

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

A step-by-step guide to making a JG application

- Facing a court hearing?
- Can't afford a lawyer?
- Denied legal aid?



Legal
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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 was up to date as of March 2018.

The Canadian Charter of Rights and Freedoms is part of Canada's Constitution. It says that everyone has the right to a fair trial.

In child protection matters, once someone has been denied legal aid, they have the right to ask the court to make an order for a lawyer to be made available to them so that they have a fair trial.

This request is called a "JG application." JG is the name of a New Brunswick court case (1999) about the right to have a lawyer in a child protection case.

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Useful Words to Know

Sometimes the words used in court or by lawyers can be hard to understand. Here's a list of words to help you understand:

- ▣ how to make a JG application, and
- ▣ who's involved in a JG application.

The words are in **bold** in this booklet.

You'll also find some other helpful words in **bold** in the booklet. They're explained in parentheses.

Advocate: A person who knows about certain issues and laws and who uses their experience to help other people.

Affidavit: A form containing the facts of your case that you swear (promise) are true.

Application for a Charter remedy: The process of going to court to show that your Charter rights have been denied.

Attorney General: The **respondent** to your **JG application**.

Commissioner, or Commissioner of Oaths: A person authorized by provincial law to witness **affidavits**.

Director of Child Welfare (the director): A person appointed under the Child, Family and Community Service Act by the Ministry of Children and Family Development to make sure children are kept safe and are well cared for. The Director of Child Welfare has the power to investigate reports of child abuse and remove children from their families.

Director's Counsel: The person who represents the Director of Child Welfare in the child protection proceeding. They aren't involved in your **JG application**, but you need to send them certain information about it.

Exhibits: Documents you use with your **affidavit** to prove what you're saying in court.

Family duty counsel (duty counsel): Lawyers paid by the Legal Services Society (Legal Aid BC) to give you free advice and speak on your behalf in court on family matters.

File: To register your documents with the court.

Government’s lawyer: The lawyer who represents the **Attorney General**. They’ll try to prove that you can afford to pay for a lawyer yourself. They aren’t involved in your child protection case, only your **JG application**.

Hearing: A court-scheduled appearance before a Provincial Court judge.

JG application: The way to ask the government to pay for a lawyer for your child protection case if you can’t afford to pay for one yourself.

Legal aid: Legal advice and services for people who can’t afford to pay for a lawyer.

List days: Days when certain types of hearings are scheduled in Provincial Court.

Mediator: A specially trained person who doesn’t take sides and who helps people to work things out.

Ministry of Children and Family Development (MCF): A government department that has the legal duty to investigate all reports about children who’ve been abused or neglected.

Notary public: A person who’s legally allowed to witness **affidavits** and other legal documents.

Pro bono lawyer: A lawyer who won’t charge you for the time they spend with you. (This time will be limited.)

Report to Court: A document with details about how and why the **Director of Child Welfare** removed your child and that sets out what they’d like to see happen.

Respondent: The person who’s opposing your **JG application** and trying to prove that you can afford to pay for a lawyer.

Serve: To give a legal document to someone.

Social worker: A person qualified and licensed as a social worker. A social worker has the authority to carry out the responsibilities of the **Director of Child Welfare** to provide child welfare services under the Child, Family and Community Service Act. Social workers look into complaints about child abuse and have the power to remove children from their family home.

Sworn statement: A phrase sometimes used to describe an **affidavit**.

Introduction

If a **social worker** contacts your family on behalf of the **Director of Child Welfare**, talk to a lawyer as soon as you can. You have the right to do this. You're under investigation and you could lose your child.

You need a lawyer because a child protection case is complicated. A lawyer can help you work out an agreement with the **Director of Child Welfare** or help you in court.

What to do first

As soon as you can:

1. Call the Legal Services Society (Legal Aid BC) at **604-408-2172** (Greater Vancouver) or **1-866-577-2525** (elsewhere in BC).
2. Ask to speak to a Family LawLINE lawyer. They can give you legal advice and help by phone. Legal Aid provides these lawyers for free.

If you apply for **legal aid** but you're denied it and then denied it again after a review, you can apply for a free court-appointed (court-ordered) lawyer to take your case. This is called "making a **JG application**."

Child protection matters often move quickly, so you need to act fast. You can make a **JG application** at any time during the court process.

You can also speak to a **family duty counsel** lawyer at the courthouse. Legal Aid pays these lawyers to give free legal advice to the public.

You'll find **family duty counsel** lawyers at most provincial courts on child protection **list days**. Their priority is to first help clients in court that day and to deal with emergency applications. But if the court list isn't too busy, they may have time to help you understand the two forms that you need to fill out. (These forms are on pages 17 to 24 of this booklet.)

You can also make an appointment with **family duty counsel** at the Vancouver, Victoria, and Nanaimo Justice Access Centres and at some provincial courts on days other than **list days**. (To find out where your nearest Justice Access Centre or provincial court is, see page 13.)

Other ways to find help

An **advocate** can support you during the child protection process. To find an **advocate**, see povnet.org.

