

## Chapter 9

*Do not use this guide for legal advice. It provides information only, and that information only applies to British Columbia law, services, and benefits. Consult with a lawyer for advice related to your specific situation. Laws, benefits, policies, and procedures are always changing. Always double-check the information you intend to rely on with the appropriate agency or with your lawyer. Indigenous people's traditions and customary laws are outside the scope of this guide; however, we want to acknowledge those customs and traditions and emphasize that nothing in this guide should be misinterpreted as superseding or taking away from them.*

## Using the courts

Much of the information in this section comes from the resources available on the Family Law in BC website (<http://www.familylaw.lss.bc.ca>) and the BC Ministry of Attorney General's website (<http://www.gov.bc.ca/justice/>).

Some grandparents get custody and guardianship of their grandchildren easily, with helpful advice and direction from family lawyers and legal advocates. Other grandparents have frustrating experiences, receiving little help or sympathy, and have to return to court many times before their issues are resolved.

One of the biggest legal issues facing grandparents who seek custody of their grandchildren is that the court tends to favour the wishes of the birth parent. Although top consideration must be given to the best interests of the child, the court will generally presume the parents are able to determine what is in the child's best interests, and it will be the grandparent's task to disprove this. This means grandparents may have a tough case to make, especially if both parents are still in the picture.

Do not be discouraged! Many grandparents have successfully been awarded custody of their grandchildren. Remember, the chances of success depend entirely on the facts of each case. Remember that it is important to seek legal advice before going forward with a court application. Turn to Chapter 8 Getting legal help for more resources. This section will explain how the courts work and how you can prepare yourself.

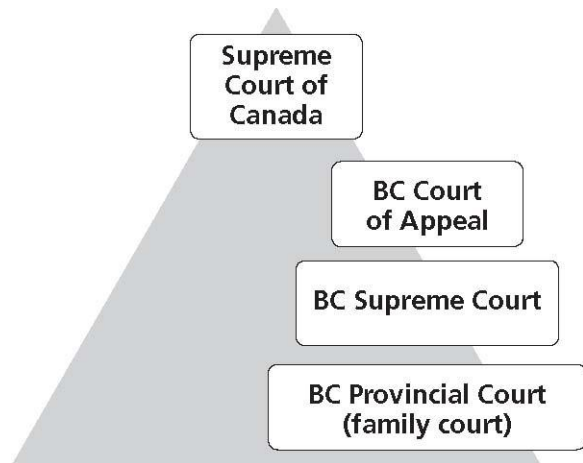
### Choosing a Court

There are three levels of court in BC: the Provincial Court, the Supreme Court, and the Court of Appeal. You can think of the courts in terms of lowest to highest, with the Provincial Court at the bottom and the Court of Appeal at the top. (To appeal something means to ask that a decision be reviewed, either because the judge did not apply the law properly in the first case or, in some limited cases such as custody orders, because the circumstances have changed. See below in this chapter for more information about appeals.) This means that a decision of the Provincial Court is appealed to the Supreme Court, and a decision of the Supreme Court is appealed to the Court of Appeal.

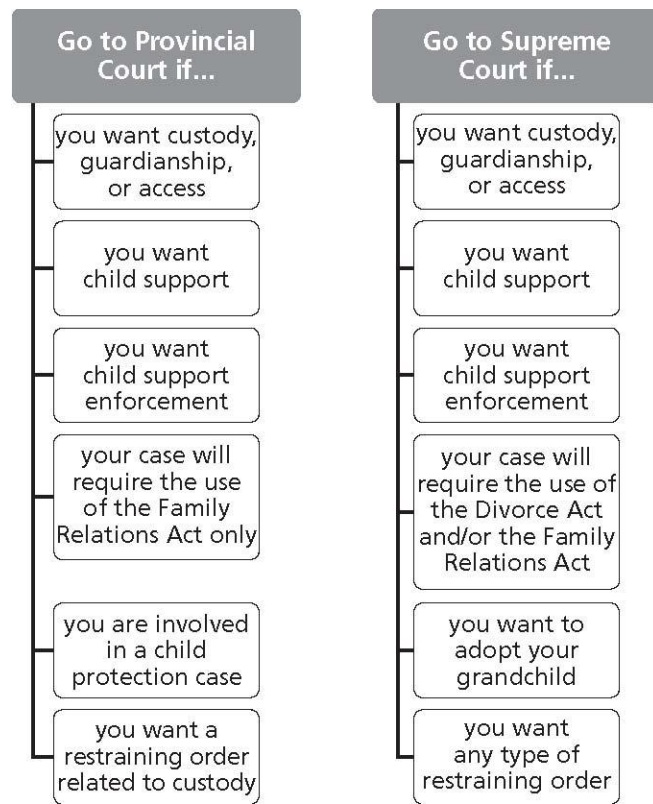
There is also the Supreme Court of Canada, which is sometimes confused with the Supreme Court of BC. The Supreme Court of Canada is the highest court in the country. It is located in

