

# Practices and Procedures

Family Duty Counsel and Advice Lawyer Services



**Legal  
Services  
Society**

British Columbia  
[www.lss.bc.ca](http://www.lss.bc.ca)



# Contents

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- Part 1 — Family Duty Counsel Program ..... 1**
  - Objectives and scope of Family Duty Counsel Program ..... 1
  - Background and description of the program ..... 1
    - Family advice lawyers ..... 2
    - Provincial Court FDC ..... 2
    - Supreme Court FDC ..... 2
    - Conflict referrals ..... 3
    - Case conference referrals ..... 3
  
- Part 2 — The Lawyers..... 4**
  - Lawyer qualifications ..... 4
  - FDC responsibilities ..... 5
    - Attendance ..... 5
    - Dealing with clients ..... 5
    - Priorities between clients ..... 7
    - Expectations of service ..... 7
    - Changing and trading FDC referrals ..... 7
  - Courtesy to other FDC lawyers ..... 8
  - Conflicts and solicitor-client privilege ..... 8
  - Multiple duty counsel referrals ..... 9
  - FDC schedule posted at the courthouse ..... 9
  - Touting ..... 9
  
- Part 3 — The Clients ..... 10**
  - Financial eligibility of clients ..... 10
  - Clients who appear to be abusing FDC or advice services ..... 10
  - Clients who qualify, or are already approved, for legal aid ..... 11
  - Clients not physically present ..... 11
  
- Part 4 — Substantive Matters ..... 12**
  - Emergency and ex parte procedures ..... 12
  - Child, Family, and Community Service Act* procedures ..... 12
  - Uncontested matters ..... 13
  - Contested matters ..... 13
  - Property ..... 14

Mediation .....	14
Drafting orders .....	14
Conflict referrals .....	14
Case conference referrals .....	15
Uncontested divorces .....	16
Swearing affidavits as FDC .....	16
Children in <i>FRA</i> and <i>CFCSA</i> matters .....	16
Appearing as agent for client .....	17
Clients in custody on bench warrants for failure to appear on <i>FMEA</i> or <i>FRA</i> matters.....	17
Clients arrested under section 126 of the <i>FRA</i> .....	18
Clients in custody in Supreme Court on a “peace officer assist” clause.....	18
Appeals .....	19
Telephone advice .....	19
Requesting spring orders for incarcerated clients to attend court.....	19
Applications for videoconferencing, transfer of venue, and teleconferencing .....	19
<b>Part 5 — Tariff and Billing .....</b>	<b>21</b>
Tariffs.....	21
Duty Counsel Tariff (includes Circuit Counsel).....	21
Disbursements for All Tariffs.....	21
Billing .....	22
When to bill.....	22
How to bill if you must attend to your own clients while you are FDC .....	22
Minimum hours .....	22
Attending an administrative/management meeting .....	23
Billing case conference referrals .....	23
Do not sign the billing form if another lawyer took the shift .....	23
Retention of records .....	23
Extra fees.....	24
<b>Part 6 — Complaints .....</b>	<b>25</b>
Complaints policy .....	25
Preventing client complaints.....	25
Insensitivity .....	25
Undue pressure .....	25
Unable to locate FDC .....	26
<b>Part 7 — Media Protocol.....</b>	<b>27</b>

<b>Part 8 — Robson Square and Nanaimo Justice Access Centres .....</b>	<b>28</b>
<b>Part 9 — Duty Counsel Resources .....</b>	<b>29</b>
LSS computers .....	29
DIVORCEmate and use of DIVORCEmate under LSS licence .....	29
Online resources.....	29
Family Law in British Columbia website .....	29
<b>Appendices.....</b>	<b>31</b>
Appendix 1. Contact list .....	31
Appendix 2. Referral Form for Family Advice Lawyer .....	31
Appendix 3. Client Declaration for Case Conference Referral.....	31
Appendix 4. Acknowledgement of Duty Counsel Services.....	31
Appendix 5. Acknowledgement of Advice Lawyer Services .....	31
Appendix 6. Family Duty Counsel Client Information Form.....	31
Appendix 7. Family Duty Counsel Program Advice Given .....	31
Appendix 8. Family Duty Counsel Referral Form for Legal Services Intake.....	31
Appendix 9: Current Family and CFCSA Tariff Coverage .....	31

# Part 1 — Family Duty Counsel Program

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## Objectives and scope of Family Duty Counsel Program

The three primary objectives of the Legal Services Society's Family Duty Counsel (FDC) Program are to:

- provide timely, brief legal and referral services to people with low incomes and family law problems who do not qualify for legal representation under the Legal Services Society's family coverage guidelines;
- promote consensual dispute resolution options to those engaged in or contemplating family law litigation; and
- work in an integrated and cooperative manner with other family justice service providers.

FDC service includes giving advice on court procedures, the law, and the client's legal options; negotiating consent orders; and providing referrals to other self-help resources. Where there is equipped office space, service may include limited document preparation or legal research. As FDC, you will speak to uncontested matters in court or Chambers. You may speak to simple contested matters if you are satisfied that you are sufficiently prepared and any materials are adequate. FDC may be scheduled on days when no family lists or matters are scheduled, primarily to provide advice. However, you are not restricted to providing advice only and may appear in court to assist with a family case.

Advice may range from independent legal advice about draft separation agreements (provided they do not deal with property division) to procedural advice for clients who are heading to Provincial or Supreme Court. You may take any steps necessary to help resolve the client's problems, including negotiating with the other party.

However, you cannot:

- attend court on a contested trial or hearing if the matters are lengthy or complex;
- attend trial planning conferences;
- help with complex property disputes or tax issues;
- help a client who has already retained a lawyer;
- help with legal problems not related to family law;
- accept service of or serve any court document; or
- become the client's solicitor of record while acting as FDC.

## Background and description of the program

The FDC Program encompasses five different types of referrals:

## **Family advice lawyers**

This service started in Kelowna in 2001. Family advice lawyers attend at family justice counsellors' offices to meet with clients referred by family justice counsellors. They help clients by supporting mediation and giving legal advice about agreements being mediated with family justice counsellors. As they are located at family justice counsellors' offices, the lawyers do not provide assistance in court, although they may give advice about a court action.

These services are offered in Kelowna and Vancouver. They are also available at the Nanaimo Justice Access Centre. In Vancouver, the family advice lawyer is included in the Provincial and Supreme Court FDC Program.

The Family Justice Services Division of the Attorney General's office provides office space and reception services and reimburses LSS for the cost of lawyers.

Family justice counsellors schedule appointments for their clients with the advice lawyers and provide lawyers with completed referral forms (see Appendix 2: Referral Form for Family Advice Lawyer). If clients are referred by family justice counsellors, each client is entitled to one hour of advice whether or not he or she qualifies financially for FDC services.

## **Provincial Court FDC**

This service started in Vancouver in November 2002, in response to budget cuts made to LSS that year. The number of Provincial Court FDC locations quickly expanded and by September 2003, LSS provided FDC at 42 Provincial Court locations. Currently, LSS provides FDC at 48 Provincial Court locations.

In most Provincial Court locations, LSS provides two private lawyers as FDC. This ensures that if both parties to an action are unrepresented, they can both get advice from FDC. If only one lawyer is scheduled, conflict referrals are available (see "conflict referrals," in Part 4). In all but a few courthouses, Provincial Court FDC are provided only on first appearance days in court. Provincial Court FDC do not represent clients at trials or complicated contested hearings, although they may provide advice about the conduct of the trial.

## **Supreme Court FDC**

This service was launched in Vancouver in October 2004, and there are currently 12 locations. Generally, only one lawyer is scheduled at a time.

Since Supreme Court functions differently than Provincial Court, the Supreme Court FDC Program does not work the same way as the Provincial Court FDC Program. By the time a matter is set for a court date in Supreme Court, all of the affidavits have been exchanged and it is too late for an FDC to be of much assistance in drafting material. Also, most applications will have several affidavits, and FDC have limited time to review material to prepare for speaking to the matter in court. As a result, in Supreme Court, legal advice is often the most important component of the service.

Many clients in Provincial Court need more advice than they can obtain from FDC on a first appearance day. These clients can be referred to Supreme Court FDC for advice and so Supreme Court FDC must be able to give legal advice on family matters for both levels of courts.

### **Conflict referrals**

Because of the BC Law Society's conflict of interest rules, there may be occasions when lawyers acting as FDC on a particular day all have conflicts and cannot help a client. LSS' conflict referral allows FDC to ask another lawyer at court that day to help the client. LSS will pay the lawyer for actual time, up to two hours, to help the client. (See also "Conflict referrals," in Part 4.)

### **Case conference referrals**

On November 1, 2006, LSS began to issue case conference referrals for 10 locations: Kamloops, Kelowna, Merritt, Port Coquitlam, Prince George, Prince Rupert, Surrey, Terrace, Vancouver, and Victoria. In April 2008, the locations were expanded to include all FDC locations.

