Family Law Act Modernization Project:

Care of and Time with Children & Protection from Family Violence

Discussion Paper – Chapter 1: Guardianship, Parenting Arrangements & Contact

January 2024

This paper addresses issues that arise under Part 4 – *Care of and Time with Children* as well as protection from family violence under the *Family Law Act* (FLA) and was created by the BC Ministry of Attorney General's Family Policy, Legislation, and Transformation Division as part of an on-going project to review and modernize the FLA. The FLA modernization project is not an overhaul of the Act but rather is intended to respond to issues that have emerged since the Act was introduced and respond to case law.

The ministry invites you to participate in the project by reviewing this paper and providing feedback. Your feedback will be used in the development of recommendations for changes. The ministry will assume that comments received are not confidential and that respondents consent to the ministry attributing their comments to them and to the release or publication of their submissions. Any requests for confidentiality or anonymity, must be clearly marked and will be respected to the extent permitted by freedom of information legislation. Please note that there will not be a reply to submissions.

This paper is organized in chapters, with each chapter addressing a different family law topic. You may respond to questions throughout the paper or provide feedback only on those topics you choose.

You can submit your comments by regular mail or email to the following addresses below until **March 31st, 2024**.

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Chapter 1 : Guardianship, Parenting Arrangements & Contact

Introduction

Phase 2 of the *Family Law Act* (FLA) Modernization Project includes a review of the provisions in the FLA under Part 4 – *Care of and Time with Children* that are related to guardianship, parenting arrangements and contact with a child. Most of the provisions concerning responsibility for and spending time with a child were substantially reformed when the FLA was implemented, not only replacing the old custody and access terminology but fundamentally shifting the way we think about responsibility for children. This project is an opportunity to consider whether those reforms have been effective, or whether certain sections should be amended to make them clearer or to better accommodate the needs and diverse structures of all families in BC.

Early engagement with people with lived experiences, lawyers, and advocates identified the following issues that need to be reviewed in the FLA Modernization Project:

- Basis for establishing guardianship as a child's parent (s.39)
    - A parent who has lived with the child, or
    - A parent who has never lived with the child but has regularly cared for the child, or
    - A parent who has never lived with the child but is the child's guardian through an agreement with the child's other guardian(s);
- Whether non-parents should be able to become guardians by agreement (s.39(3)(b));
- Recognition of kinship care and customary adoption;
- Issues related to applications for a court order appointing a guardian (s.51);
- Issues related to applications for a court order terminating guardianship (s.51);
- Issues related to appointing a guardian for a child in the event the child's guardian dies (s.53);
- Issues related to appointing a stand-by guardian when a child's guardian is facing terminal illness or permanent mental capacity (s.54);
- Issues related to the temporary exercise of parental responsibilities (s.43(2));
- Issues related to the allocation of parental responsibilities (s.40);
- Issues related to contact;
- Any additional issues related to guardianship, parenting arrangements and contact with a child as addressed in the FLA.

Guardianship

Parent of a Child

Under the FLA, only a child's guardians may have parenting time or parental responsibilities. In most cases, a child's parents are also their guardians. However, if a parent has never lived with or regularly cared for the child, they will not be the child's guardian without an agreement or court order appointing them as a guardian. Infrequently, a parent who would otherwise be a child's guardian will agree they will not assume a guardianship role. The FLA also authorizes the court, upon application by a guardian, to terminate a person's guardianship if that is in the best interests of the child. Case law has referred to terminating a parent's guardianship as "draconian" and courts have generally ruled that

"terminating guardianship of a parent should only occur in the most serious circumstances and only where there are no other means of protecting the best interests of the children."[1]

Parents are Guardians - Section 39(1)

The objective of section 39 is to establish that the parents of a child are the child's default guardians. Subsection (1) states that, "While a child's parents are living together and after the child's parent separate, each parent of the child is the child's guardian." This wording seems to assume a nuclear family, where a child's parents live together as a couple, separating upon the breakdown of their relationship. It does not clearly address situations where a child is born to a single parent or to parents that have never lived together. Case law has weighed in and clarified that a single parent – as long as they lived with the child – is the child's guardian under 39(1). However, there are situations where a child requires a guardian to make medical or other decisions before a parent has lived with the child (e.g., medical decisions needed shortly after the child is born). Is a parent the guardian of their newborn child for the purposes of matters that fall under the FLA, or child protection proceedings under the *Child, Family and Community Services Act*,[2] even when the child is still in the hospital? Although the courts have found children's parents to be their guardians in these situations, the language could be clarified to prevent the legislation from being read to permit a child being born without a legal guardian.

When Parents are Not Guardians - Section 39(2) – (4)

What is clear under the FLA is that parents are not automatically guardians in all situations. To establish guardianship of their child, a parent must have lived with or regularly cared for the child.[3] The meaning of "regularly cared for" is not set out in the legislation and has been the subject of some debate in the case law. Disputes typically arise in situations where a child is born as the result of a dating relationship, the infant resides with the birth parent and the other parent is trying to establish guardianship after having limited time with the child. A notable case that addressed the meaning of regular care was *AAAM v British Columbia (Children and Family Development)*. In that case the British Columbia Court of Appeal held that the intention of a parent to regularly care for a child was enough to cause a presumption of guardianship if the actions of others have prevented the parent from exercising that intention.[4] More specifically, the court defined regular care as "a parent who has demonstrated a continuing willingness to provide for the child's ongoing needs and a record of 'usually' or 'normally' doing so in fact."[5]

Although that precedent remains, most subsequent cases assess the actions of the parent to determine whether they meet a standard of regular care. Although regular care is more than just visiting or playing together, it has still been described as "a relatively low threshold of ordinary care."[6] Despite the case law suggesting that this is a very low bar to meet, non-residential parents argue it is unfair to require them to prove they have met a standard of care or that it is in their child's best interests for them to be

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[1] *RF v TM*, 2022 BCPC 215 (CanLII) at para 24.
[2] *Child, Family and Community Services Act*, RSBC 1996, c 46 [CFCSA].
[3] *Family Law Act*, SBC 2011, c 25, s 39(3)(c) [FLA].
[4] *AAAM v British Columbia (Children and Family Development)*, 2015 BCCA 220.
[5] *Ibid* at para 63.
[6] *LP v AE*, 2021 BCPC 281 (CanLII) at para 92.

a guardian when this is not required of the parent whom the child lives with.[7] The opposing argument is that a parent who has had minimal time and care of a child should not automatically be a guardian without demonstrating this is in the child's best interests. If the FLA is changed to make all parents automatically guardians, even in situations where a parent has never lived with or regularly cared for a child, the onus would shift and require the parent predominantly responsible for the child to apply for an order limiting the other parent's parental responsibilities, or terminating their guardianship if that was in fact in the child's best interests. Some feel this would be an unfair burden in cases where one parent has chosen not to be involved in the child's life.

