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 Aboriginal Affairs and Northern Development Canada Affaires autochtones et Développement du Nord Canada

**Wills and Estates
under the *Indian Act*:
An Overview**

Estates Unit, BC Region

Revised October 2011

 Aboriginal Affairs and Northern Development Canada Affaires autochtones et Développement du Nord Canada

Who we are and what we do

The Estates Unit in AANDC-BC Region

- We act for the Minister of Indian Affairs, carrying out his responsibilities under the *Indian Act*.
 1. Approving Wills and confirming the appointment of Executors and Administrators;
 2. Settling the estates of people who've passed away, when nobody in the family is able to do so;
 3. Managing the finances of people who are unable to manage their own money due to mental incapacity; and
 4. Paying out Minors' trust accounts held by AANDC.

Why we're here today

What we'll cover in this session

We will:

- Give you information about the law so that you can decide whether or not you need to make a Will;
- Walk you through the main steps involved in making a Will; and
- Answer any questions you may have about wills and estates issues.

Who is covered by the *Indian Act*?

The *Indian Act*'s Wills & Estates rules don't apply to everyone

You must be:

1. Status (registered) First Nation person; and
2. Make your home on reserve.
 - Includes people who live on-reserve but are away for a period of time to go to school or for seasonal employment;
 - Includes people whose home is on reserve, but who have to leave to go into a care facility off-reserve;
 - Does not include status First Nations people who don't live on-reserve, or people who live on-reserve but don't have First Nations status.

See page 4 of *Writing Your Own Will* for more information

What is your “estate”?

It's what you **OWN**, minus what you **OWE**

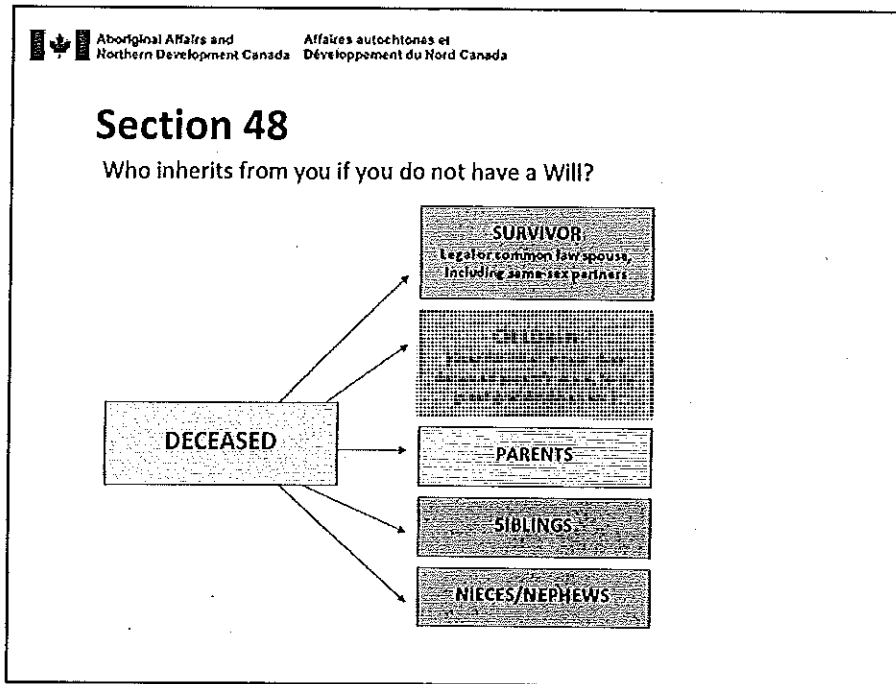
- Everything you own on the day that you die
 - Your house and land
 - All of your personal belongings
 - Money in the bank
 - A car or boat
- Everything you owe on the day you die
 - Credit card debt, final phone and cable bills
 - Any other debt that's not life-insured and must be paid off when you die

What the *Indian Act* says

Sections 42 to 50 of the Act cover Wills and Estates

- If you don't make your own Will, sections 48 and 50 of the *Indian Act* are going to be your “Will”.
- If you don't make your own Will, the law makes some assumptions about who should be provided for, and the person looking after your estate must follow these legal rules.

See page 4 of *Writing Your Own Will* for more information



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If you have land on reserve

Section 48(8) and Section 50 of the Indian Act

- **Section 48(8):** if you don't have a Will and your closest next-of-kin are nieces/nephews, any reserve land you have must be transferred to the band.
- **Section 50:** if land is inherited (Will, or no Will) by a person who isn't a member of your band, the Superintendent of Indian Affairs must sell the non-member's share of the land and give them the sale proceeds instead of the land itself.

See page 16 of *Writing Your Own Will* for more information

Do you need a Will?

Maybe

- If your life is simple – you’ve been married for years to the same person, and you, your spouse, and all of your children and grandchildren are members of the same First Nation, maybe the *Indian Act’s* inheritance rules will work for you.
- If you’re separated (but not divorced), or have children from more than 1 relationship, or have a spouse, children or grandchildren who are not status or who are not members of your First Nation, or have a friend, step-children or custom-adopted children who you want to leave something to: you need to make a Will.

See page 5 of *Writing Your Own Will* for more information

Some things you can do in a Will

... That you can’t do without one

- Give a gift to a friend or a more distant blood relative;
- Leave something to a step-child or a child you’ve raised but not legally adopted;
- Give more to one family member than another;
- Choose who looks after your estate;
- Name a guardian for your young children;
- If you have land: avoid having Section 48(8) or Section 50 apply to your land.

Some things you can't do in a Will

... Just a couple of major ones

- You can't give away something you don't actually own (sounds obvious, but ...)
 - The right to live in band social housing, or a house that is built on communal band land (also called a traditional land holding) is decided by your First Nation's Housing Program policies, not the Indian Act or your Will.
- You can't give something you own jointly with someone else, if the joint ownership comes with a "right of survivorship": the property (could be land, a car, a bank account) automatically goes to the surviving joint owner.

See page 15 of *Writing Your Own Will* for more information

Information to get

... Before you start working on your Will

- Full names and band membership information for all people to be named in your Will;
- Parcel abstract report for any reserve land interests you have;
- List/description of all vehicles, boats, business or work equipment, insurance policies, pension funds, bank accounts (incl. account numbers);
 - Who is the beneficiary for insurance (and anything else you have where you can name a beneficiary)?
- List of all debts (are any life-insured?).

See page 19 of *Writing Your Own Will* for more information



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What Makes a Will Legal?

–The requirements in the Indian Act

- The person making the Will must:
 - Be age 19 or older, unless they are married or in the Armed Forces; and
 - Be able to understand what they are doing when they write the Will [“mental capacity”]; and
 - Be free from extreme influence or pressure by people wanting a share of their possessions (called “duress” and “undue influence”).
- The Will must:
 - Be in writing; and
 - Be signed by the will-maker; and
 - Give instructions on distributing the will-maker’s property after death; and
 - The instructions must be clear.

See page 7 of *Writing Your Own Will* for more information



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Choosing an Executor

The person who will carry out the instructions in your Will

- Your executor should be:
 - Trustworthy and able to work on their own;
 - In good health (so that they survive you and can do the job);
 - Able to manage the paperwork involved; and
 - Able to communicate with and be respectful of all your family and friends (the beneficiaries named in your Will).
- You may also consider naming more than one executor, and naming a substitute executor to act in case the first person is unable or unwilling to do the job.

See page 13 of *Writing Your Own Will* for more information

What an Executor does

Some examples ...

- Makes funeral arrangements with your family;
- Notifies everyone who needs to know about the death (such as employer, hydro, phone, cable, bank, government agencies);
- Gets your Will approved by AANDC (the document must be the original Will, not a photocopy);
- Contacts everyone named in the Will;
- Claims death benefits;
- Looks after your property until it is transferred;
- Pays debts such as funeral expenses, credit cards and loans, using the money in your estate; and
- Distributes property to the people named in your Will and provides them with an accounting of your estate.

See page 13 of *Writing Your Own Will* for more information

A typical Will

Parts of a typical Will

- Identify yourself (your full name, band membership etc.) and state your home address;
- Revoke (cancel) any previous Wills;
- Name the executor(s), then the alternative executor(s);
- Name a guardian for your minor children (if any);
- Give directions for your funeral;
- Make gifts of specific items (if any);
- Give the 'residue' of your estate (the 'residue' is everything that is left after payment of your debts and gifts of any specific items); and
- Date, your signature, witnesses' names and signatures.

See page 27 of *Writing Your Own Will* for more information

Changing a Will

(Or making a new one)

- You can change your Will or make a new one at any time, particularly if there's been a change in your life such as:
 - You got married or had children;
 - You separated or got divorced, and your "ex" is named in your current Will;
 - The executor or a beneficiary named in your Will has passed away.
- A codicil is a separate document added to your Will to make a change so that you don't have to rewrite your whole Will.

See page 19 of *Writing Your Own Will* for more information

Other planning documents

Legal planning documents to consider

- Power of Attorney
 - This is a written, signed document in which you appoint another person to make financial and legal decisions for you. The powers you give can be limited to a few specific powers for a short time, or you can give a general Power of Attorney for all financial and legal purposes.
- Representation Agreement
 - This is a written, signed document in which you appoint someone to speak and act for you when you can't speak for yourself because of illness, accident or disability. It is broader than a Power of Attorney, and can cover health care decisions as well as financial and legal decisions.

See page 34 of *Writing Your Own Will* for more information



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Information & Publications

Making a Will, and Settling an Estate

Writing Your Own Will – A Guide for First Nations People Living On Reserve in BC (Tab 4 of your binder)

www.ifoabc.org (Click on "What We Do", then on "Resources").

Estate Administration On Reserve: A Guide for Executors and Administrators in BC (Tab 7 of your binder)

Contact us and we'll mail or email you a copy; also available on the Legal Services Society of BC's Aboriginal website at www.lss.bc.ca/aboriginal/ (click on "Aboriginal legal issues", then "Wills and estates on reserve")

Estate Administration On Reserve: Templates Package

Contact us and we'll email this to you, or you can download it from the Legal Services Society of BC's Aboriginal website at www.lss.bc.ca/aboriginal/ (click on "Aboriginal legal issues", then "Wills and estates on reserve")



Aboriginal Affairs and Northern Development Canada Affaires autochtones et Développement du Nord Canada

Contact Information

AANDC - BC Region contacts

Estates Unit

604.775.5100 Toll free: 1.888.917.9977

Email: BCestates@aandc-aadnc.gc.ca

Individual Land Holdings

604.775.5100 Toll free: 1.888.917.9977

(ask to speak with an Individual Land Holdings Specialist)

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EXTRACTS FROM THE INDIAN ACT

Sections 42 through 50
Section 51
Sections 52.1 through 52.3

Wills and Estates
Managing the Financial Affairs of Mentally Incapable Adults
Minors' Trust Accounts

Wills and Estates: Sections 42 through 50

DESCENT OF PROPERTY

Powers of Minister with respect to property of deceased Indians

42. (1) Subject to this Act, all jurisdiction and authority in relation to matters and causes testamentary, with respect to deceased Indians, is vested exclusively in the Minister and shall be exercised subject to and in accordance with regulations of the Governor in Council.

Regulations

(2) The Governor in Council may make regulations providing that a deceased Indian who at the time of his death was in possession of land in a reserve shall, in such circumstances and for such purposes as the regulations prescribe, be deemed to have been at the time of his death lawfully in possession of that land.

Application of regulations

(3) Regulations made under subsection (2) may be made applicable to estates of Indians who died before, on or after September 4, 1951.

R.S., c. I-6, s. 42.

Particular powers

43. Without restricting the generality of section 42, the Minister may

- (a) appoint executors of wills and administrators of estates of deceased Indians, remove them and appoint others in their stead;
- (b) authorize executors to carry out the terms of the wills of deceased Indians;
- (c) authorize administrators to administer the property of Indians who die intestate;
- (d) carry out the terms of wills of deceased Indians and administer the property of Indians who die intestate; and
- (e) make or give any order, direction or finding that in his opinion it is necessary or desirable to make or give with respect to any matter referred to in section 42.

R.S., c. I-6, s. 43.

Courts may exercise jurisdiction with consent of Minister

44. (1) The court that would have jurisdiction if a deceased were not an Indian may, with the consent of the Minister, exercise, in accordance with this Act, the jurisdiction and authority conferred on the Minister by this Act in relation to testamentary matters and causes and any other powers, jurisdiction and authority ordinarily vested in that court.

Minister may refer a matter to the court

(2) The Minister may direct in any particular case that an application for the grant of probate of the will or letters of administration of a deceased shall be made to the court that would have jurisdiction if the deceased were not an Indian, and the Minister may refer to that court any question arising out of any will or the administration of any estate.

Orders relating to lands

(3) A court that is exercising any jurisdiction or authority under this section shall not without the consent in writing of the Minister enforce any order relating to real property on a reserve.

R.S., c. I-6, s. 44.

WILLS

Indians may make wills

45. (1) Nothing in this Act shall be construed to prevent or prohibit an Indian from devising or bequeathing his property by will.

Form of will

(2) The Minister may accept as a will any written instrument signed by an Indian in which he indicates his wishes or intention with respect to the disposition of his property on his death.

Probate

(3) No will executed by an Indian is of any legal force or effect as a disposition of property until the Minister has approved the will or a court has granted probate thereof pursuant to this Act.

R.S., c. I-6, s. 45.

Minister may declare will void

46. (1) The Minister may declare the will of an Indian to be void in whole or in part if he is satisfied that

- (a) the will was executed under duress or undue influence;
- (b) the testator at the time of execution of the will lacked testamentary capacity;

- (c) the terms of the will would impose hardship on persons for whom the testator had a responsibility to provide;
- (d) the will purports to dispose of land in a reserve in a manner contrary to the interest of the band or contrary to this Act;
- (e) the terms of the will are so vague, uncertain or capricious that proper administration and equitable distribution of the estate of the deceased would be difficult or impossible to carry out in accordance with this Act; or
- (f) the terms of the will are against the public interest.

Where will declared void

(2) Where a will of an Indian is declared by the Minister or by a court to be wholly void, the person executing the will shall be deemed to have died intestate, and where the will is so declared to be void in part only, any bequest or devise affected thereby, unless a contrary intention appears in the will, shall be deemed to have lapsed.

R.S., c. I-6, s. 46.

APPEALS

Appeal to Federal Court

47. A decision of the Minister made in the exercise of the jurisdiction or authority conferred on him by section 42, 43 or 46 may, within two months from the date thereof, be appealed by any person affected thereby to the Federal Court, if the amount in controversy in the appeal exceeds five hundred dollars or if the Minister consents to an appeal.

R.S., c. I-6, s. 47; R.S., c. 10(2nd Supp.), ss. 64, 65.

DISTRIBUTION OF PROPERTY ON INTESTACY

Surviving spouse's share

48. (1) Where the net value of the estate of an intestate does not, in the opinion of the Minister, exceed seventy-five thousand dollars or such other amount as may be fixed by order of the Governor in Council, the estate shall go to the survivor.

Idem

(2) Where the net value of the estate of an intestate, in the opinion of the Minister, exceeds seventy-five thousand dollars, or such other amount as may be fixed by order of the Governor in Council, seventy-five thousand dollars, or such other amount as may be fixed by order of the Governor in Council, shall go to the survivor, and

- (a) if the intestate left no issue, the remainder shall go to the survivor,
- (b) if the intestate left one child, one-half of the remainder shall go to the survivor, and
- (c) if the intestate left more than one child, one-third of the remainder shall go to the survivor,

and where a child has died leaving issue and that issue is alive at the date of the intestate's death, the survivor shall take the same share of the estate as if the child had been living at that date.

Where children not provided for

(3) Notwithstanding subsections (1) and (2),

(a) where in any particular case the Minister is satisfied that any children of the deceased will not be adequately provided for, he may direct that all or any part of the estate that would otherwise go to the survivor shall go to the children; and

(b) the Minister may direct that the survivor shall have the right to occupy any lands in a reserve that were occupied by the deceased at the time of death.

Distribution to issue

(4) Where an intestate dies leaving issue, his estate shall be distributed, subject to the rights of the survivor, if any, *per stirpes* among such issue.

Distribution to parents

(5) Where an intestate dies leaving no survivor or issue, the estate shall go to the parents of the deceased in equal shares if both are living, but if either of them is dead the estate shall go to the surviving parent.

Distribution to brothers, sisters and their issue

(6) Where an intestate dies leaving no survivor or issue or father or mother, his estate shall be distributed among his brothers and sisters in equal shares, and where any brother or sister is dead the children of the deceased brother or sister shall take the share their parent would have taken if living, but where the only persons entitled are children of deceased brothers and sisters, they shall take *per capita*.

Next-of-kin

(7) Where an intestate dies leaving no survivor, issue, father, mother, brother or sister, and no children of any deceased brother or sister, his estate shall go to his next-of-kin.

Distribution among next-of-kin

(8) Where an estate goes to the next-of-kin, it shall be distributed equally among the next-of-kin of equal degree of consanguinity to the intestate and those who legally represent them, but in no case shall representation be admitted after brothers' and sisters' children, and any interest in land in a reserve shall vest in Her Majesty for the benefit of the band if the nearest of kin of the intestate is more remote than a brother or sister.

Degrees of kindred

(9) For the purposes of this section, degrees of kindred shall be computed by counting upward from the intestate to the nearest common ancestor and then downward to the relative, and the kindred of the half-blood shall inherit equally with those of the whole-blood in the same degree.

Descendants and relatives born after intestate's death

(10) Descendants and relatives of an intestate begotten before his death but born thereafter shall inherit as if they had been born in the lifetime of the intestate and had survived him.

Estate not disposed of by will

(11) All such estate as is not disposed of by will shall be distributed as if the testator had died intestate and had left no other estate.

No community of property

(12) There is no community of real or personal property situated in a reserve.

(13) and (14) [Repealed, R.S., 1985, c. 32 (1st Supp.), s. 9]

Equal application to men and women

(15) This section applies in respect of an intestate woman as it applies in respect of an intestate man.

(16) [Repealed, R.S., 1985, c. 32 (1st Supp.), s. 9]

R.S., 1985, c. I-5, s. 48; R.S., 1985, c. 32 (1st Supp.), s. 9, c. 48 (4th Supp.), s. 2; 2000, c. 12, ss. 149, 151.

Devisee's entitlement

49. A person who claims to be entitled to possession or occupation of lands in a reserve by devise or descent shall be deemed not to be in lawful possession or occupation of those lands until the possession is approved by the Minister.

R.S., c. I-6, s. 49.

Non-resident of reserve

50. (1) A person who is not entitled to reside on a reserve does not by devise or descent acquire a right to possession or occupation of land in that reserve.

Sale by superintendent

(2) Where a right to possession or occupation of land in a reserve passes by devise or descent to a person who is not entitled to reside on a reserve, that right shall be offered for sale by the superintendent to the highest bidder among persons who are entitled to reside on the reserve and the proceeds of the sale shall be paid to the devisee or descendant, as the case may be.

Unsold lands revert to band

(3) Where no tender is received within six months or such further period as the Minister may direct after the date when the right to possession or occupation of land is offered for sale under subsection (2), the right shall revert to the band free from any claim on the part of the devisee or descendant, subject to the payment, at the discretion of the Minister, to the devisee or descendant, from the funds of the band, of such compensation for permanent improvements as the Minister may determine.

Approval required

(4) The purchaser of a right to possession or occupation of land under subsection (2) shall be deemed not to be in lawful possession or occupation of the land until the possession is approved by the Minister.

R.S., c. 1-6, s. 50.

Regulations

50.1 The Governor in Council may make regulations respecting circumstances where more than one person qualifies as a survivor of an intestate under section 48.

2000, c. 12, s. 150.

Managing the Financial affairs of Mentally Incapable Adults: Section 51

MENTALLY INCOMPETENT INDIANS

Powers of Minister generally

51. (1) Subject to this section, all jurisdiction and authority in relation to the property of mentally incompetent Indians is vested exclusively in the Minister.

Particular powers

(2) Without restricting the generality of subsection (1), the Minister may

- (a) appoint persons to administer the estates of mentally incompetent Indians;
- (b) order that any property of a mentally incompetent Indian shall be sold, leased, alienated, mortgaged, disposed of or otherwise dealt with for the purpose of
 - (i) paying his debts or engagements,
 - (ii) discharging encumbrances on his property,

- (iii) paying debts or expenses incurred for his maintenance or otherwise for his benefit, or
 - (iv) paying or providing for the expenses of future maintenance; and
- (c) make such orders and give such directions as he considers necessary to secure the satisfactory management of the estates of mentally incompetent Indians.

Property off reserve

(3) The Minister may order that any property situated off a reserve and belonging to a mentally incompetent Indian shall be dealt with under the laws of the province in which the property is situated.

R.S., c. I-6, s. 51.

Minors' Trust Accounts: Sections 52.1 through 52.3

MONEY OF INFANT CHILDREN

Distributions of capital

52.1 (1) The council of a band may determine that the payment of not more than three thousand dollars, or such other amount as may be fixed by order of the Governor in Council, in a year of the share of a distribution under paragraph 64(1)(a) that belongs to an infant child who is a member of the band is necessary or proper for the maintenance, advancement or other benefit of the child.

Procedure

(2) Before making a determination under subsection (1), the council of the band must

- (a) post in a conspicuous place on the reserve fourteen days before the determination is made a notice that it proposes to make such a determination; and
- (b) give the members of the band a reasonable opportunity to be heard at a general meeting of the band held before the determination is made.

Minister's duty

(3) Where the council of the band makes a determination under subsection (1) and notifies the Minister, at the time it gives its consent to the distribution pursuant to paragraph 64(1)(a), that it has made that determination and that, before making it, it complied with subsection (2), the Minister shall make a payment described in subsection (1) for the maintenance, advancement or other benefit of the child to a parent or person who is responsible for the care and custody of the child or, if so requested by the council on giving its consent to that distribution, to the council.

R.S., 1985, c. 48 (4th Supp.), s. 3.

Money of infant children of Indians

52.2 The Minister may, regardless of whether a payment is made under section 52.1, pay all or part of any money administered by the Minister under section 52 that belongs to an infant child of an Indian to a parent or person who is responsible for the care and custody of the child or otherwise apply all or part of that money if

- (a) the Minister is requested in writing to do so by the parent or the person responsible; and
- (b) in the opinion of the Minister, the payment or application is necessary or proper for the maintenance, advancement or other benefit of the child.