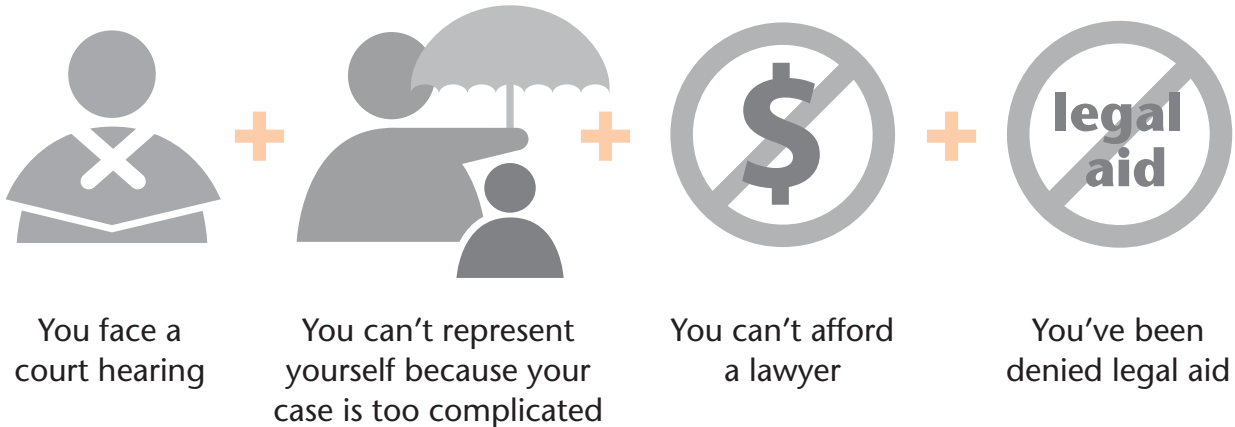
You can also ask for a mediation. At a mediation, a **mediator** will help you talk to the person from the **Ministry of Children and Family Development** (MCF). To find a **mediator**, see mediatebc.com.



If you're Aboriginal, you can also ask for a band or community representative to support you during any stage of the child protection process.

When can I ask a judge to order the government to pay for a lawyer for me?

You can ask a judge to order the government to pay for a lawyer for you if:



You can ask the judge to make an order for the government to pay for a lawyer for you even if you haven't been to court about your child protection case yet. Ask as soon as you know you can't get **legal aid**. If you have to appear in court about your case before you've had time to prepare your **JG application**, tell the judge. They'll give you time to prepare.

Why can a judge order the government to pay for a lawyer for me?

The courts have decided that sometimes a person can't have a fair trial if they don't have a lawyer. The Canadian Charter of Rights and Freedoms (the Charter) says you have the right to a fair trial. Judges have a duty to protect this right.

In child protection matters, if you need a lawyer and you've been denied **legal aid**, even after a review, you have the right to ask the judge to order the government to pay for a lawyer for you.

This request is called a **JG application**. JG is the name of an important Canadian court case about the right to have a lawyer in a child protection case.

What do I have to prove to the judge?



You have to show the judge that you need a lawyer but you can't afford to pay for one. Use the four facts below to organize the information you'll need. Put this information in the forms on pages 17 to 24. These forms and the information in them are your **application for a Charter remedy**.

Later, you'll need to prove these four points to the judge at a **JG hearing**.

1. You face a court hearing



Tell the judge what the **Director of Child Welfare** has done, and wants to do, about your child (or children). This information is in the **Report to Court**. The **social worker** should have given you this. If you don't have a copy of it, ask the **social worker** for it.

2. You can't represent yourself because your case is too complicated

You have to show the judge that your case is too complicated for you to go to court without a lawyer. For example:



- ▣ Your case may involve technical legal issues.
- ▣ The trial procedure may be difficult for you to follow.
- ▣ There may be too much **evidence** (documents or witnesses) for you to handle on your own, especially if the director has a lot of **evidence**.

A lawyer can explain to you what's complicated about your case. To find a lawyer who can explain this, see "Where can I get legal help?" on page 13.

Let the judge know about your:



education level,



language ability, and



knowledge of the child protection process.

This will also help the judge to decide if you're able to manage without a lawyer.

3. You can't afford a lawyer



You need to show the judge that you can't afford a lawyer. To give the judge a clear picture of your finances, include information about your financial situation in your **affidavit** (a form containing the facts of your case that you promise are true). If another adult lives with you and helps to pay for the household expenses, you need to give information about their finances too. The judge will want to know about:

- your job situation,
- your monthly household income and expenses,
- your **assets** (any savings or valuable things you own) and any debts,
- your **dependants** (people you're responsible for), and
- any illness or disability that makes it difficult for you to speak for yourself.

Gather any papers that can show the judge your financial situation. For example:

- bank and credit card statements,
- income tax return,
- welfare cheque stubs, pay statements, EI or disability payment statements,
- hydro bills, and
- rent receipts.

Tell the judge how much you think it would cost to hire a lawyer. This will help the court to decide if you can afford one. Before you go to court, ask one or two lawyers to tell you:

- how much they think they would charge to help you in your child protection case, and
- how much the **retainer** (deposit you would have to pay to a lawyer when they take your case) would be.

To find a lawyer who can answer these questions, see "Where can I get legal help?" on page 13.

