was only for school, medical etc.).

The person named in the Will as the **Executor** has the job of settling the affairs of the deceased: paying the bills, filing taxes, closing accounts, and generally following the wishes of the deceased in their will.

If there is no will, then the family (and ISC) will appoint an Administrator. ISC will send the Administrator a certificate showing their appointment.



For a step by step description of what needs to be done see "Estate Administration On Reserve." Available @ https://aboriginal.legalaid.bc.ca/ or Contact ISC Estates offices T: 1.888.917.9977 or general email BCEstates@sac-isc.gc.ca



Executors and family members are **Not liable** for the debts of the deceased. The Executor's role will be to pay bills from money in the Estate before any beneficiaries are paid. If no money, then no bills get paid.

If your common law partner or spouse has passed and you are wondering how your home on reserve is effected, the ***Family Homes on Reserve and Matrimonial Interests or Rights Act*** will likely apply. If so, you:

- are entitled to remain in the home for 180 days, even if renting and even if not a Band member
- can apply under the Act for exclusive occupation of the home beyond the 180 days (depends on situation)
- may apply within 10 months of the death for a court order to determine entitlement

If you are entitled to this right or interest, note that you will not also be able to receive an amount under the will for the same property.

For information about estates **Off Reserve** see
People's Law School publications online at
www.peopleslawschool.ca/publications/wills-and-estates-collection

REPRESENTATION AGREEMENTS

A Representation Agreement is a legal planning document under the *BC Representation Agreement Act*. A Representation Agreement **is a way you, as an adult, can name people to help you make decisions or make decisions on your behalf if your mental capacity comes into question**. Spouses or parents of adult children do not have automatic legal authority to speak for you or "act on your behalf."

What if you are ill, injured or have a disability? Your mental capability to understand may be questioned if you have a stroke or a bad fall or if you become seriously ill. An adult with a disability from birth or with advanced dementia may have problems to understand and may need help making decisions and managing their affairs.

You may need help with your finances – like paying bills or applying for benefits. You may need help with health care decisions like understanding the risks and benefits of surgery.

The document an adult (19 years or older) may make depends on different mental capability requirements. The **traditional definition** of mental capability is where an adult has the mental or cognitive understanding of the document, at the time of making it.

What legal document(s) are available in BC?

- In the past, BC only had a law for **Enduring Power of Attorney (POA)**. An Enduring POA allows you to appoint someone to help you with financial and legal matters (including dealing with real property off reserve) but does not cover health care.
- Then, a new law was created, called the *Representation Agreement Act*. A **Representation Agreement** is a legal document in BC to name someone to help you with health care, personal care, financial and legal matters.
- A Representation Agreement under section 9 (RA9) covers the most health and personal care matters, up to and including decisions to refuse consent to life-supporting health care.
- A Representation Agreement under section 7 (R7) can include some or all of the following standard powers: minor and major health care, personal care, routine financial, and legal matters (but not dealing with off-reserve property).

The *Representation Agreement Act* introduced a **new definition** of mental capability for Representation Agreements made under section 7. This is for adults who may have problems with understanding and need help because of a disability from birth or advanced dementia or other condition. This makes BC a leader in accessibility and inclusiveness.

Contact www.nidus.ca with any questions or concerns or contact a legal advocate for direct help accessing more information at info@nidus.ca.

TAXATION

Indigenous peoples are subject to the same tax rules as any other resident in Canada unless their income is eligible for the tax exemption under section 87 of the *Indian Act*.

If you have "Status," then **on reserve employment** income is exempt from income tax under s81(1)(a) of the *Income Tax Act* and s 87 of the *Indian Act*. Some of the connecting factors used to determine whether income is situated on a reserve are:

- the location or residence of the employer,
- the nature, location and surrounding circumstances of the work performed, and
- the location or residence of the employee.

Any questions call Canada Revenue Agency 1-800-959-8281



If your employment income is exempt from tax, any income that stems from this employment income, such as Employment Insurance, Canada Pension retirement benefits, etc. is also exempt from income tax.