If a parent is not a guardian by virtue of having lived with or had the opportunity/chosen to regularly care for their child, they may obtain guardianship under section 39(3)(b), "if the parent and all of the child's guardians make an agreement providing that the parent is also a guardian." Under the current provisions, only a parent may become a guardian by agreement. Any other person who wishes to become a child's guardian must apply for a court order appointing them as guardian, even if the child's parent(s)/guardian(s) are in agreement. An application for a court order appointing a person as guardian of a child is made under section 51 of the FLA, either by a non-parent or by a parent who is not a guardian through one of the other provisions in the FLA (i.e. as result of having lived with or regularly cared for their child or by agreement).

Although this does not appear to have been an issue in case law yet, the FLA does not require that the agreement be in writing.

Discussion Questions:

1-1. Should the FLA continue to require a person who is a parent of a child to meet residency or care requirements to be considered the child's guardian without an agreement or court order (i.e., by default)? Or,

(a) Should the requirement to have lived with or regularly cared for the child be changed to some other requirement?

(b) Should the requirements be removed so that a parent of a child is also a guardian under Part 4 unless there is an agreement or court order otherwise?

Persons Other than a Child's Parent

There is no limitation on who may be a child's guardian, however under the FLA a person who is not the child's parent may only acquire guardianship by court order under section 51, and the decision must be in the child's best interests (this does not apply to testamentary or stand-by guardianship as discussed below). In some cases, another person (e.g., a relative or family friend) will apply under section 51 to be a child's guardian in addition to, or in place of, a parent.

Early feedback has suggested that consideration should be given to expanding the ability to enter into an agreement for guardianship to include someone other than a child's parent. Those in favour of expanding guardianship agreements in situations where all of the children's guardians agree argue that

[7] In many cases, the non-residential parent is the biological father of a child that was conceived during a casual or dating relationship. The biological mother is the primary caregiver, with whom the child lives and it is not uncommon for the parents to disagree on how much time and responsibility the biological father will have with respect to the child, especially during infancy.

a child's guardians are best positioned to make this decision and should be able to do so without the procedural impediments imposed by court applications. They feel expanding the uses of guardianship agreements will improve certainty for some children and help to ensure that people taking on the role of guardian for a child have the recognition and documentation needed to carry out their parental responsibilities towards the child, without a cumbersome and sometimes costly and lengthy legal process.

Guardianship applications under section 51 of the FLA can occur when there are concurrent child protection concerns or proceedings under the *Child, Family and Community Services Act*.[8] In some of those cases, social workers may suggest a relative or another suitable person apply under section 51 of the FLA for a guardianship order to prevent the child going into or remaining in the care of the Director. In other situations, the child's parent(s)/guardian(s) may identify it would be in the child's best interests to have the support of another guardian. Section 51(2) requires an applicant for guardianship to provide evidence to the court about the best interests of the child, in accordance with the rules of court. Currently, both the *Provincial Court Family Rules* and the *Supreme Court Family Rules* require applying for criminal record, child protection, and protection order registry checks as part of the evidence that must be filed.[9] Feedback suggests this is daunting for some people, particularly those without the support of a lawyer or advocate.

On the other hand, the reason for requiring a criminal records check, a check for child protection involvement, and a protection order registry check is to ensure that this information is available to the court and considered as part of the best interests of the child analysis. At the time the FLA was developed, the then Representative for Children and Youth strongly encouraged including these checks as a way to improve children's safety when a non-parent was being granted guardianship of a child. These recommendations followed changes made to Ontario's *Children's Law Reform Act* in 2009, requiring persons other than parents who were applying for a parenting order to file a criminal records check and a child protection records check.[10] Expanding the use of guardianship agreements would remove these checks and the general oversight of the court, which was intended to ensure children are protected and that any guardianship appointments are in their best interests. Early feedback from those opposed to expanding the use of guardianship agreements raised concerns about the potential for a person in a relationship with abuse or power imbalances to be coerced into agreeing to another person becoming a guardian. As described below however, there are no similar pre-emptive oversight requirements for testamentary or standby guardians.

A further requirement under section 51(4) is that the court cannot appoint a person other than the child's parent as a guardian of a child who is 12 years or older without the child's written approval, unless the court is satisfied the appointment is in the child's best interests. The FLA does not provide any details about what constitutes written approval and there is no prescribed form. Although this allows for flexibility, families may be uncertain how to provide the approval to the court or be unaware the requirement exists. There have been very few reported cases that deal with section 51(4). The requirement for written approval was raised in *KRP v OMP*,[11] where a stepparent who had acted in the place of a parent to a 14-year-old since infancy applied for guardianship. The application was denied on

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[8] CFCSA, *supra* note 2.

[9] *Provincial Court Family Rules*, BC Reg 120/2020, rule 26(1); *Supreme Court Family Rules*, BC Reg 169/2009, rule 15-2.1(1), Appendix A – Form F101.

[10] *Children's Law Reform Act*, RSO 1990, c C12, ss 21.1—21.2.

[11] *KRP v OMP*, 2022 BCSC 37 (CanLII).

the basis that there was no written approval from the child before the court, and there was evidence that since separating from the child's parent, the stepparent's relationship with the child had deteriorated. The court found that it was not in the child's best interests to make a guardianship order without the child's approval in this case but did make an order for contact.

Discussion Questions:

1-2. Should the FLA allow the use of written agreements to appoint someone other than a parent as a child's guardian in situations where all of the child's guardians are in agreement?

1-3. Are there any issues or concerns about the requirement that a child 12 years of age or older approve an order for guardianship of a person who is not their parent?

Testamentary Guardianship

A testamentary guardian is someone who has been appointed by a child's guardian under section 53 of the FLA to take on their guardianship responsibilities upon the guardian's death. The FLA specifies that the appointment may be made using a will that meets the requirements in the *Wills, Estates and Succession Act*[12] or using the Appointment of Standby or Testamentary Guardian form.[13] This form was developed when the FLA was implemented to address the concern that not having a will should not be an impediment to appointing a testamentary guardian. The form is simple and can be completed and executed quickly if need be. The FLA also specifies what happens if a guardian dies without having appointed a testamentary guardian.[14] The parental responsibilities of the deceased guardian pass to the surviving guardian(s) if they are also a parent of the child. If there is a surviving parent who is not also a guardian, they will only become a guardian if they have been appointed through a will or the Appointment of Standby or Testamentary Guardian form, or they apply under section 51 for a court order appointing them as guardian.

One issue that has been raised is the difficulty that testamentary guardians sometimes experience having third parties recognize their guardianship status. One person who had been appointed in a will as testamentary guardian for their nephew described having to carry around death certificates and wills for each of his parents in order to do things like enrol the child in school. It was difficult to apply for a passport or access the child's medical records. It has been suggested that there should be a simple, inexpensive process to apply for a declaration of guardianship in cases like these, without requiring a court appearance. A court order recognizing the testamentary guardian's status may make it easier for testamentary guardians to exercise parental responsibilities. Developing a court process to recognize testamentary guardianship would need to consider whether to require criminal records, child protection and protection order registry checks as required in a section 51 guardianship application.