If you don't give the judge enough information about your financial situation:

- the judge probably won't order that a lawyer must be provided for you, and
- the government may ask the judge to wait until you give more information before they set a date for a court **hearing**.

To avoid any delays, **disclose** (share) at least the documents that are recommended in the **Affidavit** form on pages 21 to 24.

The government may ask you for more financial information depending on your circumstances. You can ask the judge about this if you don't agree with what the government wants to see.

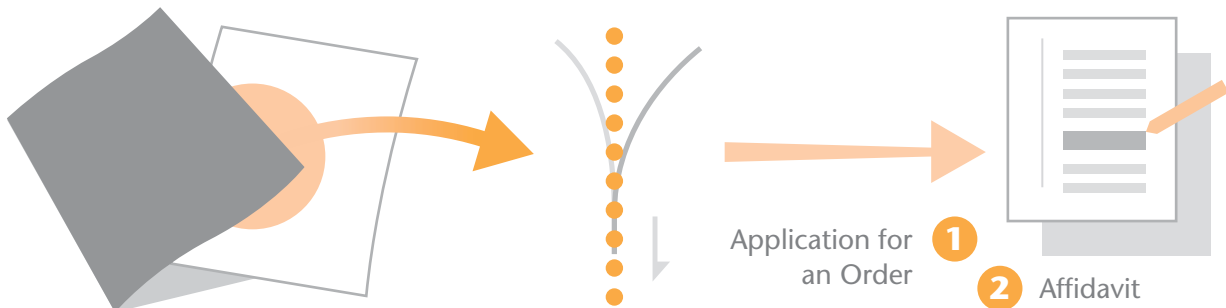
4. You've been denied legal aid



You need to show the judge proof that you applied for **legal aid** but were denied. You also need to show that you asked for a review but were denied **legal aid** again. The **affidavit** that you file when you make your **JG application** should include the letters from Legal Aid showing that you were denied **legal aid**. If you've lost those letters, ask Legal Aid for copies.

How do I start my JG application?

1. To make a **JG application**, you first have to fill out two forms. These forms (with instructions) are in this booklet. They are:
 - **Application for an Order** — This form tells the court that you want to apply for a court-appointed lawyer. It's on pages 17 to 19.
 - **Affidavit** — This is a written statement with your background information that you **swear** (promise) to be true to the best of your knowledge. You'll attach the documents about your finances and the letters from Legal Aid to the Affidavit. It's on pages 21 to 24.
2. Fill out the forms right in the booklet. Then tear out the pages along the dotted lines. See page 6 for more information about how to prepare your forms.



Apply as soon as possible



The first time Legal Aid tells you that you can't get **legal aid**, you must ask them to review their refusal. As soon as they deny you **legal aid** again, start your **JG application**.

Prepare the forms for your JG application



Meet with the **duty counsel** or another lawyer to help you complete the forms called Application for an Order (on pages 17 to 19) and Affidavit (on pages 21 to 24). These will be your **JG application**. To find a lawyer who can help you with this, see page 13 of this booklet.

1. Follow the instructions in the left-hand columns on each form.
2. Take the **Affidavit** form to a lawyer, a **commissioner**, or a **notary public** to be sworn and signed. This means that:
 - you **swear** (promise) in front of them that the information in the **affidavit** is true, and
 - then you sign the form.

There's often a **commissioner** at the court registry who can do this for free. **Duty counsel** lawyers may be able to help for free at the courthouse on **list days**. But it depends on how busy the courthouse is.

3. Make a copy of all the forms for each person who has a right to be told about the **hearing**. Everyone who needs a copy is listed on the Application form. *Make one copy for yourself as well.*

Apply to the court where your hearing will be held



All child protection hearings in BC take place in Provincial Court.

Take your forms to the courthouse where your **hearing** will be. This is also where you'll appear before the judge to make your **JG application**.

If you don't have any information yet about your **hearing**, ask the **social worker**.

File your forms

When you know where your **hearing** will be held:

1. Take the original and the copies of the Application and the **Affidavit** forms to the court registry where your **hearing** will be held.

2. The court registry staff will look at the forms. They'll ask you to fix any mistakes or things that you missed on the Application form. Make sure that you fix them in exactly the same way *on each copy of it*.

Next, the registry staff will stamp each copy of your Application and **Affidavit** forms. They'll keep the original versions of both forms. This means the documents have now been **filed** with the court.

The court registry staff will also give you a date for an appearance for your **JG application**. If you need to talk about hearing dates (for example, if you need time to sort out babysitters) before a hearing date is scheduled, you need to do this before **filing** and **servicing** (giving a legal document to someone who is involved in your case) your application. The court registry staff can tell you how to do this.

Serve your application

Take your copies of the Application and the **Affidavit** forms and **serve them on** everyone listed on the Application. These people might not all be at the same address. There are two different ways to serve the documents for everyone.

You can take the documents in person or send them by registered mail to the:

- ▣ **Attorney General** of Canada, and
- ▣ **Attorney General** of BC.

You can fax the documents or take them in person to the:

- ▣ **Director's Counsel**.

The contact information for all of these people is on page 17 in this booklet.

To serve the documents on the **parties** (the other people listed on the Application form), you must have the documents delivered:

- ▣ in person by someone other than you who's over the age of 19, or
- ▣ by registered mail, or
- ▣ by fax.