Note: the Guaranteed Income Supplement (GIS) does not include tax exempt income in the calculation of household income for eligibility purposes. GIS eligibility calculation is based on "taxable" income only. If your Old Age pensions get reduced, check to be sure your tax exempt income has not been used to calculate your GIS amount. Call a Legal Advocate for help.

For information about Business income earned on reserve, call Canada Revenue Agency to confirm 1-800-959-5525 and get legal advice.

GOODS AND SERVICES TAX (GST)

Generally, people with Status do not pay GST on:

- property bought on a reserve
- property delivered to a reserve by a vendor
- services performed entirely on a reserve.

For information on when GST does and does not apply for you and whether you have been incorrectly charged GST, visit the "GST and "Indigenous Peoples" page on the government of Canada's website.

INCOME SECURITY

Employment Insurance
Disability Benefits
Persons with Disabilities
Employment Standards
Debt

EMPLOYMENT INSURANCE (EI)

The EI Application is online and takes about 40 minutes. As a general rule, apply within 4 weeks of stopping work https://www.canada.ca/en/services/benefits/ei/ei-regular-benefit/apply.html



ELIGIBILITY CONSIDERATIONS INCLUDE:

Regular Benefits
- Eligible if you lose work through no fault of your own (shortage of work, laid off, etc.) and
- You have the required amount of hours in the last 52 weeks (a minimum of 420 hours) but changes back to pre-Covid rules September 24, 2022

Sickness Benefits
- Eligible if unable to work for medical reasons
- Have enough hours
- Medical note

Maternity
- Eligible when pregnant or caring for newborn
- Have enough hours

Caregiver Benefits
- Providing care for critically ill or injured family member
- Have enough hours
- Medical note

Parental Benefits
- Eligible when parents are away from work to care for their newborn or newly adopted child
- Have enough hours

Fishing EI
- Have made the required earnings $2500 from fishing
- Apply within four weeks from end of fishing

Compassionate Care Benefits
- Providing care for family member in need of end-of-life care
- Have enough hours
- Medical note

EMPLOYMENT INSURANCE (EI)
General Tips

Apply ASAP. You do not need to wait for your ROE. You will want to confirm that it has been sent. You will not get money from EI until the ROE is received.

If you return to work, even temporarily, report the income because you could owe money back if you double-dip and you may have a harder time getting EI in the future.

If you quit, you will be ineligible unless you show that there was no reasonable alternative to quitting (e.g. hostile work environment) and that quitting was the only reasonable solution.

If quit or fired or late applying call a Legal Advocate to assist. Do not assume you are not eligible.

If fired, you will be ineligible for EI unless you can show that you did not lose your job due to your own misconduct.

If late, file an Antedate Request to claim retroactively, if you can show good reason for the delay.

If denied, call a Legal Advocate: to assess and help with an appeal You must file within 30 days after the date the decision was communicated to you.

People's Law School
Work out life's legal problems

See People's Law School website for plain language publications about Employment Standards and E.I. and many more legal topics!
www.peopleslawschool.ca

DISABILITY BENEFITS

There are different kinds of Disability Benefits that people may be eligible for. It is important that you check the requirements so you apply for the best one for you.

Canada Pension Plan Disability (CPP-D) benefits

To qualify for CPP-D, you must:

- Be under **65 years of age**
- Have made the required amount of **contributions** from your paychecks
- Not all Bands contribute to CPP, so check your pay stub to check or ask if unsure
- Have made contributions to the program in four of six years before you became disabled, with minimum levels of earnings in each of these years, or in three of the prior six years for those with 25 or more years of contribution
- Call Service Canada to check if you are unsure about contributions 1-800-277-9914.
- Have not collected CPP Early Retirement for more than 15 months and
- Have a "severe and prolonged" disability as defined in the CPP legislation: Severe is a condition that makes "a person incapable of regularly pursuing any substantially gainful occupation." Prolonged is defined as "likely to be long continued and of indefinite duration or is likely to result in death..." https://www.canada.ca/en/services/benefits/publicpensions/cpp/cpp-disability-benefit/apply
- You can apply online or by mail. See: https://www.canada.ca/en/services/benefits/publicpensions/cpp/cpp-disability-benefit/apply

Talk to your Doctor about filling in the forms. Call a Legal Advocate for help applying. If you are denied, call the Disability Alliance of BC or another Legal Advocate for help with an appeal 604-872-1278

Employment Disability Benefits

e.g. Sun Life, Canada Life, Municipal, I.W.A.