Stand-by Guardianship

Under section 55 of the FLA, a child's guardian who is facing a terminal illness or permanent mental incapacity (e.g., terminal cancer or dementia) can use the Appointment of Standby or Testamentary Guardian form to appoint a standby guardian to carry out the guardian's parental responsibilities when the guardian is no longer able to do so. The form specifies that the appointment will take effect when

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[12] *Wills, Estates and Succession Act*, SBC 2009, c 13 [WESA].
[13] Family Law Act Regulation, BC Reg 347/2012, Appendix A, Form 2 (Family law Act Regulation, section 23.
[14] FLA, *supra* note 3, s 53(3).

the guardian is unable to care for the child due to their illness or incapacity and gives the option of having a specified person (e.g., a particular doctor) certify this condition is met. The form includes a reminder that the standby guardian must consult with the appointing guardian as much as possible about the care and upbringing of the child. The form also states that the standby guardian will have the same parental responsibilities as the appointing guardian unless restrictions are set out in the form. A standby guardian will continue as the child's guardian after the appointing guardian dies, unless the appointment provides otherwise, or the appointing guardian revokes the appointment while still capable.

The standby guardianship provisions introduced in the FLA were recommended by the British Columbia Law Institute in a 2004 report, *Report on Appointing a Guardian and Standby Guardian*.[15] The report describes standby guardianship legislation having developed in the United States in response to children being orphaned by the AIDS crisis. The objective of standby guardianship is to facilitate permanency planning that is in a child's best interests and create a constant caregiving bridge for the child in the time between their guardian's illness and death.

There has been very little mention of standby guardianship in case law. One of the few reported decisions is *GWM v WCM*.[16] This was a high conflict case involving family violence directed towards both the mother and the children. The mother had a serious medical condition and sought to have the father's guardianship terminated, rather than address concerns about the father's parenting ability by limiting parental responsibilities and parenting time. Under section 53(3), if a child's guardian dies and there is a surviving guardian who is also the child's parent, the surviving guardian has all parental responsibilities for the child unless an order provides otherwise. In this case, the judge terminated the father's guardianship, stating that in view of her advancing illness the mother could now protect her children in the event of her incapacity or death by appointing someone under the standby and testamentary guardianship provisions. There has also been little feedback on the standby guardianship provisions.

Discussion Questions:

1-4. Are there any issues or concerns regarding the standby guardianship provisions?

1-5. Are there any issues or concerns regarding the testamentary guardianship provisions?

1-6. Are there any issues or concerns regarding the Appointment of Standby or Testamentary Guardian form?

1-7. Should there be an administrative court process to recognize standby guardians and/or testamentary guardians, i.e., to provide a declaration or formal recognition of guardianship?

Temporary Exercise of Parental Responsibilities

Section 43(2) allows a guardian to, in writing, authorize another person to exercise one or more section 41 parental responsibilities on their behalf on a temporary basis because the guardian is "unable" to do so. This provision was added to the FLA as a way for guardians to enable another person to care for and

[15] British Columbia Law Institute, *Report on Appointing a Guardian and Standby Guardian* (British Columbia Law Institute, 2004) 2004 CanLIIDocs 211.
[16] *GWM v WCM*, 2015 BCSC 1624 (CanLII).

make decisions about their child for a period of time. For example, a parent who is the primary caregiver for their child and is also employed in the armed forces may need to leave their child with a relative while they are deployed on a ship or in a combat zone. The relative would need the authority to make day-to-day and emergency decisions for the child. A similar need may arise if either the parent or the child will be living elsewhere for a period of time to attend school or training, or if the parent will be temporarily unable to make decisions for the child due to surgery or medical treatment. When written authorization is given under section 43(2), the parent or guardian does not give up their role as guardian or their ability to make decisions for the child. Similarly, the person given authority does not become a guardian, they are simply able to make certain types of decisions on behalf of the guardian while the guardian cannot do so themselves.

The parental responsibilities under section 41 that can temporarily be given to another person include:

(a) making day-to-day decisions affecting the child and having day-to-day care, control and supervision of the child;
(c) making decisions respecting with whom the child will live and associate;
(d) making decisions respecting the child's education and participation in extracurricular activities, including the nature, extent and location;
(f) subject to section 17 of the *Infants Act*, giving, refusing or withdrawing consent to medical, dental and other health-related treatments for the child;
(g) applying for a passport, licence, permit, benefit, privilege or other thing for the child;
(h) giving, refusing or withdrawing consent for the child, if consent is required;
(i) receiving and responding to any notice that a parent or guardian is entitled or required by law to receive;
(j) requesting and receiving from third parties health, education or other information respecting the child;
(l) exercising any other responsibilities reasonably necessary to nurture the child's development.

The objectives underlying this section may be better understood by examining the parental responsibilities that are **not** included in section 43(2). The section 41 parental responsibilities that a guardian cannot authorize someone else to exercise on their behalf are responsibilities for longer-term matters, which should not need to be exercised during the temporary absence of a guardian. Those specifically excluded are:

(b) making decisions respecting where the child will reside;…
(e) making decisions respecting the child's cultural, linguistic, religious and spiritual upbringing and heritage, including, if the child is an Indigenous child, the child's Indigenous identity;…
(k) subject to any applicable provincial legislation,
    (i) starting, defending, compromising or settling any proceeding relating to the child, and
    (ii) identifying, advancing and protecting the child's legal and financial interests.

There has been little case law on section 43(2) to date. One of the few cases to consider section 43(2) is *FKL v DMAT*,[17] where the court considered the provision in the context of a relocation case. The mother wished to move with the child. The father opposed the move, however if the child were to live primarily

[17] *FKL v DMAT*, 2023 BCSC 1535 (CanLII).

with him, they would be left in the care of a stepparent for two-week periods while the father travelled for work. The court discussed section 43(2) and found it could be used to delegate parental responsibilities to someone serving as a stepparent while the parent was absent, including in situations where the absences were regular and predictable (e.g., shift work away from home). The court was tasked with determining "the relative abilities of the parties to exercise their responsibilities for the day-to-day care, control, and supervision of their child under the alternative residence arrangements that are under consideration, and the degree to which, relative to the other factors enumerated in s. 37(2) and any other relevant circumstances, this impacts the child's best interests."[18] On the facts of the case, the court found it was in the child's best interests to reside with the father rather than relocate with the mother, and the father could give written authorization to the stepparent to exercise certain parental responsibilities while he was working away from home, with a copy of the authorization to be provided to the mother.

Some feedback has suggested the intention underlying section 43(2) is not always clear. There have been some instances where people have misunderstood section 43(2) as conveying "temporary guardianship." Section 43(2) is not an appropriate mechanism to use in a situation where there are child protection concerns such that the child's parent or guardian should not have responsibility for making decisions for the child. It does not terminate the status of the existing guardian, who would be able to "override" any decision made by the person authorized to make decisions on their behalf or revoke the authorization at any time.