If someone delivers the documents in person, they must also fill out a **Certificate of Service** (a form that's used to prove to the court that the documents have been delivered to each of the other parties). Ask the court registry staff about where to get this form.

How do I get ready for court?

Once you've filed and served your **JG application**, think about what you're going to tell the judge to persuade them to order the government to pay for a lawyer for you. For example, tell them why you were denied legal aid and why you need a lawyer to help you. Use your **affidavit** to help you decide what you want to say.

To convince the judge, you can use:

- ▣ your own **testimony** (what you say to the judge under oath in court),
- ▣ your filed **affidavit**,
- ▣ other documents (letters, forms, bank statements, cheque stubs, etc.), and
- ▣ **witnesses** (people who'll talk under oath about your situation at the hearing).

For an **application for a Charter remedy**, you must show the judge proof of your financial situation.

Include all your financial documents as **exhibits** to your **affidavit** with your **JG application**. You can also bring documents that you didn't include in your **affidavit** if you think they'll help. You and your witnesses can use these documents when you're speaking to the judge. If you don't use these documents, you may not have enough evidence to convince the judge that you can't afford to pay for a lawyer.

The government is allowed to see any documents you plan to use at your **hearing** before the **hearing** takes place. If you're going to use documents that you didn't attach to your **affidavit** when you **filed** your application, you must send copies of them to the address the **government's lawyer** gives you before the court **hearing** takes place.

If you're using witnesses, make a list of questions for them ahead of time. Be prepared to show them the documents you've included in your **JG application**. They may have to talk about what's in the documents.

Meet with a lawyer and ask for help

Try to talk to a **pro bono lawyer** or get **summary** (general) legal advice from a legal **advocate** before you go to court. Ask the lawyer or **advocate**:

- to go over all four points you need to convince the judge about (on pages 2 to 4), and
- to explain what you can expect in court.

To find a lawyer or **advocate**, see “Where can I get legal help?” on page 13.

After you’ve made your JG application

After you’ve **filed** and **served** your **JG application**, a **government lawyer** will contact you to discuss your case and dates for a **hearing**.

When they contact you, they may:

- ask you for more information,
- agree to your application, or
- offer to **negotiate a settlement** (come to an agreement) so you don’t have to go to court to have a **hearing** for your **JG application**.



If the government offers to settle, they may ask you to pay some of the cost of hiring a lawyer if it looks like you can afford it. It’s up to you to decide if you want to settle.

You may wish to ask a lawyer or **advocate** for advice about this. To find a lawyer or **advocate**, see “Where can I get legal help?” on page 13.

If you decide you don’t want to settle and would rather have a **hearing**, the judge may order you to pay some of the cost if your financial documents show that you can afford it.

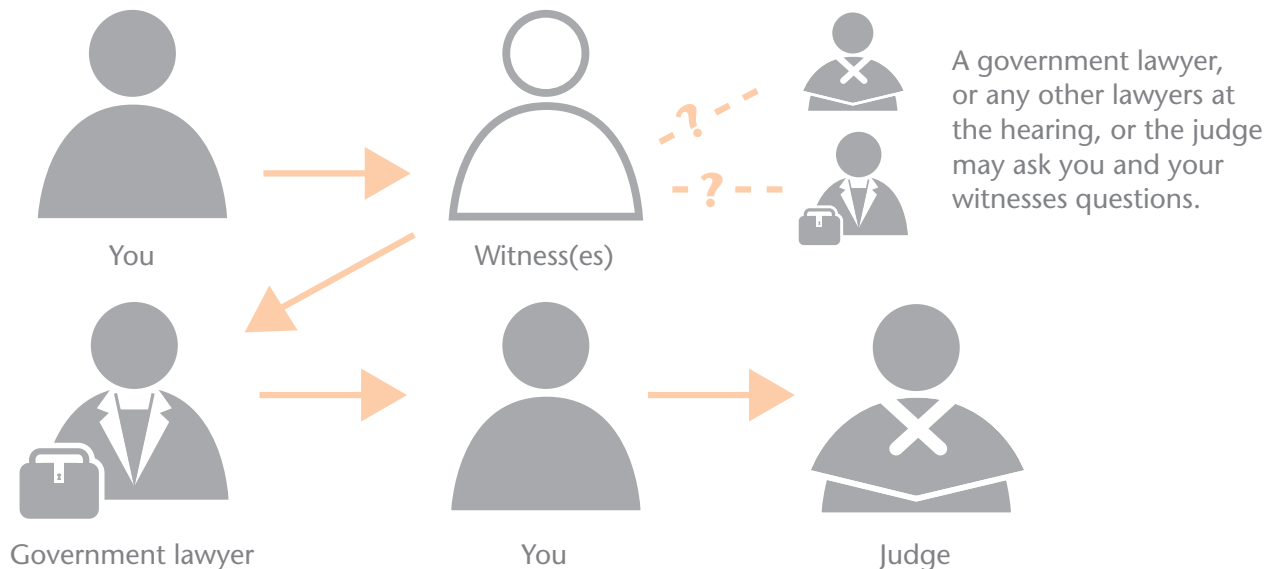
If you don’t reach a settlement and the **hearing** goes ahead, you’ll get a package of documents from the **government’s lawyer** before the **hearing**. This may include **affidavits**, an argument, and information about similar cases that the government will use at the **hearing** to prove that they shouldn’t pay for a lawyer for you.

