

KEEPING ABORIGINAL KIDS SAFE

— YOUR FAMILY'S RIGHTS —



Legal Aid BC



© 2018 Legal Services Society, BC

First edition: February 2019

ISSN 2562-3813 (Print)

ISSN 2562-3826 (Online)

Acknowledgements

Published on the traditional unceded territory of the Coast Salish peoples, including the territories of the xʷməθkʷəy̓əm (Musqueam), Skwxwú7mesh (Squamish), and səilwətaʔt/Selilwitulh (Tsleil-Waututh) Nations.

Writer: Barbara Johnston

Editor: Carol Herter

Designer: Danette Byatt

Development coordinator: Patricia Lim

Illustrators: Jay Castro and Thalia McWatt

Legal reviewer: Katrina Harry

This booklet may not be commercially reproduced, but copying for other purposes, with credit, is encouraged.

Keeping Aboriginal Kids Safe: Your Family's Rights is published by the Legal Services Society (LSS), a non-profit organization that provides legal aid to British Columbians. LSS is separate from the BC government, its primary funder. It also receives grants from the Law Foundation and the Notary Foundation (of BC).

This booklet explains the law in general. It isn't intended to give you legal advice on your particular problem. Because each person's case is different, you may need to get legal help. The information in this booklet is up to date as of February 2019.

ABOUT THIS BOOKLET ★

If a social worker from the Ministry of Children and Family Development (ministry) or a delegated Aboriginal agency contacts you about a child protection matter, this might be a stressful time for you. This booklet is to help you understand the child protection process and what you can do.

BC law has special terms about the care of Aboriginal children in child protection situations. The law recognizes:

- ★ Protecting and keeping the cultural identity of Aboriginal children is essential to their safety and well-being.
- ★ Preserving their cultural identity is necessary when planning for an Aboriginal child's care.
- ★ The Aboriginal community should be involved in the planning and delivery of services to Aboriginal families and their children.
- ★ Appropriate Aboriginal organizations must be notified of child protection proceedings that involve Aboriginal children.
- ★ If appropriate, designated representatives of bands, Aboriginal communities, treaty First Nations, and the Nisga'a Lisims government have the right to become a party to a child protection hearing for a child from their community. A **designated representative** is someone chosen to speak for others.

★ CONTENTS ★

UNDERSTANDING CHILD PROTECTION/ REMOVAL MATTERS 2

What you can do	3
How your Aboriginal community or band can help	3
Your Aboriginal organization and representative	4

DELEGATED ABORIGINAL AGENCIES 6

Services and powers	7
How delegated Aboriginal agencies work	7

STAYING OUT OF COURT: MEDIATION 10

What mediators do	10
How mediation can help	11
How mediation works	11
When to ask for mediation	12
Mediation and cultural needs	13

COURT PROCESS 14

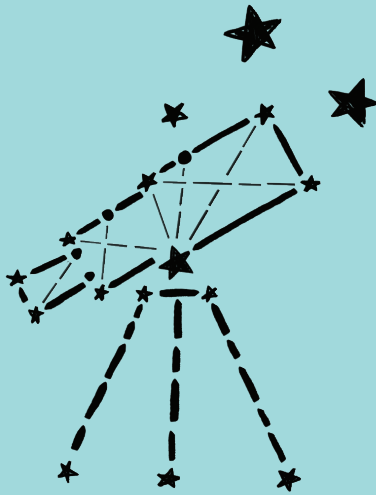
Presentation hearing	15
Report to Court	15
Interim orders	15
Protection hearing	16
Temporary orders	16

EXTENDED FAMILY PROGRAM 18

How the program can help	19
Caregivers	19
Extended Family Program agreements	19

CHILD PROTECTION PROCESS (flow chart) 22

YOUR DETAILS FOR YOUR CHILD PROTECTION CASE 24



UNDERSTANDING CHILD PROTECTION/ REMOVAL MATTERS

BC law says if a child's safety is at risk, the Ministry of Children and Family Development or a delegated Aboriginal agency must **investigate**. This means a social worker contacts you or visits your home to ask you questions about your family. See page 6 for delegated Aboriginal agencies.

If the social worker thinks there's a serious problem, they might **remove** (take) your child from your home. But if you're willing to work with the ministry and make changes to keep your child safe, the social worker might leave your child with you. This process is called **child protection**.

BC law also says:

- ★ Aboriginal cultural ties are very important to the well-being of Aboriginal children.
- ★ When the ministry makes plans for an Aboriginal child's care, the ministry should respect the child's family ties and Aboriginal identity.

What you can do

If the ministry or delegated Aboriginal agency is investigating you, you can:

- ★ get a lawyer right away,
- ★ call Legal Aid BC (see page 4),
- ★ contact your Aboriginal community to get a representative, and
- ★ ask for an Aboriginal child protection **mediator** (someone specially trained to help people reach an agreement) (see page 10).

If the ministry or delegated Aboriginal agency removes your child from your home, you can:

- ★ ask the social worker to place your child with your family or another Aboriginal family,
- ★ ask for visits with your child,
- ★ ask the social worker when court will be,
- ★ ask for the Report to Court (it explains why the ministry removed your child), and
- ★ ask that your child's Aboriginal traditions, customs, and language are practised.

How your Aboriginal community or band can help

If the ministry removes your child from your home, they must:

- ★ notify your child's **Aboriginal community representative** that they removed your child (an Aboriginal community representative is someone chosen to speak for others, such as someone from the First Nation's band);
- ★ take steps to protect your child's family ties and Aboriginal identity; and
- ★ consider your child's family ties and Aboriginal identity when choosing a foster home.