Employment Benefits such as Disability, Pension and Life Insurance are typically given to full-time employees as part of the employment contract and the employer/ee would pay into this benefit package during their employment. The benefit package would contain the qualifying Disability requirements.

PERSONS WITH DISABILITIES "PWD"
On and Off Reserve applications

To apply for disability benefits **on reserve**, you need to request the disability application form from the Band Social Development Worker. Take the application to your doctor to complete. If you are denied a Disability claim, you have the right to appeal within 20 business days from the decision.

For help with disability applications and appeals:
Contact a Legal Advocate near you www.povnet.org/find-an-advocate
and/or call the British Columbia Aboriginal Network
on Disability Society (BCANDS) 1-888-815 -5511.

When living **off reserve**, people apply for the Persons with Disabilities (PWD) designation through the Ministry of Social Development and Social Innovation.

To start the application process:

- apply online through https://myselfserve.gov.bc.ca
- call **1-866-866-0800** to apply by phone; or
- apply in person at a Ministry office

To qualify, you must meet the Ministry's financial eligibility criteria and complete a PWD application with a doctor. For more support, call a Legal Advocate and/or contact the Disability Alliance of BC for help with applications and appeals for the PWD designation 1-800-663-1278

Both on and off reserve, in order to get the PWD designation you must:

- be at least 18,
- have a disability that is severe and expected to last at least two years,
- have daily living activities that are directly and significantly restricted by your disability, and
- to do daily living activities, you need an assistive device, or help or supervision from another person, or an assistance animal.

EMPLOYMENT STANDARDS
On and Off Reserve Employment

If you have a Complaint: The Canada Labour Code sets federal labour standards for people employed in federal industries, which often includes First Nations Bands and other employment on reserve.

Call Canada Labour to confirm jurisdiction (Federal or Provincial) **1-800-641-4049** and to speak with a Labour Program Officer about your rights and the options you have if your rights have been violated.

Note time limits for filing complaints:

- Monetary and Non-Monetary Complaints must be filed within 6 months
- Unjust Dismissal Complaints must be filed within 90 days

The deadline starts running from the last day the employer was required to pay you or from when you were aware of the issue.

Special Note: Sometimes people are inaccurately defined as Contractors instead of as Employees. This misclassification can result in not getting proper employee benefits (like vacation pay, overtime, severance pay etc.) and not paying into unemployment benefits like EI.

"Having a contract" does not necessarily mean you are a contractor; it could simply mean you are an employee with a contract. The relationship is more likely that of an employer & employee if: You perform work for another for wages, the person who pays you controls the material and tools of the job, and directs the activities (sets the hours and the tasks). Canada Labour can help get you classified properly, especially because there can be other factors to consider. If you were misclassified the employer may owe you money retroactively.

If your work is off reserve and not for a federally regulated employer then your remedy is usually to go to BC Employment Standards 1-833-236-3700.

You have 1 year to file your complaint.

DEBT
Issues On and Off Reserve

Debt can feel overwhelming, but the good news is that there are BC laws that specifically offer protections to debtors. The ***Business Practices and Consumer Protection Act*** offers many protections to consumers in its regulations of business practices.