When you get the documents, try to meet with **duty counsel** or another lawyer to show them the documents and ask for advice before the **hearing**.

What happens in court?

The judge will hold a **hearing** about your application for an order (the **JG application**) to have the government pay for your lawyer.

The diagram below shows you who gets to speak in court and when.



You go first



You'll speak first. This is called "making submissions to the court."

Call the judge "Your Honour." Say "Your Honour, I want to make a JG application because I can't afford a lawyer and I can't get legal aid."

You now need to convince the judge of the four points:

1. You face a court hearing.
 - ❑ You have a hearing about your child protection case coming up and the outcome will affect your parental rights.
2. You can't represent yourself because your case is too complicated.
 - ❑ Your case may be complicated for legal reasons.
 - ❑ You may not be able to follow the court procedure.
 - ❑ There may be too much evidence for you to manage by yourself.

3. You can't afford a lawyer.
4. You've been denied legal aid, even after a review.

You need to **give evidence** (give proof) about all of the four points listed above. You can:

- ▣ **testify** (speak) under oath,
- ▣ refer to your filed **affidavit**, and
- ▣ present your documents.

When you've finished speaking, you can ask your witnesses to speak (if you have any).



A government lawyer, or any other lawyers at the hearing, or the judge may ask you and your witnesses questions. Use your documents while you're in court to help you make your points.

If the judge says you've made a mistake or that you're missing some documents, *don't give up*. Ask the judge to explain what you should have done in the first place. Then:

- ▣ ask them if you can **stand down** (pause the court hearing) to speak to **duty counsel** for help, or
- ▣ ask for an **adjournment** (delay) so you can get free legal advice and come back to court another day to continue the hearing and finish making your **JG application**.



Check carefully that you've included all the evidence you'll need to prove you can't afford a lawyer and that your child protection case will affect your parental rights and is too complicated for you to manage alone. After you've made your submissions and presented your evidence, you can't add any new evidence.

The government's lawyer goes next



The **government's lawyer** will then probably try to prove that:

- ▣ you can defend yourself, because the case isn't complicated, or
- ▣ you can afford a lawyer.

You'll get a chance to speak again after the **government's lawyer** speaks. Refer only to the parts of your documents or the parts of the earlier **testimony** (comments) that support the points you're trying to make.

Usually you can't refer to documents or evidence that you didn't include in your original **evidence** and submissions to the court.

The judge decides



After you and the **government's lawyer** have had a chance to speak, the judge will decide whether to order that a lawyer must be provided for you. Sometimes the judge will **reserve** (delay) their decision to consider the evidence and ask you to come back on another day to hear their decision.

If the judge denies your **JG application**, you can't **appeal** (ask them to review) it. But if things change in your life (for example, if your case becomes more complicated or your income drops), you can make another **JG application**.

How long before I may get a lawyer?

If the judge decides to make an order that you should have a lawyer, contact Legal Aid as quickly as you can. Give them all the details from the court order that you got at the courthouse.

Legal Aid may need a few days to check the court order before they get you a lawyer.

Legal Aid will call you with a lawyer's name and phone number. This lawyer will represent you at your court **hearing** about what the director wants to do. You may have to wait several months for that **hearing**.

Where can I get legal help?



It's a good idea to talk to a lawyer before you make your **JG application**. Here are some ways to do that:

- ▣ **Speak to a Family LawLINE lawyer.** Legal Aid provides Family LawLINE lawyers for free. They can give you free legal advice and help by phone. Call Legal Aid at **604-408-2172** (Greater Vancouver) or at **1-866-577-2525** (elsewhere in BC). Ask to speak to a Family LawLINE lawyer.
- ▣ **Speak to a family duty counsel lawyer at the courthouse.** If they have time, **duty counsel** can give you free advice about the **director's** application regarding your child (or children), court procedures, and your legal rights. **Duty counsel** can even speak on your behalf the first time you appear in court. But they can't act as your permanent lawyer.

To find out when **duty counsel** are available:

- ▣ Call Legal Aid at **604-408-2172** (Greater Vancouver) or at **1-866-577-2525** (elsewhere in BC). Ask when **duty counsel** will be in the courthouse. Or,
- ▣ Check the Legal Aid website at legalaid.bc.ca. Under Legal Aid, click Advice. In the list under the heading Family law, click Duty counsel. There's a list of cities at the bottom of the page. Click your nearest city for the address, phone number, and hours of the courthouse. You can call the number listed for your courthouse to make an appointment. Or,
- ▣ Check the Attorney General website at gov.bc.ca/justice. Near the bottom of the page is the heading Featured Services. Click Court Services Online. Click Courthouse Locations (on the right-hand side of the page) to get to the Courthouse Locations page.