Ottawa and hears appeals from every province’s Court of Appeal, including the BC Court of Appeal. The Provincial Court (often called family court) handles most grandparents’ custody, guardianship, and access issues.

### Levels of court



Figuring out which court you should go to is an important first step in any family law process. In BC, the Supreme Court and the Provincial Court handle some of the same types of cases, but procedures, timelines, costs, and the kinds of orders you can get are different. This graphic sets out which court might be better for your situation. (It was adapted from a chart on the Family Law website, which has a series of materials on how to choose a court. For more information on the subject, go to <http://www.familylaw.lss.bc.ca> and type “Choosing a court” into the search box.)



Provincial Court has a more informal atmosphere, more court locations, less paperwork, fewer rules, no filing or trial fees, and it is more common for people to represent themselves there.

Supreme Court has a formal atmosphere, fewer court locations, more paperwork, more rules, significant filing and trial fees, and lawyers usually represent clients.

The Provincial Court handles most grandparent-raising-grandchildren issues.

The times when a grandparent would be required to go to the Supreme Court to get custody or guardianship of their grandchild would likely be:

- to appeal a Provincial Court order
- to arrange custody, guardianship, or access rights during the divorce of a grandchild's parents
- to adopt a grandchild

If you go to Supreme Court, a master may hear your case instead of a judge. A master has the same powers as a judge to make interim orders for custody, guardianship, access, and support, but cannot make final orders or divorce orders.

### **If your grandchild's parents have a divorce order**

If your grandchild's parents have a divorce order from the Supreme Court and you want to obtain custody of your grandchild after they get divorced, you should ask a lawyer how to proceed because it is not obvious which court you should go to. The different types of court orders

#### **Final order**

A final order is an order that a judge makes at the end of a trial. The order contains directions that are legally binding on both parties for the foreseeable future. Final orders are never completely final. If the circumstances change significantly, you or the other person can apply to change the order.

Because Provincial Court procedures are mostly designed for people to give their evidence out loud in front of a judge, you may get a final order as a result of your first appearance or application to the court. But to get a final order in Supreme Court, you generally have to return to court for trial after the first application.

#### **Interim order**

An **interim order** is an order made by a judge or master that is binding on both parties only temporarily – it only lasts until a final order is made at the end of the trial. This type of court order may also be described as interlocutory or temporary.

Because the courts are very busy, it often takes several months to a year – or more – to go to trial after you apply for a trial date. The interim order fills the gap by giving everyone rules to follow in the meantime. Interim orders might deal with procedure, like ordering someone to produce a financial statement, but can also deal with weightier matters, like custody

An interim order is based on limited evidence and arguments presented when the order is first requested. The interim order itself will not usually have a time limit or expiry date. It will last until you go to trial, whether that is six months or several years later.

### **Without notice (ex parte) order**

A **without notice order** (also called an **ex parte order**) is when a judge makes a decision without letting the person named in the order know that such a decision will be made. The person named in the order does not appear in court, but gets a copy of the court order after it is made.

A without notice order is only available if urgent or special circumstances exist, and can be used if you and/or your grandchild need protection. In this case, a judge can make an order without notice that the person you need protection from cannot contact you.

## **How to apply for a court order**

You can apply for a court order by filling out a court form. Provincial Court forms and instructions are available free of charge from any Provincial Court Registry.

If you want to begin or change custody, access, guardianship, or support arrangements, you might have to go to the Supreme Court. Unlike the Provincial Court, the Supreme Court charges court fees. However, if you cannot afford them, you can apply for an **indigency order**, which excuses you from paying court fees.