Your Aboriginal organization and representative

Your child's Aboriginal community representative could be a person from your child's band, friendship centre, treaty First Nation, Aboriginal community, Aboriginal organization as listed in the Child and Family Service Act regulations, or the Nisga'a Lisims government.

Talk to your lawyer to make sure the right people in your child's Aboriginal organization are told at the right time about decisions that affect your child.

Your Aboriginal representative has the right to:

- ★ receive all court documents,
- ★ speak at court, and
- ★ take part in mediation.

Call Legal Aid BC

604-408-2172 (Greater Vancouver)

1-866-577-2525 (elsewhere in BC)

If a social worker from the ministry or a delegated Aboriginal agency contacts you or visits your home, you might be under investigation. Call Legal Aid BC immediately to find out if you qualify for a free lawyer.

You have the right to get legal advice.

Parents Legal Centre

The Parents Legal Centre is a service of Legal Aid BC. You'll work with a lawyer and an advocate to help you address the social worker's concerns about your children's safety (child protection). The service is available any time after the social worker first contacts you.

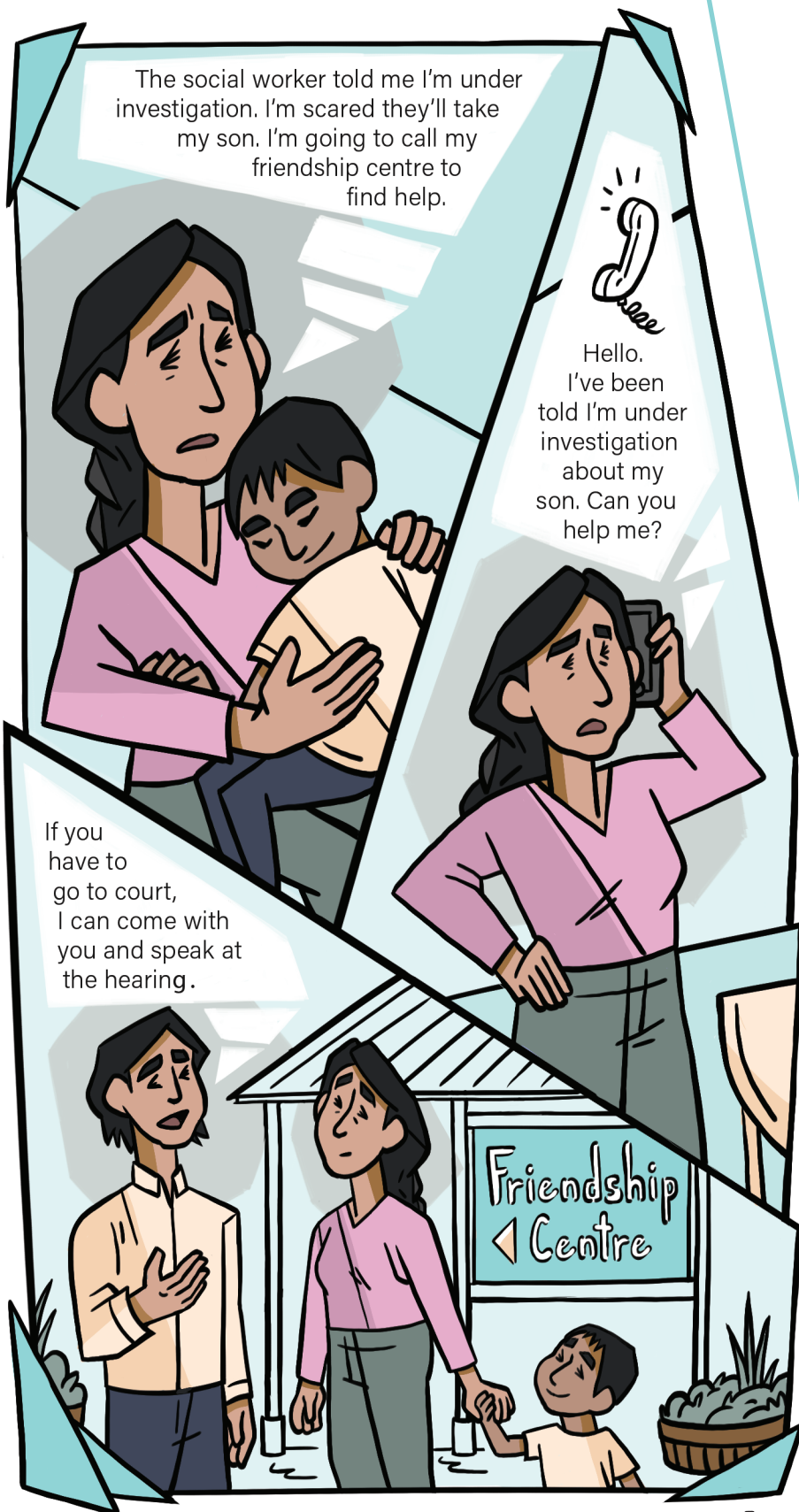
To find out if a Parents Legal Centre is near you and if you qualify, see legalaid.bc.ca/legal_aid/childProtection.php or call Legal Aid BC at the above numbers.

The social worker told me I'm under investigation. I'm scared they'll take my son. I'm going to call my friendship centre to find help.



Hello.
I've been told I'm under investigation about my son. Can you help me?

If you have to go to court, I can come with you and speak at the hearing.





DELEGATED ABORIGINAL AGENCIES

Delegated Aboriginal agencies have an agreement with the Ministry of Children and Family Development to provide certain child protection services to Aboriginal communities. Delegated Aboriginal agencies might have the power to remove your child from your home and place your child in foster care.