This referral is available for both Supreme and Provincial Court case conferences.

The client must be financially eligible for advice services through LSS and the lawyer who takes the referral is responsible for having the client swear a statutory declaration confirming his or her income (See Appendix 3: Client Declaration for Case Conference Referral).

## Part 2 — The Lawyers

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### Lawyer qualifications

To be eligible for family duty counsel work, you must have:

- a minimum of two years' experience practising family law and a minimum of two years' experience in the court location for which you have applied;
- a sufficient level of expertise in cases under both the *Family Relations Act (FRA)* and the *Child, Family and Community Service Act (CFCSA)* (your history of accepting these cases from LSS will be reviewed to determine your experience); and
- a satisfactory history with the LSS Audit and Investigation Department.

Other considerations include:

- the need for diversity within the roster (e.g., fluency in a second language),
- family or civil mediation training,
- collaborative law training,
- experience with the *Family Maintenance Enforcement Act (FMEA)*,
- the location of your practice,
- other family duty counsel experience, and
- feedback from stakeholders contacted by LSS.

If you would like to be added to the family duty counsel roster, contact:

Coordinator, Civil Law Services and Projects  
Legal Services Society  
400 – 510 Burrard Street  
Vancouver, BC V6C 3A8  
Phone: 604-601-6066  
Fax: 604-601-6195  
E-mail: [dutycounsel@lss.bc.ca](mailto:dutycounsel@lss.bc.ca)

Qualified lawyers may not necessarily be added to the roster, as evaluation of the service has shown smaller rosters provide the best client service. Exceptions to the criteria may be made at LSS discretion, depending on the need for lawyers in a particular location. Presence on or removal from a roster is at the discretion of LSS.

## FDC responsibilities

### Attendance

All FDC are responsible for the following:

- Be at the courthouse on time. If your referral is for seven hours, be at the court by 9 a.m. For three-hour referrals, if the first appearance list starts at 9:30 a.m., be at court by 9 a.m., and if the first appearance list starts at 1:30 p.m., be at court by 1:00 p.m.
- Check in with the registry staff and any other scheduled FDC to let them know where you may be reached.
- When court begins, check in with the court clerk where family matters are being heard to let the clerk know where you may be reached.
- Wear an FDC badge (you can obtain a replacement badge by contacting [dutycounsel@lss.bc.ca](mailto:dutycounsel@lss.bc.ca) or telephoning 604-601-6066).
- Check the courtroom and the registry before you leave to ensure there are no unrepresented parties who still need assistance.

Do not schedule your own client matters on a day when you are FDC unless it cannot be avoided.

For Provincial Court FDC, if the list is short and court concludes or is likely to conclude before you have worked the minimum three hours for which you are entitled to bill, the expectation is that you will advise clients and the family court registry that you will be available to give general advice and assistance after court. You are expected to stay and provide such assistance until you have worked the minimum three hours, or until, after a 20-minute wait, there has been no demand for FDC services. If you leave before completing the minimum number of hours and wish to bill the full minimum, you must ensure that the court registry and the court clerk have a contact number where you may be reached if a client requires FDC services during the remainder of your retainer.

If you provide Supreme Court FDC services and wish to bill the minimum number of hours on the referral, you must be present at the courthouse for the minimum number of hours, because clients will expect to be able to drop by during the scheduled time.

If you provide advice lawyer services, you are entitled to bill the minimum referral hours when you have seen all of the clients who have appointments or have been referred to you by the family justice counsellor's office.

### Dealing with clients

You have the following responsibilities when dealing with clients:

- **Have Acknowledgement Form completed:** You must obtain a completed Acknowledgement of Duty Counsel Services form (Acknowledgement Form) from each client. There is one form for both Provincial and Supreme Court FDC and a separate form for family advice lawyers. They are attached to this manual as Appendices 4 and 5 and are also available online at [www.lss.bc.ca/lawyers/forms.asp](http://www.lss.bc.ca/lawyers/forms.asp). You might also have the client complete the Family Duty Counsel

Client Information Form at this time (see Appendix 6). The Acknowledgement Forms used at Robson Square and the Nanaimo Justice Access Centre are different and are provided by those offices.

The Acknowledgement Form acts as the client retainer and allows LSS to verify that the service was performed. LSS may periodically ask you to submit your Acknowledgement Forms, but do not send them to LSS unless specifically requested to do so. The tariff requires that you keep forms for up to two years after service is completed.

You must ensure that your client understands the Acknowledgement Form and that you cannot give advice on any matters that do not come under the *CFCSA*, *FRA*, *Divorce Act*, or *FMEA*. Stress the advantages to your client of having his or her own lawyer. If your client does not sign and return the Acknowledgement Form, you must *not* provide service to that client. FDC services do not fall under the client identification and verification procedures contained in Law Society Rules 3-91 to 3-102.

Have your client complete a new Acknowledgement Form each time you provide services on a new date, except at Justice Access Centres.

- **Ensure financial eligibility:** You must ensure that your client is financially eligible before embarking on comprehensive services. The client must set out his or her net monthly income on the Acknowledgement Form. (See “Financial eligibility of clients” in Part 3.) If the client is not financially eligible and you are free, you may provide 20 to 45 minutes of advice to the client. If you are not free, give him or her contact information for the Lawyer Referral Service. Justice Access Centres will not make appointments for clients who do not financially qualify for FDC services (unless the client is referred by the family justice counsellor to a family advice lawyer).
- **Place time limits on clients where necessary:** Financially eligible clients are entitled to three hours of advice for *each* new family matter. A “new” family matter includes situations where there has been a substantial change of circumstances for the parties or the children since the last order or agreement was made.

If the client sees more than one FDC over a period of time, it is difficult to monitor how much advice time the client has been given. If you tell the client to return when you will be FDC again, reasonable time limits may be more easily imposed.

- **Review the client’s court documents:** You are not expected to prepare court documents for the client, but you are expected to review court documents prepared by the client or by a family justice counsellor on behalf of the client, including consent orders and agreements, and recommend appropriate changes. If the consent order or agreement deals with a complicated property division, LSS does not expect you to give more than brief summary advice.
- **Make clients aware of their options:** Ensure as much as possible that your client understands the consequences of each option and how much assistance you can provide with each option.
- **Ensure client knows the next court date:** Either make a note in writing for the client or ensure that the client receives a written note from the sheriff. Also make sure that your client knows which documents will be required for the next court date and what the deadlines for service or filing of documents are.
- **Assist clients with urgent matters:** Assist clients with ex parte applications for restraining orders and non-removal orders. (See “Priorities between clients” below.)

- **Explain court processes:** It will help your client if you fill out the Family Duty Counsel Program Advice Given form (see Appendix 7) and give him or her a copy. This form can also be helpful for your records. If your location does not have access to a photocopier, you can use carbon paper to make a copy for your file.
- **Direct clients to other resources as appropriate.**
- **Ensure that clients understand any limitation periods that may affect their claims:** Limitation dates are especially important for people in common-law relationships where there are claims for spousal support, and child support from step-parents. There is also a limitation period for division of property. Emphasize to each client that he or she is responsible for making the claim on time.
- **Check for any conflicts:** You must bring your personal conflicts list with you to check for any conflicts of interest.

### **Priorities between clients**

Give priority to clients who have a scheduled court date or urgently require an order, such as a restraining order or non-removal order, over clients seeking other advice or assistance.

If the client is not scheduled for court that day or does not have an urgent matter, and you do not have time to provide assistance, direct him or her to other resources.

### **Expectations of service**

You are expected to:

- Perform tasks in a professional manner, taking into account the pressures created by the volume of clients requiring services and the limited time in which those services can be provided.
- Be familiar with services that can help self-represented litigants and strive to connect the client to those services. In particular, you will likely make referrals to and from family justice counsellors and LSS intake. Sometimes, community advocates or pro bono legal services may offer greater assistance than you can provide, and you may refer clients to them.
- Be familiar with the general guidelines for LSS coverage policies. (See Appendix 9: Current Family and CFCSA Tariff Coverage for information about coverage.) If it appears that the client should qualify financially for a family or *CFCSA* referral and the problem is covered under LSS policies, refer the client to LSS intake or the Call Centre for determination unless the matter is very urgent and there is no time for intake to make a referral, at 604-408-2172 (Lower Mainland) or 1-866-577-2525 (call no charge, outside the Lower Mainland).

### **Changing and trading FDC referrals**

You are expected to treat your FDC referrals as you would a court appearance. This means you must not accept a referral unless you are actually available that day. Also, once you have accepted the referral, a change or trade should only be made in exceptional circumstances. However, LSS is aware that you may need to make changes due to court and other commitments that arise unexpectedly.

If you are unable to attend on the day of the referral, you have two options:

- If you want to trade the FDC referral for another FDC referral, then it is your responsibility to make arrangements for the trade by contacting other lawyers *on the same roster* to see if one of the other lawyers will trade dates. If such a trade is arranged, you must clear the trade with the referring office, and the referring office will cancel the old referrals and issue new ones.
- If you do not wish or are unable to trade, then you must contact the referring office with as much notice as possible and advise them that you are unable to attend court on the referral date. The referring office will cancel the initial referral and make arrangements for another FDC to attend that day.