There is no mention in section 43(2) about the child's other guardians and whether they must agree, or whether they would have any ability to interfere with a section 43(2) authorization. Can a parent or guardian authorize another person to exercise certain parental responsibilities under section 43(2) without the agreement of the child's other guardian(s)? This is not a requirement specified in the legislation, and the court in *FKL v DMAT* did not suggest agreement was needed, although the court did suggest providing a copy of the written authorization to the other guardian(s).

Currently, there are no prescribed forms that a guardian can use to authorize another person to exercise parental responsibilities on their behalf. A form may make it easier for families to become aware of and understand how a guardian can authorize another person to exercise their parental responsibilities.

Kinship Care

While Western society regards parents as having primary responsibility for their children, Indigenous (First Nations, Inuit, and Métis) cultures and many other cultures around the world, have a wholistic view of families as interconnected networks. They see children as the responsibility not just of the parents, but of the extended family and the entire community. A communal approach to child-rearing instills a sense of belonging and ensures that the wisdom and values of the community endure across generations.[19]

For example, Islamic law recognizes a type of long-term legal guardianship known as kafala. Kafala aims to protect children who are either abandoned or whose parents are unable to care for them.[20]

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[18] *Ibid* at para 31.

[19] Lara di Tomasso & Sandrina de Finney, "A discussion paper on Indigenous custom adoption–Part 2: Honouring our caretaking traditions" (2015) 10:1 First Peoples Child & Family Review 19.

[20] Ray Jureidini & Said Fares Hassan, *The Islamic Principle of Kafala as Applied to Migrant Workers: Traditional Continuity and Reform*, In Migration and Islamic Ethics (Leiden: Brill, 2019).

Extended family members as well as others who may not have a biological connection to the child may assume care of the child. In some countries, kafala has become a legal framework for granting guardianship rights over children who are not biologically related to the guardian.[21] This is important as Islamic law does not allow an adoption that would sever the legal rights of the parent. Instead, kafala comes to an end when the child reaches the age of majority (much like guardianship) unless the parents have revoked it. These arrangements can encompass orphaned or abandoned children, as well as cases where individuals voluntarily assume guardianship of children due to various reasons, such as family circumstances or the inability of biological parents to fulfill their caregiving duties.[22]

Kinship care is also deeply rooted in Chinese traditional values and familial relationships. In China this usually involves the care and upbringing of children by extended family members, such as grandparents, aunts, uncles, or older siblings, when the parents are unable to fulfill their caregiving responsibilities.[23] Kinship care reflects the significance of family bonds, duty, and respect in Chinese society, and it has been an essential part of the social fabric for centuries.[24]

The Islamic and Chinese traditions described above are only two examples among many that are found in cultures around the world. The FLA does not currently recognize kinship care or customary adoption arrangements that may create roles analogous to what the FLA describes as a "guardian" or a "parent." As discussed directly below, this issue has been raised particularly in the context of Indigenous traditions and practices.

Indigenous Considerations on Kinship Care and Customary Adoption – What We Heard

Community, environmental and spiritual connectedness are all fundamental to Indigenous identity. This is why Indigenous traditions of caregiving emphasize maintaining these connections and building a web of relationships around a child rather than severing a child's relationships and removing them from family, the land, community, and culture. "Kinship care refers to the practice of extended family and community members caring for children until parents are able to assume or resume their role as primary caregiver (First Nations Child & Family Caring Society (FNCFCS), 2019). Customary adoption refers to 'a complex institution by which a variety of alternative parenting arrangements, permanent or temporary, may be put in place to address the needs of children and families in Aboriginal communities' (Trerise, 2011, p. 2)."[25]

Although there is currently no recognition of Indigenous kinship care or customary adoption in the FLA, these concepts are beginning to be recognized in Canadian child protection legislation. Bill C-92 – *An Act respecting First Nations, Inuit and Metis children, youth and families*[26] came into effect January 1, 2020. The Act defines family in clause 1 to include "a person whom a child considers to be a close relative or whom the Indigenous group, community or people to which the child belongs considers, in accordance

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[21] *Ibid*.
[22] *Ibid*.
[23] Wenting You, "Parent-Child Relationship in the Civil Code of China" (2023) 12:1 Laws 1, online (2023 CanLIIDocs 6).
[24] *Ibid*.
[25] Jessica Ball and Annika Benoit-Jansson, "Promoting Cultural Connectedness Through Indigenous-led Child and Family Services: A Critical Review with a Focus on Canada" (2023) 18:1 First Peoples Child and Family Review 34 at 40.
[26] Bill C-92, *An Act respecting First Nations, Inuit and Metis children, youth and families*, 1st Sess, 42nd Parl, 2019 (assented to 21 June 2019), SC 2019, c 24.

with the customs or traditions or customary adoption practices of that Indigenous group, community or people, to be a close relative of the child." Clause 16 of the Act establishes a priority list of people that are to be considered when determining where a child should be placed for care. The child's parent is the top choice, followed by another adult member of the child's family, an adult who belongs to the same Indigenous group or community, and so on. Clause 16(2.1) goes on to clarify that a decision about placing a child "must take into account the customs and traditions of Indigenous peoples such as with regards to customary adoption." British Columbia's *Child Family and Community Service Act* states in the preamble at section 2(e) that "kinship ties and a child's attachment to the extended family should be preserved if possible." [27]

In speaking with Indigenous people with lived experience, we heard that Indigenous children are often cared for by extended family members or other people with close relationships to the family. Caregivers need to be recognized as having authority to make decisions for the child without having to go to court. The circumstances when agreements can be used need to be expanded, and guardians need the ability to temporarily give others the ability to make important decisions for the child. Guardianship arrangements should be recognized as needing to change over time in some cases, rather than being considered static and permanent. Further, there should be recognition of Indigenous documentation concerning guardianship, like band affidavits.[28]

Would authorizing another person to exercise parental responsibilities on behalf of the child's guardian under section 43(2) be one way to recognize a kinship care arrangement for an Indigenous child? The mechanism is informal, requiring only that the child's guardian set out in writing who is authorized, and which parental responsibilities they may exercise. There is no court application required, which makes the process easier to use. It may also fit with the intentions of the parties in some kinship care arrangements, i.e., that the child's parent does not give up their role as guardian and can resume care of the child at any time they are able to do so. However, it may not be broad enough to encompass all kinship care arrangements, including arrangements that are intended to be more than temporary. Also, the current wording says authorization may be given when the child's guardian is "unable" to exercise their parental responsibilities themselves. Even if "temporarily unable" is interpreted broadly, there may be some customary care arrangements where this wording is a poor fit with the individual circumstances (e.g., where the customary care arrangement results from a cultural practice).