If a social worker contacts you or visits your home to ask questions about your family, they might be working for a delegated Aboriginal agency.

How delegated Aboriginal agencies work

Delegated Aboriginal agencies work with families who live on reserve and off reserve.

- ★ If you live on reserve, your band might already work with or have an agreement with a delegated Aboriginal agency.
- ★ If you live off reserve, your local city or town might have an Aboriginal organization that's also a delegated Aboriginal agency.

If the ministry is investigating you, and a delegated Aboriginal agency works with or has an agreement with your band or Aboriginal community, you can ask the ministry to tell the delegated Aboriginal agency about the investigation.

Whether the ministry or a delegated Aboriginal agency is investigating you, you can ask for a representative from your band or friendship centre.

- ★ Your representative will support you during the investigation.
- ★ They'll also help you at any time you're involved with the ministry or a delegated Aboriginal agency.

How to contact a delegated Aboriginal agency

Your band office or government agent office in your community might have the name of the delegated Aboriginal agency in your area.

You can also check a full list of the delegated Aboriginal agencies in BC on the BC government website:

www2.gov.bc.ca (in the search bar, type delegated Aboriginal agencies)

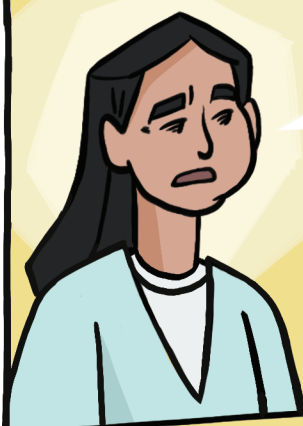
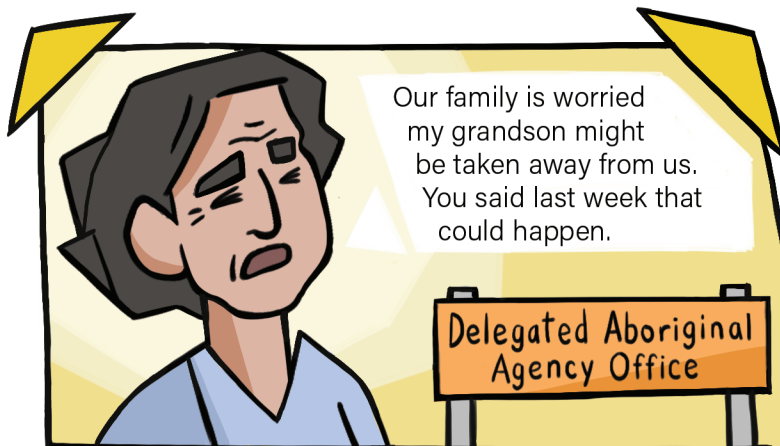
Services and powers

Delegated Aboriginal agencies might offer the following services:

- ★ support services for the whole family;
- ★ help with preparing a voluntary care agreement for your child;
- ★ help with writing, monitoring, and reviewing your child's plan of care;
- ★ help with writing special needs agreements for your child if your child has special needs;
- ★ monitoring how your child is doing while they're in foster care; and
- ★ help for youth who are moving toward independence.

Some delegated Aboriginal agencies also have the power to:

- ★ get and look into reports of child abuse and neglect;
- ★ take your child from your home and place them in a relative's care, such as with an aunt, uncle, or grandparent;
- ★ get supervision orders to make sure your child is safe and healthy; and
- ★ deal with social workers to place a child for adoption.



We want to make sure that doesn't happen. What can we do?

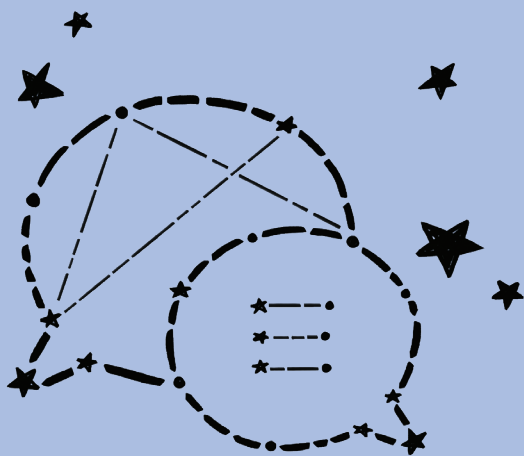
You could get a Family Preservation and Reunification counsellor. They help immediate and extended Aboriginal families stay together.



How does that work?

They work with your family to make a risk-reduction plan that works for all of you, so you can keep your son in your family's care. The plan will also respect your family's Aboriginal identity and cultural ties. If you'd like to participate, I can refer you to a counsellor.





STAYING OUT OF COURT: MEDIATION

If the ministry or a delegated Aboriginal agency contacts you about a child protection concern, you and your family have the right to be involved in decisions about your child. You can ask for a mediator right away to help you work through the social worker's concerns. Talk to your lawyer or social worker about getting an Aboriginal child protection mediator to help with your case.

What mediators do

A **mediator** is a specially trained person who doesn't take sides. They help people reach an agreement and work through conflicts. Mediators don't work for the Ministry of Children and Family Development. They work for the Ministry of Justice.

Mediators help everyone involved in your child's case to work together. Mediators help you decide on a **plan of care**. This is a plan of how your child will be cared for during the court process and possibly after the court process is over. Mediators help you make a plan that works for everyone.