To find out more about **indigency orders**, see the Family Law in BC website:

<http://www.familylaw.lss.bc.ca/guides>

### **Help to fill out court forms**

The material in this section came from the Family law website's fact sheet on the subject. To read the whole fact sheet, go to <http://www.familylaw.lss.bc.ca> and type "help with forms" into the search box.

If you cannot afford a lawyer but you need help filling out court forms, there are several ways to get help. You will have to provide all the necessary information, but there are people who can sit with you while you fill out the forms. They can also check your completed forms to make sure you filled them out correctly. To get in touch with any of the first three resources, call the Legal Services Society Call Centre (Toll Free- **1-866-577-2525** ).

- **Family justice counsellors** (in Family Justice Centres across BC) – for info [http://www.familylaw.lss.bc.ca/help/who\\_JusticeCounsellors.php](http://www.familylaw.lss.bc.ca/help/who_JusticeCounsellors.php)
- **Family advice lawyers** (in family justice counsellors' offices in Kamloops, Kelowna, Prince George, Surrey, Vancouver, and Victoria) - for info [http://www.familylaw.lss.bc.ca/help/who\\_AdviceLawyers.php](http://www.familylaw.lss.bc.ca/help/who_AdviceLawyers.php)

- **Family duty counsel** (in Provincial Courts and some Supreme Courts) – for info [http://www.familylaw.lss.bc.ca/help/who\\_FamilyDutyCounsel.php](http://www.familylaw.lss.bc.ca/help/who_FamilyDutyCounsel.php)
- **BC Supreme Court Self-Help Information Centre** (a drop-in resource located in Vancouver only) <http://www.supremecourtselphelp.bc.ca>

**Free (pro bono) legal clinics across BC (for more listings see appendix):**

- Salvation Army Pro Bono Lawyer Consultant Program <http://www.probono.ca/legaladviceprograms.php>
- UBC Law Students' Legal Advice Program (<http://www.lslap.bc.ca/main/>)
- Western Canada Society to Access Justice legal clinics (<https://www.accessjustice.ca/public/clinics.asp?province=BC>)

When you fill out a court form, you will have to identify as either the **applicant** or the **respondent**. In Family Court, the applicant is the person applying for the court order, and the respondent is the person who responds to the application. In other courts, you may be called the **plaintiff** instead of the applicant, and the **defendant** instead of the respondent.

## Family court forms

Here is a list of a few family court forms you may need when using the courts:

- **Form 1** [Application to obtain an order](#)
- **Form 2** [Application to change/cancel an order](#)
- **Form 3** [Reply \(to an application\)](#)
- **Form 4** [Financial statement](#)
- **Form 15** [Subpoena \(to call a witness\)](#)
- **Form 17** [Affidavit](#)
- **Form 18** [Request](#)
- **Form 19** [Consent \(to an order or to change\)](#)

You can find a link to any of these forms and information on how to fill them out on the Family Law in BC website: <http://www.familylaw.lss.bc.ca>. [Look on the right-hand side under "Shortcuts" for the section on "Court forms."](#)

## Family Justice Registry (Rule 5) Program

Rule 5 of the Provincial Court (family) rules enables family matters to be resolved using government and community resources, along with the traditional court process, if needed. This approach has led to the creation of family justice court registries and the Family Justice Registry Program.

If you live in Kelowna, Nanaimo, Surrey or Vancouver and you file an application for custody, access, guardianship and/or support, Rule 5 of the Provincial Court rules will apply. Under Rule 5, these four sites are designated as family justice court registries and requires any applicant/respondent to meet separately with a family justice counsellor to discuss their options before being given a court date. These options may include:

- Attending court;
- Referrals to a lawyer or a child support officer;
- A Parenting After Separation program;
- Or mediation with the other parties

(See [Chapter 7](#) for more information about family justice counsellors.)

Remember that anyone can request the help of a family justice counsellor before filing an application.

## Case conference before trial

Both the Provincial Court and the Supreme Court hold case conferences. In Provincial Court, the conference is called a family case conference (see Chapter 7 for more information), and in Supreme Court, it is called a judicial case conference. The procedures for each are different, but the purpose is the same: to try to settle the case more quickly, without a full trial.

At a case conference, the judge will identify your family's issues and discuss different ways to resolve them. The meeting is confidential and informal. A case conference can save you time, money, and stress, especially if it helps you to settle your case more quickly.