Alternatively, expanding the use of agreements to allow someone other than a child's parent to be appointed as the child's guardian may better meet the needs of Indigenous families wishing to use a longer-term care arrangement for the child. It may be possible to use a written agreement to extend guardianship to a non-parent, reflecting a customary adoption that did not sever the child's relationships with their existing parent(s) or guardian(s). Although this could be used to add a legal guardian and reflect a customary adoption, it would not create a "legal parent," meaning it could not be used to add another person to the child's birth certificate. Nor would the child be considered the child of the person appointed in the agreement for the purposes of the current *Wills, Estates and Succession Act*. [29] Despite these limitations, a written agreement could perhaps be used to put in place the intentions of at least some customary adoptions.

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[27] CFCSA, *supra* note 2, s 2(e).

[28] Mahihkan Management on behalf of the B.C. Ministry of Attorney General, *What We Heard: Family Law Act Modernization Dialogue Sessions*, (Coming Soon).

[29] WESA, *supra* note 12.

1-8. Is an authorization to exercise parental responsibilities under section 43(2) an effective way to recognize Indigenous kinship care arrangements, or is it too limited?

1-9. Are there any specific parental responsibilities that someone given care of an Indigenous child in a kinship care arrangement would not exercise (i.e., certain types of decisions that the child's parent would remain responsible for)?

1-10. Could a written agreement be used to reflect Indigenous customary adoptions, even if the written agreement had the effect of creating a guardian for the child rather than a legal parent?

Discussion Questions:

1-11. Should section 43(2*) (temporary exercise of parental responsibilities)* more clearly explain the effect of authorizing a person to exercise parental responsibilities on a guardian's behalf? For example, should the FLA be clear that the guardian making the authorization continues to be the child's guardian and the person authorized to exercise specific parental responsibilities on the guardian's behalf only does so until the guardian ends the authorization?

1-12. Should a form be developed that guardians can use to authorize someone to exercise specified parental responsibilities on their behalf?

1-13. Questions specific to the recognition of Indigenous kinship care and customary adoption within the FLA are included in the text box above. Should kinship care arrangements used in other cultures be recognized in the FLA? If so, how?

Parenting Arrangements

One of the ways that the FLA sought to minimize conflict and adversarial positions between parties in family law disputes was to shift away from the concepts of "custody" and "access" which were rights-based notions. The FLA introduced parenting arrangements, including parental responsibilities and parenting time. Both are available only to a child's guardian; the time a non-guardian spends with a child is called "contact" under the Act. Section 41 contains an open list of responsibilities that a guardian has towards the child and includes making decisions about healthcare, education, legal matters, residency, and who the child associates with as well as decisions related to the child's participation in their "cultural, linguistic and spiritual upbringing and heritage, including…the child's Indigenous identity." The final responsibility in the list is an open-ended responsibility related to anything "reasonably necessary to nurture the child's development."

Parental Responsibilities

Allocation of Parental Responsibilities - Section 40

Section 40 addresses the allocation of parental responsibilities among guardians of a child. It provides that an agreement or court order can allocate or assign responsibilities amongst the guardians of a child, and in the absence of such an agreement or order each guardian may exercise all parental responsibilities. Subsection (2) provides that the exercise of parental responsibilities in the absence of agreement or court order requires consultation with the child's other guardian(s) unless such

consultation would be "unreasonable or inappropriate" in the circumstances of the case. Subsection (3) authorizes the making of agreements or orders allocating parental responsibilities and explicitly provides that they may be exercised by one or more guardians only, each guardian acting separately, or all guardians acting together. Finally, subsection (4) states that no specific parenting arrangement is considered to be in the best interests of the child, and explicitly provides that the following should not be presumed:

(a) parental responsibilities should be allocated equally among guardians
(b) parenting time should be shared equally among guardians
(c) decisions made by guardians should be made separately or together.

The FLA establishes a child-centric model for making decisions related to caring for and spending time with children. All such decisions are to be made based only on what is in the best interests of the child.[30] The directions in section 40(4) underscore this fundamental premise. In contrast, there are other jurisdictions that have legislative presumptions in favour of equal decision-making responsibility and equal time with children, although "equal" does not always mean 50/50. These include roughly twenty percent of American states.[31]

Equal shared parenting was considered recently in Canada when the federal government amended the *Divorce Act*.[32] Prior to the amendments, section 16(10) of the *Divorce Act* was described in the marginal note as the "maximum contact" provision and stated that the court should give effect to the principle that a child should have as much time with each parent as was consistent with the best interests of the child, considering the willingness of the parent to facilitate the arrangement. This was amended and what is now the marginal note for section 16(6) (see Appendix B) of the Act reads "Parenting time consistent with best interests of the child." The language of the section is mostly unchanged, however the "friendly parent rule" requiring the court to consider each parents' willingness to support the child's relationship with the other parent was reframed as a best interests of the child factor. The *Divorce Act* amendments intentionally did not include an equal shared parenting provision and removing the "maximum contact" phrasing helps to stress that parenting arrangements must reflect what is in a child's best interests based on their individual circumstances. The federal government explained that presumptive equal shared parenting arrangements do not work for all families, and have the potential to increase conflict and litigation, as well as risk of family violence. Legislating a presumption of equal shared parenting was considered inconsistent with the emphasis on children's best interests.[33]

List of Parental Responsibilities - Section 41

Section 41 of the FLA sets out a list of the parental responsibilities that a guardian may have with respect to a child, with the exercise of a particular responsibility being subject to how responsibilities have been allocated between the child's guardians:

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[30] FLA, *supra* note 3, s 37(1).

[31] American states that have passed legislation with a rebuttable presumption of shared parenting that refers to equal time or something close to equal time include Arkansas, Florida, Kentucky, Missouri, South Dakota, West Virginia.

[32] *Divorce Act*, RSC 1985, c 3 (2nd Supp.) [DA].

[33] Government of Canada, "*Legislative Background: An Act to amend the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act and the Garnishment, Attachment and Pension Diversion Act and to make consequential amendments to another Act (Bill C-78 in the 42nd Parliament)*" (last modified 28 December 2022) online: *Department of Justice Canada*.

41 For the purposes of this Part, parental responsibilities with respect to a child are as follows:

(a) making day-to-day decisions affecting the child and having day-to-day care, control and supervision of the child;

(b) making decisions respecting where the child will reside;

(c) making decisions respecting with whom the child will live and associate;

(d) making decisions respecting the child's education and participation in extracurricular activities, including the nature, extent and location;

(e) making decisions respecting the child's cultural, linguistic, religious and spiritual upbringing and heritage, including, if the child is an Indigenous child, the child's Indigenous identity;

(f) subject to section 17 of the *Infants Act*, giving, refusing or withdrawing consent to medical, dental and other health-related treatments for the child;

(g) applying for a passport, licence, permit, benefit, privilege or other thing for the child;

(h) giving, refusing or withdrawing consent for the child, if consent is required;

(i) receiving and responding to any notice that a parent or guardian is entitled or required by law to receive;

(j) requesting and receiving from third parties health, education or other information respecting the child;

(k) subject to any applicable provincial legislation,

(i) starting, defending, compromising or settling any proceeding relating to the child, and

(ii) identifying, advancing and protecting the child's legal and financial interests;

(l) exercising any other responsibilities reasonably necessary to nurture the child's development.