You can also bring everyone together to make a plan for your family at a family case planning conference, **collaborative** (work together) meeting, family group conference, and through traditional decision making. Talk to a lawyer to help you understand your options.

How mediation can help

Working with a mediator to reach an agreement is called **mediation**. Mediation gives you a chance to have your voice heard and share your side of the story.

Mediation can help everyone agree on what's best for your child. It might help you come up with ways to solve some or all of the issues in your child's case. This means you might not have to go to court.

Mediation isn't just for working out conflicts. Sometimes it's hard to talk with your social worker or other people involved in the process. Or sometimes it's hard to understand what happens in court. A mediator can help you with this.

Mediation can help create a plan for your child that builds on your strengths and the strengths of your family and community.

How mediation works

Mediation is **voluntary** (it's your choice). Mediation is free for families involved with the ministry.

You can use mediation to work through a number of issues, including:

- ★ services your family will get and take part in as part of your child's plan of care (includes culturally appropriate plans and community services);
- ★ specific terms of consent orders or supervision orders (see pages 15 and 16);
- ★ how long someone else will care for your child;
- ★ deciding the amount and type of **access** (visits) you or others will have with your child;
- ★ developing a plan for your child to be returned to you, your family, or community; and
- ★ other matters related to your child's care or well-being.

You *can't* use mediation to decide:

- ★ whether your child needs protection, and
- ★ why your child needs protection.

Your lawyer can be at the mediation to support you and give you legal advice.

When to ask for mediation

You can ask for mediation *at any stage* of the child protection process, including:

- ★ as soon as a social worker contacts you to ask questions about your family — you don't have to wait until the social worker takes your child from your home;
- ★ if you have to go to court for a supervision order;
- ★ if your child is in foster care (temporary care or permanent care), or if the ministry placed them in the care of a family member or friend;
- ★ if your court date is already set and you ask for court to be **adjourned** (delayed) to give you time to go to mediation — if you don't reach an agreement, you can still go to court after mediation; and
- ★ after the court hearing.



Mediation and cultural needs

You can ask for an Aboriginal mediator. Aboriginal mediators come from a variety of Aboriginal cultures across BC and Canada. They come from **urban** (cities) and **rural** (country) communities, and are respected members of their home communities.

Mediators aren't experts in all Aboriginal cultures. But the mediator will work with you to meet your family's unique needs. For example, you can ask the mediator to:

- ★ involve your family, band, First Nation, or Aboriginal representative in decision making;
- ★ involve an Elder you're comfortable with, or help you find an Elder who can support you;
- ★ incorporate traditional practices, such as smudging, cedar brushing, offering prayers, or including traditional foods; and
- ★ use a space that meets your family's cultural needs, such as your local Aboriginal agency, friendship centre, or a traditional setting.

If you'd like to work with a mediator from a particular culture or Nation, ask your lawyer or social worker for help.

How to find a mediator

Mediators are available across BC. They can travel to remote communities. How you get a mediator might be different in every community. Ask your lawyer or social worker for more information.

Mediate BC website gives a **roster** (list) of mediators in BC:
mediatebc.com (click Find a Mediator — Directory of Child Protection Mediators)

For more information about mediation, contact the *Child Protection Mediation Program*:
www2.gov.bc.ca (in the search bar, type Child Protection Mediation Program)

778-698-3957 (Victoria)
1-800-663-7867 (elsewhere in BC; ask to be connected to **778-698-3957**)



COURT PROCESS

The court process in a child protection case usually has two hearings — the **presentation hearing** and the **protection hearing**. It's very important for you go to the court hearings. If you aren't there, the judge might think you aren't interested in what happens, and the judge could do what the social worker asks for — without hearing from you.

Presentation hearing

The presentation hearing is the first time you go to court. This is when the judge should ask you if you agree with what the social worker wants to do. The judge might:

- ★ make an order right away, or
- ★ schedule another day to learn more about your case.

A presentation hearing must start within seven days of when the social worker removed your child from your home.

If the social worker applies for a **supervision order without removal**, the hearing should start within 10 days. The ministry tells you the hearing date.

Report to Court

When you go to court, your social worker or lawyer must give you a copy of the Report to Court. This document should say:

- ★ why the ministry removed your child or asked for a **supervision order**,
- ★ what the ministry tried to do before that, and
- ★ what the ministry wants to do next.

Interim orders

The judge can make four types of interim orders at the presentation hearing. An interim order has **terms and conditions of supervision**.

No supervision order *(your child stays with you)*

The judge can decide a supervision order isn't needed. If that happens, the court process ends for you and your child.

Interim supervision order *(your child stays with you)*

The ministry wants you to follow a certain plan to protect your child. If you agree to do what's asked in the order, your child can stay with you. Your child lives with you, with the ministry's or delegated Aboriginal agency's supervision.

Interim supervision order *(your child stays with someone else)*

Your child lives with another person (a family member or friend), with the ministry's or delegated Aboriginal agency's supervision. The order says how your child will be cared for, and can also mention your access visits.

Interim custody order *(your child is placed in foster care)*

Your child must stay in foster care for a certain amount of time. The order can also mention your access visits.

Protection hearing

At the protection hearing, the judge decides who'll care for your child for a longer time. This hearing follows the presentation hearing. The protection hearing must start no later than 45 days after the presentation hearing ends.

If you and the ministry agree about how your child should be cared for, the judge can make a **consent order**. This means you won't have a full protection hearing. The consent order lasts for a specific amount of time.

Temporary orders

At the protection hearing, the judge can make a **temporary order** for your child's care. Or the judge can make a **continuing custody order** for your child's care.