In some cases, you may not be able to attend or give much notice because of an emergency or unforeseen circumstance. In that case, notify the referring office immediately so that the referring office can find alternate counsel and notify the court registry.

Do not sign the billing form for an FDC referral if another lawyer took the shift (see “Do not sign the billing form if another lawyer took the shift” in Part 5).

### **Courtesy to other FDC lawyers**

Consideration of other FDC lawyers is essential for smooth program operation. If one lawyer is late or doesn't stay the full time, another lawyer may have to see more clients. Similarly, if one FDC cannot be located, the workload between FDC may not be equally distributed and cause unnecessary stress for the lawyer having to take on the extra work.

Another cause of friction between FDC is inconsistency in service provided. For instance, some FDC are comfortable in giving advice about other areas of law, not just family law. While this may be helpful to the client, it can set up false expectations in both the client and court registry staff. Do not give advice on any legal matter other than family law when acting as FDC. Instead, refer the client to another appropriate resource.

### **Conflicts and solicitor-client privilege**

You are responsible for checking for conflicts of interest between clients under the provisions of chapter 6 of the *Professional Conduct Handbook*. You must maintain your own conflicts list.

Depending on the court registry, you may be able to get the court list from the registry before you appear as duty counsel, to facilitate a conflict check in advance. Bring a copy of your own conflicts list to court on days when you are scheduled as FDC.

Advice lawyers at the family justice counsellor offices may also get a list of clients with whom appointments have been made before attending at the FJC office. If you do a conflict check before the scheduled date, you can screen out clients that you cannot see due to conflicts of interest. The client can then be notified in a timely way and have the appointment rescheduled by telephone.

## Multiple duty counsel referrals

You may not accept two duty counsel referrals for the same day, except in pre-approved circumstances. In some cases, you may be asked to act as both criminal and family duty counsel because of a shortage of referral lawyers in a particular area. In this case, allocate your actual time between the two referrals. Bill first to the criminal duty counsel referral for all time spent on criminal clients and then bill anything over that to the family duty counsel referral. Make sure that the total comes to either the minimum three hours or the total time spent at court, whichever is greater.

## FDC schedule posted at the courthouse

The registry or LSS may from time to time post the FDC schedule at locations around the courthouse. This is intended to allow clients and the registry to locate you, and to allow clients to meet with you on your scheduled date to get advice. This schedule is not posted to allow clients to contact you in advance of the scheduled date.

## Touting

You cannot use your appointment to the roster to solicit referrals for yourself or your firm. Touting may result in your removal from the duty counsel roster.

If a client asks you to become his or her lawyer, always advise him or her to consider contacting the Lawyer Referral Service, asking for a referral from a trusted friend, or looking in the yellow pages. Ensure that the client has an opportunity to meet other lawyers before making a decision about retaining counsel. You cannot make a referral to another solicitor. However:

- if a client asks for your business card, you may give it to him or her;
- if a client goes to LSS intake and asks for you to be their lawyer, a referral will be issued to you; and
- if a client is ineligible for legal aid and asks if you will represent him or her, you may, but not while acting as duty counsel in court that day *and* only after the client has had an opportunity to consult with lawyers suggested by the Lawyer Referral Service.

## Part 3 — The Clients

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### Financial eligibility of clients

FDC services are subject to the financial eligibility thresholds for advice services set by LSS and adjusted periodically. Check the LSS website at [www.lss.bc.ca/legal\\_aid/doIQualifyAdvice.asp](http://www.lss.bc.ca/legal_aid/doIQualifyAdvice.asp) for updates to the financial eligibility thresholds for advice. As of September 2011, the eligibility rates are:

#### Legal advice financial eligibility test

<i>Number of family members</i> <sup>1</sup>	<i>Monthly net household income</i> <sup>2</sup>
4 or fewer	\$3,170
5	3,755
6	4,350
7 or more	4,920

<sup>1</sup> Family members include children and parent(s) or other adult(s) responsible for and living with the children.

<sup>2</sup> Household income usually includes all money or benefits earned or received by adult family members who are living together.

If a client is financially eligible, he or she may receive assistance in court as well as up to three hours of legal advice.

Clients who are not financially eligible can still receive:

- 20 to 45 minutes of general assistance from FDC (depending on the lawyer's availability);
- an initial 45-minute appointment with a family advice lawyer (with a referral from a family justice counsellor); and
- some assistance at court.

Clients who mislead duty counsel about financial eligibility will have service terminated.

**Note:** There is no financial eligibility test for criminal and immigration duty counsel services or for Brydges Line services.

### Clients who appear to be abusing FDC or advice services

Clients may repeatedly require duty counsel assistance. Encourage clients who are seeking general advice and assistance to return to the lawyer who first helped them, if possible. You *may* limit advice to a total of three hours if you are concerned that the client is abusing the duty counsel system, or if you are too busy

to provide further service to that individual. The program is relying on you to balance time spent on a particular client with the needs of other clients when deciding whether to limit service.

### **Clients who qualify, or are already approved, for legal aid**

As the objective of the FDC Program is to provide services to family litigants with low incomes who do not qualify for legal representation under LSS family coverage guidelines, you must not provide FDC services to clients who have obtained an LSS referral for legal representation unless the matter is urgent and LSS has not been able to find a lawyer to represent that client.

If a client appears to qualify for an LSS legal representation referral, then you may restrict your assistance to referring the client to LSS intake (or the Call Centre) and assisting them with interim matters.

### **Clients not physically present**

You are not expected to act as agent for a non-attending party or to give advice to someone acting on behalf of the client (e.g., the client's mother).

## Part 4 — Substantive Matters

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### Emergency and ex parte procedures

- Determine whether the matter should proceed ex parte. Is there an immediate danger to the health or safety of a child or the client? Could a delay in serving an application or motion, or in providing service have serious consequences?
- Determine if the other party has a lawyer. If so, consider attempting to contact that lawyer before proceeding ex parte.
- Consider whether the matter should be referred to legal aid intake.
- If you are proceeding, advise the client of the need to make full disclosure, even if it is against the client's interest, and explain the serious consequences of failing to do so.
- Some registries require an affidavit to be filed in support of an ex parte application. If your registry does not, consider having the client prepare one anyway.
- Advise the client that, if he or she has the means, it is preferable to retain private counsel to undertake a more complete review of the facts and to devise the best strategy for subsequent litigation.
- Try to determine the client's level of education and literacy, help the client prepare the pleadings, if required, and review the pleadings before the client files them, if possible.
- Explain the court process, what the court may order, and the next steps the client can take if the application is granted or denied.
- Appear in court to present the case.
- Refer the client to a family justice counsellor, Victim Services, or other appropriate services.
- If you determine that the matter does not meet the requirements for an ex parte or emergency application but the client still wishes to proceed, or if you are required for a more urgent matter, you should:
  - ensure the client has the necessary documents to complete,
  - explain how to complete and file the documents, and
  - advise the client of likely next steps if the order is granted or denied.

### *Child, Family, and Community Service Act* procedures

If the client appears to qualify for a *CFCSA* referral from LSS, get an adjournment so the client may apply for legal aid.

If the client does not qualify for a *CFCSA* referral or an adjournment is refused:

- Balance cooperation with the social worker against making statements against client interest to the social worker. Try to ensure that the client understands the pitfalls.
- Check with the social worker to see if any compromises are possible.

- Explain the court forms to the client.
- Explain the Plan of Care to the client and ask if he or she has any questions.
- Explore the possibility of section 60 consent orders.
- If the client is consenting or not opposing a finding or disposition, ensure that the client agrees with the wording of the facts of removal, and if not, try to negotiate a compromise.
- Consider negotiating for the least prejudicial subsection possible for a child in need of protection.
- If conditions are imposed, try to ensure that the client can reasonably meet each condition, and advise him or her of the consequences of failing to abide by them.
- Help clients in *CFCSA* cases work cooperatively with social workers and inform them about mediation, if available.
- If a child is over 12, be aware that he or she is entitled to independent legal advice (ILA) with regard to any section 60 order affecting him or her. The social worker can refer the child to a lawyer from the LSS-approved roster for this purpose. Do not provide advice to the child.

## Uncontested matters

When scheduled as an in-court lawyer, you are expected to speak to adjournments, and uncontested, ex parte, and consent matters first, before giving general advice to drop-in clients.

Before assisting a client in court, consider the following questions:

- Can you assist the client in court given the client's financial eligibility and the complexity of the issues?
- Have you had adequate time to prepare and competently argue the matter?
- Does the client have sufficient documentation before the court?