R.S., 1985, c. 48 (4th Supp.), s. 3.

Attaining majority

52.3 (1) Where a child of an Indian attains the age of majority, the Minister shall pay any money administered by the Minister under section 52 to which the child is entitled to that child in one lump sum.

Exception

(2) Notwithstanding subsection (1), where requested in writing to do so before a child of an Indian attains the age of majority by a parent or a person who is responsible for the care and custody of the child or by the council of the band of which the child is a member, the Minister may, instead of paying the money in one lump sum, pay it in instalments during a period beginning on the day the child attains the age of majority and ending not later than the day that is three years after that day.

R.S., 1985, c. 48 (4th Supp.), s. 3.

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This is an example of a Will that a married person with young children might make. This sample will is for use at Estates Workshops led by INAC Estates Officers. The contents of this sample will, and the explanatory notes, are provided for information and discussion purposes only, and should not be construed as legal advice. Contact a lawyer for advice about your specific circumstances.

LAST WILL AND TESTAMENT

I am Mary Louise Joseph, No. 123(02)
Full Name *Membership No*

of the Eagle Creek First Nation, and I live at Eagle Creek I.R. No. 1
Name of First Nation *Place*

in the Province of British Columbia.

This is my Last Will and Testament.

Start by saying that this is your Will, and that it replaces any previous Wills you may have made. Consider naming an alternate executor in case your first choice is unable to do the job when the time comes. There are legal presumptions about who dies first if, for example, a husband and wife die at the same time in a car accident. To ensure that your estate passes in accordance with your Will and is not affected by these presumptions, you may wish to use wording such as the '30-day' provision below.

1. I cancel all my former wills and codicils.

2. I appoint my husband, Richard James Joseph
Name(s) of executor(s)

of Princeton, British Columbia to be the
Place
executor(s) and trustee(s) of this my will, but if she/he/they should refuse to act, die before me, or die within a period of 30 days following my death, then I appoint

my brother, Henry William Billy
Name(s) of alternate executor(s)

of Kamloops, British Columbia, as the executor(s)
Place
and trustee(s) of this my will.

3. I direct that all my just debts, funeral and testamentary expenses be paid by my executor as soon as possible after my death.

4. I appoint my husband, Richard James Joseph
Name(s)

of Princeton, British Columbia, as
Place *Province*
Guardian(s) of my minor children, but if she/he/they should refuse to act, die before me, or die within 30 days following my death, then I appoint

my sister, Serena Mary Jack of
Name(s)

Princeton, British Columbia, as
Place *Province*

Guardian(s) of my minor Children.

5. I appoint my husband, Richard James Joseph
Name(s)

of Princeton, British Columbia, as
Place *Province*

Guardian(s) of the estates of my minor children, but if she/he/they should refuse to act, die before me, or die within 30 days following my death, then I appoint

my brother, Henry William Billy of

#4 appoints a guardian to care for your children (that is, someone to have physical custody of them). You may also wish to appoint a "guardian of the estate" of your children, as in #5. This type of guardian is responsible for looking after any money or other property you leave to your children. If you're a separated parent and the surviving parent will be looking after your children, but you want a different trusted person to be the one who decides what funds your children need for educational or other necessary expenses, name a guardian of the children's estates.

M.J.

Kamloops, British Columbia, as
Place *Province*

Guardian(s) of the estates of my minor Children.

Section 50 of the Indian Act provides that land cannot be inherited by non-band members, and that if non-band members are in line to inherit land, their share of the land must be sold by the Superintendent. #8 gives an example of wording that avoids a possible s.50 sale because the testator specifies that her land can only pass to band members.

- 6. I request that my Guardians:
Raise my children in the Catholic religion.
- 7. I want my remains to be dealt with as follows:
I want my remains to be buried at the Eagle Creek Cemetery.
- 8. I make the following specific gifts:

I give my interest in Lot 12, Eagle Creek I.R. No. 1 ("my land") to my husband, Richard James Joseph, if he survives me for 30 days, but if he does not survive me for 30 days, then I give my land to be divided equally among such of my children as are living at my death, PROVIDED that if any child of mine should predecease me but leave child or children (hereinafter called "Issue") surviving him or her, then my deceased child's share shall be divided equally among such Issue as attain the age of 19 years, AND FURTHER PROVIDED that a person who is not a member of the Eagle Creek First Nation at my death shall not be entitled to inherit any portion of my land.

I give my beaded brooch to my best friend, Annie Fraser.

- 9. I give the residue of my estate as follows:
I give the remainder of my estate to my husband, Richard James Joseph, if he survives me for 30 days, but if he does not survive me for 30 days, the remainder of my estate shall be divided equally among such of my children as are living at my death, PROVIDED that if any child of mine should predecease me but leave child or children (hereinafter called "Issue") surviving him or her, then my deceased child's share shall be divided equally among such Issue as attain the age of Nineteen 19 years.

I have signed my name to this will on June 12, 2006 at Princeton
Date *Place*

British Columbia.

This page was signed, and the preceding page was initialled, by Mary Louise Joseph as his/her last will in the presence of us, both present together at the same time. We have signed our names as witnesses to this will at the request of Mary Louise Joseph in his /her presence and in the presence of each other.

)
)
) Mary Joseph
) *Signature of testator*
) Who to choose as witnesses? Adults who are:
) 1. Not the executor or anyone else named in your Will; and
) 2. Not the husband or wife of the executor or anyone else named in your Will.
) You and your 2 witnesses must all be present together at the same time during the entire process of signing your Will. The witnesses do not need to be shown anything you have written in your Will, but you need to tell them that the document you are asking them to witness is your Will, so that they understand they are witnessing a Will.
) With your two witnesses present with you:
) 1. Initial the bottom right-hand corner of all pages of your Will, except the last page (you will be signing that page, so you don't need to initial it).
) 2. Fill in the date and place you are signing your Will, and then sign the Will.
) 3. Have your two witnesses sign the Will and print their names and addresses.

Name Brenda Smart, Band Manager
Address 123 Eagle Creek Rd., Princeton BC
Signature Brenda Smart

Name Frank Creston, Lands Manager
Address 456 Eagle Creek Rd., Princeton BC
Signature Frank Creston

LAST WILL AND TESTAMENT

I am _____, No. _____
Full Name *Membership No*
of the _____, and I live at _____
Name of First Nation *Place*
in the Province of British Columbia.

This is my Last Will and Testament.

1. I cancel all my former wills and codicils.
2. I appoint _____
Name(s) of executor(s)
of _____, British Columbia to be the
Place
executor(s) and trustee(s) of this my will, but if she/he/they should refuse to act, die before me, or die within _____ days following my death, then I appoint

Name(s) of alternate executor(s)
of _____, British Columbia, as the executor(s)
Place
and trustee(s) of this my will.
3. I direct that all my just debts, funeral and testamentary expenses be paid by my executor as soon as possible after my death.
4. I appoint _____
Name(s)
of _____, _____, as
Place *Province*
Guardian(s) of my minor children, but if she/he/they should refuse to act, die before me, or die within _____ days following my death, then I appoint
_____ of
Name(s)
_____, _____, as
Place *Province*
Guardian(s) of my minor Children.
5. I appoint _____
Name(s)
of _____, _____, as
Place *Province*
Guardian(s) of the estates of my minor children, but if she/he/they should refuse to act, die before me, or die within _____ days following my death, then I appoint
_____ of
Name(s)



_____ as
Place *Province*
Guardian(s) of the estates of my minor Children.

6. I request that my Guardians:

7. I want my remains to be dealt with as follows:

8. I make the following specific gifts:

9. I give the residue of my estate as follows:

I have signed my name to this will on _____ at _____
Date *Place*

British Columbia.

This page was signed, and the preceding page was)
initialled, by _____)
as his/her last will in the presence of us, both)
present together at the same time. We have)
signed our names as witnesses to this will at the)
request of _____ in his)
/her presence and in the presence of each other.)

Signature of testator

Name _____)
Address _____)
Signature _____)
Name _____)
Address _____)
Signature _____)

Here is an example of what can happen when there is no Will.

An elder lived in his own trailer (manufactured home) on band land. He had many children and grandchildren who were entitled to share in his estate. Some of his family lived off-reserve in the city. Only one family member wanted to live in the trailer, but not everyone in the family agreed that this person should be given the trailer. Unless everyone entitled to inherit from the elder could agree, the law required that all the elder's property be sold and divided equally among his descendants.

The trailer was old and worth very little money, and it was hard to sell. The amount each family member finally got from the sale was so small that it wasn't much use. If the elder had written a Will, he could have given the trailer to the person who wanted to live in it. That would have been a real benefit and a lot less trouble.

1.4 When do I need a lawyer?

You can make a simple Will yourself, without a lawyer, but you should probably get legal advice if:

- you own and run a business
- you own land off-reserve
- you own a great deal of property (such as bank accounts or investments), especially if any of it is off-reserve
- you are in the middle of a complicated divorce or child custody case
- you are planning on giving nothing to a close relative and you think they will argue about being left out of the Will.

Lawyers usually charge a flat rate of around \$500 for preparing a Will.

At the back of this booklet is a list of places to go for more information or assistance, with making a Will.

2. What Makes a Will Legal?

There are rules about what form a Will must be in to be valid (legal). A Will is proved to be legal when it is approved by an official at INAC after the will-maker has died.

INAC has to be involved because of federal law. The Indian Act (sections 42 to 50) and the Indian Estates Regulations say how to handle the affairs of a deceased First Nations person who lived on reserve. This is why the Will of any First Nations person living on reserve has to be sent to INAC for written approval.

If the will-maker was not ordinarily resident on reserve, the Will must be approved by the British Columbia Probate Registry, and the law that applies to the estate is the law of British Columbia, not the Indian Act. However, if the will-maker had CP land, it must still be transferred in accordance with the Indian Act (so the land can only be passed on to someone who is a member of the same First Nation as the deceased).

INAC's written approval of a Will, and the documents given by the British Columbia Probate Registry, do the same thing.

These documents give the executor of the deceased person's estate the legal right to settle the estate. For example, the executor takes those documents to the bank to transfer money from the deceased persons' bank account, or they take the documents to the Indian Land Registry to transfer the CP land. An estate cannot be settled without these papers.

2.1 Rules for Wills under the Indian Act for First Nations people living on reserve

Under the Indian Act, will-makers must:

- be 19 years of age or older, unless they are married or in the armed forces, and
- be able to understand what they are doing when they write the Will, and
- be free from extreme influence or pressure by people wanting a share of their possessions. (This is called "duress" or "undue influence". See section 8.1.2 on page 20 for more information.)

The Will must:

- be in writing (handwritten or typed on a computer and printed out), and
- be signed by the will-maker, and
- give instructions on distributing the will-maker's property after death, and
- those instructions have to be clear and easy to understand.

If these rules are followed, INAC usually approves the Will. If there are problems in understanding the Will or if relatives complain to INAC, the Will may not be approved, or the approval may be delayed while the complaints are investigated.

The following people can challenge a Will by writing to INAC:

- anyone who is entitled to share in the value of an estate under a Will
- anyone who would be entitled to part of the estate if there were no Will
- anyone who the will-maker was legally required to support.

If a Will is challenged, INAC staff will read the Will carefully, and look for written evidence from family members and the executor to try and figure out what the will-maker intended and why. This is one reason why it is a good idea to have witnesses when you make your Will. They can answer any questions that might come up later.

INAC can usually make a decision without going to Court. However, if the situation is complicated and can only be decided by having witnesses testify in person, INAC may go to the BC Supreme Court for a decision. If this is necessary, the estate and/or family members must pay the legal expenses involved.

2.2 Rules for Wills under the laws of British Columbia

INAC recommends that Wills written by First Nations people also follow the Wills law of British Columbia. These are the BC rules:

Form:

- The Will must be written on paper, either in handwriting or printed out from a computer. Electronic forms, such as audio tape or video recording, are not valid.
- The will-maker must sign their name at the bottom of the document.
- The will-maker must state that they are writing their final Will and that the document replaces any former Will they may have written.

Capacity:

- The will-maker must be 19 years or age or older to make a Will, unless the will-maker is married or in the armed forces. (This is expected to be changed to 16 years of age in 2010.)

Witnesses:

- Two people must witness a signature on a Will. The people must each be over the age of 19 and mentally capable of knowing what they are doing. (More details about witnesses in the Sample Will with Instructions on page 28.)
- The witnesses cannot be named in the Will to receive gifts, and they cannot be spouses of people who are to receive gifts in the Will. If the witnesses will receive gifts in the Will, those gifts are void (the gifts are not legal).

3. Who Should Benefit from the Will?

A person writing a Will is free to make gifts of their property to anyone they want. They can give their property to family members, to friends or to charity. There are no rules about who to leave your property to in a Will. You can leave part of your estate to some members of your family and none to other members. You can leave some to family and some to friends.

3.1 Identifying the People in your Will

Every family member who might be entitled to share in your estate must be notified of your death and of your Will by your executor, whether you have included them in your Will or not. For that reason, you should make a list with names and addresses for your executor. Make sure that you include nick-names and any names that a person is known by as well as their legal name.

This list should include all of your immediate family and descendants. Identify any children who are custom-adopted (see box on page 11). If you have a large family you might not list all of your cousins or nieces and nephews. Instead you might list all the families that are related to you and how. That way the executor can find them. It is especially important to identify any friends you might want to leave something to. Also if you want to leave something to a charity, you should find out the charity's legal name.

If you have all this information prepared for your executor, and keep it up-to-date after you've made your Will, then you don't have to put details like addresses into your Will, just the name of the person or charity. If you have not prepared a list, then all the details

have to go into the Will to ensure that your gifts go to the right people.

3.2 Leaving a Family Member out of your Will

You may decide NOT to leave property to one or more family members. If those persons were being supported by you or were dependant on you in some way, you should state why you are not leaving them anything. This makes it harder for them to prove that the terms of your Will should be changed for their benefit. (See Section 8, page 20, on Disputing a Will).

EXAMPLE PARAGRAPHS

I love all my children equally, but I am leaving most of my money to my daughter Susan Johnson because she has serious health problems and is unable to work. My other children are supporting themselves.

OR

I am not giving a share of my estate to my son, Charles Johnson. He left my home when he was 17 because he wanted to do drugs. He has been living on the streets in Vancouver. I only see him when he needs money. I have given him thousands of dollars over the years, more than I have given my other children. For this reason I do not want to give him anything in my Will.

4. Common Types of Wills

4.1 Wills written by Spouses

4.1.1 Joint Wills

Joint Wills are very common and are written by spouses (either married or common-law). The wife writes a Will giving all her property to her husband, if he survives her. The husband writes a Will giving everything to his wife, if she survives him. Without a Will, the surviving spouse would have to share the estate with the children of the deceased.

Joint Wills also state that if the spouses die together, their descendants (such as children or grandchildren) inherit all their property. Usually they are each other's executor.

4.1.2 Mutual Wills

Mutual Wills are written by spouses (either married or common-law) who have young families. The spouses want to make sure that their own children inherit when they grow up, not a new spouse. Mutual Wills can also be used to make sure that all the children of a blended family inherit equally from both parents. In that case, the surviving spouse leaves their estate to both their own biological children and to their step-children (the children by a former marriage of the other spouse), but not to just the children of the survivor and not to any new husband or wife who comes along later.

Mutual Wills are not made very often, because the spouses have to agree that the surviving spouse will not alter their own Will after inheriting the property of the deceased spouse. For example, a surviving husband could write a new Will and disinherit the

children of his deceased wife in favor of just his own children or a new wife. In that case, those children would be able to sue for their share of the estate on the grounds of breach of contract.

Mutual Wills are more complicated than Joint Wills, and must be written carefully. Although we are mentioning this type of Will here, anyone considering Mutual Wills should consult a lawyer. This kind of Will is not suitable for doing yourself.

4.2 Parent to Child Wills

Parent to child (descendant) Wills are the other most common type of Will.

When giving property to children, it is a good idea to decide what to do with the share of a child who might die before you. You can write into the Will that the share of a child who dies before you (the term is "predecease"), is divided equally among the descendants of that child. Or you can divide that child's share equally among their surviving siblings.

Sample sentence: "I give the remainder of my estate to my children, John Joseph, Lisa Johnson, Sarah Johnson and Philip Johnson. If any of my children predecease me, then that share is to be divided equally among my remaining children."

EXAMPLE:

Giving Everything to Adult Children

When John's wife died, John decided to write a Will leaving all his property to his children. John was 68 years old and his children were adults with children of their own. He decided to leave his property, which included CP land, to his children, but not to his grandchildren. He thought maybe one or two of his grandchildren might not be members of his First Nation, which meant they couldn't inherit a share of his CP land. And he trusted his children to share fairly with their own children.

So John made a Will leaving everything to his children. His instructions were that Susan, Charles and Joseph were to inherit equal shares. If one of them died before John, their share would be divided equally between the two surviving children. This was much simpler than naming all the grandchildren and trying to work out their shares.

EXAMPLE:

Giving Everything to Adult Children and then Grandchildren

Ellen wanted to provide for her grandchildren if her children died before her. (She knew that they were all members of her First Nation and living on reserve.) Ellen worried particularly about her son who worked as a faller in the forest industry. So her instructions in her Will are that all her property goes to her children. She then says if any of her children die before her, that their share is to be divided among that child's children.

Custom Adoption: Who are your children?

Some First Nations people raise children who are not their own by birth and have not been legally adopted (for example, a brother's or sister's child).

If you have children who are not biologically yours, and you want to be sure they are treated the same as your biological children in your Will, be sure to mention these custom-adopted children by name, instead of just saying "I leave everything to my children".

INAC can recognize custom-adopted children, but there is a lot of paperwork involved for your family and it is much easier if you just list the children by name in your Will.

4.3 Care of Minor Children

If you have custody of children under 19, it is important to name a guardian for your children. This is especially important if there are good reasons not to give custody to their other parent. If the minor children in your care are custom adopted, not legally adopted, you may want to talk to a lawyer about what to do.

The courts do not have to appoint the guardian that you name in your Will, but they will consider your choice very seriously. When you have a good reason for not wanting the children's other parent to have custody, you should briefly state the reason in your Will (see example on right). If you have stated your reasons clearly and chosen responsible guardians for the children, there is a good chance your choice will be upheld.

Whoever you name should be responsible, and of course they must be willing and able to be a guardian. You would ordinarily name someone close to the children, such as an aunt and uncle who have been involved in their upbringing.

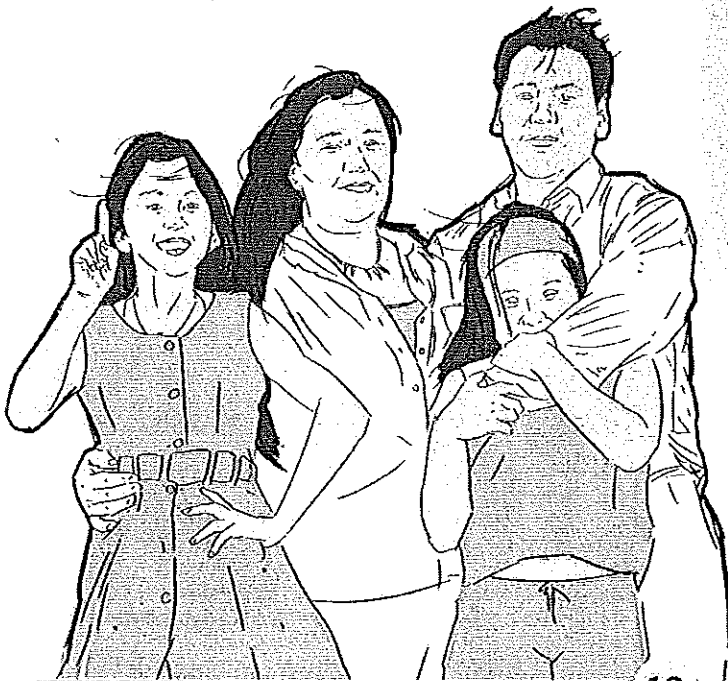
Even if you are happily married, it is a good idea to think about a guardian. Sometimes couples die at the same time, for example in a car accident.

SAMPLE PARAGRAPHS:

I direct that my sister, Judy Johnson, take custody of my children and become their legal guardian. I do not want their biological father, Robert Johnson, to have custody and guardianship because he has not lived with the children since the eldest was 4 and has never visited them more than once or twice a year. To my knowledge he has never been sober. For these reasons I am directing that my children be given into my sister's care.

OR

I direct that my sister, Judy Johnson, take custody of my children and become their legal guardian. The biological father of the children, Robert Johnson, has a joint custody order with me dated July 20, 2001. He moved to Ontario in 2002 and has not visited or communicated with the children since then. My sister has been helping me raise the children. The children know and like her. For these reasons I am directing that my children be given into her care.



5. Choosing your Executor

You must name someone in your Will to take control of your property when you die. The person whom you name to look after your estate is called an executor ("executor" is a man and "executrix" is a woman, but you can use "executor" for both). The executor is your representative and it's their job to follow the instructions in your Will.

The job of executor is important. It can involve a lot of paperwork. The executor may have to work with a lawyer to get your estate approved and distributed. You need to choose your representative carefully.

Your executor should be:

- trustworthy and able to work on their own,
- in good health (so that they survive you and can do the job),
- able to manage the paperwork involved, and
- able to communicate with and be respectful of all your family and friends (your beneficiaries).

Once you have decided on someone, it is a good idea to ask them if they are willing to do the job.

5.1 More than one Executor

You can have more than one executor so that there is more than one person to do all the work and make decisions. However, this can cause problems if they don't get along with each other. Most will-makers just have one executor.

5.2 Substitute Executor

You can also name a substitute executor, in case the first person is unable or unwilling to do the job (for instance, they are ill, or they have moved away). It is a very good idea to name a substitute.

5.3 Executor's Duties

Here are some examples of what an executor does:

- Gets your Will approved by INAC.
- Locates and takes control of your home, vehicles, bank accounts, tools, household goods, and personal possessions, including jewelry, art and crafts.
- Notifies hydro, phone, cable and all other services of your death.
- Looks after your house until it is transferred.
- Notifies your creditors and banks of your death.
- Claims death benefits.
- Makes funeral and memorial arrangements.

You can see that there are many responsibilities. This is why it is important to think carefully before you choose your executor.

5.4 Directions to the Executor

You need to put in your Will that you want your executor to pay all your debts, funeral expenses and all the expenses of winding up your affairs and settling your estate.