Depending on your situation, you may be required to go to a case conference before your case goes to trial. If you live far away from the courthouse, you can participate by telephone.

If you have questions about case conferences, Family Justice Centres provide free information and can help you learn about the process. To find a Family Justice Centre go [to Clicklaw](#) for a list of centres (and their contact numbers) or call Service BC, toll free, at 1-800-663-7867.

## Court interpreters

If you do not speak or understand English very well, you may need an interpreter to help you understand questions in court and to make sure the court understands your responses. If you need a court interpreter, tell the court a long time before the court date. Phone the court registry where your case is being held and explain the situation. In larger cities there will be an interpreter clerk to give you information.

You will have to pay the interpreter fees yourself, at least on the day of the hearing. If the court rules in your favour and orders the other party to pay your legal costs, they will have to pay

you back for the fees. *“The court pays for interpreters only when you are in the courtroom. For anything outside the courtroom, you need to bring along a friend or family member to interpret for you, or hire a professional interpreter.”* From Justice BC website -

<http://www.justicebc.ca/en/fam/help/interpreters/cost.html>

## How to represent yourself in court

Many grandparents use either the Provincial Court or a family case conference to establish a legal agreement. This section will teach you about rules and procedures in Provincial Court so that you can prepare to represent yourself.

A court process usually begins with what is called a **first appearance hearing**, where you introduce your issue to the judge. To prepare for your first hearing, or any other hearing, the following suggestions from the Ministry of Attorney General may be helpful (for more information on representing yourself, go to <http://www.supremecourtselfhelp.bc.ca>). The [Justice Education Society](#) also has useful resources.

## Before the hearing

- 1) Re-read all the documents that you or the parent filed at the court registry as part of your application to Provincial Court.
- 2) To help organize your thoughts, write down:
  - why you are going to court
  - a list of the issues you hope to settle
  - your position on each issue
  - what you want the judge to order
- 3) Prepare a detailed outline of what you think the judge needs to know to come to a good and fair decision. (This is just for you. You will not be able to give your notes to the judge or read them out as part of your evidence. However, if you forget what you want to say, you may ask the judge if you can refer to your notes.)
- 4) Collect any other documents you think you may need in court. For example, if you are going to court to gain custody or access, you should bring any relevant documents, such as a *Parenting After Separation* certificate. Make three copies of all the documents you want to judge to see: one for you, one for the parent, and one for the judge.
- 5) If you are not comfortable speaking in English, or you communicate only in sign language, ask court staff to arrange for an interpreter well in advance of your court date.

## Calling witnesses

You cannot call witnesses for a first appearance hearing. However, if the judge decides your case should go to a trial, you may want to call witnesses to speak on your behalf. If you do so,



make sure you notify them of the court date well in advance, or ask court staff about how to arrange for a subpoena (summons to appear) if necessary.

## On the day of the hearing

- Make sure you have all the documents you need (and copies) in one neat folder or envelope.
- Dress neatly – this is one of the most important times to make a good impression.
- Bring a paper and pen so you can write down notes or questions as they occur to you.
- Arrive early – at least 15 minutes before your court appearance is scheduled.
- Find out which courtroom your case will be heard in and wait outside the door. (To find your courtroom, check the daily list posted in the lobby of the courthouse, the court registry office, or at the information desk, if there is one.)
- Turn off your cell phone, take off your hat, and throw away any chewing gum before you enter the courtroom.

## Court etiquette

### How to address the other people in the courtroom:

- Call the judge “Your Honour”
- Refer to the court clerk as “Mr. or Madam Clerk”
- Refer to the other party (the parent) as Mr., Mrs., or Ms., followed by their surname (last name).

### How to act while in court:

- Be on time. Once you are inside the court room, take a seat at the back. The court may hear several cases in one session, so you may have to wait for your case to be called.
- Stand up when the judge enters the courtroom and remain standing until the judge sits down.
- Stand whenever you are asked to speak and whenever the judge speaks to you.
- Be brief and to the point. Even though you may be emotional, try to speak calmly.
- Do not interrupt the judge or anyone else while they are speaking.
- Do not argue with the judge.
- If you do not understand a part of the proceeding, ask the judge and they will explain the procedure.