Debt collectors harassing you with phone calls? You can stop debt collector's calls with a simple letter asking for all communication to be in writing. You can find this letter on the **Consumer Protection BC** website www.consumerprotectionbc.ca. To find it, go to the "consumer help" section, then click on "debt collection." Save proof that you sent the letter. If they continue to call you, then you can report to Consumer Protection. Consumer Protection responds to consumer inquiries and investigates alleged violations of consumer protection laws. 1-888 -564-9963

Similarly, the **Vehicle Sales Authority of BC** can help you address car dealerships with bad sales practices. To make a complaint call 1-877-294-9889.

Do you need help figuring out how to manage your debt load? The **Credit Counselling Society** 1-888-951-8602 provides free and confidential help with debt, such as setting up repayment plans, debt consolidation, and other ways to reduce the interest you have to pay. "We understand debt happens to the best of us, and too much debt is something we never planned to have."

KNOW YOUR RIGHTS

Creditors cannot garnish your wages or put liens on any property located on a reserve. Section 89 (1) of the *Indian Act* provides that "the **real and personal property** of an Indian or a band situated on a reserve is not subject to charge, pledge, mortgage, **attachment**, levy, seizure, distress or execution in favour or at the instance of any person **other than an Indian or a band**."

Two exceptions to note:

- Conditional Sales Agreements: If you buy a truck on credit and don't pay, then the dealer can come after you for payment or to repossess the vehicle.
- If the "creditor" is Indigenous: This is how, for example, Family Maintenance can enforce (garnish wages on reserve) a child support order for unpaid child support - because the money is owed for the Indigenous child.

CLASS ACTIONS

GLOSSARY OF LAWS

AFTERWORD

CLASS ACTIONS

Lawsuits Filed by an Individual Acting on Behalf of a Group

CURRENT CLASS ACTIONS TO APPLY FOR:

(Compiled by I.C.L.C and current as of Spring 2022)

Sixties Scoop Métis and Non-Status Indian Class Action	Website: https://kmlaw.ca/cases/sixties-scoop-metis-non-status-indian-class-action Toll Free: 1-866-778-7986
Indigenous Child Welfare Class Action	Murphy Battista LLP Website: https://www.murphybattista.com/practice-areas/class-action-lawsuits/indigenous-child-welfare-class-action Toll-free: 1-888-683-9621
Sexual Misconduct Class Action	Law firm: Murphy Battista LLP Lawyer: Janelle O'Conner Email: oconnor@murphybattista.com Phone: 604-683-9621
Federal Indian Day School class action	Website: www.indiandayschools.com/en Clams Administrator: 1-888-221-2898 Class Counsel: 1-844-539-3815
"Indian Boarding Homes" Class Action & "Indian Hospitals" Class Action	Klein Lawyers LLP Website: www.callkleinlawyers.com Phone: 604-874-7171
Millennium Scoop Class Action	Miller Titerle Website: https://www.sotosclassactions.com/cases/first-nations-youth Phone: 604-681-4112

Contact the Indigenous Community Legal Clinic (ICLC) about current Class Actions. The ICLC provides legal services to Indigenous people in BC

Phone: 604 822 1311 Email: iclc@allard.ubc.ca

www.allard.ubc.ca/community-clinics/indigenous-community-legal-clinic

GLOSSARY OF LAWS

An Act respecting First Nations, Inuit and Métis children, youth and families (Bill C-92)

"The purpose of the Bill is to recognize Indigenous People's jurisdiction over child and family services, as part of an inherent and Aboriginal right to self-governance; to establish national standards in this area, in response to the TRC's Call to Action #4; and to contribute to the implementation of UNDRIP."

– Yellowhead Institute

Canadian Charter of Rights and Freedoms (the "Charter")

"The principal rights and freedoms covered by the Charter include: freedom of expression; the right to a democratic government; the right to live and seek work anywhere in Canada; the legal rights of people accused of crimes; the rights of Indigenous peoples; the right to equality including gender equality; the right to use Canada's official languages; and the right of French or English minorities to an education in their language."

– Canadian Encyclopedia

The Canadian *Constitution Act*

Section 35: Instituted in 1982, Section 35 of the Canadian Constitution "recognizes and affirms existing aboriginal and treaty rights" including land claim agreements, and guarantees those rights equally to "both male and female persons." It also clarifies that "aboriginal peoples of Canada" includes "Indian, Inuit, and Métis" peoples.