- ❑ **If you're near Vancouver, Victoria, or Nanaimo**, talk to someone at your nearest Justice Access Centre. Find the addresses at gov.bc.ca/justice. Under the heading Featured Topics, click Justice Access Centres.
- ❑ **Pay a lawyer for one or two meetings.** Even if you pay for just two meetings to get basic advice about your case, it could be worth the cost. Find out at your first meeting what kind of help the lawyer can give you and how much it will cost.
- ❑ **If you don't know a lawyer who handles child protection cases**, call the Lawyer Referral Service. For \$25 (plus tax), you can have a half-hour appointment with a lawyer. If you decide you want to hire that lawyer, remember to ask how much you can expect to pay. Call **604-687-3221** (Greater Vancouver) or **1-800-663-1919** (elsewhere in BC).
- ❑ **You can learn more about the child protection process** from the Family Law in BC website at familylaw.lss.bc.ca. (Under Your legal issue, click Child protection / removal.)



Forms

Follow the instructions in the left-hand columns.

Fill out the forms right in the booklet. Then tear out the pages along the dotted lines.

See page 6 for more information about how to prepare your forms.

INSTRUCTIONS

Print your answers clearly on the form.

Use the same court file number and court location that's on the **top right corner** of your court documents.

Write the child(ren)'s name(s) **as they appear on your court documents**. Include the child(ren)'s birth date(s) (mm/dd/yyyy).

List the full names of the **parent(s) and other people who are parties**.

You're the one filing the application. Fill in your name, address, postal code, phone number, and fax number (if you have one).

If you change your address, go to the court registry for a Notice of Address for Service (Form 8). Fill the form in and file it with the court registry.

You must give notice (send a copy) to:

- The **Attorney General of Canada**,
- **Attorney General of British Columbia**,
- **Director's Counsel** (the government's lawyer) (ask the ministry lawyer for their contact information).

Use registered mail to send the documents to the **Attorneys General** or take the documents in person to their offices.

Fax the documents to the **Director's Counsel** or take the documents in person to their office.

APPLICATION FOR AN ORDER

Court File Number _____

Court Location _____

In the Provincial Court of British Columbia
Under the *Child, Family and Community Service Act*

In the matter of the child(ren):

Date(s) of birth:

The parent(s) of the child(ren) is/are:

This Application is filed by:

Name: _____

Address: _____

Phone number: _____ Fax number: _____

Notice to: Attorney General of Canada
Department of Justice Canada
#900 – 840 Howe Street
Vancouver, British Columbia V6Z 2S9

Attorney General of British Columbia
PO Box 9280 Stn Prov Govt
Victoria, British Columbia V8W 9J7
Attn: Duty Counsel

Director's Counsel

Party — List the names and addresses of the other people who are parties.

There are three ways to get the documents to the other parties:

- Fax them, or
- Send them by registered mail,
- Or send someone other than you who is 19 or older to deliver them in person. That person must sign an Affidavit of Service to prove that they served the documents.

If you use registered mail to send the forms, you can check Canada Post's website to see that they've been delivered. You can then print that information as proof of delivery.

If any of the parties have a lawyer, you can fax the documents to their lawyer or take them to the lawyer's office in person.

Check one box to show if **your child(ren) is/are Aboriginal** or not.

Ask the court registry staff (at the courthouse) about **the most appropriate date** to schedule your application hearing. Then fill in the blanks for the **date, time, and address of the court location** for your application hearing.

Check off the box that says "An order as set out below."

Party _____

Party _____

Party _____

The child is Aboriginal: Yes No

I will apply to this court on _____ at ____:____ am pm
at _____

FOR

- A temporary custody order (under s. 41(1)(c), s. 42.2(4)(b) or s. 49(7)(b))
- A supervision order (under s. 41(1)(a), s. 41(2.1) or s. 42.2(4)(a))
- A continuing custody order (under s. 41(1)(d), s. 42.2(4)(d), s. 49(4), s. 49(5) or s. 49(10))
- An order permitting use of another service method, as set out below (Rule 6(10))
- Extension of a temporary order (s. 44)
- A supervision order after expiry of a temporary custody order (s. 46)
- An order for access to a child (s. 55)
- An order that a child or parent undergo a medical or other examination (s. 59)
- An order under s. 60 with reference to section _____
- An order under s. 60 dispensing with a required consent
- An order varying notice requirements (s. 69)
- An order as set out below

Read your court documents and check the one box that applies.

Write your age and what grade you completed in school (or higher).

Sign and date the form.

Write in an address or fax number where you want to receive mail, if it's different from the one you put on the first page.

-
-
-
1. The Director's application is for:
 - interim custody (for 45 days)
 - temporary custody (for ___ months)
 - continuing custody
 2. The applicant wishes to retain counsel to represent them with regard to the order sought by the Director. To that end, the applicant applied to the Legal Services Society for legal aid and legal aid has been refused. The applicant cannot pay for a lawyer. Representation of the client by counsel is essential to a fair trial and to the ability of the applicant to make a full answer and defence. The applicant believes that the order sought is serious and complex. The applicant is _____ years old and her/his level of education is _____.
 3. **Constitutional issues to be raised and principles to be argued are:**
The applicant relies on s. 7 of the Charter of Rights and Freedoms, and the common law. S. 7 of the Charter guarantees the applicant the right to a fair hearing in accordance with the principles of fundamental justice and accordingly requires funded counsel to be provided if the applicant wishes counsel, cannot pay a lawyer, and representation of the applicant by counsel is essential to a fair trial: *New Brunswick (Minister of Health and Community Services) v. G.(J.)*, [1999] 3 SCR 46. The applicant also relies on Rule 8, s. 8(c) of the *Family Court Rules (CFCSA)*.