6. Giving Property in your Will

6.1 Specific Gifts of Property or Cash

There are two ways to give property after you die. One is to give instructions (also known as making a "bequest") in your Will. For example: "I give my friend, Joe White, \$1,000 cash" or "I give my nephew, Dan Smith, my box of carving tools".

A better way to give small items is to put instructions in another document, not in your Will. You can write a letter to your executor with a list of all the gifts you wish to give, and keep it with your Will.

You can change the letter any time without changing your Will.

In a letter, you can also give your executor general instructions. For example: "Let my cousins choose what they want from my tools. If they can't agree, then you, as executor, decides who is to get what." Or: "My children can take what they want of my household and personal belongings. The executor is to give them their choice in order from the oldest to the youngest."

6.2 The Remainder of your property

The "residue" is all the rest of your property remaining after any specific gifts of property or cash have been given. You don't know how much will be left after your debts have been paid and any gifts distributed. You also don't know what the value of your CP land and house will be at the time of your death.

Most people leave all their remaining property to their spouse or children.

6.3 Naming Alternates

It is a good idea to give instructions in case any of the people named in your Will die before you.

For example, "I leave the remainder of my estate to my wife. If she predeceases me, then her share is to be given to each of my three children and if any of my children die before me, then to their descendants in equal shares."

You can decide whether or not you want your grandchildren and great-grandchildren to take a share if any of your sons or daughters die before you. If you name each of your children in this section of the Will, then you have to specifically say that if any of them die before you, their individual share is to go to their children or grandchildren. (See examples on page 11.)

If you left your remaining property to "my children" without naming them, then the share of any child who predeceases you is divided among the surviving children unless you say otherwise.

Remember that if some of your children are custom adopted, you should include the names of all your children, not just say "my children." See box on page 11.

6.4 Property that can be distributed by a Will

In a Will you can only give property that you own in your own name, or jointly with another person.

The property can be personal items such as household goods, jewellery, boats and vehicles, and tools or equipment.

The property can also be a Certificate of Possession to reserve land or a house or land situated off reserve. Money or investments in the bank are property too.

Debts are also part of the property of an estate. These include credit card debt, bank loans, lines of credit, utility bills and funeral expenses.

6.5 Property that cannot be given in a Will

6.5.1 Joint Ownership

People often own property with one or more other people. This is called joint ownership.

The property could be a bank account, land, a boat, a vehicle or a lease. If the joint title comes with "right of survivorship", the property automatically passes to the surviving owner(s) and **it does not have to be included in a Will.**

Surviving owners of joint property take the death certificate into the bank or to the Motor Vehicle Branch, and usually ownership is transferred without any problem. In the case of a Certificate of Possession in joint names, the surviving CP holder takes the death certificate to INAC (or to the First Nation, if it manages its own land under the First Nations Land Management Act) and the CP land will be transferred to the surviving CP holder.

Sometimes land is owned by more than one person as "tenants in common." In that case, the property must be included in your Will for you to give your portion of it to somebody else.

If you have CP land on reserve with someone else and you are not sure if you are joint tenants or tenants in common, call an Individual Land Holdings Specialist at INAC to find out, before you make your Will. If your First Nation manages its own land, contact the band instead. INAC or the band will give you a document with the legal description of the land and how it is owned.

6.5.2 Named Beneficiary

When you buy some kinds of property, such as life insurance or pensions, you name a "beneficiary" who will receive the property when you die. The person named as the beneficiary only has to provide proof of their identity and proof that the holder of the policy has died to receive the funds. Beneficiaries do not have to be named in your Will.

You can write a Will saying that everything you own goes to your children, but if your insurance policy names your wife or husband as the beneficiary, your wife or husband will get the insurance money.

6.6 Giving land on Reserve

First Nations people who are writing a Will because they want to say who inherits their land, can only give the land if it is registered in the Indian Land Registry System (or under the First Nations Land Management Act, for bands that manage their own land). CP land can only be given to people who are members of that band, or are entitled to become members and are not already members of another band.

If the will-maker occupies a traditional land-holding on reserve (also known as a custom allotment), that land probably cannot be given in a Will, because the band legally owns the land, not the will-maker.

An example of a custom allotment is a house, owned by the will-maker, that is built on band land. It would have to be dealt with through the band (usually, under the band's housing program). Some First Nations have very clear custom allotment systems in place, with rules that allow a will-maker to decide who in their family will get to live in their house after they die. Other First Nations do not have such clear rules.

If your house is built on band land, rather than CP land, you should check with your band to find out if you are allowed to decide who will occupy your house after you die.

6.6.1 Non-band Members

If the will-maker gives land on reserve to a person not entitled to receive it, the Superintendent of INAC must put the land up for sale (the sale will only be open to band members) and give the money from the sale to the non-band member. There are many ways to avoid this. One is for the will-maker to leave their CP land to family

members who are entitled to receive it, and give other property to family members who are not entitled to CP land.

Here is another way.

EXAMPLE 1:

David owns CP land but his wife, Debra, is not a registered Indian. The couple have lived together in a house on the CP land for 36 years. They have no children, but David has a favourite nephew who is a member of David's First Nation.

David wants to leave his CP land to his nephew, but he also wants to make sure that Debra can still live in their home after he dies, for the rest of her life. David talks to a lawyer friend and they come up with the idea of leasing the CP lot to Debra.

David hires a lawyer to help him with the lease, and contacts a Lands Management and Leasing Officer at INAC. The process takes about a year. What David gets is a 30-year prepaid lease between Canada (on David's behalf) as the landlord (lessor), and Debra as the tenant (lessee). Because it is a long term lease, it will not end when David dies. Debra will still be entitled to live on the lot until the lease ends or she dies. She can also sublease the lot and use the money to support herself if she can't manage on her own and needs to move into a care facility.

David then writes his Will, leaving the CP land to his nephew who is a band member. The nephew will inherit the CP land when David dies, but the lease to Debra will continue until Debra dies or the lease comes to an end.

Leasing reserve land is complicated, and should never be done without advice from a lawyer. A person who leases their land is giving up their right to occupy the land for as long as the lease lasts. For instance, in Example 1, if David leased the land to Debra and they got divorced, David could not just take the land back. Once the lease was in place, Debra could make David move out and she could live in the house by herself or with a new husband.

A lease also creates legal obligations for the person leasing the land, such as maintaining the land and repairing buildings. They may also have to clean up the property and remove buildings after the end of the lease. The person leasing the land needs a lawyer's advice so they understand what they are agreeing to.

Leasing your land may be an important part of your plan for your estate, but it takes time, involves INAC and a lawyer, and there are a lot of legal requirements that must be met, including environmental assessments.

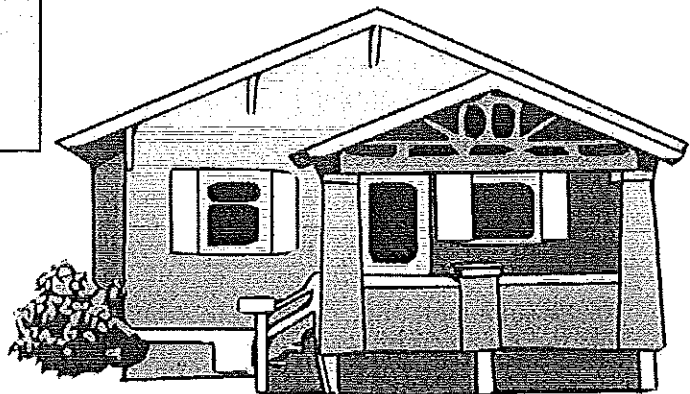
A 'lease' that is made informally, and is not signed by INAC on behalf of the CP holder, is not legally valid and will not provide any protection to a non-band member spouse or children after you die.

EXAMPLE 2:

Jennifer Jones inherited CP land. Her husband has already died and she wants to pass the CP land on to her son, Jimmy, but she can't because her son is member of another band. What she can do is lease the land to her son on a 49-year prepaid lease (the longest possible lease period without approval by the band membership).

To do this, she needs to work with a lawyer and INAC. When she dies, INAC will have to sell the land, but the lease will be in effect, so whoever buys the land will have to continue the lease to Jimmy Jones until the lease ends or Jimmy dies. If Jennifer makes a Will leaving the CP land to a band member, the person inheriting the land would have to continue the lease.

Important Note: If you have CP land that is already leased or has a business on it, you should consult a lawyer about your options, before you make your Will.



6.6.2 Giving Property to Minor Children

CP land, money and possessions can be given in a Will to a person under 19, but the minor cannot lease or sell the CP land. To lease or sell the land for a minor, a guardian of the minor's interest in the CP land must be appointed by INAC to do legal transactions on behalf of the minor.

6.7 Social Housing

If you are a band member living in band housing that is rented to you, you may express your wishes about who will be able to stay in that housing after you die. The band does not have to follow your wishes, but they may listen to what you have said in your Will.

You can say you would like your surviving family members to remain in the housing unit. You could also suggest that a close family member who is entitled to live on reserve, but who hasn't been able to find housing, be placed in your unit.

6.8 What property cannot be given in a Will by a First Nations person?

- ⊗ A house owned by a First Nation which only allows the band member to use it
- ⊗ Traditional land holdings
- ⊗ Trapline licences from the Province of BC

A will-maker may still express their wishes about these things in a Will, but the wishes are not legally binding.

6.9 If you own land off-reserve

"Real property" (which means land) must be transferred according to the laws of the place where the land is located. Therefore, if you own land off-reserve (such as fee simple or strata-titled property in British Columbia) your executor will need to have your Will approved by the BC Probate Registry as well as INAC. (See section 9.5, page 23, for more information).

In BC, probate fees must be paid up front (before the property is sold). Probate fees are based on a percentage of the value of the estate, including all of the real property (land) and personal property (bank accounts, cars etc.) located in BC. Probate fees are not charged on the value of real property and personal property located on-reserve.

If you own property off-reserve in BC, it is a good idea to make sure that your bank accounts and other investments are held at a bank branch located on-reserve. This will decrease the probate fees that will have to be paid later. Contact INAC and/or a lawyer for additional information.

If you own land off-reserve in another Province or outside Canada, you may wish to get advice from a lawyer in the place where your land is located, because your BC Will may not be valid there.

6.10 Making an Inventory of Property

It is helpful to make a list of all your property before writing a Will. The existence of the list as part of your records helps show that you were in a capable state of mind when you wrote your Will.

If you describe your property and its location, then your executor will have an easier time finding it. Often, items like artwork are stored away in a place that is difficult to find. These items can add quite a bit to the value of the estate. There are

stories of property being found after an estate was settled. Hidden property is a problem for everyone.

Your list should include any life insurance policies, home insurance, pensions you are entitled to, vehicles and boats (including registration numbers), all bank accounts, Certificates of Possession or occupancy agreements. Include property that is not part of your estate such as trapline licenses. If you own any of these jointly with another person, be sure to write that on the list.

See Inventory form, page 32.

7. After the Will is Signed

7.1 Where to keep the Will

You should keep the original Will (with the original signatures) in a metal box so that it is protected from fire and flood. The box should be locked. It could be a safety deposit box at the bank or a lock box or metal file cabinet in your home. Some band offices may arrange for the storage of original Wills for their members. Some law offices or notaries keep original Wills, some do not. INAC does not store Wills.

It is a good idea to give a photocopy of the signed Will to your executor. You should also tell him/her where you are keeping your Will and your personal records.

No matter where you keep your Will, it is a good idea to file a Wills Notice with the Vital Statistics Agency of BC. The Wills Registry doesn't get a copy of the Will. You just tell

them when your Will was signed and where it is kept. There is a small fee (about \$30).

If you leave your Will in a safety deposit box at a bank, it is a good idea to take your executor into the bank with you and have them co-signed on the box. That way they can get into the box quickly and easily when they need to.

7.2 Changing the Will

A Codicil is a written change to a Will. It is added as a new last page. You refer to the Will by your name and the date it was made, and say you want to make changes. Then you write out the sentences you want to change. To be legal, a Codicil has to be dated and signed. If your Will was witnessed, then the Codicil should be too. You can use different witnesses.

8. Disputing a Will

Anyone who is entitled to share in the value of an estate under a Will, or who would be entitled to part of the estate if there were no Will, or who the will-maker was legally obliged to support, can challenge a Will. They can challenge the way the Will was written, and they can also challenge the choices made in the Will by the will-maker.

INAC approves Wills and deals with disputes about Wills if the deceased was a First Nation person who was a registered Indian under the Indian Act and made their home on reserve. It does not matter where the Will was written or where the person was at the time of death, so long as they were ordinarily resident on reserve. (See page 4 for a definition of "ordinarily resident on reserve.")

8.1 Grounds for Disputing a Will

8.1.1. Mental Capacity

The will-maker must have the mental ability:

- to know what property they own,
- to know who all their family members are,
- to understand what a Will is, and
- to know what they are doing when they write a Will.

The will-maker may be showing signs of dementia or may have some mental illness. The person may be an addict. The will-maker can have all sorts of problems, but if he or she understands those four points on the day they write and sign their Will, then the law says they have the mental capacity to make a Will.

8.1.2. Duress and Undue Influence

Sometimes family members and friends have strong opinions about how somebody should leave their property, and they put pressure on a will-maker to leave property to them in a Will or to make a new Will. There are many ways to pressure someone, especially if the person is old or sick. Family members may argue or threaten. They may withhold care. They may sit beside the person and tell them what to write.

If the executor or anyone else has reason to believe there was a problem with the way a Will was made, they can challenge the Will by writing to INAC. The challenge must be in writing and must refer to one or more of the grounds for disputing a Will stated in Section 46 of the Indian Act. These grounds are discussed on the next page.

8.1.3 Obligation to Provide Support

The Indian Act has a section saying that your Will should provide for people that you are responsible for. If you do not leave a share of your estate to a family member who you supported for many years, that person may be able to challenge your Will.

Under the law of the province of British Columbia, a spouse or children who are left out of a Will (or who are given much less than expected) can go to court to get a share of the estate. The Indian Act is even broader. Any family member can challenge the Will if they were financially dependent on the deceased person and if they will suffer hardship by not being given anything.

Here are some examples of financial dependence:

- An adult child is being supported by the will-maker while they go to school.
- The will-maker is helping support a family member who is sick or disabled.
- The will-maker is paying child support for minor children.

If you want to leave a dependent family member out of your Will, you need to give a good reason why. (See section 3.2, page 9.)

8.1.4 Vague or Confusing Terms

The Indian Act uses the words "vague, uncertain or capricious" to describe a Will that is hard to understand or doesn't make sense.

For example the will-maker might write a Will that says "I direct my executor to distribute my property to my family so that everyone is happy." That is too vague to be legal.

As another example, the will-maker might say "Everyone in my family is to be given a share in my estate." But they have not said what size of share (such as an equal share) so it is uncertain how much each person is to get.

Another example of uncertainty: "I give my tools to my neighbour". Since the neighbour isn't named, it is not clear which neighbour is meant.

If it is unclear who a gift should be given to and a family member contacts INAC, INAC might void (cancel) the gift.

Sometimes people make peculiar Wills because of feelings they have that get in the way of being sensible. Perhaps a will-maker was feeling annoyed at his children the day he made his Will and he had just received a nice card from his grandniece, so he left everything to the grandniece and nothing to his children. If there wasn't a good reason to ignore his children, INAC would probably consider this decision "capricious" and the children could successfully challenge the Will.

9. Legal Process after Death

Administering an estate is quite complicated, and we only go into the first steps in this booklet. There are other books available on how to be an executor. (See Section 15 for where to get more information.)

As long as there is enough money in the estate, the executor can pay for any reasonable help they need. For example, the executor may want to hire an accountant to work out assets and debts, and to prepare paperwork, such as a final tax return. Executors usually hire a lawyer or get legal advice if there is a lot of property in the estate.

If there is not enough money in the estate to pay off all the deceased person's debts, the executor should consult a lawyer.

9.1 Obtain a Death Certificate

If the person did not die in a hospital, then a doctor must be called. Either the hospital or the doctor will issue a Medical Certificate of Death. This certificate usually goes to the funeral home because that is where the body goes. The funeral home then registers the death with the BC Vital Statistics Agency and applies for a Death Certificate. There is a fee. The family can also apply for an original Death Certificate if the funeral home did not get one.

9.2 Find the Will

The family or the executor should look for a Will as soon as possible. The usual places are in the person's home, in a safety deposit box at the bank, or with the person's lawyer. Some band offices may also arrange for the storage of original Wills for their members.

INAC used to accept Wills for safekeeping, but doesn't any more.

A search of the Wills Registry at the BC Vital Statistics Agency should also be done, even if a Will is found, to make sure that no other Will was made later.

9.3 Notify INAC

Once the original Will has been located and the Death Certificate has been received, INAC must be told of the death. The person's Indian Registry number (the number that appears on their status card), the name of their First Nation, a copy of the Death Certificate and the original Will must all be sent to the Estates Unit. (The original Will is returned to the executor after it has been approved.)

9.4 INAC'S Involvement

9.4.1 Confirming Residency

INAC first confirms with the deceased's First Nation that the deceased was both a registered Indian and "ordinarily resident" on reserve.

Ordinarily resident includes people who died while they were away temporarily (such as at college, traveling, or living somewhere else for a short time but intending to return), or who died in hospital or a long-term care home, but their last home before that was on reserve.

INAC also searches the Indian Land Registry to see if the deceased had a registered interest in reserve land. (This search does not include traditional land holdings. Traditional land holdings are not included in an estate. See section 6.8.)

If the deceased was ordinarily resident off-reserve or if they were not a status Indian, then the estate is administered according to the laws of whatever province or state the person lived in.

9.4.2 Getting INAC Approval

If there is a Will and the Will names an executor, INAC asks the executor to apply to administer the estate. In most cases the executor will be appointed and the Will approved. The Will cannot be acted on until INAC has approved it.

The executor is sent a Personal Representative's Package containing information and forms.

If there is no Will, INAC writes to the deceased's family members (see who inherits under the Indian Act in section 1.2, page 4) and asks for someone to step forward to be the administrator of the estate. If nobody volunteers, a staff member at INAC becomes the administrator.

9.4.3 After INAC Approves the Will

INAC does not give legal advice. If the executor needs legal advice they must go to a lawyer. The lawyer can be paid for from the estate.

INAC will get involved if someone challenges the legality of the Will or has a complaint about how the administrator or executor of the estate is doing their job.

INAC will assist an executor in dealing with the transfer of land on reserve.

9.5 Land located off-reserve

As noted in section 6.9, "real property" (which means land) must be transferred

according to the laws of the place where the land is located. This means that land in BC that is off reserve cannot be transferred using estate documents from INAC. If there is land off reserve, the executor needs to contact INAC for an Order to allow the land to be dealt with through the BC Supreme Court (Probate Registry).

9.6 Common Experience Payments

If the deceased person attended a residential school, the executor should find out if they applied for a Common Experience Payment. If they were eligible for a payment and did not receive it, the executor can apply for it as part of the estate.

9.7 Other Responsibilities of the Executor

The executor does the following:

- Makes funeral and burial or cremation arrangements with family.
- Notifies everyone who needs to know about the death, such as employer, landlord, phone company, bank, government agencies, and so on.
- Contacts people named in the Will.
- Makes an inventory of property and debts.
- Pays debts such as funeral expenses, credit cards, loans and back taxes.
- Distributes the assets to people named in the Will.
- Does a final accounting.

10. Example Will - Spouse to Spouse

LAST WILL

This will is made by me, Ellen Josephson, also known as Ellen Joseph. My Membership Number is 01234 and I am of the Eagle Creek Nation. My home address is 6 Gosling Street, Eagle Creek in the Province of British Columbia.

This is my final will. I revoke all former wills and any codicils.

I appoint my spouse, Joseph Josephson, also known as Joe Joseph, who also lives at 6 Gosling Street, Eagle Creek, British Columbia to be the executor and trustee of my estate.

If he does not want to act for any reason or dies before me, then I appoint my sister, Judy Josephson, of Eagle Creek, British Columbia to be executor and trustee of my estate.

Directions to Executor

I want my executor to pay all my debts, funeral expenses and all costs arising from my death. My executor is also to pay any taxes and fees required to be paid to any government office as a result of my death. All these expenses are to be paid from my estate before my estate is divided up and given to my beneficiaries.

I want to be cremated and my ashes scattered at the mouth of Eagle Creek. I would like my executor and family to arrange a traditional memorial ceremony for me.

Gifts of Specific Items

I give my interest in Lot 62, Eagle Creek Reserve ("my land") to my spouse, Joseph Josephson. If he predeceases me or fails to survive me by 30 days, then I give equal shares in my interest in my land to my children who are over the age of 19 and members of the Eagle Creek Band at the time of my death.

If any of my children who are entitled to share in my land predecease me or fail to survive me by 30 days, then that child's share in my land shall be given to any descendant of that child upon their reaching age 19 provided they are members of my band.

If there are no descendants, then that share in my land is to be divided equally among those of my children who survive me and are entitled to a share in my land.

If I leave any descendants who are not entitled to share in my land upon reaching the age of 19, then I give them a share in the remainder of my estate equivalent in value to the share in my land that they would have inherited.

Remainder

I give the remainder of my estate to my spouse, Joseph Josephson and if he fails to survive me, then in equal shares to my four children, Eleanor Josephson, of Eagle Creek, British Columbia, Samuel Josephson, of Eagle Creek, BC, Joseph Wolfman of Salmonberry, BC and William Samuel Wolfman Junior of Vancouver, BC.

If any of my children predecease me, then that share is to be divided equally among that child's children. If there are no descendants, then my deceased child's share is to be divided among the surviving brothers and sisters.

If I leave any descendants who are not entitled to share in that portion of my estate which is CP land upon reaching the age of 19, then I give them a share in the remainder of my estate equivalent in value to the share in my land that they would have inherited.

Signed by the will-maker, Ellen Josephson on _____ at _____, British Columbia in the presence of each of us and all of us together at the same time signing as witnesses to this will.

11. Example Will - Parent to Child

LAST WILL

This will is made by me, Ellen Josephson, also known as Ellen Joseph. My Membership Number is 01234 and I am of the Eagle Creek Nation. My home address is 6 Gosling Street, Eagle Creek in the Province of British Columbia.

This is my final will. I revoke all former wills and any codicils.

I appoint my sister, Judy Josephson who currently lives at 10 Salmon Drive, Eagle Creek, British Columbia to be the executor and trustee of my estate.