Temporary supervision order *(your child stays with you)*

Your child lives with you, with the ministry's supervision. The order includes supervision terms you must follow. Once the temporary order is in place, the social worker can apply to extend it.

Temporary supervision order *(your child stays with someone else)*

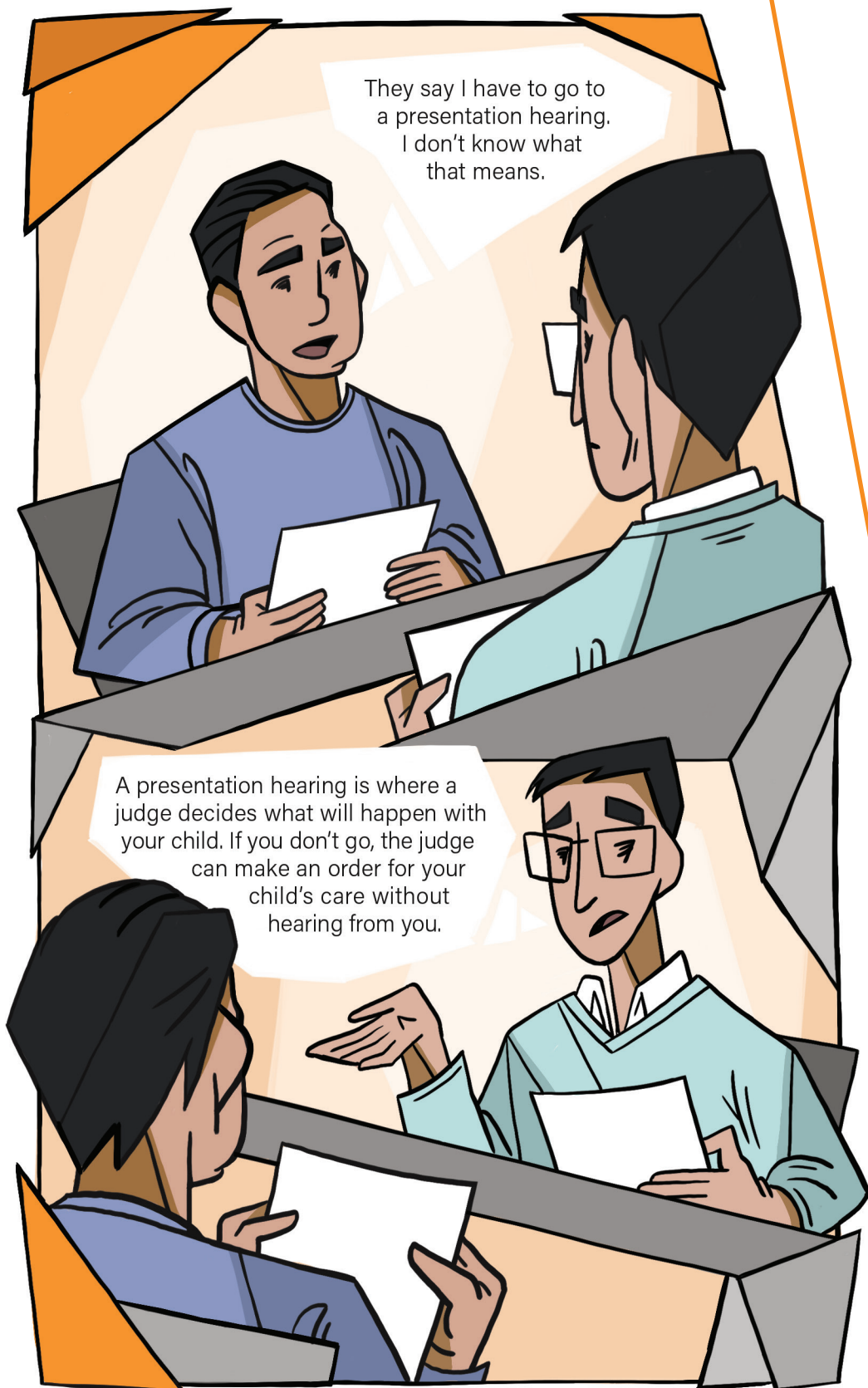
Your child lives with another person (a family member or friend), with the ministry's supervision. The order says how your child will be cared for, and can also mention your access visits. Once the temporary order is in place, the social worker can apply to extend it.

Temporary custody order *(your child is placed in foster care)*

Your child must stay in foster care for a certain length of time. The order can also mention your access visits. Once the temporary order is in place, the social worker can apply to extend it.

Continuing custody order *(your child is placed in foster care for an indefinite time)*

Your child stays in foster care without any limits on how long. A judge usually makes this order only if a very serious problem can't be fixed.





EXTENDED FAMILY PROGRAM

If you can't take care of your children for a while, you can ask the ministry to place them with family or friends to care for them. This means your children stay with someone they know. They don't go into foster care.

You can arrange for this through an **Extended Family Program agreement**. This is sometimes called an EFP agreement. The EFP agreement is for only a limited time. The Ministry of Children and Family Development runs the program.

If you can't care for your children, or a social worker takes your children from your home (or is going to take them), you can ask the social worker to place your children in the care of:

- ★ a family member,
- ★ a friend who has an important relationship with them, or
- ★ someone who has a cultural or traditional connection to them; for example, a grandparent, aunt or uncle, or a family friend.

How the program can help

The Extended Family Program:

- ★ is an alternative to foster care,
- ★ gives your children a living arrangement that's less upsetting for them while you can't take care of them, and
- ★ builds on the strengths of your family and community.

The program's goal is to return your children to you when possible.

