

Supporting Children and
Indigenous Families in
the BC Family Law
System

Who is SCY?

- We are a provincial organization dedicated to improving the well-being of children and youth in British Columbia
- We advocate for child and youth rights
- We want to grow opportunities for children and youth to be heard and included

SCY Programs

SOCIETY FOR
children
and **youth**
OF BC

Public Awareness
Campaign

Child and Youth
Friendly Communities

Child and Youth
Legal Centre



Why Should Children
Participate in Family
Law Decisions?

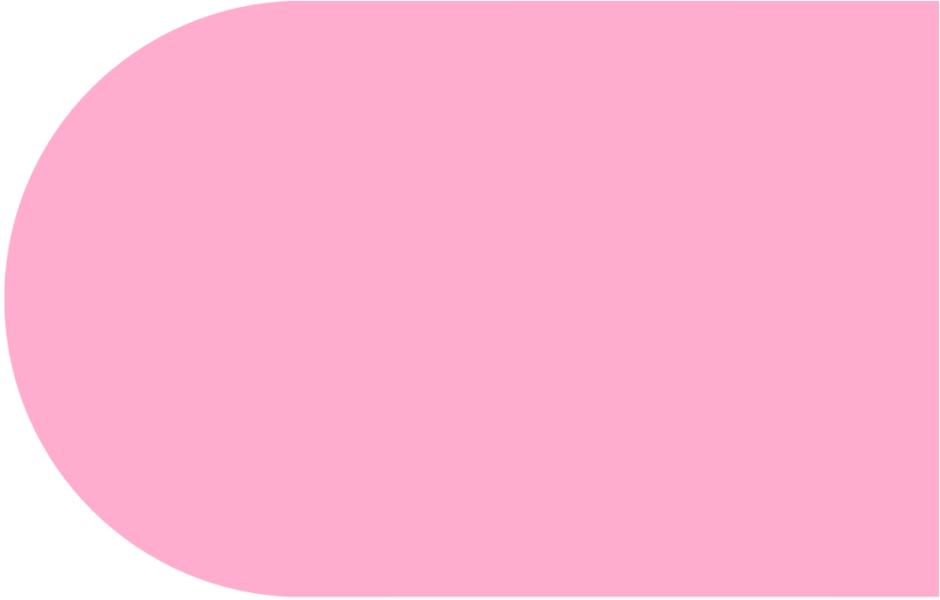
"There should always be someone listening to a child, because their voice matters."
(Youth Engagement)

All children have the legal right to be heard in family law decisions.

Presumed capacity for expressing views and preferences.

Participation is a Choice.

"Even my sister,
knows whether she
can make decisions
and she is nine.
Kids need to know
what is going on in
their lives, they
have the right to
know." (Youth
Engagement)



A child's maturity matters for how
their opinions are considered, but it
should not limit their right to
participate.

There is a direct link between
determining a child's best interests
and hearing the child's views and
taking them seriously.



Why Are Children Excluded?

Common Justifications

**Paternalistic Assumptions
often lead to a child's rights
being overlooked or
undermined**



Belief that a child doesn't have the capacity to participate.

Assumption that parents know best

Belief that it will be harmful to the child to include them

Alienated children don't know what's best for them.

Assumption #1:

Children Lack Capacity: The assumption that children lack the psychological and legal capacity to participate in family law matters.

Reality Check:

- "Things need to be explained in ways that kids can understand them."
- "My four-year-old can make decisions, he is so smart. If you expect something from someone you have to teach them how, they have to be kept in the loop." (Youth Engagement)

Assumption: #2

Parents know what is best for their children and can adequately represent their children's views.

Reality Check:

- “Professionals repeatedly act in the best interest of what the parents want.”
- “Parents do not have to live with it, yet they are the ones who make the decisions, they are deferred to.”
(Youth Engagement)

Assumption #3:

Children need to be sheltered from the turmoil of family breakdown by excluding them from the process

Reality Check:

- “When my parents split up I was given a choice to either live with my mom or my dad. And, yes, it was a much bigger decision than just who I was going to live with. It ultimately came down to me wanting to stay with my six-month-old sister. I felt so heard and grateful in being included in that decision.” (Youth Engagement)

Assumption: #4

Children who have been alienated by one of the parents should not be heard and their views should get little to no weight.

Reality Check:

- “As a child making decisions about who you live with, who you feel safe with, you don’t know a lot about technical things, you just know something is wrong, you just don’t feel safe.” (Youth Engagement)

Participation vs. Non-Participation

Children/youth have the right to express views (UNCRC).

Children cope better when their views are listened to in separation and divorce decisions.

Unheard children feel confused, overlooked, and unimportant in family law proceedings.