If she does not want to act for any reason or dies before me, then I appoint William Wolfman of the Salmonberry Band to be executor and trustee of my estate.

Directions to Executor

I want my executor to pay all my debts, funeral expenses and all costs arising from my death. My executor is also to pay any taxes and fees required to be paid to any government office as a result of my death. All these expenses are to be paid from my estate before my estate is divided up and given to my beneficiaries.

I want to be buried in the Eagle Creek Cemetery. I would like my executor and family to arrange a traditional memorial ceremony for me.

[insert paragraph for Appointment of a Guardian if any children under 19]

Gifts of Specific Items

I distribute my assets as follows:

- To my daughter, Eleanor Josephson, my jewelry;
- To my son, Samuel Josephson, my carving tools; and
- To my sister, Judy Josephson, my car.

All of my children are to have first choice of my household goods and personal items, including my carvings, and anything left is to be given away or sold by my executor;

Remainder

I give the remainder of my estate to my four children, Eleanor Josephson, of Eagle Creek, British Columbia, Samuel Josephson, of Eagle Creek, BC, Joseph Wolfman of Salmonberry, BC and William Samuel Wolfman Junior of Vancouver, BC.

If any of my children predecease me, then that share is to be divided equally among that child's children. If there are no descendants, then my deceased child's share is to be divided among the surviving brothers and sisters.

If I leave any descendants who are not entitled to share in that portion of my estate which is CP land upon reaching the age of 19, then I give them a share in the remainder of my estate equivalent in value to the share in my land that they would have inherited.

Signed by the will-maker, Ellen Josephson on _____ at _____, British Columbia in the presence of each of us and all of us together at the same time signing as witnesses to this will.

12. Example Blank Will with Instructions

WILL INSTRUCTIONS

1. Give the name that is on your Indian registration card. That name is your legal name. Also give the name or names that your family and friends use for you. Example: Robert Phillip Josephson (known as "Bob Joe")
2. Name of Band or Nation.
3. If you always go home between jobs or trips, then you have a home address. If you don't have a permanent home and stay with family on your reserve, then just give the name of your nation.
4. People often make new Wills when their lives change, for instance, when they marry or get divorced, their children grow up, or if they buy a home. You can make as many Wills as you want, so long as you make it clear which one is the one you want followed. If you don't "revoke" (which means cancel) any previous Wills, then there can be confusion. If this is your first Will, you can say: "This is my first and only Will."
5. Naming an executor: This is the person you name to take control of your property when you die. They pay your unpaid bills, and deal with all your unfinished business. Your executor carries out ("executes") the instructions you have given in your Will. It is a big job.
6. It is always wise to choose an alternate executor, in case the first person dies, or gets sick or cannot do the job.
7. If you have children under 19 years old, you can appoint somebody you would like to take care of them (a guardian). If there are problems with their other parent being the guardian, you can suggest who should replace you as the person responsible for taking care of the children.

To write your own will, use the blank will form on page 29

EXAMPLE BLANK WILL

This will is made by me, _____ ①

My Membership Number is _____ and I am of the _____ ②
 _____ My home address is _____ ③
 _____ in the Province of British Columbia.

This is my final will. I revoke all former wills and any codicils. ④

I appoint _____ ⑤ who currently lives at _____
 _____ to be the executor and trustee of my estate.

If he/she does not want to act for any reason or dies before me, or dies within 30 days of my death, then I appoint _____ ⑥
 of _____ to be executor and trustee of my estate.

I appoint _____ ⑦ of _____
 _____ as Guardian(s) of my minor children.

I want to be _____ ⑧ and my remains _____

I would like my executor and family to arrange a traditional memorial ceremony for me.

Directions to Executor

I want my executor to pay all my debts, funeral expenses and all costs arising from my death. My executor is also to pay any taxes and fees required to be paid to any government office as a result of my death. All these expenses are to be paid from my estate before my estate is divided up and given to my beneficiaries.

8. Directions for funeral/burial/cremation: Example: "I wish to be cremated and my ashes scattered into the ocean." If there is any disagreement about this after you die, your executor has the final say.

You don't have to include this paragraph in your Will. You can write these instructions separately as a letter to your executor. If you write these instructions separately you can change them at any time without changing your Will.

Writing Your Own Will - A Guide for First Nations People Living on Reserve

9. Usually items worth less than a thousand dollars (as second hand goods, not replacement value) are not important enough to list in your Will. You can write a list of small gifts in a letter to your executor. Then if the items change or you change your mind, the letter is easy to change and you do not have to change your Will.

If you want to make gifts of cash, think about whether your property is worth enough after your funeral expenses and other debts are paid. Giving cash amounts is a way to compensate any non-band member relatives who are not able to inherit an interest in land on reserve.

10. This is where you gift all of your property left after payment of debts and specific gifts. If you didn't make any specific gifts, then you can just say "I give all my property to my spouse." or "I give all my property to my children", and then explain what happens if any of them die before you. List your children by name.

11 It is important to write the date on the Will when you sign it, so that it is easy to see that it is the most recent (or "last") Will you made.

12. Place, Province (e.g. Nakusp, British Columbia).

13. The Indian Act does not require that a Will be witnessed, but having two witnesses is a good idea. Witnesses do not read the Will. You must tell them they are witnessing a Will, but they do not need to know what is in it. Witnesses may not receive gifts in your Will. Your executor cannot be a witness.

You must all be together and watch each other signing the Will. The will-maker signs first, then one witness and then the other.

14. If the Will is longer than one page, put your initials in the corner of each page. The witnesses should do this, too.

Gifts of Specific Items

I distribute my assets as follows: (9)

I give the remainder of my estate as follows: (10)

If _____ dies before me, then I give the remainder of my estate to _____

Signed by the will-maker on _____ at _____
(11) _____
(12) _____ in the presence of each of us and all of us together at the same time signing as witnesses to this will.

Witness Signature _____ Will-maker Signature _____
(13) _____
Print Witness Name _____ Print will-maker Name _____

Witness Address _____

Witness Signature _____
Print Witness Name _____
Witness Address _____ (14)

To write your own will, use the blank will form on the next page

It is not a good idea to cross out words or write new words in spaces around what has already been written. If you need to make changes before the Will is signed, then it is much better to rewrite the whole Will. You don't want any confusion, or any questions to be asked about why changes were made.

Once the Will has been printed out and signed, you should not make any more changes. If you do make changes, it may be challenged and it may not be legal. If it's not legal, then it's like you died without a Will.

LAST WILL

This will is made by me, _____ . My Membership
(Full Legal Name)

Number is _____ and I am of the _____ .
(Band Membership Number) (Name of Band or Nation)

My home address is _____
(Address)

in the Province of British Columbia.

This is my final will. I cancel all former wills and any codicils.

Appointment of Executor

I appoint _____ who currently lives at _____
(Full Legal Name)

_____ to be the executor and trustee of my estate.
(Address)

If he/she does not want to act for any reason or dies before me, or dies within 30 days of my death, then I appoint _____ of _____
(Full Legal Name)

_____ to be executor and trustee of my estate.
(Address)

Appointment of Guardian(s)

I appoint _____ of _____
(Full Legal Name)

_____ as Guardian(s) of my minor children.
(Address)

Funeral Instructions

I want to be _____ and my remains _____
(Buried or Cremated) (Instructions)

I would like my executor and family to arrange a traditional memorial ceremony for me.

If _____ dies before me, then I give the remainder of my estate to _____

Signed by the will-maker on _____ at _____
(Date)

_____ In the presence of each of us
(Location, Province)

and all of us together at the same time signing as witnesses to this will.

Witness Signature

Will maker Signature

Print Witness Name

Print will maker Name

Witness Address

Witness Signature

Print Witness Name

Witness Address

ESTATE PLANNING LIST of FAMILY and PROPERTY

(Use additional sheets of paper if you need more space)

Name: _____

Address: _____

Telephone: _____

Email: _____

Birth date and place of birth: _____

Citizenship: _____

Band Membership Number: _____

Marital Status: Married Common Law (living together one year or more)
 Single Widowed Divorced Separated

Spouse's Name: _____

Spouse's Date of birth: _____

If your spouse has a will, when did they make it? _____

Where is your spouse's will located? _____

Name and address of your previous spouse (married or common law):

PARENTS (biological or step) (if living) Name, address and date of birth:

CHILDREN (identify natural or step or custom-adopted): Names, home address/location, date of birth

Other close family and people named in my will: Names, home address/location

PERSONAL PROPERTY (only list property worth at least \$1,000)

Address of home or other land in your name on or off reserve: (is it jointly owned? If on reserve, identify Certificate of Possession)

Business or work equipment (e.g. store, fish boat, trap line, mechanic's tools):

Vehicles: _____

Boats: _____

Household goods: _____

Other valuables): _____

Bank accounts (Name of bank, branch location, type of account)

Insurance policies, pension funds, RRSP or other: (location/identifying number)(Is there a named beneficiary? Who?):

DEBTS

Mortgages and Loans: _____

Credit Cards: _____

Other Debts: _____

Location of your important documents (e.g. marriage certificate, bank and tax records, divorce papers, insurance or mortgage)

14. Other documents to prepare at the same time you make a Will

14.1 Planning for Incapacity

When you make your Will, you may also wish to make other legal documents to plan for the future in case you become mentally unable manage your own financial affairs or personal care.

Planning ahead is particularly important if you don't have any close family, or if you don't get along with your family and would prefer to have a friend help you instead.

14.2 What happens if planning is not done

When a person gets very frail or develops Alzheimer's disease and no longer knows what they are doing, family members will

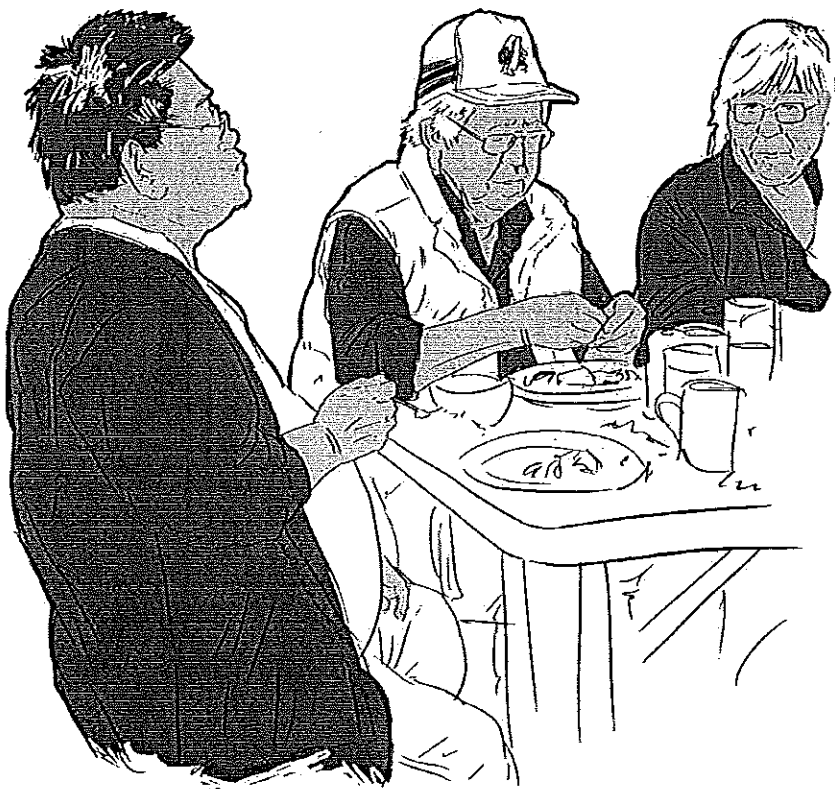
often step in and help out informally. This can work for a while, but if none of the family has the legal right to handle things like banking, there are often problems.

The time to call for help is if a person has become mentally incapable and:

- there's an urgent need to manage financial or legal affairs (for example, they haven't paid their bills and the power is being cut off to their home) and nobody in the family has the legal right to take care of these things; or
- the person is being neglected or abused.

If a person has become incapable and legal documents have not been prepared ahead of time, a legal process must be started to have the person officially declared incapable so that somebody else can be appointed to manage their affairs.

The legal decision about whether someone has become incapable of managing their money or looking after themselves physically is made under BC law. If a First Nations person living on reserve is unable to care of themselves or if there are



concerns about abuse or neglect, friends or family members should contact the BC Public Guardian and Trustee. The BC Public Trustee can take action to protect a vulnerable adult, investigate their living situation, and have their mental capacity evaluated. (See the back of this booklet for contact information for the Public Trustee.)

INAC does not investigate claims of abuse, or decide whether or not a person is mentally capable.

An official legal document will be issued under BC law—either a court order, or a medical 'Certificate of Incapacity'—saying that a person is incapable of managing their affairs. At that point, under the Indian Act, INAC automatically becomes responsible for that person's financial and legal decisions (but not personal or health care decisions). If there is a responsible friend or family member willing to manage the incapable person's financial affairs, INAC may appoint that person to assist.

When the Public Trustee is arranging to have somebody declared incapable, a friend or relative can ask to be included and appointed as the person's guardian for personal and health care decisions. Personal and health care decisions would include consenting to medical treatment (such as surgery).

Usually, all of this complicated legal process can be avoided if people prepare documents ahead of time, while they are still mentally able. All you need is a Power of Attorney (for financial and legal matters) and a Representation Agreement (for personal and health care). These documents are not difficult or expensive to make.

14.3 Legal Planning Documents

14.3.1 Power of Attorney

People sometimes need to appoint other people to manage their financial and legal affairs, for example, elders who are frail and can no longer get to the bank to sign forms.

A Power of Attorney is a written, signed document in which you appoint another person to be your "attorney". (In this case, "attorney" does not mean a lawyer, it means a representative.) The attorney is given the power to make financial and legal decisions for you. The document only needs to be witnessed and notarized if you own land off-reserve.

Most people choose their spouse, a responsible adult child or a close friend. It helps if the "attorney" lives nearby and is familiar with your affairs. You can name one person, or more than one person to act together or separately. You can also name an alternate in case the first person can't act or doesn't want to. It is a good idea to talk to the person you want to name as your attorney. You want to make sure they are willing to take on this responsibility.

The Power of Attorney can be limited to a few specific powers for a short time. For example, if you are going away on a long trip, you can say "This Power of Attorney is to allow my attorney to pay my bills, do my banking and look after my house while I am away from March 1 to November 30, 2011."

Or you can give a general Power of Attorney "for all financial and legal purposes". A general power like that would give the attorney the power to sell your property and use your credit card.

You can put a paragraph in the Power of Attorney saying that it is to continue even if you become mentally incapable. This is called an "enduring" Power of Attorney.

For a status Indian living on reserve, the enduring Power of Attorney will then continue unless a legal process declares you incapable (through a court order or a Certificate of Incapacity). This legal process is unlikely to happen unless there is a complaint or abuse or neglect, or your Attorney is unable to act and there is no alternate attorney. If you are declared legally incapable, the Power of Attorney ends and INAC becomes responsible for managing your financial and legal affairs. (See section 14.2 above).

If you have an enduring Power of Attorney and somebody is managing your affairs, it is unlikely that the BC courts or INAC will get involved in your affairs.

A Power of Attorney takes effect the moment you sign it, but you don't have to use it. You can sign the document and put it in a drawer. You can give the document to your attorney later when you need them to act for you. The appointment ends if the maker becomes mentally incapable or dies. Once the maker is dead the Power of Attorney is no longer in effect. The Will comes into effect from the moment of death.

14.3.2 Representation Agreement

A Representation Agreement is a legally binding document in which you appoint someone to speak and act for you when you can't speak for yourself because of illness, accident or disability. This agreement is broader than a Power of Attorney. It can cover personal care and health care as well as financial and legal matters. For instance, it can give a representative the legal right to make personal care decisions for someone who is in a long term care facility. A Representation Agreement cannot be overridden by doctors.

The Representation Agreement gives very broad decision-making power to the representative, who uses their own judgment when different situations arise. You can also appoint another person as a "monitor" to oversee the person you appoint as your representative. It is a good idea to appoint a "monitor".

For status Indians living on reserve, a Representation Agreement will continue unless you are legally found incapable (through a Certificate of Incapacity or a court declaration). So long as you are not declared legally incapable, your chosen representative can simply start assisting you when you need help. INAC and the BC Public Guardian and Trustee will only get involved if a problem occurs (for example, if someone reports that you are being neglected or abused).

If you are declared legally incapable, the financial powers of a Representation Agreement end automatically, and INAC becomes responsible for managing your financial and legal affairs.

14.3.3 Advance Health Directive

(not yet BC law, but expected in 2010)

This is a written, signed document in which you can give consent in advance (or refuse consent in advance) for specific medical treatments. This document is sometimes called a "living will", but living wills are not legal in British Columbia.

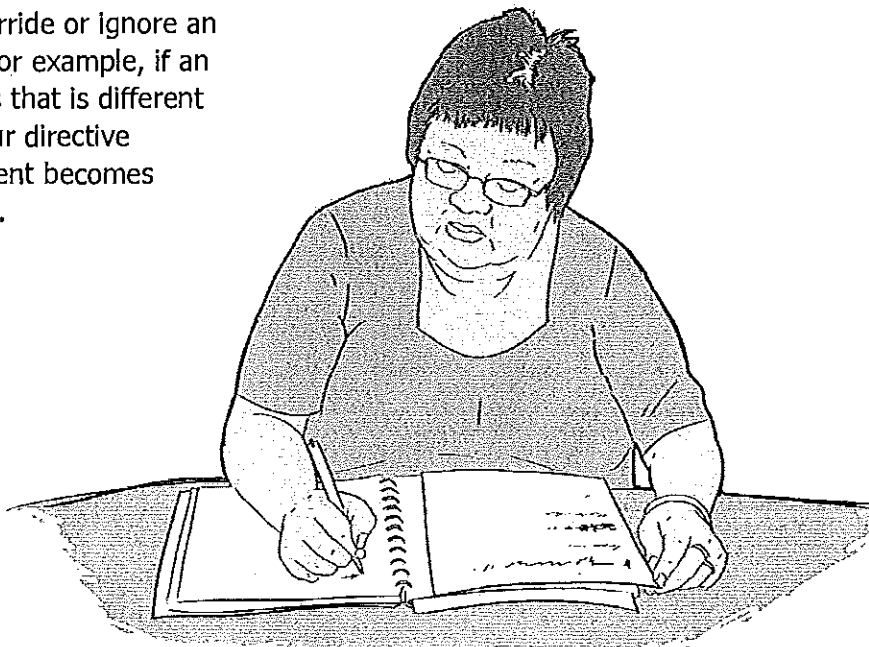
You must be mentally capable when you write an Advance Health Directive. The instructions will continue to be valid even if you become incapable later. The document does not appoint a representative. It simply says what kind of treatments you want or do not want in case you cannot speak for yourself. An Advance Health Directive can be included in a Representation Agreement.

A very common type of Advance Health Directive is a "do not resuscitate" order. This is often made by people who are terminally ill, who do not want to be revived if their heart stops.

Doctors can sometimes override or ignore an Advance Health Directive. For example, if an unexpected situation occurs that is different than what you intended your directive to cover, or if a new treatment becomes available, they can ignore it.

14.3.4 Cancelling these Legal Documents

You can cancel your Power of Attorney, Advance Health Care Directive or Representation Agreement by tearing up all the copies of it. But it is better, just in case you missed a copy, to write and sign another document saying that you have cancelled the first agreement. Make sure that you give the cancellation document to everyone who received the first document.



15. Where to go for more information or help

Indian and Northern Affairs Canada

The website address given below is for the BC Region Estates Unit. They have useful information sheets and publications about wills, estates, minor children and mental incapability. General information is available online, and other publications specifically for people living on-reserve in BC can be requested by phone or email:

Indian and Northern Affairs Canada
British Columbia Region
1138 Melville Street, Suite 600
Vancouver, BC V6E 4S3

Phone: (local) (604) 775-5100
Phone: (toll-free) 1-888-917-9977
Fax: (604) 775-7149

E-mail: BCestates@inac-ainc.gc.ca
Website: <http://www.ainc-inac.gc.ca/br/es/index-eng.asp>

The People's Law School

Publications (free):

- *Choosing an Executor—Being an Executor*
- *Writing Your Will*

These publications contain information for the general public. You can read them online or print them out from their website:
www.publiclegaled.bc.ca.

Or order them from:

The People's Law School
150 – 900 Howe Street
Vancouver, BC V6Z 2M4
Telephone: (604) 331-5400

Self-Counsel Press

Publications:

- *Wills Guide for British Columbia*
- *Probate Guide for British Columbia*

The guides and kits published by Self-Counsel Press contain information intended for people writing a will or administering an estate in British Columbia. They are not intended to apply to registered Indians living on reserve, but may be of assistance if you own off-reserve land in BC (see sections 6.9 and 9.5). You can find these publications at bookstores and stationery stores, or order them online or from their office.

Website: www.self-counsel.com

Self-Counsel Press
1481 Charlotte Road
North Vancouver, BC V7J 1H1

Telephone: (604) 986-3366
Telephone: 1-800-663-3007 (toll free)
Fax: (604) 986-3947

Lawyer Referral Service

Telephone: (604) 687-3221

Telephone: 1-800-663-1919 (toll free)

This service is operated by the BC Branch of the Canadian Bar Association.

When you call, you are given the name of a lawyer in your area of British Columbia. You then call the lawyer to arrange for a half-hour consultation. This half hour meeting costs \$25 plus tax.

Legal Information

A new on-line website, www.clicklaw.bc.ca, is operated by the Courthouse Libraries of BC. When you click on Wills and Estates under the heading "Your Family" or on Aboriginal under "Your Community", you will find all the legal publications and legal information resources available to the general public in BC, including those listed here.

Dial-A-Law

Telephone: 1-800-565-5297

Website: www.dialalaw.org

Free recorded information on a variety of legal topics, including wills and estates, available on the phone or on the Web. This service is operated by the BC branch of the Canadian Bar Association.

Legal Services Society/Legal Aid

Legal aid is not available for people needing help with wills and estates. However, the Legal Services Society does have a publication available on making a will and settling an estate for First Nations people, which you can download free from their website at www.lss.bc.ca.

Guide to Aboriginal Organizations and Services

<http://www.gov.bc.ca/arr/reports/default.html>

The Guide is a list of 800 community-based services and organizations in BC, most of which are Aboriginal controlled and operate on a not-for-profit basis.