Caregivers

The person looking after your children is called their **caregiver**. The Extended Family Program gives your children's caregiver financial help and other support services.

Not everyone **qualifies** (is accepted) for the program.

- ★ If your children are with a caregiver who has court-ordered custody or guardianship of them, they *don't* qualify.
- ★ If your children are already with a caregiver who's still enrolled in the Child in the Home of a Relative program (sometimes called CIHR), they *might not* qualify. The Child in the Home of a Relative program has different rules.

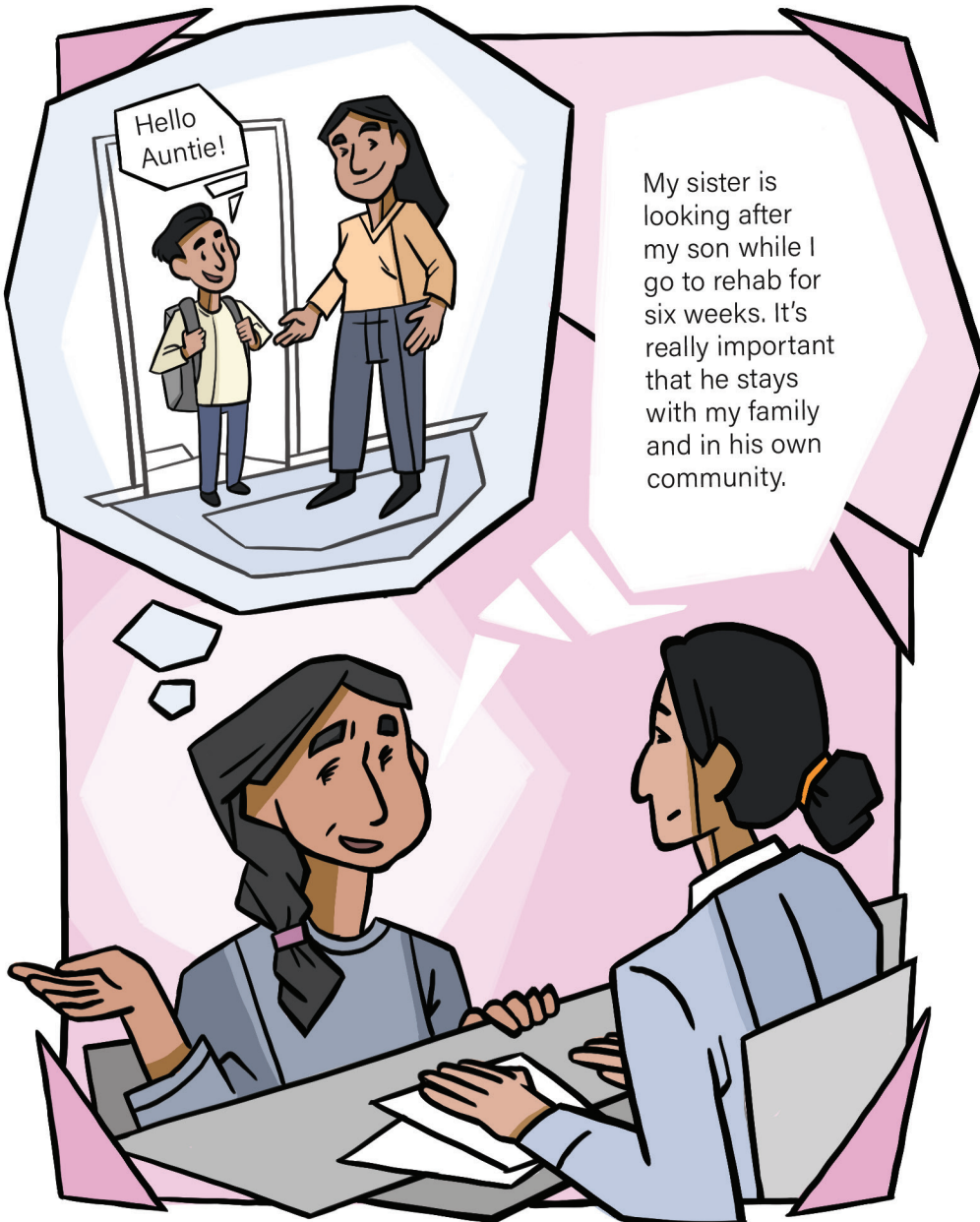
Extended Family Program agreements

Your children are placed with their caregiver through an Extended Family Program agreement. The agreement sets out the best way to meet your children's needs. It also sets out how long your children stay with their caregiver.

An Extended Family Program agreement requires the following:

- ★ The social worker looks at your children's needs. The social worker helps you decide if the Extended Family Program is the best fit for you and your family.
- ★ You work as a team with the social worker and your children's caregiver to come up with a plan for your children's care. The plan includes the services and supports your children need.
- ★ You must deal with the issues that keep you from caring for your children. This is so the ministry can return your children to you by the time the agreement ends.

- ★ The social worker must look into the background of the caregiver you suggest. They will:
- review the caregiver's Child, Family, and Community Service Act records (sometimes called CFCSA records);
 - do a criminal record check;
 - check personal references;
 - check their home; and
 - see how ready and able they are to care for your children.



Agreement length

The first agreement's length depends on how old your children are.

<u>Child's age</u>	<u>Agreement length</u>
Under 5	No longer than 3 months
5 to 11	No longer than 6 months
12 and older	No longer than 6 months

If a longer placement would be better for your children, you might be able to renew the agreement.

<u>Child's age</u>	<u>Total agreement length</u>
Under 5	No longer than 12 months
5 to 11	No longer than 18 months
12 and older	No longer than 24 months

The social worker reviews your Extended Family Program agreement every three or six months.