In support of this application, the applicant relies upon the following:

- a) the Affidavit of the applicant;
- b) such further and other evidence as the court may permit.

Signature of Applicant or Agent

Dated

Address for service if different from Applicant's:

Fax: _____

Once you've completed this form, make three (3) copies. Serve one on the Attorney General of Canada and one on the Attorney General of British Columbia. Keep one for yourself.

Take your original and all of the copies to the court registry where you'll have your application heard, and ask the registry staff to **stamp each copy**.

The registry staff will keep the original of both the Affidavit and Application. This means you've now **filed** your documents.

Serve all the people who are listed as the people who should receive notice.

Under the Constitutional Questions Act, the government is entitled to **14 days' notice** before having this application heard by the court.

INSTRUCTIONS

Print your answers clearly on the form.

Use the same court file number and court location that's on the **top right corner** of your court documents.

Write the child(ren)'s name(s) **as they appear on your court documents**. Include the child(ren)'s birth date(s).

List the full names of the parent(s) and any other people who are parties.

Fill in your name and address. If you change your address, go to the court registry for a Notice of Address for Service (Form 8). Fill the form in and file it with the court registry.

Read your court documents and fill in the **date of removal** of your child(ren).

Read your court documents and check the one box that applies.

Documents are called "Exhibits." Label them "A," "B," "C," etc. and attach them to the Affidavit.

List the reason(s) on your letter(s) from Legal Aid.

Court File Number _____

Court Location _____

In the Provincial Court of British Columbia Under the *Child, Family and Community Service Act*

In the matter of the child(ren):

Date(s) of birth:

The parent(s) of the child(ren) is/are:

AFFIDAVIT

I, _____ of _____ swear/affirm:

1. I know or firmly believe the following facts to be true. Where these facts are based on information from others, I have stated the source of that information and I firmly believe that information to be true.
2. My child(ren) was/were removed from my care on _____.
3. The Director's application is for:
 - interim custody (for 45 days)
 - temporary custody (for ___ months)
 - continuing custody
4. I have been refused legal aid.
5. I have attached the letter from Legal Aid informing me that my application for coverage was denied as Exhibit "A" to this Affidavit.
6. I appealed Legal Aid's decision to deny me coverage, but my appeal was denied. I have attached the letter from Legal Aid informing me that my appeal was denied as Exhibit "B" to this Affidavit.
7. I was denied legal aid because

Write your age and the name of the country you were born in.

Check one box only.

Check one box only and fill in the blank(s).

Check one box only and fill in the blank(s).

Check one box only and fill in the blank, if needed.

Label your Exhibits ("C," "D," "E," etc.) as needed. If you haven't completed your Income Tax Returns, attach any other proof of income such as pay statements, or EI or disability payments, etc., as Exhibits.

Attach as exhibits your:

- cheque stubs
- employment records
- bank statements
- rent
- hydro bill
- other bills
- support payments

You can list your monthly expenses here for:

- transportation
- food
- medical care
- child care
- any other relevant expense you have

8. I am currently ___ years old. I was born in _____, and I am:

- A Canadian Citizen
- Canadian Permanent Resident
- Not a Canadian Citizen or a Canadian Permanent Resident

9. My first language is _____, and:

- I can read, write, and speak either English or French.
- I can't read, write, and speak either English or French without help from someone else, and I need the following kinds of help reading, writing, or speaking English or French: _____

10. The highest level of schooling I have completed is:

- Less than high school. The last grade I completed was grade ____.
- High school.
- Technical or trade school. The institutions I attended and certificates/diplomas I received are: _____
- College or university. The institutions I attended and certificates/diplomas I received are: _____

11. I am currently:

- Unemployed.
- Employed as a _____:
My pay stubs or other documents to prove my household income are attached to this Affidavit as Exhibit "_____."

12. I have attached my Income Tax Returns and Notices of Assessment from the Canada Revenue Agency for the following years _____ as Exhibit "_____" to this Affidavit. I have attached _____ as Exhibit(s) "_____" to this Affidavit.

13. My financial circumstances are:

- a) my household income is: \$ _____
- b) my monthly household expenses are:

Item	Cost

Total: \$ _____

- c) my debts total: \$ _____

List your:

- vehicles
- savings
- shares
- investments
- property
- any other relevant items of value you have

d) all the things that I own have a value of:

Item	Cost

Total: \$ _____

Documents to prove my expenses and debts are attached as “Exhibit ____” to this affidavit.

14. I have contacted at least two (2) private lawyers who practise in or near _____, British Columbia, and who practise child protection law. They estimated it would cost the amounts below to represent me, and asked for retainers as follows:

Lawyer#1 Hearings: \$ _____ Retainer: \$ _____

Lawyer#2 Hearings: \$ _____ Retainer: \$ _____

15. I have not been able to hire a lawyer because I cannot afford one. Since my child(ren) was/were removed, I have not been able to save enough money to hire a lawyer to defend me because:

16. I believe my case is serious because I may lose custody of my child(ren).

17. I believe my case is complex. My case is complex because:

18. Other relevant information I think should be considered:

You **don't** need to give the lawyers' names.