## Contested matters

In addition to assisting with uncontested matters, you may speak to *simple* contested matters where appropriate. Use your judgment to determine whether a case is simple and appropriate to speak to. If you feel that you can provide a real benefit to the client and court by speaking to the matter, you may do so. If you feel the matter is too convoluted, or you do not have the time required to reasonably prepare, you are not expected to speak to it. Clients do not expect you to speak to contested matters, as the Acknowledgement Form limits client expectations of what will be covered to adjournments and uncontested/unopposed matters.

However, consider standing a matter down the list if you feel that, with some preparation, you may be able to speak to it, particularly if there are no other clients waiting to see you. LSS does not want to fetter your discretion and encourages you to assist clients in court whenever it is appropriate.

## Property

Restrict advice with regard to property issues to simple matters. Advising the client to pay a lawyer to deal with property may be the appropriate course. You are under no obligation to deal with property issues that you feel are complex or inappropriate in this limited service context; however, you should bring relevant issues to the client's attention.

## Mediation

While mediation is considered an asset in assessing lawyers for the FDC roster, you must not provide mediation services to FDC clients as part of your referral. If mediation services are provided, it often results in conflicts and follow-up issues.

## Drafting orders

You must neither prepare orders for your FDC clients nor sign them on the client's behalf. You are not counsel of record, and the client is technically "unrepresented."

In Provincial Court, the *Provincial Court (Family) Rules* require the clerks to prepare orders for unrepresented litigants, or, if there is a lawyer representing the other side, that lawyer must draft the order.

In Supreme Court, the FDC client may be expected to draft the order. Tell the client to get a copy of the clerk's notes and refer him or her to the self-help guides on the LSS Family Law in BC website at [www.familylaw.lss.bc.ca](http://www.familylaw.lss.bc.ca). You may then review what your client has drafted.

Ensure that your client understands who is to draft the order, as well as the process and time frame for having it entered.

In some situations, a judge may insist that you draft or approve the form of order even after being informed that this is not part of the FDC service. If this happens, do what the judge wishes, but also let the Coordinator, Civil Law Services and Projects, know about the situation. If you require additional time because of this judicial direction, request extra fees (see "Extra fees" in Part 5).

## Conflict referrals

If you have a conflict of interest with a client who needs immediate assistance, refer that client to the other scheduled FDC. If there is no alternate FDC and the client needs immediate assistance, first ask another lawyer from the FDC roster who happens to be at the courthouse or, if no such lawyer is available, ask any other lawyer to provide the assistance.

If the other lawyer agrees to provide service, give this lawyer the Acknowledgement Form and advise him or her of the requirement to retain it and track the time spent with the client. You, or the second lawyer, must then contact the referring office as soon as possible after the service to request a conflict referral and indicate the time spent. A conflict referral is for actual time spent with a client to a maximum of two hours.

If there is a conflict but the client does not need immediate assistance, you may refer the client to see the next available FDC (Provincial or Supreme Court).

## Case conference referrals

Case conference referrals are issued in one of the following ways:

1. If the court determines that the matter should be set for a case conference and you feel that your assistance at the case conference would benefit the client, schedule the conference on a date you are available. Contact the office that issued your FDC referral and request a case conference referral. You must provide the name of the client to be recorded on the referral. A referral will be sent to you in the usual fashion.

OR

2. The client may attend the LSS intake office and request a case conference referral to an FDC. The intake assistant will issue a case conference referral to a lawyer on the roster if the client qualifies financially.

Please note that only the person at the intake office who issues the FDC referrals will be able to process the case conference referral.

These referrals are an extension of FDC and advice lawyer services and therefore will only be issued to lawyers approved for the roster at that courthouse.

If you think the client may qualify for a legal aid referral, refer him or her to the intake office or Call Centre for an assessment. If the client does not qualify for a family or *CFCSA* referral, then the intake office can issue a case conference referral.

You are responsible for the following:

1. Verify the client's financial eligibility by having the client complete the Client Declaration for Case Conference Referral form (see Appendix 3). You are required to keep the sworn copy of this document in your file and produce a copy to LSS on request.
2. Clearly identify yourself as appearing as duty counsel when booking the date and at the case conference itself. LSS will not authorize more than one appearance at a case conference without compelling reasons.

The case conference referral permits you to bill for up to three hours of general preparation before the case conference and your actual time at the case conference, up to two hours. You may meet the client at your office or any other location. If the case conference has to be rescheduled, your issuing office can cancel your referral, provided you have not billed it, and issue a replacement referral for the new date. Continuations or subsequent case conferences are not billable, nor will additional referrals be issued, except in unusual circumstances.

FDC do not draft or approve the form of orders.

If a final agreement is not reached at the case conference and you think that the client might qualify for a legal aid referral, send the client to legal aid intake with the completed Family Duty Counsel Referral Form for Legal Services Intake (see Appendix 8).

## Uncontested divorces

FDC are not expected to draft court documents. However, if the court registry sends a client to you for advice about divorce documents, you are expected to assist the client. In some cases, proper legal advice at the outset will avoid larger problems later on; for example, if a client has not claimed child support in the writ of summons and statement of claim and then serves the documents on the spouse in Iran.

However, if there are complex property issues, refer the client to the Lawyer Referral Service or, if the client may qualify financially for a family legal aid referral, to LSS intake.

## Swearing affidavits as FDC

In Provincial Court, the court registry does not charge clients for swearing affidavits for their family matters. In Supreme Court and Small Claims Court, there is a charge. The court registry should not send clients to you *only* to swear documents of any kind. It is not a good use of your time, and you may send the client back to the registry. If the registry continually sends you clients for swearing affidavits, please contact the LSS Coordinator, Civil Services and Projects.

If you have provided advice about an affidavit in a family matter, then you may swear the affidavit for the client, but it is within your discretion. If the client cannot afford to pay to have the affidavit sworn, then he or she may need your help obtaining indigency status in Supreme Court.

If a client does not have proper identification, do not swear an affidavit for that client unless you know him or her personally (see *Professional Conduct Handbook*, Appendix 1, footnote 3).

## Children in FRA and CFCSA matters

Under the *Criminal Records Review Act*, a lawyer with an LSS retainer (such as an FDC referral) must have a criminal record check done before assisting a child.

You may encounter several types of circumstances where children participate in the court process:

- *CFCSA* — LSS has a contract with the Ministry of Children and Family Development (MCFD) to provide ILA to children who are 12 or over if MCFD is seeking an order and expects that the child is willing to agree to that order. The social worker must give out the referral, make the appointment, and ensure that the child is taken to the appointment with the lawyer. Only lawyers who have been appropriately added to the MCFD ILA roster may be given the referral. If you are asked to assist a child in this situation, make sure that the social worker knows of this process and do not provide advice to the child.
- *CFCSA* — If MCFD is seeking an order for a child who is 12 or over and the child does *not* agree with the order, then MCFD should retain a lawyer for the child. If MCFD is reluctant to retain counsel for the child, it may help to have the child added as a party to the proceeding, but you must

not provide ongoing assistance for the child. LSS does not provide legal representation referrals to children who are in MCFD care, as MCFD is their legal guardian and therefore responsible.

- *FRA* — Sometimes an applicant is a parent under the age of majority. You can provide services to this client only if you have had a criminal record check done through LSS. If none of the scheduled FDC have had criminal record checks done, then the client should ask for an adjournment to seek advice from other counsel. If the child is a ward of MCFD, then the ministry should retain counsel on his or her behalf. If you would like to have a criminal record check completed, contact the Coordinator, Civil Services and Projects, at 604-601-6009.

## Appearing as agent for client

You are not expected to act as an agent for a client who cannot attend court due to distance or disability. If a client cannot attend at the courthouse on the day the matter is set, then the client should make arrangements for a friend or other third party to attend on his or her behalf. If this is not possible, then the client should contact the court registry by telephone (and fax, if possible) to let the court know the reasons for the non-attendance and the next date he or she can appear. The client is responsible for contacting the registry to find out when the next court date is scheduled. You, at your discretion, may appear as a friend of the court to ensure that the court is aware of the circumstances. However, you need to set clear boundaries with your client as to what you will do.

You are not expected to act as agent for another lawyer. There are a number of reasons for this:

- One of the objectives of the FDC Program is to “provide timely, brief legal and referral services to family litigants with low incomes who do not qualify for legal representation under the Legal Services Society’s family coverage guidelines.” Providing agency work for an LSS client duplicates services already available to that client. If the client’s lawyer has an LSS referral, then that lawyer may be able to arrange for an agency referral with LSS.
- You may have acted for the other side as FDC and not be able to appear because of a conflict.
- The matter may end up being contested and FDC do not provide the same degree of assistance if it is.
- Agency work often requires pre-court and post-court follow up, which may require time outside of the FDC referral.
- The client may not be financially eligible.

However, counsel often find it hard to say no when called upon by other counsel and, in that case, it is within your discretion.

## Clients in custody on bench warrants for failure to appear on *FMEA* or *FRA* matters

Providing assistance to clients in custody is a priority for FDC and must take priority over drop-in clients or appointments. In locations where the Supreme and Provincial Courts are co-housed, you are expected to assist an in-custody client in either level of court whether you are assigned as Provincial or Supreme Court FDC. If it is a remand day in Provincial Court, then do your best to balance the priorities of clients with matters in court that day and in-custody clients.