The Guide is used by community service organizations, government ministries and agencies to help non-Aboriginal citizens learn about Aboriginal services and organizations.

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ESTATE ADMINISTRATION ON-RESERVE

Initial steps to take when a family member passes away

1. Make funeral arrangements.
2. Obtain an official Death Certificate or funeral director's Burial Certificate from the funeral home (or the BC Vital Statistics Agency).
3. Report the death to the Indian Registry Administrator or membership clerk at the band office, including as much as possible of the following information:
 - The name, address, date of death and band membership of the person who passed away, and whether or not their home was on reserve;
 - Proof of the death (a photocopy of the Death Certificate or Burial Certificate);
 - The date of birth and social insurance number of the person who passed away; and
 - The names, addresses and telephone numbers of the deceased's next-of-kin and the executor named in the deceased's Will (if the deceased left a Will).

The Indian Registry Administrator or membership clerk at the band office will report the death to Aboriginal Affairs and Northern Development Canada (AANDC) in Vancouver.

4. Search for a Will.

If the deceased left a Will, send the original Will, not a photocopy, to the AANDC Estates Unit in Vancouver by courier or registered mail.

The address is:

Estates Unit
Aboriginal Affairs and Northern Development Canada, BC Region
600 – 1138 Melville Street
Vancouver BC V6E 4S3

What happens next?

Estates Unit staff will write to the deceased's next-of-kin and/or the executor named in the deceased's Will. If the deceased was ordinarily resident on reserve, a personal representative (normally, a family member, someone chosen by the family, or the executor named in the deceased's Will) will be appointed for the estate in accordance with the *Indian Act*.

For more information:

Contact the Estates Unit in Vancouver by telephone at 604.775.5100 or 1.888.917.9977 (toll free in BC), or email us at BCestates@aandc-aadnc.gc.ca.

Estates Unit – BC Region
Rev. October 2011





SETTLING A FAMILY MEMBER'S ESTATE

When someone in your family dies, the "estate" is that family member's real and personal property that must be managed by an executor or administrator. The executor or administrator will be appointed to gather, protect and distribute the estate to those entitled.

If there is a Will, someone may have been named by the deceased as an executor to administer the estate.

Who May Be Appointed to Administer the Estate?

Aboriginal Affairs and Northern Development Canada ("AANDC") can appoint a family member, anyone named in the Will, or anyone else the family members choose. If there is no Will or no one is named in the Will and no one applies to administer the estate, AANDC may assist by appointing a departmental administrator for the estate.

Importance of a Family Member Appointment

A family member is in the best position to administer the estate to everyone's satisfaction.

A family member will have full control over the estate and is in the best position to obtain the cooperation of the other family members.

Some Duties Of An Administrator

- identify and protect the estate property and belongings;
- pay the estate debts, including funeral expenses, from the estate's funds;
- distribute what remains to the people named in the Will or to the family in accordance with the provisions of the *Indian Act*, and,
- provide a full report to the heirs or beneficiaries on what has been done.

AANDC's Role

If a family member is appointed to administer the estate, the Minister of Indian Affairs has an administrative and quasi-judicial role (i.e., the Minister's role is to appoint administrators, approve Wills and reserve land transfers and to resolve disputes brought before the Minister).

Please Call Us For More Information

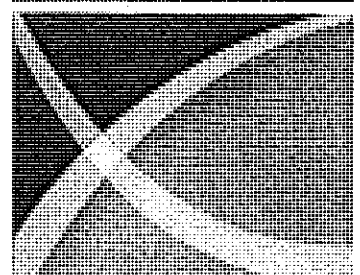
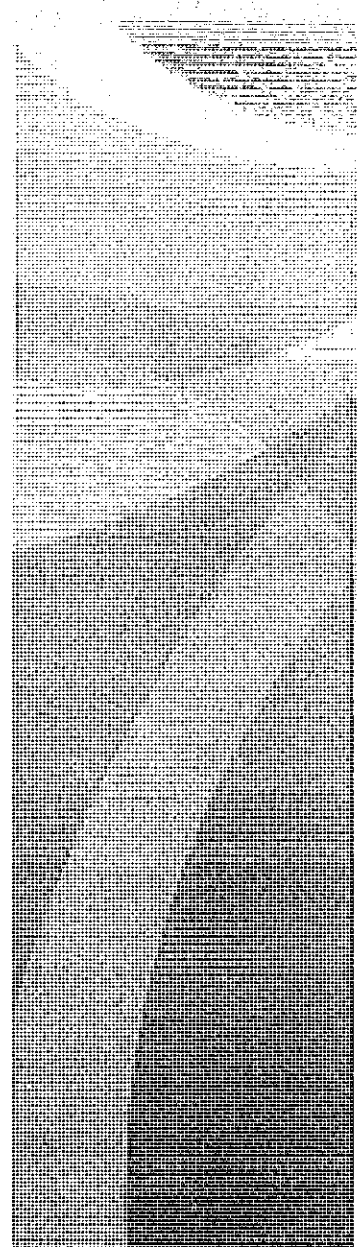
Contact Information:

ESTATES UNIT • BC REGION

600 - 1138 Melville Street, Vancouver BC V6E 4S3

Telephone 604.775.5100 or Toll Free in BC 1.888.917.9977

Fax 604.775.7149 Email: BCestates@aandc-aadnc.gc.ca



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Aboriginal Affairs and
Northern Development Canada

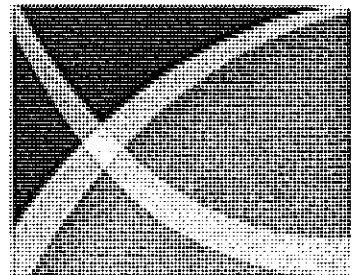
Affaires autochtones et
Développement du Nord Canada

ESTATE ADMINISTRATION ON-RESERVE

A Guide for Executors and Administrators
in British Columbia

This document contains references to forms and sample letters. These can be found in the Estate Administration On-Reserve: Templates Package available on request from the Estates Unit and online at the Legal Services Society of BC's Aboriginal website at <http://www.lss.bc.ca/aboriginal/> (click on "Aboriginal publications"). To request the Templates Package from Aboriginal Affairs and Northern Development Canada, contact the BC Region Estates Unit in Vancouver at (604) 775-5100 or 1-888-917-9977 (toll free in BC), or email us at BCestates@aandc-aadnc.gc.ca.

Estates Unit – BC Region
v6 October 2012



Canada

IMPORTANT NOTICE TO READERS OF THIS BOOKLET:

This booklet contains general information only, and is intended for reference and education only. It has been developed to provide an overview of the routine tasks of administering a simple estate under the *Indian Act*. If you are the administrator or executor of an estate and are not sure if the estate is a simple one or not, seek legal advice before proceeding with the administration. The contents of this booklet should not be used as a substitute for legal advice, and nothing in this booklet is intended to provide legal advice or to be relied upon in any dispute, claim or proceeding.

Despite our best efforts, there may be errors or omissions in the information provided in this booklet, and we therefore do not guarantee that the information provided is correct, complete, or up-to-date. The relevant statutes and regulations should be consulted for all purposes of interpreting and applying the law.

This booklet was prepared by the program staff of the BC Region Estates Unit in March 2008 and has since been revised as follows:

October 2009: Added information on the Department's policy concerning section 50 of the *Indian Act*.

August 2010: Added information on dealing with real property (fee simple or strata-titled land) located off-reserve in British Columbia.

January 2011: Added information about the Templates Package published in Jan 2011.

October 2011: Revised to reflect the passing of the CEP application deadline and the change of the Department's name to Aboriginal Affairs and Northern Development Canada ("AANDC").

October 2012: Added information on funding sources for funeral costs, revised to reflect passing of deadlines to apply for Indian Residential Schools compensation, and updated website links.

***We recommend that you seek legal advice
before acting as the executor or administrator of an estate.***

Links to third-party websites are provided in this booklet for your convenience. We are not responsible for the information available on these websites, and we do not warrant that the information available on these websites is correct, complete, or up-to-date.

Estates Unit, BC Region
October 2012

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Introduction

This guide is for people who have been appointed by the Aboriginal Affairs and Northern Development Canada ("AANDC") office in Vancouver as the executor or administrator of the estate of a family member or friend who has passed away. It supplements the information in the publication *Writing Your Own Will: A Guide for First Nations People Living On-Reserve in British Columbia*, which is available (free) from the Aboriginal Financial Officers' Association of BC (www.afoabc.org - click on "What We Do", then select "Publications"), or on request from the Estates Unit at AANDC in Vancouver.

This guide is not for people who are looking after the estate of a First Nations person who lived off-reserve or on treaty settlement lands.

The contact information for government offices and other agencies provided in this booklet applies only in British Columbia.

There are references to forms and sample letters (in bold light-blue font) throughout this Guide. These forms and letters are in a *Templates Package* that is available on request from the Estates Unit. Links to websites (underlined, in blue font) are available by clicking on them.

1. When a Family Member Dies

Obtaining a Death Certificate

Someone in the family must obtain the deceased's *Death Certificate*. This document is needed to report the death to AANDC.

A *Death Certificate* can be obtained directly from the funeral home for a short period after a person passes away. Later, a *Death Certificate* may be obtained from the BC Vital Statistics Agency (see section 3 of this Guide (*Wills Search*) for further information).

2. Funeral Arrangements

The person who enters into a contract with the funeral home (usually, a family member of the deceased) is responsible for paying for the funeral. **Reasonable** funeral costs may then be claimed as a debt against the deceased's estate. Some First Nations may also provide financial assistance with funeral costs.

The Canada Pension Plan (CPP) Death Benefit provides a one-time payment to, or on behalf of, the estate of a deceased contributor. The maximum available benefit is \$2,500, but the amount that is actually paid in any given case depends on the amount of CPP contributions made by the deceased person during his or her lifetime. (See section 10.F. of this Guide (*Government Agencies to Contact*), for information on applying for this benefit).

In addition to the CPP Death Benefit, a supplement may be provided to pay necessary funeral services costs of any person who dies in BC if the family unit or the estate of the deceased person has no immediate resources to meet these costs. There is no requirement that the deceased person, or the person's family, must be social assistance recipients to qualify for this supplement. In the case of a First Nations person who lived on-reserve in BC, payment of this funeral costs supplement would be handled by the social assistance office on-reserve. In the case of a First Nations person who lived off-reserve in BC, payment of this funeral costs supplement would be handled by the BC Ministry of Social Development through its social assistance offices off-reserve.

For general information on funeral services in BC see the website of the Funeral Services Association of BC: www.bcfunerals.com or contact the Association at 1-800-665-3899.

See the title page of this Guide for information on obtaining a copy of the Templates Package.

3. Look for a Will

The family should check the deceased's home and anywhere else that he or she might have stored important documents, to see if there was a Will. Once AANDC in Vancouver is notified of the death, the staff there will also search their Wills Vault. Please note that AANDC no longer accepts Wills for storage.

The deceased may have registered his or her Will with the BC Vital Statistics Agency, so a request to search for a Wills Notice (which identifies that a Will has been registered, describes the person who has made the Will, where the Will is located and the date of the Will) should be submitted to the BC Vital Statistics Agency. There is a fee for this search.

For more information on a Wills Search (or to obtain a Birth or Death Certificate), and to see the current fees, see the website of the BC Vital Statistics Agency:
<http://www.vs.gov.bc.ca/> or call (250) 952-2681.

4. Notify Aboriginal Affairs and Northern Development Canada

AANDC must be notified of the death. The Department will require basic information such as the deceased's Indian Registry Number, the name of the deceased's First Nation, whether there is a Will, and the date of death. If there is a Will, the Department must be provided with the original for probate purposes; it will be returned once probate (which is called "approval" in the *Indian Act*) has been granted.

AANDC requires proof of death and will request that a copy of the *Death Certificate* be forwarded to the Department.

To reach the Estates Unit of AANDC in Vancouver, please call (604) 775-5100 or toll free in BC 1-888-917-9977, or email us at BCestates@aandc-aadnc.gc.ca.

5. AANDC Determines if it has Jurisdiction over the Estate

After AANDC has been notified of the death, the Department will take steps to determine if the deceased was registered (or entitled to be registered) under the *Indian Act* and was "ordinarily resident" on reserve or Crown land at the time of his or her death. AANDC will confirm the residency of the deceased with his or her First Nation.

It is possible in some cases for a person to be considered "ordinarily resident" on-reserve even if the person was not living on-reserve at the time of his or her death. Some examples include:

- A person who lived on-reserve all their life but had to leave in order to move into a long-term care facility or receive hospital care during the last years of their life;
- A student temporarily living away from the reserve to attend college or university;
- A fisher, hunter or seasonal farm worker temporarily living away from the reserve for their work.

6. If Your Family Member Did Not Live On-Reserve

If the deceased was not "ordinarily resident" on-reserve, then AANDC will not be involved in the administration of the deceased's estate and the information in this Guide does not apply. The administration of the estate of a deceased First Nations person who lived off-reserve is under the jurisdiction of the province in which they lived, not the *Indian Act*.

Under the law of British Columbia, for example, the executor (if there is a Will) or the administrator (if there is no Will) is appointed by the Supreme Court of BC. If the person named as the executor in the Will, or a family member, is not willing or able to administer the estate, and the estate is of sufficient value, the Public Guardian and Trustee of British Columbia may administer the estate for a fee.

For more information on how estates are administered under BC law, go to http://www.ag.gov.bc.ca/courts/other/wills_estates.htm.

For information and forms to use in administering an estate yourself under BC law, you may wish to purchase a copy of the Self-Counsel Press publication entitled *British Columbia Probate Kit*, available at many drugstores, stationers and bookstores, or online at www.self-counsel.com. It costs about \$40.00.

For more information on the services of the Public Guardian and Trustee of British Columbia see the website: www.trustee.bc.ca and click on "Estate Administration", or contact the Public Trustee in Vancouver at (604) 660-4444 or through Service BC (toll free in BC) at 1-800-663-7867.

It is prudent to see a lawyer for some initial advice, even if you believe the estate is simple and you plan on administering the estate yourself. See section 9 of this Guide (*Do I need a lawyer?*) for information on how to find a lawyer.

7. AANDC Makes an Initial Determination of the Heirs and/or Beneficiaries

In many cases, family members do not leave a Will and AANDC must refer to section 48 of the *Indian Act* (see *Appendix C* of this Guide for the full text of section 48) and the deceased's Indian Registry records to determine the next-of-kin who

are entitled to inherit (called **heirs**). The *Indian Act* sets out the legal rules for who inherits the deceased's assets when the deceased did not leave a Will.

If there is a Will, the people entitled to inherit (called **beneficiaries**) are named in the Will.

8. The Minister of Aboriginal Affairs Appoints a Personal Representative

A personal representative is a person who looks after and distributes the estate of a deceased person. If there is a Will, the name for this person is the **executor**; if there is no Will or the person named as executor in the Will is unable or unwilling to act, the name for this person is the **administrator**.

A. If There is No Will

If there is no Will, AANDC writes to the heirs (as determined by section 48 of the *Indian Act*) and asks if they would like to administer the estate or nominate someone to administer the estate. AANDC then appoints an administrator from among the applicants.

If none of the heirs apply to administer the estate or nominate someone else who is willing to do so, an Estates Officer at AANDC will administer the estate as administrator of last resort.

B. If There is a Will

If there is a Will and the Will names an executor, AANDC will ask the named executor to apply to administer the estate.

If the executor is willing and able to act, then AANDC will approve (probate) the Will and appoint the named executor as personal representative.

Please note that a Will is of no legal force and effect until it has been approved (probated) by the Minister of Indian Affairs.

In "approving" a Will, the Minister is checking to confirm that the Will document meets the technical requirements to be a valid Will, i.e., that it is a genuine document (not a forgery) that is in writing, signed by the deceased, disposes of property (such as personal belongings or land), and is intended to take effect upon death. In "approving" a Will, the Minister is not reviewing or otherwise evaluating any of the gifts made by the deceased in the Will.

If there is a Will but the Will does not name an executor or the named executor is unable or unwilling to act as executor, AANDC writes to the beneficiaries named in the Will and asks if they would like to administer the estate or nominate someone else to administer the estate.

If none of the beneficiaries apply to administer the estate or nominate someone else to do so, an Estates Officer at AANDC will administer the estate as administrator of last resort.

C. Lands Search

The Department will do a search of the Indian Land Registry to determine if there is an interest in reserve land registered in the name of the deceased and will advise the appointed executor or administrator of the results. Please note this search is limited to registered on-reserve interests (interests that are registered in the Indian Lands Registry under the *Indian Act*, or in the First Nation's own land registry system under the *First Nations Land Management Act*, for First Nations that manage their own lands).

9. Do I Need a Lawyer?

It is prudent to see a lawyer for some initial advice, even if you believe the estate is simple and you plan on administering the estate yourself. If the estate includes a business or off-reserve land, or may otherwise be complicated, you should seek legal assistance. The costs of legal assistance needed to settle the estate may be paid from the estate's assets.

For assistance in finding a lawyer please contact:

- **Canadian Bar Association's Lawyer Referral Service**
This service provides a half-hour consultation with a lawyer for about \$30.00.
Telephone: (604) 687-322 or 1-800-663-1919
- **The Law Centre**
An in-person service provided by University of Victoria law students in downtown Victoria.
1221 Broad Street
Victoria, BC V8W 2A4
Telephone: (250) 385-1221
Website: www.thelawcentre.ca
- **UBC First Nations Legal Clinic**
An in-person service provided by UBC law students in downtown Vancouver.
50 Powell Street
Vancouver, BC V6A 1E7
Telephone: (604) 687-0285
- **UBC Law Students' Legal Advice Program**
An in-person service provided by UBC law students at clinics located throughout the GVRD. Also has a Legal Advice Manual viewable on their website.
Telephone: (604) 822-5791
Website: www.lslap.bc.ca
- **Yellow Pages**
Look in the yellow pages under "Lawyers" to find a lawyer who specializes in wills and estates law or Aboriginal law.

10. When You are the Personal Representative

Generally speaking, the duties of the personal representative are to gather and protect the assets of the estate, pay the debts of the estate from the assets, determine who the heirs or beneficiaries are, and distribute the assets. The following is a list of some of the duties of a personal representative. Because each estate is unique, the list is not exhaustive.

A. Notify Others

You will need to notify government agencies and companies with whom the deceased dealt that s/he has passed away and that you have been appointed as the deceased's personal representative. Banks, credit unions, credit card companies, utility companies (for example, Terasen and Telus), insurance companies, and Canada Pension Plan are examples of some government agencies and companies that may need to be advised of the deceased's death.

If the deceased left a Will, you must provide a copy of the Will to every person named in it, and to every person not named in it who would have inherited from the deceased if the deceased had not made a Will. See section 10.N. of this Guide (*Determining the Heirs when there is no Will*) for additional information on determining who you must provide a copy of the Will to.

B. Determine and Protect the Assets of the Estate

As personal representative, you must determine what property the deceased owned, e.g. land, money, pension and personal belongings. You need to make a list of all of the estate's assets, including the value of each asset.

You may wish to collect estate valuables such as jewelry, paintings and cultural artifacts, and store them for safekeeping.

You may also wish to have the deceased's mail redirected to you. To do this, go to any Post Office – bring your Appointment document and the *Death Certificate* for the deceased with you.

If you believe there was an interest in reserve land registered in the name of the deceased, please contact an Individual Lands Holding Specialist for the deceased's First Nation at AANDC in Vancouver at (604) 775-5100.

If you believe that the deceased was receiving lease, permit or other income for his or her reserve land, contact a Land Management & Leasing Officer at AANDC in Vancouver at (604) 775-5100.

You are also required to protect the assets of the estate. If the deceased owned a house or other buildings, make sure that the house and buildings are insured by the estate until you have legally transferred these assets to those entitled to inherit them. You may also need to take out insurance on other property of the estate as required. These insurance costs may be paid from the assets of the estate.

If the deceased owned a vehicle, contact the Insurance Corporation of British Columbia (ICBC) at (604) 661-2800 or see ICBC's website: www.icbc.com (Use the search term "MV1432" in the search box at the top of the screen to see a Checklist for doing Estate transfers). Note that the deceased's car should normally not be used until it has been transferred to the person entitled to inherit it and that person has arranged for insurance.

Letters should be sent to banks and credit unions in the area where the deceased lived, to inquire if the deceased held any accounts and to direct the release of funds to the personal representative.

C14: Enquiry Letter to Bank or Credit Union

C15: Enquiry Letter to the "Big 5" Banks

All estate funds should be placed in an account at a bank, credit union or trust company. In order to open a separate account in the name of the estate, most banks and credit unions will require you to provide a certified copy of your Appointment document and the *Death Certificate* – contact the bank or credit union for any additional requirements.

If the deceased owned a fishing boat or other registered vessel, contact the Registrar of Ships at Transport Canada. For further information about vessel registration, and to locate the Ships' Registry in your area, see Transport Canada's website: <http://www.tc.gc.ca/eng/menu.htm> and click on "Marine".

For information on dealing with a fishing licence in the name of the deceased, please see Fisheries and Oceans Canada's website: www.dfo-mpo.gc.ca or contact the Vancouver regional office at (604) 666-0384.

For information on trap lines, contact the BC Ministry of Environment at 1-800-663-7867, or see the website: <http://www.env.gov.bc.ca/pasb/applications/process/trapper.html>

The deceased's employer should be contacted to inquire if any outstanding wages are owed to the deceased. If the deceased had a pension plan, contact the employer for information on what will happen to it.

If the deceased had life insurance (either through work, or purchased privately), contact the insurer. In cases where the deceased named a specific beneficiary of his or her life insurance policy, the insurance proceeds are not considered an asset of the estate. However, where no beneficiary is named, insurance proceeds are considered an asset of the estate and the personal representative should arrange to collect these funds.

C. If the Deceased owned land off-reserve

If you believe the deceased owned land off-reserve in British Columbia, see the BC Land Title and Survey website at <http://www.ltsa.ca/contact> for an overview of the land transfer process.

A search of BC Land Title records will tell you what interests in off-reserve land the deceased held and whether there were any charges or mortgages. A lawyer or notary can do this search for you for a small fee.

"Real property", which means land and improvements to it such as houses, must be transferred in accordance with the laws of the place where the land is located. This means that fee simple or strata-titled property located off-reserve in British Columbia cannot be transferred using estate administration documents issued under the *Indian Act*.