In 2021, amendments to the *Divorce Act* replaced the outdated "custody" and "access" terminology, replacing them with language that is similar to the FLA. The *Divorce Act* uses "decision-making responsibilities" rather than "parental responsibilities." Decision-making responsibility is defined in section 2(1) as the responsibility for making significant decisions about a child's well-being, including in respect of: health; education; culture, language, religion and spirituality; and significant extracurricular activities. Although the list of responsibilities set out in the *Divorce Act* is less detailed than the FLA, it is also a non-exhaustive list. See Appendix B for a comparison of the relevant provisions in the *Divorce Act* and the FLA.

The *Divorce Act* also deals with access to information about a child differently than the FLA; the FLA includes "requesting and receiving from third parties health, education or other information about a child" as a parental responsibility while the *Divorce Act* addresses this separately from decision-making responsibilities. Under the *Divorce Act*, any person with parenting time or decision-making responsibilities can request information about the child's well-being under section 16.4. Although the language has been updated, section 16.4 pre-dated the inclusion of a list of decision-making responsibilities in the *Divorce Act*.

Indigenous Considerations on Parental Responsibilities –What We Heard

The FLA currently refers to responsibility for making decisions about a child's Indigenous identity, within the context of making decisions about a child's cultural, linguistic, religious and spiritual upbringing and heritage. Although there have been few comments about how the FLA describes parental responsibilities for making decisions about an Indigenous child's Indigenous identity, there were comments that the FLA needs to more specifically set out factors that are unique to determining what is in the best interests of an Indigenous child.[34] This is discussed more in Chapter 3 – *Child-centred Decision Making*.

1-14. Is there anything further that should be added to the list of parental responsibilities with respect to Indigenous children?

Discussion Questions:

1-15. Are the any issues or concerns with the current list of parental responsibilities?

1-16. Is the current model, which requires the allocation of parental responsibilities and parenting time be made based only on what is in the child's best interests in their particular circumstances, without making any presumptions about equal allocation or joint decision-making, effective?

1-17. Are there any issues in practice with the differences between how parental responsibilities are described and allocated in the FLA and how decision-making responsibilities are described and allocated in the Divorce Act? If so, how should these issues be addressed?

Time With the Child

Parenting Time - Section 42

Section 42 of the FLA explains that parenting time is time that a child is with a guardian, as allocated under an agreement or court order. During that time, the child's guardian makes day-to-day decisions and is responsible for the care, control, and supervision of the child. In contrast, the time that someone other than a guardian spends with a child is called contact. A non-guardian does not have responsibility for making significant decisions concerning the child while they are spending time together or otherwise in contact with each other. Contact is discussed further below.

Contact with a Child - Division 4

Contact is the word used to describe communication or time spent with a child by a person who is not the child's guardian. Arrangements for contact with a child can be set out in a court order or an agreement as long as the agreement is made between all of the child's guardians who have responsibility for deciding with whom the child may associate.[35] Section 59(2) of the FLA stipulates that the court may grant contact to any person who is not a guardian of the child, including a parent or grandparent. Many of the court applications regarding contact with a child are made by grandparents. Like other decisions concerning the care of and time with children, decisions about contact must be in the best interests of the child. *LP and DP v CC* was a recent case that dealt with an application by

[34] Mahihkan Management, *supra* note 28.
[35] FLA, *supra* note 3, s 58(1)–(2).

Indigenous grandparents for contact following the death of their grandchild's father (i.e., their son).[36] The child's mother was not Indigenous and did not acknowledge her child's Indigenous identity. The court reviewed the case law and noted that "while the views of the custodial parent continue to be a consideration, those views can never trump the best interests of the child."[37] The court confirmed that the principles that apply to an application for contact continue to be as follows:

(a) There is no presumption that grandparent contact is in the best interests of the child;
(b) The onus to establish grandparent contact time is in the best interests of the child is on the grandparent – not on the parent to establish otherwise;
(c) The custodial parent has a significant role. The courts should be reluctant to interfere with a custodial parent's decision in this sort of matter and should only do so where it is in the best interests of the child;
(d) While judges must be vigilant to prevent parents from alleging fictitious or imagined conflicts as a reason to deny contact time, in cases of 'real conflict or hostility' between the parent and grandparent, the child's best interests will rarely be served by granting access.[38]

This case went on to find that the child had Indigenous ancestry and to consider how Indigenous ancestry impacted the child's best interests in this particular case. Judge Archer emphasized his task was not to consider whether access to Indigenous culture would be in the best interests of children generally, but whether it would be in this child's best interests to have access to his Indigenous culture through his grandparents, keeping in mind that deference should be paid to the mother's right to make decisions on her child's behalf. The court concluded that the child's Indigenous ancestry was one of the factors to be considered along with the other factors in the best interests of the child test and determined that in this case the grandparents had met the onus of proving a contact order would connect the child with his Indigenous ancestry and was in his best interests. Although this case involved an application for contact by Indigenous grandparents and some of the discussion focused on the relationship between Indigenous ancestry and the best interests of the child test, it is a good example of the principles that apply to any application for contact by a grandparent or any other person.

Like the FLA, the *Divorce Act* also uses the term contact however its use is slightly different because the *Divorce Act* applies exclusively to married spouses. Under section 16.5 of the *Divorce Act*, someone other than a spouse may apply for the court's permission to make an application for contact with a child. The *Divorce Act* does not contemplate a child's parent applying for contact with a child – a parent who is married to the child's other parent will always be in the position of applying for a parenting order setting out parenting time and decision-making responsibilities. Although only a non-parent would apply for contact under the *Divorce Act*, the provisions are similar (see the comparison table at Appendix B). One difference is that section 16.5(4) of the *Divorce Act* specifically requires the court to consider "all relevant factors, including whether contact between the applicant and the child could otherwise occur, for example during the parenting time of another person." This was considered in *KLB v SWB*.[39] In that case the court denied the grandparents' application for parenting time on the basis that the grandparents would be able to spend time with the child during the father's parenting time which included overnight visits in the grandparents' home. The judge emphasized the decision was intended to promote stability for the child and took into account the increase in the father's parenting time. It

[36] *LP and DP v CC*, 2022 BCPC 34 (CanLII).
[37] *Ibid* at para 29.
[38] *Ibid*.
[39] *KLB v SWB*, 2021 BCSC 1437 (CanLII).

was not intended to diminish the importance of maintaining close relationships with extended family and could be revisited if parenting arrangements changed. Although courts have made similar analyses under the FLA and found that extended family members could spend time with the child during parent time, or making a contact order to be exercised concurrently with a guardian's parenting time order, this factor is not specifically included in the FLA.[40]

Discussion Questions:

1-18. Are there any issues or concerns with the provisions for contact in the FLA?