List all the expenses/reasons why you have no extra money available.

You can explain why your case is complex (complicated), if you want (for example, the number of documents and witnesses the Director will be using).



Write the number of the affidavit (first, second, etc.)

19. This is my ____ affidavit for this application.

20. I swear/affirm this Affidavit in support of an application to have a judge order that I be provided with counsel by the Government of British Columbia.

You must sign this IN FRONT OF a lawyer, a commissioner for taking oaths, or a notary public. The lawyer, commissioner, or notary fills out the date and place and also signs.

SWORN/AFFIRMED BEFORE ME at)
the city of _____, in)
the province of British Columbia, this)
____ day of _____, 20 __.)

Signature of applicant

If you forget to include something with your first affidavit (for example, a document you want to use as an exhibit), you may need to do a new affidavit that includes the extra information.

A commissioner for taking)
Affidavits within British Columbia)

After you've sworn this document, make a copy for **each person** who you must give notice to (see page 1 of your Application for the number of people), plus a copy for yourself.

Take your original and all of the copies to the court registry where you'll have your application heard, and ask the registry staff to **stamp each copy**. The registry staff will keep the original of both the Application and Affidavit. This means you've now filed your documents.

Serve all the people who are listed as the people who should receive notice. If you use registered mail to send the forms, you can check Canada Post's website to see that it's been delivered. You can then print that information as proof of delivery.

Under the Constitutional Questions Act, the government is entitled to **14 days' notice** before this application is heard by the court.

Also Available

Emily's Choice: A Child Protection Story

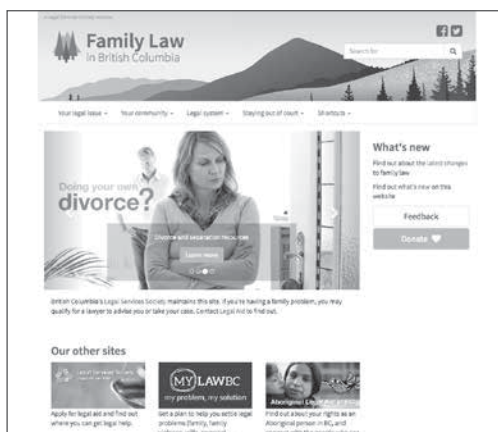
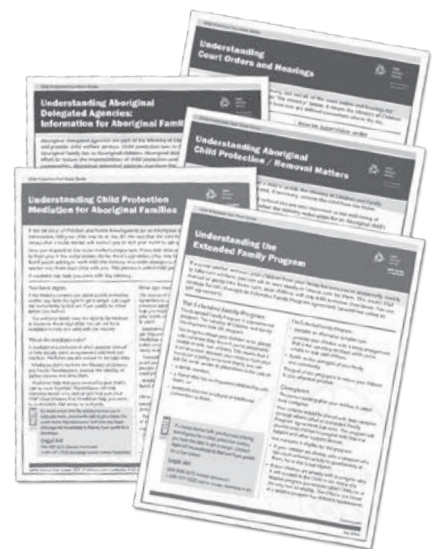
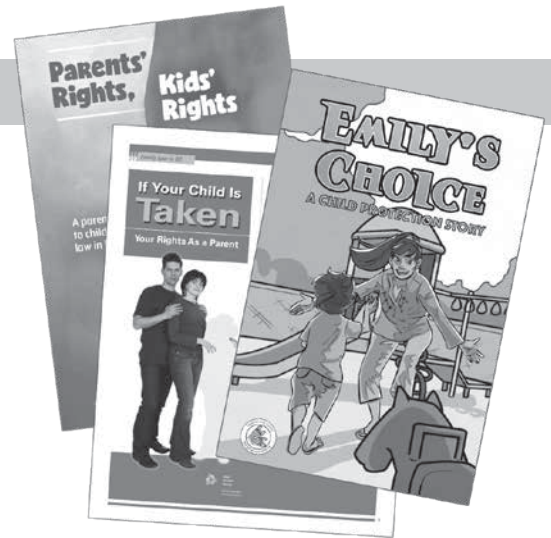
Parents' Rights, Kids' Rights: A Parent's Guide to Child Protection Law in BC

If Your Child Is Taken: Your Rights As a Parent

Aboriginal Child Protection Fact Sheets

- ❑ *Understanding Aboriginal Child Protection/Removal Matters*
- ❑ *Understanding Delegated Aboriginal Agencies: Information for Aboriginal Families*
- ❑ *Understanding Child Protection Mediation for Aboriginal Families*
- ❑ *Understanding Court Orders and Hearings*
- ❑ *Understanding the Extended Family Program*

You can read all of our publications online at legallaid.bc.ca/read.



Our Family Law in BC website has information about the child protection process. See familylaw.lss.bc.ca.



Our Aboriginal Legal Aid in BC website has information about issues important to Aboriginal people. See aboriginal.legalaid.bc.ca.

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