If the assets of the estate of a First Nation person who was ordinarily resident on-reserve include land located off-reserve in British Columbia, the executor will need to request an Order from AANDC referring the transfer of the fee simple land to the BC Supreme Court (Probate Registry), and the executor will then need to obtain a grant of probate (if there was a Will) or administration (if there was no Will) from the Probate Registry in order to be able to register the transfer of the fee simple land from the estate to an heir or beneficiary in the BC Land Title Office.

See section 6 of this Guide (*If Your Family Member Did Not Live On-Reserve*) for information on proceeding under BC law.

If the deceased held land off-reserve, you may wish to seek legal advice on behalf of the estate. See section 9 of this Guide (*Do I need a lawyer?*) for information on how to find a lawyer.

D. If the Deceased had Joint Ownership of Certain Assets

The deceased may have owned property (e.g., a bank account or land) jointly with another person. The deceased's share of an asset that was owned jointly with another person as tenants-in-common is part of the estate and must be dealt with by the personal representative.

However, an asset of the deceased that was held in joint tenancy *with a right of survivorship* (whether a bank account, or land) does not form part of the deceased's estate and is therefore not normally dealt with by the personal representative. Usually, the surviving joint tenant simply needs to provide (e.g.) the bank with proof of the joint account-holder's death, and the bank will then transfer the account into the sole name of the surviving joint account-holder.

E. If the Deceased Attended Residential School

The deadline for Residential School survivors to apply to receive the Common Experience Payment ("CEP") was September 19, 2011, with late applications accepted until September 19, 2012 in cases of disability, undue hardship and exceptional circumstances.

The deadline for Residential School survivors to apply to the Independent Assessment Process ("IAP") was September 19, 2012.

For more information on CEP and IAP, visit the Legal Services Society of BC's web page of resources on the Indian Residential Schools Settlement at <http://www.lss.bc.ca/aboriginal/indianResidentialSchools.asp>

F. Government Agencies to Contact

Various federal and provincial government agencies will likely need to be contacted in order to be advised of the deceased's death and to inquire if any outstanding benefits are owed to, or owed by, the estate. You will need to know the deceased's Social Insurance Number before submitting enquiries.

C5: Letter requesting SIN Information

The government agencies you will likely need to contact may include:

- **Human Resources and Skills Development Canada (HRSDC):** Contact HRSDC to inquire about possible Canada Pension Plan (CPP) Death Benefit and/or Survivor Benefits that may be payable, as well as to terminate the deceased's CPP benefits, Old Age Security (OAS) and Guaranteed Income Supplement (GIS), and/or Employment Insurance (EI).

C7: Enquiry Letter - CPP

C8: Enquiry Letter - CPP Death Benefit inquiry

C9: Enquiry Letter - OAS and GIS

C11: Enquiry Letter - EI

C13: Letter enclosing CPP Death Benefit application

To download an Application form for the Canada Pension Plan Death Benefit, go to: <http://www.servicecanada.gc.ca/eng/sc/cpp/deathpension.shtml>

For more information, see the HRSDC website at www.hrsgc.ca. (Click on "Programs and

Policies" and locate "Canada Pension Plan"). If you receive a government cheque payable to the deceased and dated after the month of his or her death, contact the government agency; you may need to return the cheque. Note: Never destroy a government cheque! If the deceased is not entitled to the payment, the cheque must be returned to the government agency.

C12: Letter enclosing cheque(s) for return

- **BC Ministry of Social Development:** Contact this agency regarding the deceased's Senior's Supplement: <http://www.gov.bc.ca/hsd/>

C6: Enquiry Letter - BC Senior's Supplement

- **Canada Revenue Agency (CRA):** The personal representative must ensure that the deceased's tax returns are filed, and that any income taxes and/or GST owing are paid (to the extent that the estate has the funds to pay these debts).

C16: Enquiry Letter-- Request Tax Info

C17: Enquiry Letter – Request GST Info

For more information, see the following CRA publications available for download from the CRA website at www.cra-arc.gc.ca : *What to Do Following a Death* (RC4111); *Preparing Returns for Deceased Persons Guide* (T4011).

- **Worksafe BC:** Contact this agency if the deceased was receiving a WCB pension or benefits: www.worksafebc.com

C10: Enquiry Letter to Worksafe BC

G. Determine the Debts of the Estate

As personal representative, you must notify creditors, heirs and other claimants about the death. You should contact any creditors of the

deceased you know of, advise them you are the personal representative and ask the creditor to send you a written notice of the outstanding debt owed by the deceased.

The debts of the estate may include:

- Funeral expenses;
- The personal representative's costs of administering the estate (e.g. necessary long-distance calls, postage and photocopying; necessary legal, accounting and other professional advice);
- Outstanding utility bills;
- Car loans/lease payments. You may have to contact the leasing company to obtain the leasing contract between the deceased and financial institution;
- Mortgages;
- Personal loans or lines of credit;
- Income tax debt. As stated above, Canada Revenue Agency will need to be contacted in order to determine if the estate owes a debt;
- Credit card debt.

C19 and C20: Enquiry Letters re Debts/Loans

C21: Letter Acknowledging a Debt

H. Notice to Creditors

When you are appointed the personal representative you will receive blank copies of a *Notice to Creditors, Heirs and Other Claimants* from AANDC. Post the Notices in the Band office, Post Office and other public places, and send a copy to the Housing Resources Officer at AANDC in Vancouver:

C1: Notice to Creditors Form

C2: Cover Letter to Band Office

C3: Cover Letter to Canada Post

C4: Cover Letter to AANDC

The *Notice* gives creditors and potential heirs eight weeks to advise you of a debt against the estate or of a claim to be an heir. If a claim is

made after the eight week period, the estate may not be legally required to pay the debt. If you receive a late claim, you may wish to consult a lawyer for advice on whether the debt should be paid. See section 9 of this Guide (*Do I need a lawyer?*) for information on how to find a lawyer.

I. Payment of Debts

As the personal representative, you are responsible for ensuring that the deceased's debts are paid from the estate's assets.

As the personal representative, you are not required to use your own money to pay the deceased's debts, *provided that* you administer the estate in accordance with applicable laws.

J. What if the Estate doesn't have enough money to pay all of the Debts?

If you are the personal representative for an estate that does not have enough money to pay all debts, obtain legal advice to ensure that you do not incur any personal liability for the deceased's debts. There is an order of priority for payment of debts (i.e., certain types of debt must be paid before others). See section 9 of this Guide (*Do I need a lawyer?*) for information on how to find a lawyer.

K. Transfer Land and Other Assets

As personal representative, you may be required to transfer the deceased's registered interest in reserve land to an heir or beneficiary. If the deceased had traditional land holdings (not registered in the Indian Land Registry), you will need to consult with the deceased's First Nation. Traditional land holdings are normally governed by the First Nation's own Housing policies, which may or may not give an individual the right to determine who will occupy their house after they pass away.

The Minister of Indian Affairs (or the First Nation, in the case of First Nations that manage their own lands under the *First Nations Land Management Act* "FNLMA") must approve any transfers of registered interests in reserve land to heirs or beneficiaries. In particular, as personal representative, you are required to complete and submit to AANDC (if the land is registered in the ILRS) a *Transfer of Land by Personal Representative* form. (If the First Nation manages its own lands under FNLMA, consult the band office for the required transfer form).

For assistance with the completion of a *Transfer of Land by Personal Representative* form or if you have any questions regarding on-reserve land transfers, please contact an Individual Land Holding Specialist at AANDC in Vancouver at (604) 775-5100.

L. Land Transfers to Non-Band Members are Prohibited

If the deceased had an interest in reserve land (for example, a Certificate of Possession) and has left that interest to heirs or beneficiaries who are not members of the deceased's First Nation, section 50 of the *Indian Act* prohibits the non-band members from inheriting the deceased's interest in the reserve land, and requires the Superintendent of Indian Affairs to sell the non-band members' interest in the land to the highest bidder in a sale process open to all members of the deceased's First Nation. The executor or administrator of the estate may not sell or transfer the land privately.

Note that the relevant time for determining if any of the deceased's heirs or beneficiaries are not members of the same First Nation as the deceased is the date of death. After that date, an heir or beneficiary cannot gain the right to inherit the deceased's land by transferring their band membership to the deceased's First Nation.

Please refer to *Appendix D* of this Guide for the full text of section 50.

AANDC national policy concerning section 50 provides alternatives, in certain cases, to having the Superintendent of Indian Affairs sell the non-band member's interest in land. In particular, if a non-member heir or beneficiary is willing to give up their share of the deceased's land, they can sign an *Absolute Disclaimer* form. Or, if the deceased's estate includes (significant) cash assets as well as the reserve land, it may be possible for the personal representative to divide up the estate in such a way that non-members shares of the estate are made up of cash only, and only band members inherit the land.

For more information on section 50 and the potential alternatives to a sale of the non-member's share of land by the Superintendent, contact the Estates Unit of AANDC in Vancouver at (604) 775-5100 or toll free in BC 1-888-917-9977, , or email us at BCestates@aandc-aadnc.gc.ca.

M. Obtain Clearance Certificate from CRA

As personal representative you must obtain a Clearance Certificate from the Canada Revenue Agency before you distribute the assets of the estate or you may be held personally liable to CRA for any outstanding taxes owed by the estate.

In order to obtain a Clearance Certificate from CRA you must ensure the deceased's taxes are filed for the year of his or her death and for previous years. Once all outstanding taxes, if any, have been paid, you may apply for a clearance certificate.

Application form for a Clearance Certificate
C18: Letter enclosing Clearance Certificate
Application

For more information, see the following CRA publication, available for download from the CRA website at www.cra-arc.gc.ca : *Information Circular IC82-6R8, Clearance Certificate*.

N. Determining the Heirs When there is No Will

Unless the estate is simple, i.e. there are no disputes and only one heir, legal advice may need to be sought when determining the heirs.

Except for the "survivor" (married spouse or common law partner), only people who are related to the deceased by blood are considered heirs.

A person, however, may be considered an heir of the deceased if they were legally adopted or adopted according to the custom of the First Nation (custom adoption). Unless all the heirs to the estate agree, in writing, that a person who is not otherwise entitled to inherit should be treated as a (custom-adopted) heir of the deceased, the person who is claiming custom adoption must prove their claim to the satisfaction of the Indian Registrar before a personal representative will be obliged to treat that person as an heir of the estate.

For information on custom adoptions contact:

Aboriginal Affairs and Northern Development
Canada, Adoption Unit
10 Wellington St.
Gatineau, PQ K1A 0H4
Telephone: 1-819-953-0960 (Registration
Information Line) Fax: (819) 997-6296

If the deceased has left both a common-law partner and a (separated, but not divorced) legal spouse (i.e. if there are potentially two "survivors"), it is important that you obtain legal advice. See section 9 of this Guide (*Do I need a lawyer?*) for information on how to find a lawyer.

When there is no Will, the rules for the distribution of assets are set out in section 48 of the *Indian Act*. If the net value of the estate (all of the assets, minus all of the debts) is:

- less than \$75,000, the survivor receives the entire estate;
- more than \$75,000, the survivor receives the first \$75,000 and the rest is divided between the survivor and the children (if any).

If there is no survivor, the estate is divided equally among any children (surviving grandchildren or great-grand children *may* also inherit, depending on the circumstances).

If the deceased had no survivor, children, grandchildren, great-grandchildren and so on at the time of death, the next heirs in line are (in descending order):

- parents;
- sisters and brothers; and
- nieces and nephews.*

*There is a restriction in section 48(8) on who can inherit reserve land when there is no Will and the heir or heirs are more distantly related than siblings of the deceased. If there is no Will, and the closest surviving heir(s) of the deceased are niece(s)/nephew(s), the deceased's reserve land must be transferred back to the deceased's First Nation by the Minister. However, if the deceased's closest surviving relatives included at least one brother or sister, as well as one or more niece(s)/nephew(s), the land may be transferred to the niece(s)/nephew(s), as well as to the brother(s)/sister(s), in shares as determined by section 48(6) of the *Indian Act*.

NOTE: The above description of section 48 is an overview only. Please refer to the full text of section 48 in *Appendix C* of this Guide.

O. Proposal for Distribution

The assets of the estate should not be distributed until the *Notice to Creditors* has expired, the debts of the estate are paid, and a Clearance Certificate has been obtained from the Canada Revenue Agency.

Once you have done those things, it's a good idea to write to the heirs or beneficiaries, including an itemized list of the estate's assets and debts and setting out how you propose to distribute what is left after the debts have been paid from the assets.

C22: Sample Proposal for Distribution

P. Distribute Assets to Heirs and/or Beneficiaries

As personal representative, you should attempt to complete your administration of the estate and distribute the estate assets within a year of the date of death of the deceased. This is known as the "executor's year".

Q. Final Accounting

Once all of the debts have been paid and the assets have been distributed to the heirs and/or beneficiaries, you must give a detailed written accounting of the estate's administration to the heirs and/or beneficiaries. The accounting should include an itemized list of the estate's assets (including value) at the time of death, the estate's debts and details of how the assets were distributed.

C23: Sample Accounting to Heirs/Beneficiaries

You may also consider periodically advising the heirs and beneficiaries of your progress while you are administering the estate.

11. Role of AANDC and Complaints

Once the Minister of Indian Affairs has appointed either an executor or an administrator, the Department cannot be directly involved in the administration of the estate.

Departmental staff can provide general Estates information on request, but cannot provide advice on a specific problem with a particular estate; the advice of a lawyer should be sought in those circumstances.

The Department's role after an executor or administrator has been appointed is limited to a quasi-judicial role. For example, the Minister will act as the adjudicator of challenges to a Will's validity and will consider applications for the removal of an administrator, or may refer a matter to the BC Supreme Court.

12. Resources

Legal Services Society of BC

The Legal Services Society has a section of its website specifically for Aboriginal people, at <http://www.lss.bc.ca/aboriginal/>. Click on "Aboriginal publications" to see a list of publications. (You can also download the Templates Package, containing the forms and sample letters referred to in this Guide, from this website).

Dial-A-Law

Free recorded information on a variety of legal topics. Please note that the wills and estates information is based on BC's laws, not the *Indian Act*. Telephone: 1-800-565-5297, Website: www.dialalaw.org

Salvation Army Pro Bono Program

Offers pro bono (free) legal services. For more information go to www.probono.ca, or call 604.694.6647.

Clicklaw

Legal information and education for British Columbians. Please note that the wills and estates information is based on BC's laws, not the *Indian Act*. <http://www.clicklaw.bc.ca/>

BC Bereavement Helpline

Provides useful resources for persons dealing with the loss of a loved one. Call 604.738.9950 (in the Lower Mainland) or 1.877.779.2223 (toll-free in B.C.) or visit their website at: www.bcbereavementhelpline.com

Access Pro Bono Society of BC

Offers pro bono (free) legal services. For more information go to www.accessprobono.ca or call 604.878.7400 (in the Lower Mainland) or 1.877.762.6664 (toll-free in B.C.).

VictimLinkBC

Offers information and support for victims of crime. If you are dealing with a sudden death and require assistance or support, or if you just want to talk to someone, you may wish to call VictimLink BC at 1-800-563-0808 or visit their website at www.victimlinkbc.ca.

13. Questions?

If you have a question about the information in this booklet, please contact AANDC in Vancouver and ask to speak to the Estates Officer for the deceased's First Nation.

To reach the Estates Unit of AANDC in Vancouver please call (604) 775-5100 or toll free in BC 1-888-917-9977, or email us at BCestates@aandc-aadnc.gc.ca.

Please keep in mind that while Estates Officers can provide you with information, they cannot provide legal advice.

Appendices

A. Templates Package

Posting the Notice to Creditors

- C1 Notice to Creditors
- C2 Cover letter to Band Office
- C3 Cover letter to Canada Post
- C4 Cover letter to AANDC

NOTE: The Templates Package for use with this Guide is published as a separate document in fillable PDF format. You can download it online from the Legal Services Society of BC's website at <http://www.lss.bc.ca/aboriginal/> (click on "Aboriginal publications"), or contact the Estates Unit of AANDC in Vancouver at 1.888.917.9977, or by email to BCestates@aandc-aadnc.gc.ca.

Finding out the deceased's Social Insurance Number (use this only if you don't have the SIN already)

- C5 Letter requesting SIN

Enquiring about government benefits & cancelling government pensions

- C6 Letter re. BC Seniors' Supplement benefits
- C7 Letter re. Canada Pension Plan benefits
- C8 Letter re Canada Pension Plan Death Benefit
- C9 Letter re Old Age Supplement (OAS) and Guaranteed Income Supplement (GIS)
- C10 Letter re Workers' Compensation benefits
- C11 Letter re Employment Insurance benefits
- C12 Letter enclosing pension/benefits overpayment (cheque to be returned)

Applying for government death benefits

- C13 Letter enclosing application for Canada Pension Plan Death Benefit

Enquiring about bank accounts

- C14 Letter to a bank or credit union
- C15 Letter to the 'Big 5' banks

Preparing the Final Income Tax Return

- C16 Letter to Canada Revenue Agency requesting income tax information
 - C17 Letter to Canada Revenue Agency requesting GST/HST information
 - C18 Letter requesting Clearance Certificate
- Application form for a Clearance Certificate

Communicating with creditors

- C19 Letter of enquiry to a credit card company or other creditor
- C20 Letter to creditor asking if loan was life-insured, requesting forms to have the loan written off
- C21 Letter to a credit card company or other creditor acknowledging a debt

Keeping the Heirs/Beneficiaries informed of your progress

- C22 Proposal for distribution of the estate
- C23 Final accounting

Transferring the deceased's registered interest in reserve land

Transfer of Land by Personal Representative form, with instructions

B. Links

Government of Canada	
Aboriginal Affairs and Northern Development Canada	www.aandc-aadnc.gc.ca
Canada Revenue Agency	www.cra-arc.gc.ca
Fisheries & Oceans Canada	www.dfo-mpo.gc.ca
Human Resources and Skills Development Canada	www.hrsdc.gc.ca
Government of Canada staff -- Phone Directory	http://sage-geds.tpsgc-pwgsc.gc.ca/cgi-bin/direct500/eng/TE?FN=index.htm
Service Canada	www.servicecanada.gc.ca
Transport Canada	http://www.tc.gc.ca/
Government of British Columbia	
BC Land Title & Survey Office	http://www.ltsa.ca/contact
BC Ministry of Social Development	http://www.gov.bc.ca/hsd/
BC Ministry of the Attorney General (Court Services)	http://www.ag.gov.bc.ca/courts/index.htm
BC Supreme Court Self-Help Information Centre	www.supremecourtselfhelp.bc.ca
BC Vital Statistics Agency	http://www.vs.gov.bc.ca/
Public Guardian and Trustee of British Columbia	www.trustee.bc.ca
Worksafe BC	www.worksafebc.com
Other links	
Clicklaw	http://www.clicklaw.bc.ca/
Dial-A-Law (CBA-BC)	www.dialalaw.org
Funeral Services Association of BC	www.bcfunerals.com
<i>Indian Act</i>	http://laws.justice.gc.ca/en/showtdm/cs/l-5
<i>Indian Estates Regulations</i>	http://laws.justice.gc.ca/en/showtdm/cr/C.R.C.-c.954
Insurance Corporation of BC	www.icbc.com
Law Centre (University of Victoria)	www.thelawcentre.ca
Lawyer Referral Service (CBA-BC)	http://www.cba.org/BC/Public_Media/main/lawyer_referral.aspx
Legal Services Society of BC	www.lss.bc.ca
Self-Counsel Press	www.self-counsel.com
UBC Law Students' Legal Advice Program	www.lslap.bc.ca

C. Section 48 of the Indian Act

DISTRIBUTION OF PROPERTY ON INTESTACY

Surviving spouse's share

48. (1) Where the net value of the estate of an intestate does not, in the opinion of the Minister, exceed seventy-five thousand dollars or such other amount as may be fixed by order of the Governor in Council, the estate shall go to the survivor.

Idem

(2) Where the net value of the estate of an intestate, in the opinion of the Minister, exceeds seventy-five thousand dollars, or such other amount as may be fixed by order of the Governor in Council, seventy-five thousand dollars, or such other amount as may be fixed by order of the Governor in Council, shall go to the survivor, and

(a) if the intestate left no issue, the remainder shall go to the survivor,

(b) if the intestate left one child, one-half of the remainder shall go to the survivor, and

(c) if the intestate left more than one child, one-third of the remainder shall go to the survivor,

and where a child has died leaving issue and that issue is alive at the date of the intestate's death, the survivor shall take the same share of the estate as if the child had been living at that date.

Where children not provided for

(3) Notwithstanding subsections (1) and (2),

(a) where in any particular case the Minister is satisfied that any children of the deceased will not be adequately provided for, he may direct that all or any part of the estate that would otherwise go to the survivor shall go to the children; and

(b) the Minister may direct that the survivor shall have the right to occupy any lands in a reserve that were occupied by the deceased at the time of death.

Distribution to issue

(4) Where an intestate dies leaving issue, his estate shall be distributed, subject to the rights of the survivor, if any, per stirpes among such issue.

Distribution to parents

(5) Where an intestate dies leaving no survivor or issue, the estate shall go to the parents of the deceased in equal shares if both are living, but if either of them is dead the estate shall go to the surviving parent.

Distribution to brothers, sisters and their issue

(6) Where an intestate dies leaving no survivor or issue or father or mother, his estate shall be distributed among his brothers and sisters in equal shares, and where any brother or sister is dead the children of the deceased brother or sister shall take the share their parent would have taken if living, but where the only persons entitled are children of deceased brothers and sisters, they shall take per capita.

Next-of-kin

(7) Where an intestate dies leaving no survivor, issue, father, mother, brother or sister, and no children of any deceased brother or sister, his estate shall go to his next-of-kin.

Distribution among next-of-kin

(8) Where an estate goes to the next-of-kin, it shall be distributed equally among the next-of-kin of equal degree of consanguinity to the intestate and those who legally represent them, but in no case shall representation be admitted after brothers' and sisters' children, and any interest in land in a reserve shall vest in Her Majesty for the benefit of the band if the nearest of kin of the intestate is more remote than a brother or sister.

Degrees of kindred

(9) For the purposes of this section, degrees of kindred shall be computed by counting upward from the intestate to the nearest common ancestor and then downward to the relative, and the kindred of the half-blood shall inherit equally with those of the whole-blood in the same degree.