## Information to present in court

The Legal Services Society of BC has a checklist of items to include in an affidavit (a written statement used in Supreme Court) or to present aloud (in Family Court) that we thought would be useful to include here. (What follows is an excerpt; the complete resource can be found at <http://www.familylaw.lss.bc.ca>. Click on “[Fact sheets](#)” on the right-hand side, then look under “Legal system & courts.”)

The following suggestions are a starting point or general overview of the kind of information that should be given to a judge/master who is hearing a family case. You will need to adjust them to your particular circumstances.

- **Background information** of both you and the other party, like age, current job, and address, etc.
- **Role of each party** throughout your relationship. Include a summary of important responsibilities, jobs, and/or contributions of both you and the other person to the child.
- **The child’s needs.** Include details about your grandchild, such as whether he or she has problems at school, diagnosed special needs, etc. If you want custody, be sure to say that you are able to take custody of the child, and explain why you should be awarded it instead of the parent.
- **Parental responsibilities.** Include details about who did what in relation to your grandchild’s care such as: who made sure the child had good food to eat; who took the child to the doctor; and who the child is closest with. Give reasons for each detail.
- **Extended family.** It may also be important to describe how you will help your grandchild maintain relationships with other family members, especially if your grandchild is Aboriginal.
- **Finances.** Include financial details if you are applying for child support.
- **Family dynamics.** Include a summary of how well you and the other party communicate, if there have been incidents of physical or emotional abuse, and if your grandchild has been exposed to that abuse.
- **Access.** If either party is applying for access, include details about how you would like to see access arranged.
- **Other information.** Include other details important to your grandchild’s upbringing, such as religious or cultural ties and values.

If you are applying for, or responding to an application for custody or access, you may want to ask friends, neighbours, or family members to speak to the court as witnesses to support your case. In Provincial Court, you call your own witnesses.

## If you reach an agreement before the court date

If you and the parent are able to reach an agreement before your court date, you can file either a written agreement or a consent order with the court. Once the agreement is filed, the court can enforce your agreement about custody, guardianship, access, and child support.

If you and the other party reach an agreement but you already applied for an interim order, advise the judge that you both intend for the order to be final. In this case, the order can be made final by consent. If you have any questions about written agreements or consent orders, ask the staff at your local court registry office.

## Likely outcomes of a first appearance

The judge has a number of options to choose from at a first appearance hearing:

- **Family case conference:** The judge might order you and the other party to attend a family case conference.
- **Adjournment:** The judge might choose to adjourn (postpone) your case to a later date, so that you and/or the other party can consult further with your lawyers, attend a Parenting After Separation course (see page 11\_ for more information), or try mediation.
- **Consent order:** The judge might make a consent order if you and the other person agree on the application, or if you come to an agreement at the first appearance hearing or through a family case conference.
- **Interim order:** The judge might make an interim order, a short-term court order that temporarily settles issues such as custody and guardianship until a final order is made.
- **Order:** The judge might make any of a number of other court orders, ranging from an order asking one of you to produce additional documents to a final order that settles your matter (see page 106 for more information).
- **Trial preparation conference:** The judge might order you and the other party (and your lawyers, if you have them) to attend a trial preparation conference. Similar to a family case conference, this is also an informal meeting before the judge, but this time the judge will focus on making sure you and the other person are ready to present your cases at a trial.
- **Trial:** The judge might send your case to trial – either directly, without a family case conference or trial preparation conference, or after them.

## How to change or cancel a court order

When it comes to cases that involve a child, no final order is ever permanent. Either party may go back to court to ask for a final order to be changed – but only if the situation has changed significantly. If you disagree with the court order but the circumstances have not changed, you should instead appeal it (see the next page), or apply to cancel it. To change or cancel a court order, first get legal advice about how to proceed. Be aware that there are important time limits for filing an appeal.

## The “Parenting After Separation” course

*Parenting After Separation* is a free, three-hour information session for BC parents – and other family members, such as grandparents, or guardians – who are dealing with parenting and support issues. The course explains the effects of separation on separating parents and their children and demonstrates effective ways to communicate and solve problems in parenting situations. Any separating parents can choose to attend this course.

For more information, see the [information about the program](#) on the Justice Education Society website or Ministry of Justice and Ministry of Children and Family Development's [JusticeBC](#) website.

In some communities, separating couples must attend Parenting After Separation sessions before they can go to court. The course is available in many communities and can also be taken online.

For more information about the online course, see [Online Parenting After Separation](#) on the Justice Education Society website.