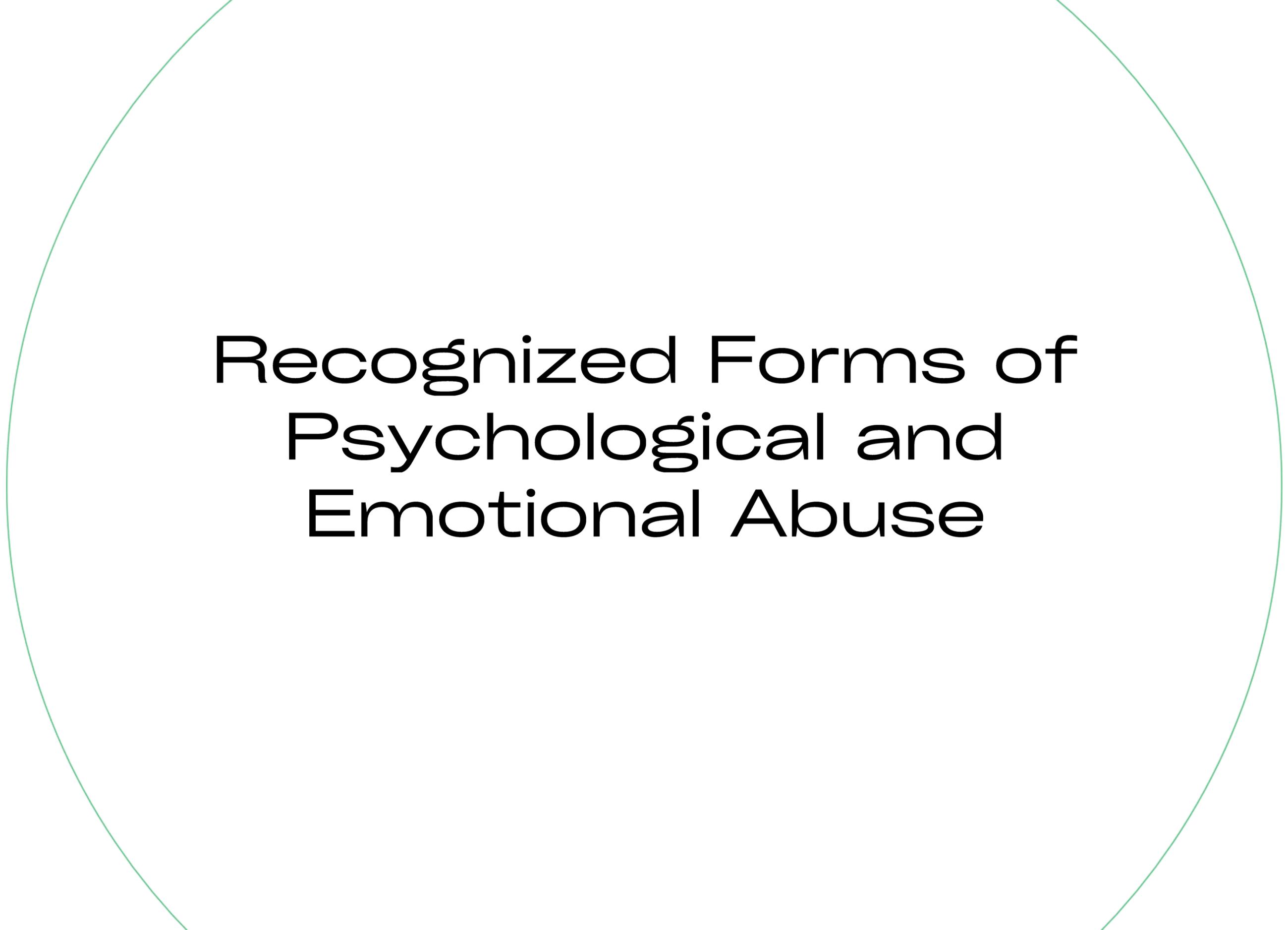


Family Violence

What is Family Violence?

FLA s 1 family violence to a family member includes

- (a) Physical abuse of a family member, including forced confinement or deprivation of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm
- (b) Sexual abuse of a family member
- (c) Attempts to physically or sexually abuse a family member
- (d) **Psychological or emotional abuse of a family member**, including
 - (i) intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property
 - (ii) unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy
 - (iii) stalking or following of the family member, and
 - (iv) intentional damage to property, and
- (e) **In the case of a child, direct or indirect exposure to family violence**



Recognized Forms of Psychological and Emotional Abuse



Emotional and Psychological Abuse

Demeaning remarks

Threats

Name-calling

Ridiculing

Repeatedly making comments that tend to manipulate, intimidate and humiliate the other person

Silent treatment to exert power over that family member

Derogatory outbursts where the abuser tends to scream, yell and swear at a family member

Repeated abusive text messages and/or emails

Creating unreasonable “rules” that the family member must follow

Other Forms of Abuse and Harassment in Domestic Settings



- Coercive & controlling behavior
- Financial abuse
- Litigation harassment
- Property destruction
- Distributing court documents to third-parties or on social media
- Children's exposure to family violence that was not directed at them

Indirect Exposure of Children to Family Violence

Witnessing the family
violence or incident

Experiencing the aftermath

Hearing about the family
violence from the other
parent/third parties

Addressing Common Myth & Stereotypes



Spouses exaggerate violence against them

People experiencing violence will report to police (who will respond appropriately)

People reporting violence are just trying to get money and property

Family violence is **ONLY** physical

Safety for Children: Key Consideration in Parenting Arrangements under Section 43

S. 43 -When making parenting arrangements, the court must consider the **best interests of the child only**. This means it must protect, to the greatest extent possible, the child's physical, psychological and emotional safety, security and wellbeing.