Descendants and relatives born after intestate's death

(10) Descendants and relatives of an intestate begotten before his death but born thereafter shall inherit as if they had been born in the lifetime of the intestate and had survived him.

Estate not disposed of by will

(11) All such estate as is not disposed of by will shall be distributed as if the testator had died intestate and had left no other estate.

No community of property

(12) There is no community of real or personal property situated in a reserve.

(13) and (14) [Repealed, R.S., 1985, c. 32 (1st Supp.), s. 9]

Equal application to men and women

(15) This section applies in respect of an intestate woman as it applies in respect of an intestate man.

D. Section 50 of the Indian Act

Non-resident of reserve

50. (1) A person who is not entitled to reside on a reserve does not by devise or descent acquire a right to possession or occupation of land in that reserve.

Sale by superintendent

(2) Where a right to possession or occupation of land in a reserve passes by devise or descent to a person who is not entitled to reside on a reserve, that right shall be offered for sale by the superintendent to the highest bidder among persons who are entitled to reside on the reserve and the proceeds of the sale shall be paid to the devisee or descendant, as the case may be.

Unsold lands revert to band

(3) Where no tender is received within six months or such further period as the Minister may direct after the date when the right to possession or occupation of land is offered for sale under subsection (2), the right shall revert to the band free from any claim on the part of the devisee or descendant, subject to the payment, at the discretion of the Minister, to the devisee or descendant, from the funds of the band, of such compensation for permanent improvements as the Minister may determine.

Approval required

(4) The purchaser of a right to possession or occupation of land under subsection (2) shall be deemed not to be in lawful possession or occupation of the land until the possession is approved by the Minister.

R.S., c. I-6, s. 50.

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ASSISTANCE WITH FUNERAL COSTS

Aboriginal Affairs and Northern Development Canada does not provide assistance with funeral costs, however, assistance with funeral costs may be available from one of the following sources:

1. Insurance Corporation of B.C. (ICBC)

Basic Autoplan insurance from ICBC may cover partial funeral costs and death benefit payments for you, your spouse and your children. Payments for death benefits vary if the insurance policy holder was the main wage earner in the home and if there are any children or dependants.

There are also payments if the deceased is a child. Payments for a child come in a lump sum, whereas payments for adults combine a lump sum and weekly payments for 104 weeks.

****PLEASE CONTACT ICBC OR YOUR AUTOPLAN BROKER DIRECTLY FOR INFORMATION****

2. BC Ministry of Social Development OR the Social Assistance office on-reserve

A supplement may be provided to pay necessary funeral costs of any person who dies in BC if the estate of the deceased person or any responsible person has no immediate resources to meet these costs. There is no requirement that the deceased person, or the person's family, must be BC Employment and Assistance recipients to qualify for the supplement. Costs are to be recovered whenever possible. This supplement is available under the Employment and Assistance Regulation.

****PLEASE CONTACT THE MINISTRY OF SOCIAL DEVELOPMENT OR THE SOCIAL ASSISTANCE OFFICE ON-RESERVE DIRECTLY FOR INFORMATION****

3. Canada Pension Plan Death Benefit

The death benefit is a one-time payment to, or on behalf of, the estate of a deceased Canada Pension Plan contributor. The maximum benefit is \$2,500. The actual amount paid in any given case depends on the contributions the deceased made to the Canada Pension Plan during his or her lifetime. There is a minimum contributory requirement of at least 3 years, and if the deceased contributed to the Canada Pension Plan for more than nine years, he or she must have contributed in one third of the calendar years in the contributory period or 10 calendar years, whichever is less.

The Canada Pension Plan also provides other benefits. These are:

- **The survivor's pension:** a monthly pension paid to the surviving spouse or common-law partner of a deceased contributor;
- **The children's benefit:** a monthly benefit for dependent children of a deceased contributor.

****FOR MORE INFORMATION, OR TO DOWNLOAD AN APPLICATION FORM FOR A PENSION OR BENEFITS, GO TO: WWW.SERVICECANADA.GC.CA****

4. Canadian Forces Members

Veterans' Affairs Death Benefit

When military families lose a loved one in the line of duty, there can be great suffering as the surviving spouse and children struggle to find their place in the civilian world. Veterans Affairs Canada pays a death benefit to help ease that struggle. The death benefit is a one-time, tax-free cash award. The death benefit is not designed to be life insurance. Instead, it recognizes the impact the death of a service member has on the functioning of their immediate family, including the permanent loss of guidance, care and companionship. It is paid in addition to the usual pension-related death benefits paid under the Canada Pension Plan and the *Canadian Forces Superannuation Act*.

The death benefit is adjusted annually according to the cost of living index. More information regarding the benefits offered by Veterans Affairs Canada may be found at www.veterans.gc.ca or by calling toll free at 1.866.522.2122.

****PLEASE CONTACT VETERANS' AFFAIRS CANADA DIRECTLY FOR INFORMATION****

5. WorkSafeBC

1. Can we get financial help from WorkSafeBC?

You may be entitled to financial help from WorkSafeBC when a family member dies from a work-related accident or disease.

The amount and type of assistance will vary according to the number and age of dependants in the family and the earnings of the worker, as prescribed by the Workers Compensation Act. Financial assistance is considered when WorkSafeBC has accepted a claim for a work-related death.

- The actual costs up to \$7,200 for funeral and related costs is available.
- An emergency lump sum of approximately \$2,150 is provided to a spouse or common-law spouse to help with immediate needs. This is a one-time payment in addition to any other WorkSafeBC assistance.
- The actual cost (up to a maximum of approximately \$1,000) of transporting the body to another location for burial or cremation may be available.
- After a work-related death, Survivor benefits include a monthly pension, which may be provided to a worker's dependent spouse or common-law spouse and to dependent children.

For more information, please contact a Sensitive Claims Coordinator at 604 231-8594 or Toll-free in B.C. 1 888-WORKERS (967-5377), local 8594.

****PLEASE CONTACT WORKSAFE BC DIRECTLY FOR INFORMATION****

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SECTION 51 OF THE *INDIAN ACT*: ADMINISTRATION OF A MENTALLY INCAPABLE ADULT'S PROPERTY AND FINANCES

The Department's role with respect to First Nation adults on reserve who are unable to manage their own financial affairs

The information in this document is specific to BC Region and does not apply outside of British Columbia.

When a registered Indian adult who is ordinarily resident on reserve is found, under BC law, to be incapable of managing his or her own financial affairs by reason of mental incapacity, the Estates Unit at Aboriginal Affairs and Northern Development Canada (AANDC) becomes responsible for ensuring that the adult's property and financial affairs are managed for his or her benefit. Where it is in the adult's best interests to do so, AANDC may appoint a non-departmental administrator (a family member or friend) to manage some or all of the adult's property and financial affairs pursuant to section 51 of the *Indian Act*.

AANDC's authority with respect to mentally incapable adults is limited to financial and property management only (not health care decisions), and AANDC may only become involved after a person has been found to be mentally incapable under BC law.

AANDC has no involvement in making the decision about whether or not an adult has become incapable of managing their own financial affairs. That decision is made under the laws of the Province of BC, not the *Indian Act*.

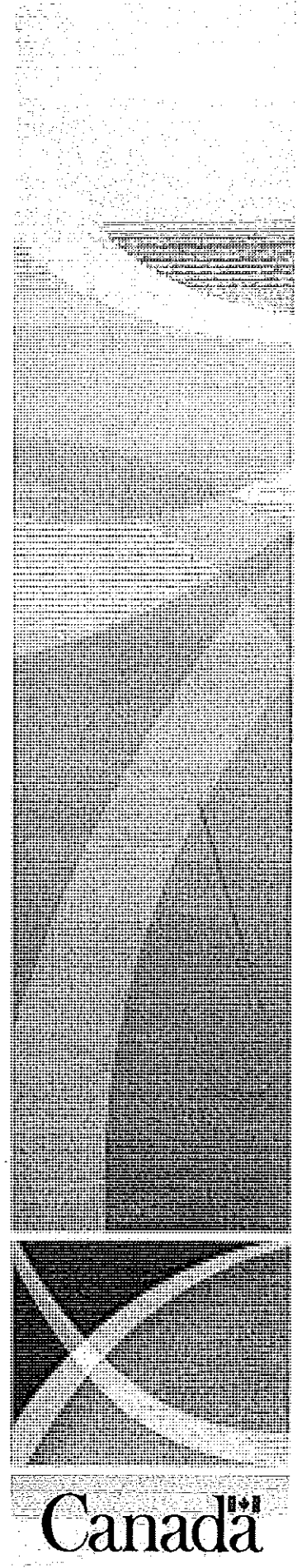
An administrator appointed pursuant to section 51 of the *Indian Act* cannot make health care or other non-financial decisions on behalf of the mentally incapable adult; these decisions can normally only be made by the adult, or (if the adult is incapable of doing so) a Committee of the Person or a Representative named in a Representation Agreement. Committees and Representatives are governed by BC law, not the *Indian Act*. AANDC does not have the authority to investigate claims of physical or financial abuse of a vulnerable adult, or to determine whether or not a person is mentally incapable.

If family or friends are concerned that a registered Indian adult living on reserve seems unable to care for themselves or make their own financial decisions, or if it appears that there may be physical or financial abuse or neglect of a vulnerable Elder or other adult, they should contact a "designated agency". In BC, the designated agencies are the five Regional Health Authorities, and Community Living BC. To find out the phone number to call in your area, call the Public Guardian and Trustee of British Columbia at 1-800-663-7867, or go to www.trustee.bc.ca, or send an email message to mail@trustee.bc.ca.

For more information:

Contact the Estates Unit in Vancouver by telephone at 604.775.5100 or 1.888.917.9977 (toll free), or email us at BCestates@aandc-aadnc.gc.ca.

Estates Unit - BC Region (rev. October 2011)



Public Guardian and Trustee of British Columbia



What can you do if you think an adult is abused, neglected or self-neglected and they cannot get help on their own?

Helping an Adult Get Support and Reporting Abuse or Neglect

Adults in BC have the right to make their own decisions, including decisions others might think are dangerous or unwise, as long as the adult is mentally capable and the decision does not harm others. This includes a decision to remain in an abusive relationship, but only if the adult is mentally capable and understands the decision they are making.

There is no legal requirement to report adult abuse in BC. However, as a concerned citizen you may wish to report that you have noticed that someone is in difficulty. This is even more true in situations where an adult cannot seek help on their own because of a physical disability, restraint, or an illness, disease or other condition (such as a dementia, brain injury or stroke) that affects their ability to make decisions.

There are many community agencies such as victim services, seniors centres, transitions houses and so on that can assist in certain circumstances. In addition, for adults who may not be able to seek help on their own, designated agencies have a mandate to respond. The designated agencies in BC are the 5 regional health authorities for many adults and Community Living BC for adults who have a developmental disability.

For numbers to call in your community, click [here](#). Communities are listed in alphabetic order. If you look at the numbers for your community and don't know which one(s) to call, click [here](#).

In an emergency...

If the situation is an emergency and someone's safety or life is at risk you can call the police emergency number for your community.

If it is not an emergency but there is still reason for concern...

If there is a bit of time to take action, you can do one or more of the following:

- Talk to the adult if you feel comfortable doing so to find out if they need assistance and if there's someone you can contact for them.
- Phone one of the Community Numbers in your community.
- Phone one of the Designated Agency Numbers for your community if you have any doubt about whether the adult can seek help on their own. Under Part 3 of the Adult Guardianship Act, designated agencies must look into reports of adult abuse or neglect they receive. See [Protecting Adults from Abuse and Neglect](#) for more information about the role of designated agencies
- For information on the Public Guardian and Trustee's role in helping an adult get support and receiving reports of possible financial abuse or neglect, visit the [Services to Adults Assessment and Investigations](#) page.
- Phone VictimLINK 1.800.563.0808 (toll-free), 24 hour-a-day, seven day-a-week support and referral service.
- Phone the BC Centre for Elder Advocacy and Support (BCCEAS) during regular weekday hours at 1.866.437.1940 (toll free) to get information about who else can help.

DESIGNATED AGENCIES - CONTACTS

Fraser Health:

1-877-REACT-08 (1-877-732-2808)

http://www.fraserhealth.ca/your_care/adult_abuse_and_neglect/getting_help/getting_help

Interior Health:

For direct community numbers visit www.interiorhealth.ca/report.aspx

Northern Health:

Prince George Adult Protection Line 250.565.7414

Vancouver Coastal Health:

Providence Health Care: 1.877.REACT.99 (1.877.732.2899)

Re:Act Response Resource : 1.877.REACT.99 (1.877.732.2899)

For more direct community numbers visit www.vchreact.ca/report.htm

Vancouver Island health Authority:

South Island 1.888.533.2273

Central Island 1.877.734.4101

North Island 1.866.928.4988

Community Living BC (CLBC):

CLBC is the Designated Agency for all individuals with a developmental disability who are eligible for CLBC services. For locations and contacts, visit <http://www.communitylivingbc.ca>

IF YOU DON'T KNOW WHICH NUMBER(S) TO CALL IN YOUR COMMUNITY:

Contact the person below for your area:

Northern Health - Prince George Adult Protection Line: 250.565.7414

Vancouver Island Health - Matt Scott: Matthew.Scott@viha.ca

Vancouver Coastal Health - Re:Act Response Resource: 1.877.732.2899

Fraser Health - Leanne Lange: leanne.lange@fraserhealth.ca

Interior Health - Linda Myers: linda.myers@interiorhealth.ca

**Should you discover any of the numbers on this list are no longer working,
it would be appreciated if you would contact: mail@trustee.bc.ca**

Helping an Adult Get Support and Reporting Abuse or Neglect

City	Type of agency	Type of Service	Phone
Abbeotsford	Designated Agency	Home and Community Care	604.556.5000
	Designated Agency	Mental Health and Addictions	604.870.7800
	Designated Agency	CLBC	604.870.5996
	Community Agency	Crisis Line	604.852.5099
	Community Agency	Police - Victim Services	604.864.4757
Agassiz	Community Agency	Police (non emergency)	604.859.5225
	Designated Agency	Home and Community Care	604.793.7160
Ainsworth	Designated Agency	Mental Health and Addictions	604.793.7160
	Community Agency	Crisis Line	1.877.820.7444 or 604.820.1166
Anahim Lake	Designated Agency	Home and Community Care	250.353.2744
	Designated Agency	Home and Community Care	1.877.668.3388
Armstrong	Designated Agency	Home and Community Care	250.541.2219
	Designated Agency	Home and Community Care	see Nakusp or New Denver
Arrow	Designated Agency	Home and Community Care	250.453.2211
	Designated Agency	Home and Community Care	250.651.7677
Ashcroft	Designated Agency	Home and Community Care	250.352.1401
	Designated Agency	Home and Community Care	250.723.4050 or 1.800.588.8717
Atlin	Designated Agency	Home and Community Care	1.877.668.3388
	Designated Agency	Home and Community Care	250.799.5311 x.203
Balfour	Designated Agency	Home and Community Care	250.799.5311 x.203
	Community Agency	Crisis Line	250.227.9019
Bamfield	Designated Agency	Home and Community Care	1.877.820.7444 or 604.820.1166
	Community Agency	Sea to Sky Community Services	604.852.5796
Barriere	Designated Agency	Home and Community Care	250.723.4050 or 1.800.588.8717
	Designated Agency	Home and Community Care	1.877.668.3388
Bella Bella	Designated Agency	Home and Community Care	250.799.5311 x.203
	Designated Agency	Home and Community Care	250.799.5311 x.203
Bella Coola	Designated Agency	Home and Community Care	250.799.5311 x.203
	Designated Agency	Home and Community Care	250.227.9019
Eoswell	Designated Agency	Home and Community Care	1.877.820.7444 or 604.820.1166
	Community Agency	Crisis Line	604.852.5796
Boston Bar	Designated Agency	Home and Community Care	250.227.9019
	Community Agency	Sea to Sky Community Services	604.852.5796
Brittania Beach	Designated Agency	Home and Community Care	1.877.820.7444 or 604.820.1166
	Community Agency	Sea to Sky Community Services	604.852.5796

Helping an Adult Got Support and Reporting Abuse or Neglect

City	Type of Agency	Type of Service	Phone
Burnaby	Designated Agency	Home and Community Care	604.918.7447
	Designated Agency	Mental Health and Addictions	604.675.3950
	Designated Agency	Mental Health and Addictions - Central	604.450.1900
	Designated Agency	Mental Health and Addictions - North	604.949.7730
	Designated Agency	Mental Health and Addictions - South	604.777.6870
Burns Lake	Designated Agency	CLBC	604.660.8124
	Designated Agency	Home and Community Care	250.567.5984
Campbell River	Designated Agency	Mental Health and Addictions	250.692.7577
	Designated Agency	Home and Community Care	250.850.2150
	Designated Agency	Mental Health and Addictions	250.850.5800
	Designated Agency	CLBC	250.286.7692
	Community Agency	Crisis Line	250.287.7743
Castlegar	Designated Agency	Home and Community Care	250.304.1846
	Designated Agency	CLBC	250.365.8558
	Community Agency	Crisis Line	1.800.515.6989 or 250.364.1718
	Community Agency	RCMP - non-emergency	250.365.7721
Chase	Designated Agency	Home and Community Care	1.877.668.3388
Chetwynd	Designated Agency	Home and Community Care	250.788.7200
Chilliwack	Designated Agency	Home and Community Care	604.702.4800
	Designated Agency	Mental Health and Addictions	604.702.4960
	Designated Agency	CLBC	604.702.5795
	Community Agency	Crisis Line	1.877.820.7444 or 604.820.1166
	Community Agency	RCMP - non-emergency	604.792.4611
Clearwater	Designated Agency	Home and Community Care	1.877.668.3388
Christina Lake	Designated Agency	Home and Community Care	250.443.2100
	Community Agency	Crisis Line	1.800.515.6989
Clifton	Designated Agency	Home and Community Care	1.877.668.3388
Comox Valley	Designated Agency	Home and Community Care	250.338.5453
	Designated Agency	Mental Health and Addictions	250.338.9777
	Community Agency	Crisis Line	250.334.2455
	Community Agency	RCMP - non-emergency	250.338.1321

Helping an Adult Get Support and Reporting Abuse or Neglect

City	Type of agency	Type of Service	Phone
Coquitlam	Designated Agency	Home and Community Care	604.777.7300
	Designated Agency	Mental Health and Addictions	604.777.8400
	Community Agency	Crisis Line	604.540.2221
Courtenay	Designated Agency	Home and Community Care	250.338.8453
	Designated Agency	CLBC	250.334.1370
	Community Agency	Crisis Line	250.334.2455
Crawford Bay	Designated Agency	Home and Community Care	250.227.9019
	Designated Agency	Home and Community Care	250.430.2200
Cranbrook	Designated Agency	CLBC	250.426.1282
	Community Agency	Crisis Line	250.426.8407
	Community Agency	Legal Services Society	250.426.4066
Creston	Designated Agency	Home and Community Care	250.402.6782
	Designated Agency	CLBC	250.426.1282
	Community Agency	Crisis Line	1.800.687.8407
Crescent Valley	Community Agency	Senior Advocate Service	250.402.0068
	Designated Agency	Home and Community Care	250.352.1401
Dawson Creek	Designated Agency	Home and Community Care	250.719.6500
	Designated Agency	Mental Health and Addictions	250.719.6525
	Designated Agency	CLBC	250.764.2262
Dease Lake	Designated Agency	Home and Community Care	250.771.4444
	Designated Agency	Home and Community Care - Delta North	604.953.4950
Delta	Designated Agency	Mental Health and Addictions - Delta North	604.592.3700
	Community Agency	Crisis Line - Delta North	604.951.8855
	Designated Agency	Home and Community Care - Delta South	604.852.3552
	Designated Agency	Mental Health and Addictions - Delta South	604.948.7010
	Community Agency	Crisis Line - Delta South	604.279.7070
	Designated Agency	CLBC	604.660.2100
	Community Agency	DeLassist Family and Community Services	604.946.9526
	Community Agency	HandyDART	604.596.1777
	Community Agency	Home Support	604.946.9536
	Community Agency	Legal Services	604.595.6595
	Community Agency	Lifeline (Delta Hospital)	604.946.1121 x 3288
	Community Agency	South Fraser Regional Crisis line	604.951.8855
Duncan	Community Agency	Victim Services (Delta Police)	604.940.5019
	Designated Agency	Mental Health and Addictions	250.709.3040
East Shore	Designated Agency	CLBC	250.715.2830
	Community Agency	Crisis Line	250.748.1133
Elkford	Designated Agency	Home and Community Care	250.227.9019
	Designated Agency	Home and Community Care	250.865.2247
Enderby	Designated Agency	Home and Community Care	250.541.2219
	Community Agency	Crisis Line	250.838.0890

Helping an Adult Get Support and Reporting Abuse or Neglect

City	Type of agency	Type of Service	Phone
Fairland	Designated Agency	Home and Community Care	250.865.2247
	Designated Agency	Home and Community Care and Mental Health	250.774.7092
	Designated Agency	Mental Health and Addictions	250.774.8105
Fort Nelson	Designated Agency	Home and Community Care	250.567.6900
	Designated Agency	Mental Health and Addictions	250.567.5994
	Designated Agency	Home and Community Care	250.263.6000
Fort St. John	Designated Agency	Mental Health and Addictions	250.263.6080
	Designated Agency	CLBC	250.263.0111
	Designated Agency	Home and Community Care	250.699.7742
Fraser Lake	Designated Agency	Mental Health and Addictions	250.567.5994
	Designated Agency	Mental Health and Addictions	250.699.5315
	Community Agency	Crisis Line	604.820.1166
Fraser Valley	Community Agency	Home and Community Care	604.886.5900
	Designated Agency	CLBC	1.888.981.0110
	Community Agency	Crisis Line	1.866.872.0113
Gibsons	Designated Agency	Home and Community Care	250.344.7555
	Designated Agency	Mental Health	250.344.7555
	Community Agency	Crisis Line	1.800.667.8407
Golden	Designated Agency	Home and Community Care	250.443.2100
	Designated Agency	Crisis Line	1.800.515.6999
	Community Agency	RCMP - non-emergency	250.442.8288
Grand Forks	Community Agency	Crisis Line	250.364.1718
	Designated Agency	Home and Community Care	250.697.2251
	Designated Agency	Home and Community Care	250.227.9019
Granisle	Designated Agency	Home and Community Care	1.866.286.6323
	Designated Agency	Home and Community Care	1.877.820.7444 or 604.820.1166
	Community Agency	Crisis Line	250.842.4640
Gray Creek	Designated Agency	Home and Community Care	250.842.5144
	Community Agency	Crisis Line	604.860.7747
	Community Agency	Crisis Line	604.860.7733
Gulf Islands	Designated Agency	Home and Community Care	1.877.820.7444 or 604.820.1166
	Designated Agency	Mental Health and Addictions	250.842.4640
	Community Agency	Crisis Line	250.842.5144
Harrison Hot Springs	Designated Agency	Home and Community Care	604.860.7747
	Designated Agency	Mental Health and Addictions	604.860.7733
	Community Agency	Crisis Line	1.877.820.7444 or 604.820.1166
Hazelton	Designated Agency	Home and Community Care	250.842.4640
	Designated Agency	Mental Health and Addictions	250.842.5144
	Community Agency	Crisis Line	604.860.7747
Hope	Designated Agency	Home and Community Care	604.860.7747
	Designated Agency	Mental Health and Addictions	604.860.7733
	Community Agency	Crisis Line	1.877.820.7444 or 604.820.1166