1-19. Are there any issues in practice with the differences between the contact provisions in the FLA and the Divorce Act? If so, how should these issues be addressed?

1-20. The discussion and questions posed in this chapter relate to issues that have been raised concerning guardianship, parenting arrangements and contact. Do you have any other concerns or suggestions for amendments to provisions in the FLA related to this topic?

[40] *HSA v SKA*, 2022 BCSC 1492 (CanLII).

Appendix B : Parenting Arrangements and Contact Legislative Comparison Table

Note: Underlining added to emphasize differences between the legislation

	FAMILY LAW ACT [SBC 2011] CHAPTER 25	**DIVORCE ACT** (R.S.C., 1985, c. 3 (2nd Supp.))
Parenting Arrangements/ Parenting Orders	*Sections 1, 44 - 45, 47 - 49* **Part 1 — Interpretation** **Definitions** **1** In this Act: … **"guardian"** means a guardian under section 39 [*parents are generally guardians*] and Division 3 [*Guardianship*] of Part 4; **"parenting arrangements"** means arrangements respecting the allocation of parental responsibilities or parenting time, or both; **Part 4, Division 2 — Parenting Arrangements** **Agreements respecting parenting arrangements** **44** (1) Two or more of a child's guardians may make an agreement respecting one or more of the following: (a) the allocation of parental responsibilities; (b) parenting time;	*Sections 2 (1), 16.1* **Interpretation** **Definitions** **2** **(1)** In this Act, … ***parenting order*** means an order made under subsection 16.1(1); (*ordonnance parentale*) ***spouse*** includes, in subsection 6(1) and sections 15.1 to 16.96, 21.1, 25.01 and 25.1, a former spouse; (*époux*) **Parenting Orders** **Parenting order** **16.1** **(1)** A court of competent jurisdiction may make an order providing for the exercise of parenting time or decision-making responsibility in respect of any child of the marriage, on application by **(a)** either or both spouses; or **(b)** a person, other than a spouse, who is a parent of the child, stands in the place of a parent or intends to stand in the place of a parent.

	(c) the implementation of an agreement made under this section; (d) the means for resolving disputes respecting an agreement made under this section. (2) An agreement respecting parenting arrangements is binding only if the agreement is made (a) after separation, or (b) when the parties are about to separate, for the purpose of being effective on separation. (3) A written agreement respecting parenting arrangements that is filed in the court is enforceable under this Act as if it were an order of the court. (4) On application by a party, the court must set aside or replace with an order made under this Division all or part of an agreement respecting parenting arrangements if satisfied that the agreement is not in the best interests of the child. **Orders respecting parenting arrangements** **45** (1) On application by a guardian, a court may make an order respecting one or more of the following: (a) the allocation of parental responsibilities; (b) parenting time;	**Interim order** **(2)** The court may, on application by a person described in subsection (1), make an interim parenting order in respect of the child, pending the determination of an application made under that subsection. **Application by person other than spouse** **(3)** A person described in paragraph (1)(b) may make an application under subsection (1) or (2) only with leave of the court. **Contents of parenting order** **(4)** The court may, in the order, **(a)** allocate parenting time in accordance with section 16.2; **(b)** allocate decision-making responsibility in accordance with section 16.3; **(c)** include requirements with respect to any means of communication, that is to occur during the parenting time allocated to a person, between a child and another person to whom parenting time or decision-making responsibility is allocated; and **(d)** provide for any other matter that the court considers appropriate. **Terms and conditions**

	(c) the implementation of an order made under this Division; (d) the means for resolving disputes respecting an order made under this Division. (2) An order under subsection (1) must not be made if the child's guardians are the child's parents and are not separated. (3) The court may make an order to require that the transfer of a child from one party to another, or that parenting time with a child, be supervised by another person named in the order if the court is satisfied that supervision is in the best interests of the child. (4) Despite subsection (1), a person applying for guardianship may apply, at the same time, for an order under this section. **Changing, suspending or terminating orders respecting parenting arrangements** **47** On application, a court may change, suspend or terminate an order respecting parenting arrangements if satisfied that, since the making of the order, there has been a change in the needs or circumstances of the child, including because of a change in the circumstances of another person. **Informal parenting arrangements** **48** (1) If	**(5)** The court may make an order for a definite or indefinite period or until a specified event occurs, and may impose any terms, conditions and restrictions that it considers appropriate. **Family dispute resolution process** **(6)** Subject to provincial law, the order may direct the parties to attend a family dispute resolution process. **Relocation** **(7)** The order may authorize or prohibit the relocation of the child. **Supervision** **(8)** The order may require that parenting time or the transfer of the child from one person to another be supervised. **Prohibition on removal of child** **(9)** The order may prohibit the removal of a child from a specified geographic area without the written consent of any specified person or without a court order authorizing the removal.

	(a) no agreement or order respecting parenting arrangements applies in respect of a child, and (b) the child's guardians have had in place informal parenting arrangements for a period of time sufficient for those parenting arrangements to have been established as a normal part of that child's routine, a child's guardian must not change the informal parenting arrangements without consulting the other guardians who are parties to those arrangements, unless consultation would be unreasonable or inappropriate in the circumstances. (2) Nothing in subsection (1) prevents a child's guardian from seeking (a) an agreement respecting parenting arrangements, or (b) an order under section 45 [*orders respecting parenting arrangements*]. **Referral of questions to court** **49** A child's guardian may apply to a court for directions respecting an issue affecting the child, and the court may make an order giving the directions it considers appropriate.	
Allocation of Parental/ Decision-	*Section 40* **Part 4, Division 2 — Parenting Arrangements**	*Sections 16 (6), 16.3* **Best Interests of the Child** **Best interests of child**

Making Responsibilities	*Parenting arrangements* **40** (1) Only a guardian may have parental responsibilities and parenting time with respect to a child. (2) Unless an agreement or order allocates parental responsibilities differently, each child's guardian may exercise all parental responsibilities with respect to the child in consultation with the child's other guardians, unless consultation would be unreasonable or inappropriate in the circumstances. (3) Parental responsibilities may be allocated under an agreement or order such that they may be exercised by (a) one or more guardians only, or (b) each guardian acting separately or all guardians acting together. (4) In the making of parenting arrangements, no particular arrangement is presumed to be in the best interests of the child and without limiting that, the following must not be presumed: (a) that parental responsibilities should be allocated equally among guardians; (b) that parenting time should be shared equally among guardians; (c) that decisions among guardians should be made separately or together.	**16** … **Parenting time consistent with best interests of child** **(6)** In allocating parenting time, the court shall give effect to the principle that a child should have as much time with each spouse as is consistent with the best interests of the child. **Parenting Orders** **Allocation of decision-making responsibility** **16.3** Decision-making responsibility in respect of a child, or any aspect of that responsibility, may be allocated to either spouse, to both spouses, to a person described in paragraph 16.1(1)(b), or to any combination of those persons.