In Provincial Court, the client is usually in custody as a result of being picked up on a bench warrant for failure to appear on an *FMEA* or *FRA* matter. The Supreme Court can also issue bench warrants under these acts. Usually the Family Maintenance Enforcement Program or the Family Maintenance Program will have requested the warrant and the court registry should contact the appropriate counsel to let them know that the client has been arrested under the warrant.

When the client is brought before the court, it will consider whether to release the client on his or her own recognizance or keep him or her in custody until the next court date. The court may also impose release terms such as a cash surety.

Often you can be of more assistance than just speaking to the client's release. If the court file is in a registry where the client cannot possibly attend, you might be able to negotiate a change of venue for the purposes of the *FMEA* hearing.

If the matter is complicated, the client may be eligible for legal representation under the family tariff if he or she qualifies financially.

If FDC is not scheduled in court that day, then criminal duty counsel is expected to assist the client.

### **Clients arrested under section 126 of the *FRA***

You are not expected to assist clients who have been arrested under the *Offence Act* for breaching an *FRA* (usually restraining) order. Criminal duty counsel should assist these clients.

### **Clients in custody in Supreme Court on a "peace officer assist" clause**

Usually, these cases involve an alleged breach of a restraining order made in Supreme Court, and the "peace officer assist" clause is being relied upon. The client is brought before the court on a show cause hearing to determine whether or not he or she should be released until the next court date. Unfortunately, there are no rules that specifically deal with these matters, and there are no documents filed. Also, the alleged victim may not have counsel, as Crown is not usually involved.

In locations where there are two FDC, it may be convenient for both FDC to provide assistance, one to each side of the matter. If only one FDC is scheduled or available, a conflict referral may be requested to obtain the services of another lawyer for the alleged victim. Alternatively, contact LSS intake to determine if any of the clients are eligible for legal representation so they can find counsel to assist in a timely way. The client must be financially eligible for legal representation and may have to ask for an exception review, as the problem may not fit under the usual LSS categories of problems. Direct the client to contact the LSS Call Centre or the local intake office.

If FDC is not scheduled in court that day, then criminal duty counsel is expected to assist the in-custody client.

## Appeals

You are expected to assist clients with the procedure if a client wants to appeal a final Provincial Court family order to Supreme Court. You are not expected to assist with appeals from Supreme Court to the Court of Appeal.

For appeals from Provincial to Supreme Court, the Supreme Court registry has a package to assist clients who want to appeal a Provincial Court order. Instruct the client to obtain that package, preferably before meeting with you. Make sure your client is aware of the limitation period for bringing an appeal.

## Telephone advice

Before obtaining any service from FDC, the client must sign an Acknowledgement of Duty Counsel Services, which sets out the limits of FDC services, satisfies LSS audit and investigation requirements, and enables LSS to evaluate services by providing authorization for the client to be contacted. If it is a return client, you may provide follow-up services by telephone.

LSS does not expect you to provide advice to clients who phone you at your office as a follow up to a court appearance or who get your name in advance of a scheduled appearance. Also, you cannot bill for FDC services provided on a day you are not FDC.

If the client is unable to see you in person, then you may refer him or her to the LSS Call Centre to see if he or she qualifies for a family or *CFCSA* referral.

## Requesting spring orders for incarcerated clients to attend court

FDC do not obtain spring orders on behalf of incarcerated clients. When a client is incarcerated at a correctional centre, it is difficult for you to connect with them. If the incarcerated client has a family member or friend who can appear, the preference is for that family member or friend to appear and request the spring order or adjournment for the client. As you are not retained to act for the incarcerated client, you do not have the authority to sign the notice of motion on behalf of your client. You may refer an incarcerated client to the LSS Call Centre to see if he or she qualifies for a family or *CFCSA* referral.

At some registries (i.e., Robson Square and Surrey) a client in jail can apply for a spring order personally by faxing a form. This is essentially a desk order application to a justice of the peace and so no court appearance is required. The authority falls under the justice of the peace's general powers and the *Offence Act*. This procedure eliminates any need for FDC to be involved in the spring order process. Check with your local registry to see if they have similar procedures.

## Applications for videoconferencing, transfer of venue, and teleconferencing

Assisting a client with an application to appear by video or telephone for a court appearance at another courthouse presents logistical challenges, as does an application for a change of venue. The FDC that is present at the courthouse where the court file is located can be of very limited assistance because the applicant will not likely be able to attend in person.

The only assistance that FDC can offer is for the FDC at the nearest courthouse to meet with the applicant and review his or her notice of motion and affidavit before they are sent to the filing registry.

## Part 5 — Tariff and Billing

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### Tariffs

The three sections of the *Guide to Legal Aid Tariffs* that apply to FDC and family advice lawyers are:

- General Terms and Conditions;
- Duty Counsel Tariff (includes Circuit Counsel); and
- Disbursements for all Tariffs.

The *Guide to Legal Aid Tariffs* is available online at [www.lss.bc.ca/lawyers/tariffGuide.asp](http://www.lss.bc.ca/lawyers/tariffGuide.asp).

General Terms and Conditions outlines the rules for billing; the Duty Counsel Tariff outlines the hours that can be billed for the service and expectations of service; and Disbursements for All Tariffs outlines what out-of-pocket expenses LSS will reimburse to FDC lawyers.

There are a few key issues governed by the General Terms and Conditions that come up quite often for FDC.

#### **Duty Counsel Tariff (includes Circuit Counsel)**

The Duty Counsel Tariff of the *Guide to Legal Aid Tariffs* applies to family duty counsel and advice lawyers. It contains the FDC billing form, instructions for completion of the form, and the Record of Duty Counsel Worksheet (Family). The worksheet is optional and provided for your convenience as a way of tracking your services so as to accurately complete your billing form. LSS Audit and Investigation will ask to view the worksheet or your equivalent record during any review of your billing. You may also bill LSS electronically. See the LSS website for instructions.

#### **Disbursements for All Tariffs**

The Disbursements for All Tariffs section of the tariff guide sets out the expenses for which LSS will reimburse the tariff lawyer. The usual expenses you may incur are those for mileage, parking, and, if authorized, travel costs. Do not charge LSS for filing fees, couriers, postage, and title searches and other similar disbursements on an FDC referral.

Encourage clients to pay their own disbursements as much as possible, including any costs for photocopying documents for financial statements. If possible, encourage clients to bring someone to interpret for them or ask the interpreter appointed by the court to assist.

However, if the client cannot provide an interpreter or photocopies, then the Disbursements for All Tariffs section is there to ensure that you do not incur out-of-pocket expenses for the items covered. Use the disbursements billing form in the Disbursements for All Tariffs section to bill FDC disbursements.

## Billing

Part 5 of the Duty Counsel Tariff gives detailed information on billing your FDC referral. The following are some issues specific to FDC billing.

### When to bill

You must bill LSS for FDC referrals not later than 60 days after the service date on the referral.

### How to bill if you must attend to your own clients while you are FDC

Under the General Terms and Conditions, you cannot bill for two legal services provided at the same time or on the same half-day. This means that if you appeared at court on another LSS referral on the same half day, you cannot bill for the time you spent on your own LSS client or clients in addition to the minimum referral for FDC. For example, if you have an FDC referral for a “minimum” three hours and an LSS family tariff referral for which you appear at court the same morning and you spend three hours at court that day, you must not bill more than three hours to LSS under the two referrals. In that case, “zero bill” the LSS client referral and bill all three hours of your time to the FDC referral. If you do bill your LSS referral and your FDC referral, you must keep track of your “start” and “stop” time for each service, and make a record of all clients assisted and notes of the advice given or assistance provided.

It is best to avoid scheduling your own client matters on the same day you are FDC, wherever possible, to be fair to the duty counsel clients needing assistance and to the second duty counsel who may then have to pick up your share of work while you attend to your own client matter.

### Minimum hours

Minimum hours were initially set at four hours for FDC, but the usual minimum has now been reduced to three hours. Some locations have a different minimum as a greater need for flexibility was identified, particularly with Supreme Court duty counsel. The minimum billable time is set out on your referral.

If additional time is authorized on your referral (e.g., a minimum of three hours, up to a maximum of seven hours), the time above the minimum is billable only for actual service rendered. This means that if the list is completed within three hours and there is no further client demand, you may not bill for more than three hours, even if you were available for up to seven hours. The three hours is the minimum and the time for which you should be available if you wish to bill that minimum.

In FDC offices where client appointments are available, they may be scheduled so that you can bill up to seven hours per day. Time spent in the duty counsel office after the minimum of three hours is not billable once family lists and client appointments are concluded, with the exception of lead duty counsel, who also have administrative duties. Scheduled FDC may stay at the office and bill for any service provided to a drop-in client, but time spent waiting on speculation after the minimum time is not billable.