– CRE Explains UNDRIP

Child, Family and Community Service Act (CFCSA)

"Child protection services in BC are intended to safeguard children from harm. Where there is reason to believe a child has been abused or neglected, or is otherwise in need of protection, child protection social workers have the delegated authority to investigate and take appropriate action to ensure that child's safety."

– BC Government website

GLOSSARY OF LAWS

Criminal Code

"Defines the conduct that constitutes criminal offences; sets out defenses that a person can raise if they are charged; establishes the kind and degree of punishment that may be imposed on someone convicted of an offence; describes the powers and procedures to be followed for investigation and prosecution of an offence."

– Government Canada website

Family Homes on Reserve and Matrimonial Interests or Rights Act (FHRMIRA)

"The *FHRMIRA* provides basic protections and rights to individuals on reserves regarding the family home and other matrimonial interests or rights during a relationship, in the event of a relationship breakdown, and on the death of a spouse or common-law partner."

– Centre for Excellence for Matrimonial Real Property

Family Law Act (FLA)

"the primary legislation on family law issues in British Columbia . . . The *Family Law Act* talks about the care of children after separation and about how guardians are appointed. It also deals with financial issues like child support, spousal support, and the division of property and debt, as well as with family violence, court processes, and ways of resolving family law problems without going to court."

– J.P. Boyd

Indian Act

"Canadian federal law that governs in matters pertaining to Indian status, bands, and Indian reserves. Throughout history it has been highly invasive and paternalistic, as it authorizes the Canadian federal government to regulate and administer in the affairs and day-to-day lives of registered Indians and reserve communities. This authority has ranged from overarching political control, such as imposing governing structures on Aboriginal communities in the form of band councils, to control over the rights of Indians to practice their culture and traditions. The *Indian Act* has also enabled the government to determine the land base of these groups in the form of reserves, and even to define who qualifies as Indian in the form of Indian status"

– Erin Hanson, "Indigenousfoundations.arts.ubc.ca"

GLOSSARY OF LAWS

United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

"the most comprehensive international instrument on the rights of indigenous peoples. It establishes a universal framework of minimum standards for the survival, dignity and well-being of the indigenous peoples of the world and it elaborates on existing human rights standards and fundamental freedoms as they apply to the specific situation of indigenous peoples."

– United Nations

Youth Criminal Justice Act

"...the law that governs Canada's youth justice system. It applies to youth who are at least 12 but under 18 years old, who are alleged to have committed criminal offences."

– Government Canada website

LEGAL REVIEWERS ORGANIZATION KEY

CLAS | Community Legal Assistance Society

ICLC | Indigenous Community Legal Clinic

ISC | Indigenous Services Canada

NALMA | National Aboriginal Land Managers Association

NIDUS | Nidus Personal Planning and Resource Centre

AFTERWORD

Legal Information for Indigenous People would have never been written without the ProBono Students Canada program at UBC Allard School of Law. Four law students spent a total of 2 academic years researching and writing the wide spectrum of material found here and then editing it all down to mere pages per topic. Next came the many legal reviewers who lent their expertise to this perhaps unusually concise plain language resource.

The Bella Coola Legal Advocacy Program has worked on over 10,000 client matters throughout the years. A common thread running through all of these is the hugeness of the law's daily impacts on people's lives and the immense relief people feel when given the basic information they need to understand and engage in the legal process.

As one of the Bella Coola people who reviewed this publication told us: “You can’t google this stuff.” Although this information is certainly out there, it can be challenging to access. This book is a place to start.

The Bella Coola Legal Advocacy Program

"Serving clients from the Indigenous and non-Indigenous communities of the Bella Coola valley, the outer Mid-Coast and the Western Chilcotin, with experience in both on and off reserve legal issues."



Top of the Bella Coola Hill. Photo by Bonnie Gilbert