**Important: In urgent situations, you can apply to the court to skip or postpone this step.**

If the course is mandatory where you live, Provincial Court registry staff will give you a referral. (For a list of Court Registries go to <http://www.clicklaw.bc.ca/helpmap/service/1014>)

When you've completed the course, you'll receive a certificate of attendance that you must file with the registry before they will set a first appearance date. Both parties must attend the course on or before the first appearance date. You can choose to attend a Parenting After Separation course if you want to (and one is available in your community), even if it's not required.

**Tip: It's a good idea to find out as soon as possible if you have to go to a Parenting After Separation course – sometimes the waiting list to get into a course can be quite long.**

You don't have to attend this course if you:

- have attended the course already within the past 24 months;

- aren't fluent in any language in which the course is offered;
- live in an area where the course isn't offered and you don't have access to the Internet to take the online course; or
- can't attend because you have serious health problems.

If one of these situations applies to you, go to your court [registry](#) and ask for the exemption form you can fill out and submit instead of the certificate of attendance.

## How to appeal

An appeal is when a higher court reviews a lower court's decision to see whether the trial judge applied the law correctly when deciding a case. In other words, the appeal court does not make a decision about the facts of the case, but about whether there was a mistake in how the first judge used the law. It is not enough to appeal a decision if you are simply unhappy with it; your appeal must be based on the incorrect application of the law to your case. (It is rare, but you can also sometimes appeal because new evidence has come to light, or because the circumstances surrounding the original order have changed – but courts seldom allow it.)

Where you can appeal a court order depends on which court made the original order. See the chart below to figure out whether you can appeal your order, and if so, where the appeal will be heard.

Type of order	Where to appeal
Provincial Court, interim order	Under FRA: cannot appeal Under CFCSA: Supreme Court
Provincial Court, final order	Supreme Court
Supreme Court, final or interim order	Court of Appeal
Court of Appeal	Supreme Court of Canada (with permission)

If the appeal judge finds that the first judge who made the order made an error that affected the final result in your case, they may set aside (cancel) the order, make a new order, or send the case back to the first court for another hearing. If the appeal judge finds that the first judge did not make an error, the original order remains in place. Most often, the original court order also remains in effect while your appeal is being heard, though there are exceptions, and you can ask a lawyer about whether they would apply to your case.

You should be aware that an appeal can be complicated, time consuming, and expensive, and there is no guarantee that the judge will decide in your favour. Before you begin an appeal, you should talk to a lawyer to find out if it is worth the time and money it will take.

## Important time limits

There are important time limits for appeals and you must file your appeal before the time limit expires. If you decide that you want to appeal an order, do not wait until the last minute. There are strict rules about how the days are counted for these time limits. You should get legal advice as soon as you can.

## Useful resources

- **Legal Services Society Family Law website** - <http://www.familylaw.lss.bc.ca>
- **Justice Centres and Counsellors (Ministry of Attorney General)** - <http://www.justicebc.ca/en/fam/index.html>
- **JP Boyd’s BC Family Law Resource** - <http://wiki.clicklaw.bc.ca/index.php/Jpboyd>
- **The Justice Education Society** Provides resource guides on how to represent yourself in court. - <http://www.justiceeducation.ca/>
- **Ministry of Attorney General (Justice BC – Family Justice)** - <http://www.justicebc.ca/en/fam/index.html>
- **Service BC**  
Call Service BC to find out more about the services mentioned in this chapter. You can also ask to be transferred to another BC government service provider if you do not know the number or to avoid having to pay long distance charges for the call.

**Phone:** In Victoria: 250-387-6121 In Vancouver: 604-660-2421 Toll Free: 1-800-663-7867  
**Telephone Device for the Deaf (TDD):** Vancouver: 604-775-0303 Toll Free 1-800-661-8773  
**Website:** <http://www.servicebc.gov.bc.ca>

- **Dial-A-Law**  
Listen to a series of audio clips on different legal topics, including how to represent yourself in court.

**Phone:** 1-800-565-5297 (toll-free)  
**Website:** <http://www.dialalaw.org>

*This Legal Guide will be updated regularly. We are counting on readers to alert us to any errors, omissions or unclear content. Please send your feedback to “Communications” via: [office@parentsupportbc.ca](mailto:office@parentsupportbc.ca).*