Time spent at lunch is not billable.

Rules for billing the minimum number of hours are listed for each service in Part 2, under “FDC responsibilities — Attendance.”

### **Attending an administrative/management meeting**

If you are invited to attend an administrative/management meeting to discuss the program with family justice counsellor management, contact the Coordinator, Civil Services and Projects, at LSS in advance to find out if you may bill your time for participating.

### **Billing case conference referrals**

Your referral and billing form indicate that services are only for the date of the case conference. LSS recognizes that preparation will be needed before the case conference. When you bill, attribute all preparation time spent on the case to the date of service shown on your referral, no matter when you actually prepared for the case conference.

If your actual attendance at the case conference exceeds two hours, attach a note to your account stating your actual attendance time and the reason for the additional time. LSS will review the note and determine whether to cover the additional time, but payment beyond two hours is discretionary. Basic instructions for billing will appear on all case conference referrals.

### **Do not sign the billing form if another lawyer took the shift**

If you have another lawyer attend court as FDC on your behalf, do *not* sign the billing form. The billing form certifies that you did the work yourself and, if you sign it as is, you will be making a false statement. Also, if there is any difference between the tiered rates, LSS will not be able to pay the correct amount to the other lawyer without issuing a new referral.

Follow the practice set out in Part 2 under “Changing and trading FDC referrals.” If another lawyer does a portion of your FDC or advice lawyer work, the referring office may have to issue two referrals for that day, as long as the maximum number of hours under both referrals is not more than the initial referral.

### **Retention of records**

Paragraph 30 of the General Terms and Conditions sets out that LSS may enquire about a bill for up to two years after it is submitted. Keep records pertaining to FDC services, including the Acknowledgement of Duty Counsel Services forms, for at least two years after payment.

Under paragraphs 49 to 51 of the General Terms and Conditions, you are expected to keep “adequate” time-keeping and accounting records. While “adequate” is not defined, it is expected that you will be able to produce a timesheet that is legible, identifies the client and the date, identifies the amount of time you spent, and contains a description of the service provided. As well, the timesheet must indicate “start” and “stop” times for each service.

## **Extra fees**

According to paragraphs 41 and 42 of the General Terms and Conditions, if a lawyer spends more time on a file than permitted under the tariff, he or she may write to LSS and request extra legal fees at the conclusion of the referral. While paragraphs 41 and 42 set out extensive criteria, if you are asking for more time because you were required in court or otherwise as FDC, please fax or mail a short letter explaining your request and including your timesheet, to:

Case Management Section  
400 – 510 Burrard Street  
Vancouver, BC V6C 3A  
Fax: 604-681-7963

## Part 6 — Complaints

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### Complaints policy

Under the LSS complaints policy, any complaints about referral bar lawyers, including FDC, are to be referred to the LSS Audit and Investigation Department. Complainants are asked to submit their complaints in writing.

If there are repeated complaints about counsel, or complaints of a significant nature, LSS will remove counsel from the roster. Counsel may also be removed from a roster if a serious audit and investigation concern is identified with regard to either quality of service or billing practices, even if the concerns arise outside the context of the FDC service.

### Preventing client complaints

Although complaints are not common, most can be prevented. The most frequent complaints about FDC from clients are that the lawyer:

- was insensitive or not emotionally supportive;
- pressured the client into consenting to an order;
- did not spend enough time with the client; or
- could not be found.

Here are some suggestions to avoid the above perceptions.

#### Insensitivity

Most counsel who are perceived as insensitive are likely unaware that they appear that way to the client. Although you may be busy and rushed, appearing supportive can be invaluable to your client. Be alert to the possibility that your client has experienced violence or other abusive situations which he or she may not disclose at a first meeting, in a hallway conversation, or even in an office.

#### Undue pressure

In negotiations, ask the client if they want an adjournment to think it over and get further explanation of consequences. The client needs to balance striking while the iron is hot against being sure it is an acceptable compromise. Attempt to negotiate an adjournment by consent if the client needs time to consider.

Advise the client that he or she may return to see you on your next scheduled day (make an appointment, if possible) or see another duty counsel or pro bono lawyer for further advice. Refer the client to available legal information resources, including the LSS family law website, advocates, legal information outreach

workers (in Vancouver and Terrace), and the local legal aid office. Give the client handouts that can refer them to other resources.

### **Unable to locate FDC**

Court staff, other duty counsel, and clients complain when a scheduled lawyer cannot be found. Remember to identify yourself to court staff and co-duty counsel, and advise them where you will be at all times when you leave a court room or designated duty counsel office. If you leave the court before you have finished the minimum number of hours, leave a phone number so you may be contacted if needed.

## Part 7 — Media Protocol

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Inquiries about policy, including problems or complaints, should be directed to the Manager, Civil Law. Advise the media that someone from LSS will respond to the inquiry as soon as possible.

If you are asked to comment on a specific case or on a general legal issue that relates to a specific case, be aware of the *Professional Conduct Handbook*, Chapter 14:

- “6. A lawyer must not:
- (a) comment publicly on the validity, worth or probable outcome of a legal proceeding in which the lawyer acts,
  - (b) endorse or lend his or her credibility as a lawyer to the promotion or advertisement of any product, property, investment or service for sale to the public except:
    - (i) a law practice with which the lawyer is affiliated,
    - (ii) a book or other publication that the lawyer has written or assisted in writing, or
    - (iii) a product designed to assist in the practice of law and with which the lawyer has experience, or
  - (c) state publicly that the lawyer speaks on behalf of the legal profession unless the lawyer has been expressly authorized to state the official position of the legal profession.
- 6.1. Before making a public statement concerning a client’s affairs, a lawyer must be satisfied that any communication is in the best interests of the client and made with the client’s consent.”

## **Part 8 — Robson Square and Nanaimo Justice Access Centres**

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As the justice access centres are in the process of being set up, a separate manual or insert will be issued for FDC in Vancouver and Nanaimo at a later date.

## Part 9 — Duty Counsel Resources

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### LSS computers

In some court locations and at justice access centres, LSS has installed computers for you to use in assisting your LSS and FDC clients.

These computers are to assist LSS and FDC clients only — *not* to assist privately paying clients.

Do not save any confidential material on the computer hard drive. Bear in mind that when you use the “Save” icon or function, the material is saved to the computer hard drive by default. This means that any FDC who uses that computer will have access to your confidential material and could find him or herself in a conflict of interest.

If you do look into the hard drive files and find that confidential material has been saved there, either exit the file immediately and advise the lawyer who saved the material to delete it, or delete it yourself.

### DIVORCEmate and use of DIVORCEmate under LSS licence

The LSS licensing agreement with DIVORCEmate sets out that the program can only be used to assist LSS clients with a referral for legal representation or FDC clients. You are not permitted to use the DIVORCEmate program installed on the LSS computers for any other clients.

### Online resources

In Nanaimo, Port Coquitlam, Surrey, and Vancouver, either the lead duty counsel or the administrative assistant has access to Continuing Legal Education online manuals. If you believe one of these manuals may help you deal with an LSS or FDC client, the lead duty counsel or the administrative assistant may be able to access the relevant portion for you.

### Family Law in British Columbia website

The Family Law in BC website offers self-help guides, plain language legal information fact sheets, publications, video clips, and audio clips on family law matters, information about organizations that can help, and links to other resources. New material is always being developed by LSS or submitted by outside parties.

The website works in conjunction with other LSS services, such as FDC, lawyer referrals, and legal information outreach workers (LIOWs) (in Vancouver and Terrace only).

Since your time as FDC is limited, you might choose to refer clients to this website, where they could learn basic information about family law (from the fact sheet, video clip, and audio clip sections). Or you could suggest that they use the site to complete court forms (using the self-help guides and court forms sections), which you can then review before court appearances. Ultimately, your clients will end up with

an increased knowledge of family law, and thus save you, as FDC, time spent explaining basic family law or the process they are going through.