Helping an Adult Get Support and Reporting Abuse or Neglect

City	Type of agency	Type of Service	Phone
Houston	Designated Agency	Home and Community Care	250.845.2294
	Designated Agency	Mental Health and Addictions	250.845.5964
Hudson's Hope	Designated Agency	Home and Community Care	250.783.9991
	Designated Agency	Mental Health and Addictions	250.788.7211
Invermere	Designated Agency	Home and Community Care	250.342.2372
	Designated Agency	Home and Community Care	1.877.668.3388
Kamloops	Designated Agency	CLBC	250.377.4416
	Designated Agency	Home and Community Care	250.353.2744
Kaslo	Designated Agency	Home and Community Care	250.353.2225
	Community Agency	Crisis Line	250.364.1718
Kelowna	Designated Agency	Home and Community Care	250.990.1400
	Designated Agency	CLBC	250.712.3603
Kent	Community Agency	Crisis Line	250.763.9191
	Community Agency	Crisis Line	1.877.820.7444 or 604.820.1166
Keremeos	Designated Agency	Home and Community Care	250.295.4464
	Designated Agency	Mental Health and Addictions	250.770.3555
Kimberly	Designated Agency	Home and Community Care	250.432.2015
Kingsgate	Designated Agency	Home and Community Care	250.402.6782
	Designated Agency	Home and Community Care	250.832.3181
Kilimst	Designated Agency	Mental Health and Addictions	250.832.3181
	Designated Agency	Home and Community Care	250.227.9019
Kootenay Bay	Designated Agency	Home and Community Care	250.402.6782
Kuskoonuk	Designated Agency	Home and Community Care	604.532.6500
	Designated Agency	Mental Health and Addictions	604.514.7940
Langley	Designated Agency	CLBC	604.532.4900
	Community Agency	Crisis Line	604.951.8855

Helping an Adult Get Support and Reporting Abuse or Neglect

City	Type of agency	Type of Service	Phone
Lillooet	Designated Agency	Home and Community Care	1,877,668,3388
	Designated Agency	Home and Community Care	250,523,9414
	Designated Agency	Home and Community Care	1,877,668,3388
Maple Ridge	Designated Agency	Home and Community Care	250,997,3263 ask for Home Care Nurse
	Designated Agency	Mental Health and Addictions	250,997,6585
Maple Ridge	Designated Agency	Home and Community Care	604,476,7100
	Designated Agency	Mental Health and Addictions	604,476,7165
	Designated Agency	CLBC	604,466,7444
	Community Agency	Alouette Addictions	604,467,5179
	Community Agency	Ridge Meadows Associate for Community Living	604,467,8700
	Community Agency	Seniors Outreach	604,467,8511 x 232
Mission	Community Agency	Access Justice	604,878,7400
	Community Agency	RCMP - non-emergency	604,463,6251
	Designated Agency	Home and Community Care	250,624,7480 or 250,624,7413
Mission	Designated Agency	Mental Health and Addictions	250,569,8765
	Designated Agency	Home and Community Care	250,569,2251 x 234
Mission	Designated Agency	Mental Health and Addictions	250,569,2251 x 227
	Designated Agency	Home and Community Care	250,379,2242
Mission	Designated Agency	Home and Community Care	250,443,2100
	Designated Agency	Home and Community Care	604,814,5520
Mission	Designated Agency	Mental Health and Addictions	604,814,5600
	Community Agency	Crisis Line	1,877,820,7444 or 604,820,1166

Helping an Adult Get Support and Reporting Abuse or Neglect

City	Type of agency	Type of Service	Phone
Nakusp	Designated Agency	Home and Community Care	250.265.3608
	Community Agency	RCMP - non-emergency	250.265.3677
	Community Agency	Crisis Line	1.800.515.6999
Nanaimo	Designated Agency	Home and Community Care	250.734.4101
	Designated Agency	Mental Health and Addictions	250.755.3361
	Designated Agency	Mental Health and Addictions - Seniors Outreach	250.755.3301
	Designated Agency	CLBC	250.760.0424
	Community Agency	Crisis Line	250.754.4447
Nelson	Designated Agency	Home and Community Care	250.352.1401
	Community Agency	Crisis Line	1.800.515.6999
	Community Agency	Nelson City Police	250.354.3919
	Community Agency	RCMP - non-emergency	250.352.2156
	Community Agency	Crisis Line	250.364.1718
New Denver	Designated Agency	Home and Community Care	250.358.7804
	Community Agency	Crisis Line	1.800.515.6999
	Community Agency	RCMP - non-emergency	250.358.2222
New Westminster	Designated Agency	Home and Community Care	604.777.6700
	Designated Agency	Mental Health and Addictions	604.777.6800
	Community Agency	Crisis Line	604.540.2221
Newton	Designated Agency	Home and Community Care	604.572.5340
	Designated Agency	Community Health Centre	604.983.6740
North Shore	Designated Agency	Mental Health and Addictions	604.988.3131
	Designated Agency	CLBC	604.981.0110
	Designated Agency	Home and Community Care	250.395.7676
100 Mile House	Designated Agency	Mental Health and Addictions	250.395.7676
	Designated Agency	CLBC	250.395.5591
	Designated Agency	Home and Community Care	1.877.668.3388
Oliver	Community Agency	Crisis Line	250.453.6622
	Designated Agency	Home and Community Care	250.498.5084
Osoyoos	Designated Agency	Crisis Line	250.453.6622
	Community Agency	Home and Community Care	250.980.1400
Oyama	Designated Agency	Home and Community Care	250.980.1400
	Designated Agency	Home and Community Care	250.980.1400

Helping an Adult Get Support and Reporting Abuse or Neglect

City	Type of Agency	Type of Service	Phone
Parkville/Quilicum Beach	Designated Agency	Mental Health and Addictions	250.248.8500
	Designated Agency	Mental Health and Addictions - Seniors Outreach	250.954.3251
	Community Agency	CLBC	250.951.6002
Peachland	Community Agency	Crisis Line	250.248.3111
	Designated Agency	Home and Community Care	250.980.1400
Pemberton	Designated Agency	Home and Community Care	604.894.6939
	Community Agency	Crisis Line	1.866.872.0113
Penticton	Designated Agency	Home and Community Care	250.770.3476
	Designated Agency	CLBC	250.770.7475
	Community Agency	Crisis Line	250.493.6622
Pitt Meadows	Designated Agency	Home and Community Care	604.478.7100
	Designated Agency	Mental Health and Addictions	604.475.7165
	Community Agency	Crisis Line	604.540.2221
	Community Agency	Alouette Addictions	604.467.5179
	Community Agency	Ridge Meadows Associate for Community Living	604.467.8700
	Community Agency	Seniors Outreach	604.467.6911 x 232
Port Alberni	Community Agency	Access Justice	604.878.7400
	Community Agency	RCMP - non-emergency	604.463.6251
	Designated Agency	Mental Health and Addictions	250.724.3554
Port Clements	Designated Agency	CLBC	250.720.2570
	Community Agency	Crisis Line	250.723.4050
	Community Agency	Crisis Line	or 1.800.588.8717
Port Clements	Designated Agency	Home and Community Care	250.624.7480 or 250.624.7413
	Designated Agency	Mental Health and Addictions	250.559.8785
Port Coquitlam	Designated Agency	Home and Community Care	604.777.7300
	Designated Agency	Mental Health and Addictions	604.777.8400
	Community Agency	Crisis Line	604.540.2221
Port Hardy	Designated Agency	Home and Community Care	250.949.3423
	Designated Agency	Mental Health and Addictions	250.494.8611
	Designated Agency	CLBC	250.949.7419
	Community Agency	Crisis Line	250.949.6033 Zenith 2963

Helping an Adult Get Support and Reporting Abuse or Neglect

City	Type of agency	Type of Service	Phone
Fort McNeil	Designated Agency	Home and Community Care	250.949.3423
	Designated Agency	Mental Health and Addictions	250.565.3644
	Community Agency	Crisis Line	250.949.6033 Zenith 2983
Port Moody	Designated Agency	Home and Community Care	604.777.7300
	Designated Agency	Mental Health and Addictions	604.777.8400
	Community Agency	CLBC	604.933.2000
Powell River	Community Agency	Crisis Line	604.540.2221
	Designated Agency	Community Health Centre	604.485.3310
	Designated Agency	Mental Health and Addictions	604.485.3302
Prince George	Designated Agency	CLBC	1.868.981.0110
	Community Agency	Crisis Line	1.866.872.0113
	Designated Agency	Home and Community Care	250.565.7311
Prince Rupert	Designated Agency	Mental Health and Addictions	250.565.7417
	Designated Agency	CLBC	250.565.6904
	Community Agency	Career Sekani Family Services	250.562.3591 or 1.800.889.6855
	Community Agency	Central Interior Native Health Society	250.564.4422
	Community Agency	Crisis Line	250.563.1214
	Community Agency	RCMP - non-emergency	250.561.3300
	Community Agency	Suicide Prevention line	1.800.784.2344
	Designated Agency	Home and Community Care	250.622.6380
	Designated Agency	Mental Health and Addictions	250.626.6910
	Designated Agency	CLBC	250.624.7574
Pritchett	Community Agency	North Coast Victims' Services	250.627.7779
	Community Agency	RCMP - non-emergency	250.627.0700
	Designated Agency	Home and Community Care	250.295.4464
Queen Charlotte City	Community Agency	Crisis Line	250.493.8622
	Designated Agency	Home and Community Care	250.624.7480 or 250.624.7413
	Designated Agency	Mental Health and Addictions	250.559.8765
Quezon	Designated Agency	Home and Community Care	250.983.6850
	Designated Agency	Mental Health and Addictions	250.983.6828
	Designated Agency	CLBC	250.992.4110
	Community Agency	Crisis Line	250.992.9414

Helping an Adult Get Support and Reporting Abuse or Neglect

City	Type of agency	Type of Service	Phone
Revelstoke	Designated Agency	Home and Community Care	1.877.668.3388
	Designated Agency	CLBC	250.837.6295
	Community Agency	Crisis Line	250.837.6601
	Community Agency	Women's Shelter (24 hrs)	250.837.1111
Richmond	Community Agency	RCMP - non-emergency	250.837.5255
	Designated Agency	Community Health Centre	604.278.3361 x 4477
	Designated Agency	Mental Health and Addictions	604.273.9121
Riordan	Designated Agency	CLBC	604.660.2100
	Community Agency	Crisis Line	604.279.7070
Rock Creek	Designated Agency	Home and Community Care	250.227.9019
Salmo	Designated Agency	Home and Community Care	250.443.2100
	Designated Agency	Home and Community Care	250.352.1401
	Community Agency	Crisis Line	1.800.515.6999
Salmon Arm	Designated Agency	Home and Community Care	1.877.668.3388
	Designated Agency	CLBC	250.832.1718
	Community Agency	Crisis Line	250.833.1488
Sandspit	Designated Agency	Home and Community Care	250.624.7460 or 250.624.7413
	Designated Agency	Mental Health and Addictions	250.559.8765
Sanka	Designated Agency	Home and Community Care	250.402.6782
Sechelt	Designated Agency	Home and Community Care	604.741.0726
	Designated Agency	Mental Health and Addictions	604.885.6101
	Community Agency	Crisis Line	1.866.872.0113
Sirdar	Designated Agency	Home and Community Care	250.402.6782
Squamish	Designated Agency	Community Health Centre	604.892.2293
	Designated Agency	Mental Health and Addictions	604.892.6365 or 604.815.3447
	Designated Agency	CLBC	1.888.981.0110
	Community Agency	Crisis Line	1.866.872.0113
Slocan Valley (lower)	Designated Agency	Home and Community Care	250.352.1401

Helping an Adult Get Support and Reporting Abuse or Neglect

City	Type of agency	Type of Service	Phone
Smithers	Designated Agency	Home and Community Care	250.847.6234
	Designated Agency	Mental Health and Addictions	250.847.6405
	Designated Agency	CLBC	250.847.7780
Sparwood	Designated Agency	Home and Community Care	250.425.6212
Squamish	Designated Agency	CLBC	1.888.981.0110
	Designated Agency	Home and Community Care	250.636.2221
Stewart	Designated Agency	Mental Health and Addictions	250.636.2103
	Designated Agency	Home and Community Care	250.770.3476
Summerland	Community Agency	Crisis Line	250.493.6622
	Designated Agency	Home and Community Care	604.953.4950
Sunroy	Designated Agency	Home and Community Care	604.953.4900
	Designated Agency	Mental Health and Addictions	604.501.8310
	Community Agency	Crisis Line	604.951.8855
Tatla Lake	Designated Agency	Home and Community Care	1.877.668.3988
Terrace	Designated Agency	Home and Community Care	250.638.2272
	Designated Agency	Mental Health and Addictions	250.638.2202
	Designated Agency	CLBC	250.638.3600
Tofino	Community Agency	Crisis Line	1.800.588.8717
Trail	Designated Agency	Home and Community Care	250.364.6230
	Community Agency	RCMP - non-emergency	250.364.2588
Tsanawwassen	Designated Agency	Mental Health and Addictions	604.948.7010
	Community Agency	Crisis Line	604.279.7070
Tumbler Ridge	Designated Agency	Home and Community Care	250.242.4262
	Designated Agency	Mental Health and Addictions	250.242.5505
Ucluelet	Designated Agency	Mental Health and Addictions	250.725.1282
	Community Agency	Crisis Line	1.800.588.8717
Valemount	Designated Agency	Community Health Centre	250.566.9138
	Designated Agency	Mental Health and Addictions	250.566.9138 x 235

Helping an Adult Get Support and Reporting Abuse or Neglect

City	Type of Agency	Type of Service	Phone
Vancouver	Designated Agency	ReAd - Vancouver Coastal Health Authority	1.877.732.2899
	Designated Agency	Mental Health and Addictions - Older Adults Referral line	604.714.3765
	Designated Agency	CLBC	604.660.3323
	Community Agency	Crisis Line	604.872.3311
Vancouver - Arbutus Ridge, Dunbar/ Southlands, Kerrisdale, Kitsilano, Shaughnessy, West Point Grey, Musqueam First Nation Lands, University Endowment lands		Crisis Line	
Vancouver - Cedar Cottage, Hastings - Sunnisa, Renfrew - Collingwood	Designated Agency	Community Health Centre	604.267.2612
	Designated Agency	Mental Health and Addictions	604.873.6733
Vancouver - Downtown East Side	Designated Agency	Community Health Centre	604.872.2511
Vancouver - East	Designated Agency	Community Health Centre	604.642.5830
	Designated Agency	Mental Health and Addictions	604.215.4401
	Designated Agency	Mental Health and Addictions	604.215.4239
Vancouver - East (Commercial)			
Vancouver - Grandview, Woodlands, Commercial Drive	Designated Agency	Community Health Centre	604.269.3575
Vancouver - Killarney, Marpole, Oakridge	Designated Agency	Mental Health and Addictions	604.251.2264
	Designated Agency	Mental Health and Addictions	604.266.6124
Vancouver - Killarney, Marpole, Oakridge, Sunset, Victoria - Fraserview	Designated Agency	Community Health Centre	604.301.2252
Vancouver - Kitsilano, Fairview	Designated Agency	Mental Health and Addictions	604.736.2881
Vancouver - Mount Pleasant	Designated Agency	Mental Health and Addictions	604.872.8441
Vancouver - Mount Pleasant, Kensington, Little Mountain/ Riley Park, South Cambie	Designated Agency	Community Health Centre	604.709.6445
Vancouver - West End	Designated Agency	Mental Health and Addictions	604.687.7994
Vancouver - West End, Yaletown, Downtown Business District, Downtown South, False Creek, Kitsilano, Fairview Slopes, South Granville	Designated Agency	Community Health Centre	604.714.3433

Helping an Adult Get Support and Reporting Abuse or Neglect

City	Type of agency	Type of Service	Phone
Vancouver	Designated Agency	Home and Community Care	250.567.5994
	Designated Agency	Mental Health and Addictions	250.567.7577
Vernon	Designated Agency	Home and Community Care	250.541.2219
	Designated Agency	CLBC	250.549.5490
	Community Agency	Crisis Line	250.545.2339
Victoria	Designated Agency	Home and Community Care	250.388.2273 or 1.877.533.2273
	Designated Agency	Mental Health and Addictions	250.381.3444
	Designated Agency	Mental Health and Addictions - Seniors Outreach	250.953.3966
	Designated Agency	CLBC	250.952.4203
	Community Agency	Crisis Line	250.396.6323
	Community Agency	RCMP - non-emergency	250.656.3931
	Community Agency	Central Saanich Police	250.852.4441
	Community Agency	Peninsula Community Services	250.656.0134
West Kelowna	Designated Agency	Home and Community Care	250.980.1400
Westbank	Community Agency	Crisis Line	250.763.9191
	Designated Agency	Community Health Centre	604.932.4911
Whistler	Community Agency	Crisis Line	1.866.872.0113
	Designated Agency	Home and Community Care	604.541.6900
White Rock/South Surrey	Designated Agency	Mental Health and Addictions	604.541.8844
	Community Agency	Crisis Line	604.951.8655
Williams Lake	Designated Agency	Home and Community Care	1.877.668.3988
	Designated Agency	CLBC	250.398.4992
	Community Agency	Crisis Line	250.398.8224
Winfield	Designated Agency	Home and Community Care	250.980.1400
	Community Agency	Crisis Line	250.763.5161
Wymond	Designated Agency	Home and Community Care	250.402.6782
	Community Agency	Crisis Line	1.877.820.7444 or 604.820.1166
Yale	Designated Agency	Home and Community Care	250.402.6782
Yahk	Community Agency	Crisis Line	1.877.820.7444 or 604.820.1166
	Designated Agency	Home and Community Care	250.402.6782

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SECTIONS 52.1 – 52.5 OF THE *INDIAN ACT*: MINORS' INDIVIDUAL TRUST ACCOUNTS

The Department's role with per capita distributions and other funds held in trust for Children under age 19

The information in this document is specific to BC Region and does not apply outside of British Columbia.

When a First Nation makes a per capita distribution to its members, Aboriginal Affairs and Northern Development Canada (AANDC) may be required to deposit the funds paid to a registered Indian child under the age of 19 into an interest-earning trust account for the child.

Certain other types of funds that may be paid to a registered Indian child may also be held by AANDC in an interest-earning trust account for that child. Examples include funds inherited by a child who lives on reserve, and revenue from a registered lease of reserve land (where a child holds an interest in reserve land).

Payment before age 19

Parents and legal guardians are expected to provide for the ordinary maintenance of their children, without drawing on the child's own trust funds. In exceptional circumstances - where a parent or guardian is able to demonstrate that it is in the best interests of the child that a particular item or service be purchased, and also that the parent or guardian does not have the financial means to purchase the item or service - a portion of a minor's trust funds may be released prior to the child coming of age.

Payment at age 19

When a child turns 19, AANDC is normally required to pay out all the funds held in trust for that child in one lump sum: See section 52.3(1) of the *Indian Act*.

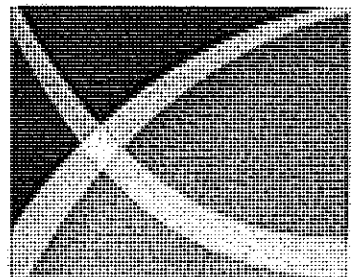
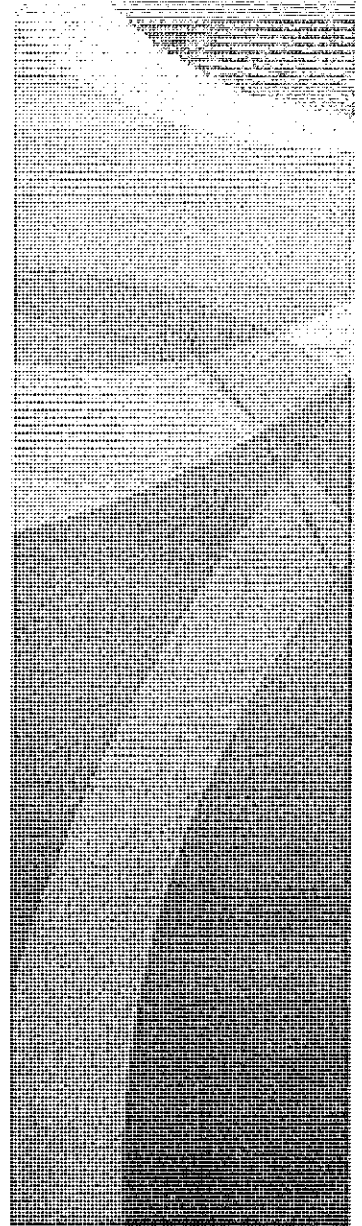
Payment in installments from age 19 to 22

Section 52.3(2) of the *Indian Act* allows AANDC to pay out a minor's trust funds in installments over a period of up to 3 years (beginning when the child turns 19) if the child's parent or other person responsible for the child's care and custody, or the band council, requests in writing that that AANDC do so. **The written request must be made before the child turns 19.** In BC, these requests should be directed to the attention of the Manager of Estates for BC Region.

For more information:

Contact the Estates Unit in Vancouver by telephone at 604.775.5100 or 1.888.917.9977 (toll free), or email us at BCestates@aandc-aadnc.gc.ca.

Estates Unit – BC Region, (rev. Oct/11)



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