Parenting time via video call

Supervised visits

Non-removal orders

Conduct orders

Mandatory counselling

Mandatory treatment

Parenting coordinators

Consideration of Children's Views in Family Law

1

Family Law Act(s.37)
Courts consider children's views as part of their best interests.

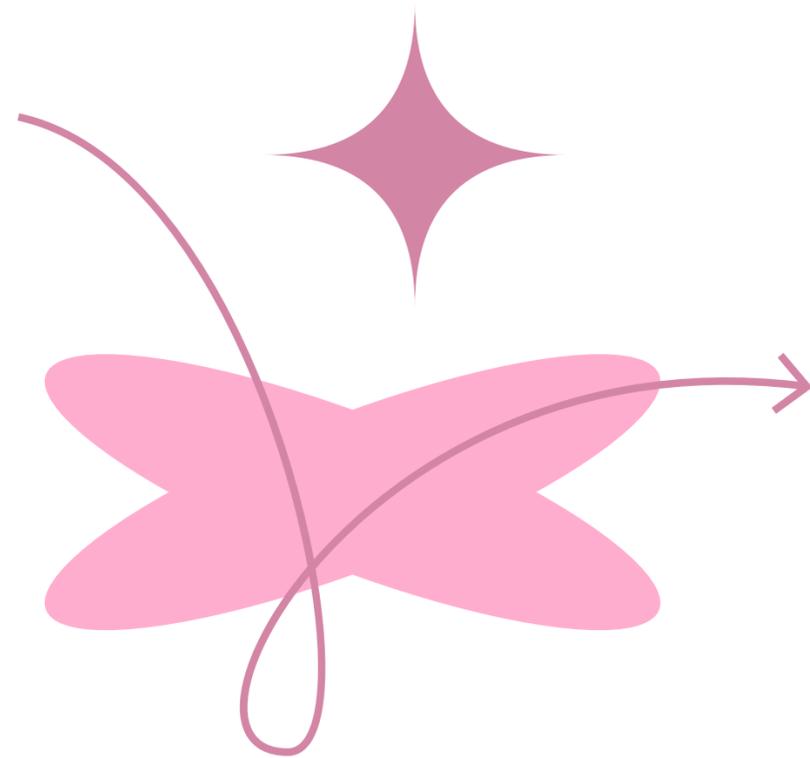
2

Divorce Act (s.16)
Courts consider child's views, weighing age and maturity.

3

Both laws require the court to consider **ONLY** the best interests of the child in making a parenting order.

Children's Ways of Participation



1

Mediation: Parents and child or their advocate meet with an independent trained person to solve family law disputes.

2

Judicial Interviews: Opportunity for children to express views directly to the court.

3

Children's Lawyer: Appointment to represent and advocate for the child's views.

4

Views of the Child Reports: Private meeting with an independent trained person to express views, shared with parents and judge.

5

Expert Reports: Court appoints an expert to assess child's views and needs, primarily a parenting assessment tool.

Other Ways Children are Heard



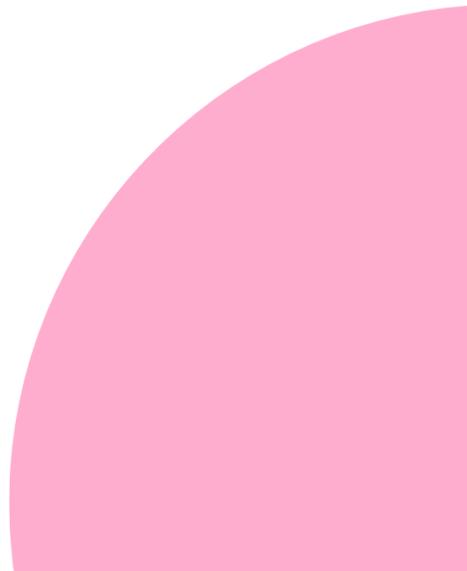
Video recordings.



Letters to the judge.



Hearsay evidence, including records.



Counselling Records and Confidentiality: What's the test and why does it matter?

Four-part test:

01 Expectation of confidentiality

02 This confidentiality must be essential to the full and satisfactory maintenance of the relationship between the parties.

03 The relation must be one that, in the opinion of the community, must be sedulously fostered.

04 The injury to the relationship if the records were disclosed must be greater than the benefit gained by the disclosure

Best Practices for Counsellors

Confidentiality

Record keeping

What to do if you are subpoenaed for court



How can you support meaningful access to justice for children?

“Multiple medical professionals and teachers knew something was wrong, but no one ever pulled the alarm.”

“There is a social worker in my school and a counsellor; when I have approached them they have little or barely any information about child lawyers and anything like that.”

“It should be in the education system, we should be given options right off of the bat. You need to start being taught in school, and then we will bring these questions home to our parents.”

(Youth Engagement)

Thank you!
Questions?

Contact us

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