# Appendices

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Appendix 1. Contact list

Appendix 2. Referral Form for Family Advice Lawyer

Appendix 3. Client Declaration for Case Conference Referral

Appendix 4. Acknowledgement of Duty Counsel Services

Appendix 5. Acknowledgement of Advice Lawyer Services

Appendix 6. Family Duty Counsel Client Information Form

Appendix 7. Family Duty Counsel Program Advice Given

Appendix 8. Current Family and CFCSA Tariff Coverage

Appendix 9: Family Duty Counsel Referral Form for Legal Services Intake

## Appendix 1: Contact list

### LSS contacts

<b>Title</b>	<b>Contact information</b>
Coordinator, Civil Services and Projects Or:	<a href="mailto:fdc.coordinator@lss.bc.ca">fdc.coordinator@lss.bc.ca</a> Telephone: 604-601-6239 Telephone: 604-601-6006
Duty Counsel Coordinator (scheduling)	<a href="mailto:dutycounsel@lss.bc.ca">dutycounsel@lss.bc.ca</a> Telephone: 604-601-6066
Family Helpdesk	<a href="mailto:helpdesk.family@lss.bc.ca">helpdesk.family@lss.bc.ca</a> Telephone: 604-601-6009
Case Management Section	<a href="mailto:helpdesk.case-mgt@lss.bc.ca">helpdesk.case-mgt@lss.bc.ca</a> Telephone: 604-601-6145 Fax: 604-681-7963

### Resources

CBA Lawyer Referral	(Greater Vancouver)	604-687-3221
	(Outside Greater Vancouver)	1-800-663-1919

### Websites

LSS website:	<a href="http://www.lss.bc.ca">www.lss.bc.ca</a>
Family Law in British Columbia website:	<a href="http://www.familylaw.lss.bc.ca">www.familylaw.lss.bc.ca</a>
BC Supreme Court Self-Help Information Centre website:	<a href="http://www.supremecourtselphelp.bc.ca">www.supremecourtselphelp.bc.ca</a>



**Legal Services Society** Family Duty Counsel Program

British Columbia  
www.lss.bc.ca

## Referral Form for Family Advice Lawyer

Fax to: \_\_\_\_\_

From: \_\_\_\_\_ (family justice counsellor)

Client's name: \_\_\_\_\_

Client's telephone number: \_\_\_\_\_

Other party's name: \_\_\_\_\_

Date: \_\_\_\_\_

Client's issues:

*(please check all applicable issues)*

- Restraining Order
- Custody
- Access
- Spousal Support
- Child Support
- Child, Family, and Community Service Act
- Family Maintenance Enforcement Act
- Property
- Other: \_\_\_\_\_

Reason for referral to advice lawyer: \_\_\_\_\_

\_\_\_\_\_

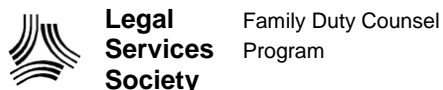
\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Next court date and time: \_\_\_\_\_



British Columbia  
www.lss.bc.ca

## Client Declaration for Case Conference Referral

**I acknowledge** that the duty counsel (“the lawyer”) has told me that he or she cannot provide me with the same help I could get from a lawyer I hire privately to represent me, and that it is strongly recommended that I hire a lawyer to represent me in this matter. **I am aware** that I must be financially eligible for this service.

**I acknowledge** that the lawyer can only assist me by:

- giving me verbal advice only about my legal rights, obligations, and court procedures with no written follow-up;
- helping me prepare for a family or judicial case conference;
- helping me negotiate and settle issues on a temporary or final basis; and
- referring me to other resources.

**I am aware** that the lawyer cannot:

- attend more than one case conference with me;
- prepare my court documents; or
- become my lawyer.

**I am aware** that I may be contacted by a Legal Services Society (“LSS”) representative to answer questions about the value of this service. If contacted, I may refuse to participate. **I consent** to my file and/or client information being released for LSS evaluation or audit purposes.

I, \_\_\_\_\_ of \_\_\_\_\_, in the city of \_\_\_\_\_, in the Province of British Columbia, **DO SOLEMNLY DECLARE** that my net monthly household income is \$\_\_\_\_\_ and that there are \_\_\_\_\_ people in my household.

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

DECLARED BEFORE ME at the city of \_\_\_\_\_ )  
 \_\_\_\_\_, in the province of British Columbia, this \_\_\_ day of \_\_\_\_\_, )  
 20 \_\_\_\_\_. )  
 \_\_\_\_\_ )  
 A Commissioner for Taking Affidavits )  
 Within British Columbia )

\_\_\_\_\_  
Client signature

**Court file number:** \_\_\_\_\_ **SC/PC Registry:** \_\_\_\_\_

**Client phone number:** \_\_\_\_\_



## Acknowledgement of Duty Counsel Services

**I acknowledge** that the duty counsel (“the lawyer”) has told me that he or she cannot provide me with the same help I could get from a lawyer I hired privately to represent me, and that it is strongly recommended that I hire a lawyer to represent me in this matter.

**I acknowledge** that the lawyer can only assist me by:

- giving me verbal advice only about my legal rights, obligations, and court procedures with no written follow-up;
- reviewing and helping me prepare court documents;
- helping me negotiate and settle issues on a temporary or final basis;
- helping me prepare or review consent orders or family agreements that can be filed in court;
- attending court with me to ask for an adjournment, an unopposed or consent order, or an emergency restraining order, if necessary;
- informing me on how to make a court appearance; and
- referring me to other resources.

**I am aware** that the lawyer cannot:

- go to court on any contested trial or any hearing where the issues are not simple, as determined by the lawyer;
- help me with complex property disputes, or tax advice.
- help me if I already have a lawyer acting for me;
- prepare my court documents;
- help me with any legal problems that are not related to family law;
- serve or accept service of any court documents; or
- become my lawyer while acting as duty counsel.

**I am aware** that the lawyer is not responsible if the advice given is inadequate or inappropriate because I failed to disclose relevant information about my case or prepared inadequate affidavit or other material.

**I am aware** that the Family Duty Counsel Program can only provide me with a maximum of three hours of legal advice. **I am also aware** that if I am not financially eligible, the only service I receive will be at the discretion of the lawyer (up to a maximum of 45 minutes), and only after other eligible clients have been helped.

**I am aware** that I may be contacted by a Legal Services Society (LSS) representative to answer questions about the value of this service. If contacted, I may refuse to participate. I consent to my file and/or client information being released to an employee or designate of LSS for evaluation.

Date (dd/mm/yyyy): \_\_\_\_\_

Name of client: \_\_\_\_\_

Name of opposing party: \_\_\_\_\_

Client home address: \_\_\_\_\_ Client phone number \_\_\_\_\_

Occupation of client: \_\_\_\_\_ Net monthly household income of client: \_\_\_\_\_

Signature of client: \_\_\_\_\_

Name of duty counsel: \_\_\_\_\_

Court file number: \_\_\_\_\_ SC/PC Registry: \_\_\_\_\_



## Acknowledgement of Advice Lawyer Services

**I acknowledge** that the advice lawyer (the “lawyer”) has told me that he or she cannot provide me with the same help I could get from a lawyer I hired privately to represent me, and that it is strongly recommended that I hire a lawyer to represent me in this matter.

**I acknowledge** that the lawyer can only assist me by —

- giving me verbal advice only about my legal rights, obligations and court procedures with no written follow-up;
- reviewing and helping me prepare court documents;
- helping me negotiate and settle issues on a temporary or final basis;
- helping me prepare or review consent orders or family agreements that can be filed in Family Court;
- providing advice on Supreme Court procedures;
- informing me on how to make a court appearance; or
- referring me to other resources.

**I am aware** that the lawyer cannot —

- go to court,
- help me with complex property disputes, or tax advice,
- help me if I already have a lawyer acting for me,
- prepare my court documents,
- help me with any legal problems that are not related to family law, or
- serve or accept service of any court documents.

**I am aware** that the lawyer is not responsible if the advice given is inadequate or inappropriate because I failed to disclose relevant information about my case.

**I am aware** that the Advice Program can only provide me with a maximum of three hours of legal advice (or forty five minutes of legal advice, if I am not financially eligible).

**I am aware** that I may be contacted by a Legal Services Society (LSS) representative to answer questions about the value of this service. If contacted, my participation will be voluntary. I consent to my file and/or client information being released to an employee or designate of LSS for evaluation.

Date (dd/mm/yyyy): \_\_\_\_\_

Name of client: \_\_\_\_\_

Name of opposing party: \_\_\_\_\_

Client home address: \_\_\_\_\_ Client phone number: \_\_\_\_\_

Occupation of client: \_\_\_\_\_ Net monthly household income of client: \_\_\_\_\_

Signature of client: \_\_\_\_\_

Name of lawyer: \_\_\_\_\_

Court file number: \_\_\_\_\_ Registry: \_\_\_\_\_



# Family Duty Counsel Client Information Form

Date (dd/mm/yyyy): \_\_\_\_\_

**A. Names, addresses, and phone numbers of parties:**

Your first name: \_\_\_\_\_ Middle name(s): \_\_\_\_\_

Your last name: \_\_\_\_\_

If you use or are known by any other name, what is it? \_\_\_\_\_

Your street number and name: \_\_\_\_\_ Apt.#: \_\_\_\_\_

City: \_\_\_\_\_ Province: \_\_\_\_\_ Postal Code: \_\_\_\_\_

Client phone number (home): \_\_\_\_\_ client phone number (other): \_\_\_\_\_

Your birth date (dd/mm/yyyy): \_\_\_\_\_ Gender:  M  F

Is your NET household income over \$3,085/month (NET 37,000/year)?  Y  N

Do you have a lawyer?  Y  N

Other party's first name: \_\_\_\_\_ Middle name(s): \_\_\_\_\_

Other party's last name: \_\_\_\_\_

If he or she uses or is known by any other name, what is it? \_\_\_\_\_

Other party's address: \_\_\_\_\_

City: \_\_\_\_\_ Province: \_\_\_\_\_ Postal Code: \_\_\_\_\_

Other party's birth date (dd/mm/yyyy): \_\_\_\_\_ Gender:  M  F

What is this person's relationship to you? \_\_\_\_\_

Does this party have a lawyer?  Y  N

Name of the lawyer (if yes) \_\_\_\_\_

**B. Information about you:**

Current marital status: \_\_\_\_\_ Date of marriage (if applicable): \_\_\_\_\_

Date you started cohabitating (living together), If applicable: \_\_\_\_\_

Date of separation: \_\_\_\_\_

Are there any written or oral agreements between you and the other party?:

Y  N

**C. Information about your children:**

Last Name	First Name	Birth date	Birthplace	Resides with you (yes or no)	Name of other parent

Does your spouse have any other children? If yes, please complete the following:

Last name	First Name	Birth date	Birthplace:	Resides with you (yes or no)	Name of other parent

**D. Information about your case:**

Are any of the following involved in your legal matter?