List of Parental/ Decision-Making Responsibilities	*Sections 1, 41*	*Sections 2 (1), 16.4*

Part 1 — Interpretation

Definitions

1 In this Act:

…

"parental responsibilities" means one or more of the parental responsibilities listed in section 41 [*parental responsibilities*];

Part 4, Division 2 — Parenting Arrangements

Parental responsibilities

41 For the purposes of this Part, parental responsibilities with respect to a child are as follows:

(a) making day-to-day decisions affecting the child and having day-to-day care, control and supervision of the child;

(b) making decisions respecting where the child will reside;

(c) making decisions respecting with whom the child will live and associate;

(d) making decisions respecting the child's education and participation in extracurricular activities, including the nature, extent and location;

(e) making decisions respecting the child's cultural, linguistic, religious and spiritual upbringing and heritage, including, if the

Interpretation

Definitions

2 (1) In this Act,

…

decision-making responsibility means the responsibility for making significant decisions about a child's well-being, including in respect of

(a) health;

(b) education;

(c) culture, language, religion and spirituality; and

(d) significant extra-curricular activities;
(*responsabilités décisionnelles*)

Parenting Orders

Entitlement to information

16.4 Unless the court orders otherwise, any person to whom parenting time or decision-making responsibility has been allocated is entitled to request from another person to whom parenting time or decision-making responsibility has been allocated information about the child's well-being, including in respect of their health and education, or from any other person who is likely to have such information, and to be given such information by those persons subject to any applicable laws.

	child is an Indigenous child, the child's Indigenous identity; (f) subject to section 17 of the *Infants Act*, giving, refusing or withdrawing consent to medical, dental and other health-related treatments for the child; (g) applying for a passport, licence, permit, benefit, privilege or other thing for the child; (h) giving, refusing or withdrawing consent for the child, if consent is required; (i) receiving and responding to any notice that a parent or guardian is entitled or required by law to receive; (j) requesting and receiving from third parties health, education or other information respecting the child; (k) subject to any applicable provincial legislation, (i) starting, defending, compromising or settling any proceeding relating to the child, and (ii) identifying, advancing and protecting the child's legal and financial interests; (l) exercising any other responsibilities reasonably necessary to nurture the child's development.	

Exercising Parenting Time & Parental/ Decision-Making Responsibilities	*Sections 1, 42, 43 (1)* **Part 1 — Interpretation** **Definitions** **1** In this Act: … **"parenting time"** means parenting time as described in section 42 *[parenting time]*; **Part 4, Division 2 — Parenting Arrangements** **Parenting time** ***42*** *(1) For the purposes of this Part, parenting time is the time that a child is with a guardian, as allocated under an agreement or order.* *(2) During parenting time, a guardian may exercise, subject to an agreement or order that provides otherwise, the parental responsibility of making day-to-day decisions affecting the child and having day-to-day care, control and supervision of the child.* *Exercise of parental responsibilities* ***43*** *(1) A child's guardian must exercise parental responsibilities in the best interests of the child.*	*Sections 2 (1), 16.2* **Interpretation** **Definitions** **2** **(1)** In this Act, … ***parenting time*** means the time that a child of the marriage spends in the care of a person referred to in subsection 16.1(1), whether or not the child is physically with that person during that entire time; (*temps parental*) **Parenting Orders** **Parenting time — schedule** **16.2** (1) Parenting time may be allocated by way of a schedule. **Day-to-day decisions** (2) Unless the court orders otherwise, a person to whom parenting time is allocated under paragraph 16.1(4)(a) has exclusive authority to make, during that time, day-to-day decisions affecting the child.
Contact with a Child	*Sections 1, 58 - 60* **Part 1 — Interpretation** **Definitions** **1** In this Act:	*Sections 2 (1), 16.5* **Interpretation** **Definitions** **2** **(1)** In this Act,

	…	…
	"contact with a child" or **"contact with the child"** means contact between a child and a person, other than the child's guardian, the terms of which are set out in an agreement or order;	***contact order*** means an order made under subsection 16.5(1); (*ordonnance de contact*)
	Part 4, Division 4 — Contact with a Child	**Contact Orders**
	Agreements respecting contact	**Contact order**
	58 (1) A child's guardian and a person who is not a child's guardian may make an agreement respecting contact with a child, including describing the terms and form of contact.	**16.5** (1) A court of competent jurisdiction may, on application by a person other than a spouse, make an order providing for contact between that person and a child of the marriage.
	(2) An agreement respecting contact with a child is binding only if the agreement is made between all of a child's guardians having parental responsibility for making decisions respecting with whom the child may associate.	**Interim order** (2) The court may, on application by a person referred to in subsection (1), make an interim order providing for contact between that person and the child, pending the determination of the application made under that subsection.
	(3) A written agreement respecting contact with a child that is filed in the court is enforceable under this Act as if it were an order of the court.	**Leave of the court** (3) A person may make an application under subsection (1) or (2) only with leave of the court, unless they obtained leave of the court to make an application under section 16.1 [*Parenting Order*].
	(4) On application by a party, the court must set aside or replace with an order made under this Division all or part of an agreement respecting contact with a child if satisfied that the agreement is not in the best interests of the child.	**Factors in determining whether to make order** (4) In determining whether to make a contact order under this section, the court shall consider all relevant factors, including whether contact between the applicant and the child
	Orders respecting contact	
	59 (1) On application, a court may make an order respecting contact with a child, including describing the terms and form of contact.	

	(2) A court may grant contact to any person who is not a guardian, including, without limiting the meaning of "person" in any other provision of this Act or a regulation made under it, to a parent or grandparent. (3) The court may make an order to require the parties to transfer the child under the supervision of, or require contact with the child to be supervised by, another person named in the order if the court is satisfied that supervision is in the best interests of the child. (4) An access order referred to in section 54.2 (2.1) or (3) of the *Child, Family and Community Service Act* is deemed, for the purposes of this Act, to be an order made under subsection (1) of this section for contact with a child. *Changing, suspending or terminating orders respecting contact* **60** On application, a court may change, suspend or terminate an order respecting contact with a child if satisfied that, since the making of the order, there has been a change in the needs or circumstances of the child, including because of a change in the circumstances of another person.	could otherwise occur, for example during the parenting time of another person. **Contents of contact order** (5) The court may, in the contact order, (a) provide for contact between the applicant and the child in the form of visits or by any means of communication; and (b) provide for any other matter that the court considers appropriate. **Terms and conditions** (6) The court may make a contact order for a definite or indefinite period or until a specified event occurs, and may impose any terms, conditions and restrictions that it considers appropriate. **Supervision** (7) The order may require that the contact or transfer of the child from one person to another be supervised. **Prohibition on removal of child** (8) The order may provide that a child shall not be removed from a specified geographic area without the written consent of any specified person or without a court order authorizing the removal. **Variation of parenting order**

		(9) If a parenting order in respect of the child has already been made, the court may make an order varying the parenting order to take into account a contact order it makes under this section, and subsections 17(3) and (11) apply as a consequence with any necessary modifications.