Extended Family Program agreements replaced kith and kin agreements and the Child in the Home of a Relative program in April 2010.

For more information

www2.gov.bc.ca (in the search bar, type
Extended Family Program)

The ministry website includes information about the steps involved to become a caregiver.

Parent Support Services Society of BC
parentsupportbc.ca

The society gives support to parents and caregivers.
For help with your application, call their *Grandparents
Raising Grandchildren Support Line*:

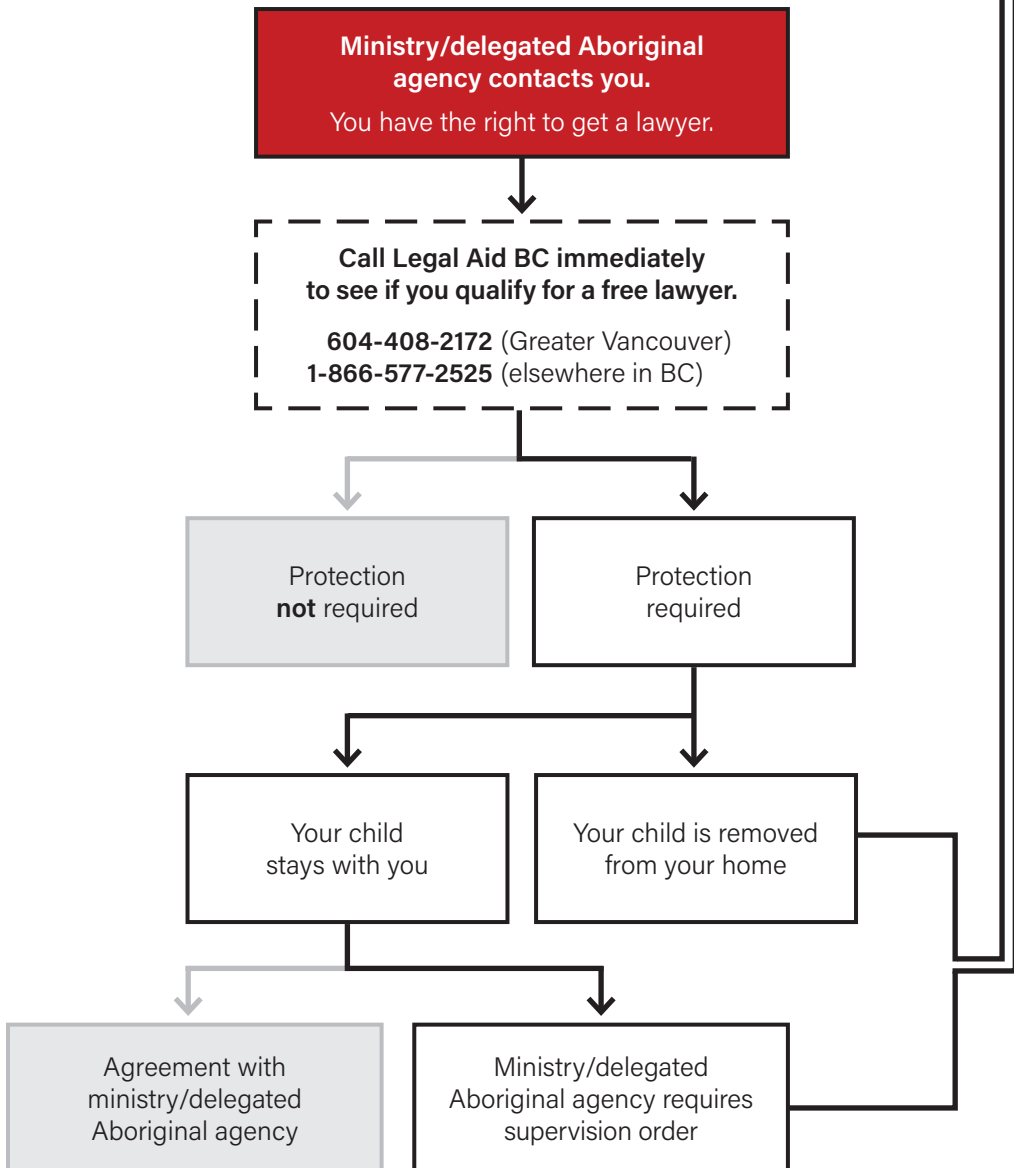
1-855-474-9777

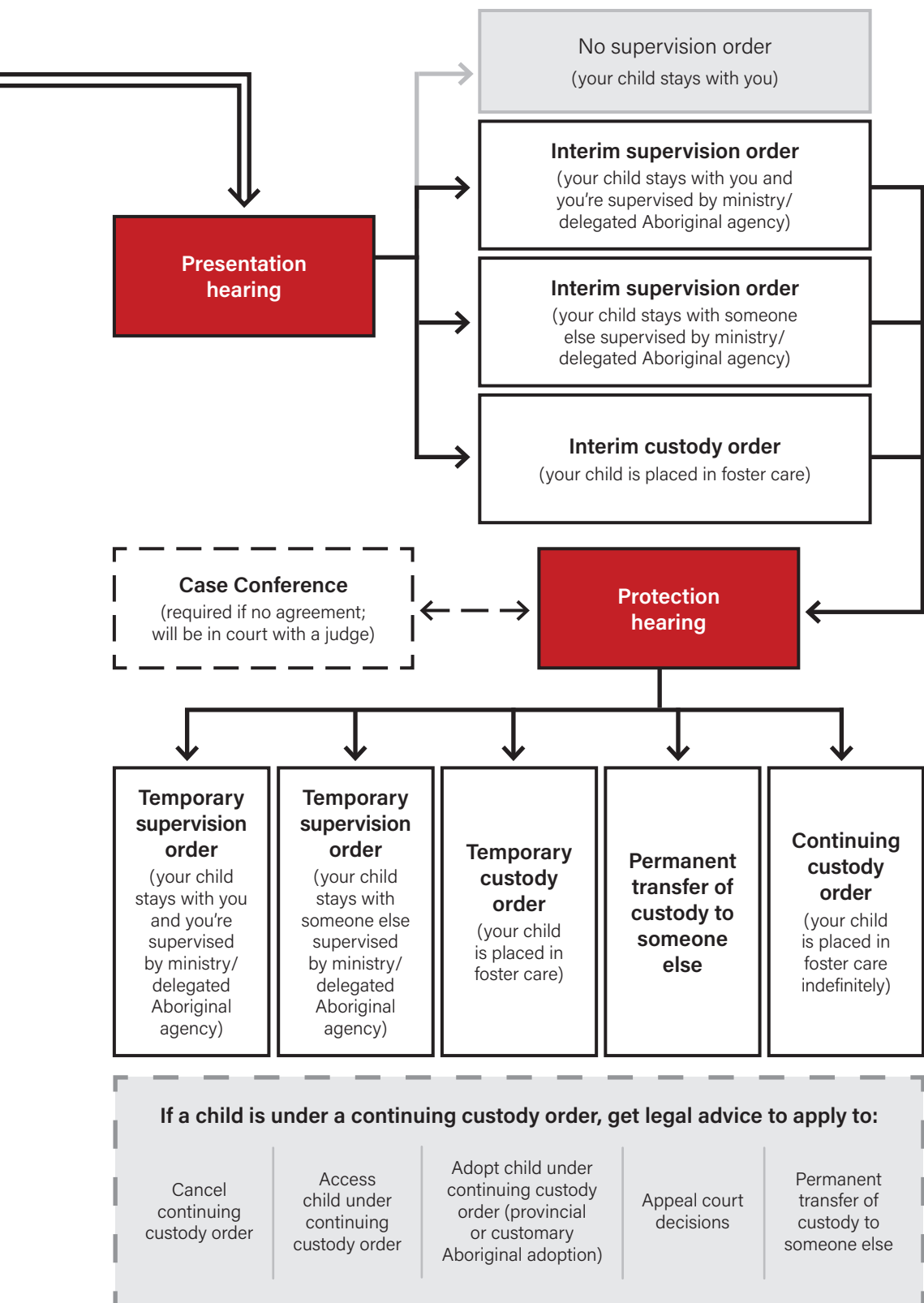
CHILD PROTECTION PROCESS

This flow chart shows you the process for child protection cases that involve Aboriginal children.

Ministry/delegated Aboriginal agency must notify your child's Aboriginal organization of the presentation hearing, if practical.

Ministry/delegated Aboriginal agency must notify your child's Aboriginal organization of the protection hearing.





YOUR DETAILS FOR YOUR CHILD PROTECTION CASE

Date the ministry started investigating

Name of social worker or delegated Aboriginal agency

Date you called Legal Aid BC for a lawyer

Lawyer's name

Lawyer's phone number

Lawyer's address

Date the ministry removed your child

First Nation, band, or friendship centre

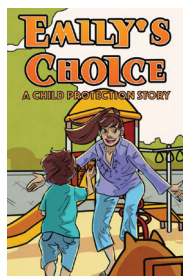
Name

Address

Phone number

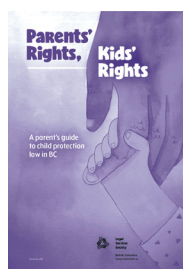


OTHER FREE LEGAL AID BC PUBLICATIONS WITH CHILD PROTECTION INFORMATION



Emily's Choice — A child protection story

This graphic novel introduces your legal rights through engaging storytelling and artwork. Emily is struggling with addiction and an unhealthy relationship. She loves her son, Greg, but can't always take care of him. When Greg goes into foster care, Emily gets legal help and the support of her family to get Greg back. *Emily's Choice* is Emily's story.