- Family Maintenance Enforcement Program
- Family Maintenance Program (Income Assistance)
- Ministry of Children and Family Development

Have you seen Family Duty Counsel before?  Y  N

If this matter has been to court, at which courthouse? \_\_\_\_\_

What is the court file number? \_\_\_\_\_

Is there any other information you feel is important to your case?

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## Current Family and CFCSA Tariff Coverage

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In order for a client to qualify for legal representation through Legal Services Society, the client must qualify financially (both household income and asset level) and the client's legal problem must be covered by LSS. This checklist is a rough guide to LSS policy and meant to assist FDC in determining if a client should be referred to LSS Intake. LSS policies change from time to time so please ensure you have the most up-to-date information.

### 1. *The client must qualify financially for legal representation.*

#### a) Household income

The client's net monthly income must be at or below the amount for his or her household size in the table below:

Household size (number of family members)	Net monthly income (income after taxes)
1	\$ 1,470
2	\$ 2,050
3	\$ 2,640
4	\$ 3,230
5	\$ 3,810
6	\$ 4,400
7 or more	\$ 4,990

Some of the items **included in monthly income** are employment income; social assistance benefits; child or spousal support; student loans; and income of a common-law partner the client has lived with for two years or more or with whom the client has a child.

Child Tax Benefits, the BC Family Bonus, GST rebates, and tuition or book fees under federal or provincial student loans or children's income are **not included as monthly income** for the purposes of assessing financial eligibility.

**Allowable deductions** include mandatory deductions from pay such as income tax, EI, and CPP; daycare expenses; MSP, extended health and disability insurance payments; child or spousal support payments made by the client or the client's spouse; court fines that, if not paid, will result in incarceration for either the client or the client's spouse; education expenses for a special needs child; travel costs for child

access visits; and medical or dental expenses or medication the client must personally pay for that a doctor says is necessary for the client or the client's dependants.

### b) Asset Test

The client must also pass an asset test before being found to be financially eligible for legal representation. The asset test is more complicated and only some of the criteria are set out below:

Household size (number of family members)	Personal Property Exemption
1	\$ 2,000
2	\$ 4,000
3	\$ 4,500
4	\$ 5,000
5	\$ 5,500
6	\$ 6,000
7 or more	\$ 6,000

There are some assets that fall outside of the Personal Property Exemptions:

- In family cases, the **family home** is an exempt asset if the client and opposing party lived in the family home, although some conditions may apply;
- If the total of the client's share of **real property other than the family home** exceeds \$10,000, the client is ineligible;
- If the total of the client's share of **equity in vehicles** exceeds \$15,000, the client is ineligible. Leased vehicles are not considered an asset;
- Any available **equity in business assets** makes the client ineligible unless the asset is required to generate the client's income, the client is unable to borrow against the asset, or the asset cannot be disposed of within a reasonable period of time for fair market value;
- An **RESP** held in trust for a child's education or a specified **savings account for a child** are exempt assets;
- An **RRSP** is considered an asset unless the RRSP is not cashable or the client has negligible income and is using the RRSP to live on;
- A **line of credit** is not considered an asset; and
- **Residential schools settlement payments** are not considered an asset.

**Only a trained legal intake assistant can determine the client's financial eligibility for legal aid as the above information is not complete.**

## 2. *The client's legal problem must qualify for legal representation.*

**NB:** The client does not have to permanently reside in BC or hold Canadian citizenship to qualify for legal aid representation. Clients with a family legal issue in another province or territory can be referred to legal aid to apply for a reciprocal referral for legal aid in another jurisdiction.

### **a) Emergency Referrals under the Family Tariff**

LSS is only able to offer legal representation for FRA or Divorce Act matters under an emergency services referral. To obtain an emergency referral, the client must be a parent or be a party to the proceeding who is:

- a member of the children's immediate or extended family,
- a relative or individual who has lived with the child in a parental or custodial relationship, or
- a member of the community who has cultural or traditional responsibility towards the child.

The client must:

- need an initial, or a change to the current, custody or access order where there is a risk of harm or violence to the client or to his or her child or children (this includes emotional and mental harm);
- have custody of a child or children who have been unlawfully held by the access parent/party;
- have been permanently or repeatedly denied access to a child or children;
- need a physical restraining order or other legal assistance to protect themselves or their child or children from harm or violence; or
- need a non-removal order to prevent the other parent from permanently moving their child or children out of the province. The threat must be real and imminent, and involve a permanent change of residence.

### **b) Exception Review under the Family Tariff**

There is discretionary coverage for FRA issues that do not fall within the emergency referral criteria, such as custody or access where there is not a risk of harm or violence to the client or child, child or spousal support, civil contempt, or committal hearings under the *FMEA*. If discretionary coverage is to be considered, the client must have a mental or physical disability and be unable to represent him or herself or there must be a significant barrier that will create an injustice if the client is not represented. The factors considered are: the outcome will benefit the client if successful, the claim is meritorious and there are no other viable options.

**Before referring a client to LSS intake for an exception review, ensure that the client knows his or her chance of obtaining an Emergency Referral is uncertain.**

Send a completed "Referral to LSS Intake Form" with the client. Be sure to check off "Exception Review" and indicate the factors that could result in the client receiving discretionary coverage.

There is **no** coverage where the only issue is division of family assets or restraint of assets.

### **c) Coverage under the CFCSA Tariff**

The client must be a parent or be a party to the proceeding who is:

- a member of the children's immediate or extended family,
- a relative or individual who has lived with the child in a parental or custodial relationship, or
- a member of the community who has cultural or traditional responsibility towards the child.

Where an applicant is financially eligible and his or her children have been removed or are at risk of being removed, coverage is provided.

An applicant is not eligible for legal aid if he or she is in the care of the Ministry of Children and Family Development (MCFD). In such cases, MCFD will arrange for counsel through the Ministry of Attorney General.

### **d) Extended Family Services**

Extended Family Services were reinstated effective February 9, 2010 for clients with Emergency Services Referrals. Counsel who believe their client's case warrants Extended Family Services can submit an opinion letter requesting this coverage.

To be eligible for Extended Family Services, the client must have a current referral and continue to qualify for legal aid, but requires assistance beyond the standard legal aid referral. Hours available under Emergency Family Services should have been (a) reasonably used to address the issues that entitled the client to Emergency Family Services, and (b) as fully used as is reasonable for the case.

Authorization of Extended Family Services is subject to a merit test, available budget, and the following criteria:

- There are significant contested issues involving sexual, mental, or physical abuse of the client or the client's children,
- The opposing party is using the justice system to continue a pattern of abuse,
- There is significant risk of the client being alienated from his/her children,
- The client or children may be left at physical or psychological risk if coverage of the case is discontinued, and/or
- Resolution of custody/access issues will have a significant positive impact on the relationship between the client and his/her child or the environment in which the child is raised.

**Only a trained intake assistant can determine the client's eligibility for legal aid. If in doubt, have the client apply. Applications for legal aid can be made at your local legal aid office or over the telephone at 604-408-2172 (Greater Vancouver) or 1-866-577-2525 (call no charge, outside Greater Vancouver).**



**Legal Services Society** Family Duty Counsel Program

British Columbia  
www.lss.bc.ca

# Family Duty Counsel Referral Form for Legal Services Intake

To: Legal Services Society

Client name: \_\_\_\_\_

Date: \_\_\_\_\_

Client issues:

- Restraining Order
- Custody
- Access
- Spousal Support
- Child Support
- Child, Family, and Community Service Act
- Family Maintenance Enforcement Act
- Property
- Exception Review (i.e., family problem not covered under LSS policy)

Other: \_\_\_\_\_

Reason for referral to legal aid (identify barriers to client proceeding alone):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Next court date and time: \_\_\_\_\_

Name of family duty counsel lawyer: \_\_\_\_\_

Lawyer's signature: \_\_\_\_\_

**Legal Services Call Centre:  
604-408-2172 (Lower Mainland)  
1-866-577-2525 (Toll free, outside the Lower Mainland)**