Parents Rights, Kids' Rights: A parent's guide to child protection law in BC

This booklet explains the child protection process for Aboriginal and non-Aboriginal children and families. The booklet describes collaborative (shared) planning and decision-making options to stay out of court, what can be decided at the presentation and protection hearings, and where to get community services and legal help.



If You Can't Get Legal Aid for Your Child Protection Case

This booklet is for people facing a complicated child protection hearing who've been denied legal aid but can't afford a lawyer. It explains you can ask for a court-appointed lawyer and how to apply. This step-by-step guide about how to make a JG application includes forms and what to say to the judge in court. Also available in French (online only).



If Your Child Is Taken: Your Rights As a Parent

This online-only brochure explains child protection law and what parents or guardians can do if the Director of Child Welfare removes their child or plans to remove their child from the home. It describes what happens at court and where to get legal help. Also available in French.



Aboriginal Legal Aid BC

To learn more about the law, see aboriginal.legalaid.bc.ca.



How to get free Aboriginal Legal Aid BC publications

Read: aboriginal.legalaid.bc.ca/read

Order: crownpub.bc.ca

(under Quick Links, click
BC Public Legal Education
& Information)



Questions about ordering?

604-601-6000

distribution@legalaid.bc.ca

Feedback on this publication?

publications@legalaid.bc.ca

  @legalaidbc