Family Law Act Modernization Project
Phase 2: Care of and Time with Children & Protection from Family Violence

What We Heard

Project Overview

The BC Ministry of Attorney General (the Ministry) is conducting the Family Law Act Modernization Project with the primary goal of reviewing the provisions of the *Family Law Act* (FLA) to determine whether amendments are needed to reflect the many societal changes that have happened since the FLA came into force in 2013. The project is happening in phases to make sure the public and interested organizations have the time and ability to participate, including allowing the Ministry time to engage with Indigenous governments and organizations.

This What We Heard report represents feedback received about issues reviewed as part of Phase 2 of the Family Law Act Modernization Project. It is the second report of the project, and summarizes public feedback on issues related to the following family law issues:

- Guardianship, parenting arrangements and contact with a child
- Relocation of a child
- Child-centred decision making
- Children's views and parenting assessments and report
- Family violence and protection orders

A Phase 1 What We Heard report was published in February 2023 and dealt with issues of property division, spousal support and pension division under the Act.

Public Engagement Summary

The Ministry began early engagement on the Phase 2 issues addressed in this report beginning in early 2023.

Building on existing research and early discussions with people with lived experiences, lawyers, and advocates, engagement with Indigenous people occurred in the first half of 2023. This included virtual information sessions in February 2023 and four regional, in-person dialogue sessions with First Nations community members with lived experience between May and June 2023. The Ministry worked with Mahihkan Management to develop and offer culturally appropriate, Indigenous-facilitated sessions. Mahihkan provided independent notetaking and circulated draft notes, as well as a draft "What We Heard" report, to the participants for their review and input. You can access the final copy of the What We Heard Repor on the govTogetherBC "Making Family Law Better" webpage

[https://engage.gov.bc.ca/govtogetherbc/engagement/making-family-law-better]. A dialogue session with Métis people, also facilitated by Mahihkan Management, was held on January 13, 2024. A report summarizing those discussions will be published soon.

The Ministry began engagement with the broader public in early 2024. To facilitate public engagement, a discussion paper with information and discussion questions for members of the public to respond to was prepared [https://engage.gov.bc.ca/app/uploads/sites/121/2024/01/Phase-2-Discussion-Paper.pdf]. The Ministry also created a total of five surveys related to different aspects of the Phase 2 topics. The surveys and discussion paper were posted on the govTogetherBC website for the public to learn about specific issues being considered. The public was invited to provide feedback by completing a survey or by sending a written response.

In addition, in-person and virtual engagement sessions were held throughout the public engagement. These sessions were held with a variety of groups who shared their lived experiences and feedback related to the Phase 2 topics being reviewed. The sessions included the following:

- Four one-day, in-person regional loop-back sessions with Indigenous people
- In-person and virtual dialogue sessions with people with disabilities
- In-person dialogue session with immigrants, refugees and newcomers to BC
- Virtual dialogue sessions with youth
- In-person and virtual dialogue sessions with family justice professionals including members of the bar, advocates from the anti-violence community; and law students
- Virtual roundtable with views of the child and parenting assessors and report writers
- Virtual information sessions for members of the bar and Indigenous people with lived experience

A public consultation on the issue of parentage under Part 3 of the FLA, which is also an issue being reviewed in Phase 2 of this project, was conducted through the British Columbia Law Institute and the resulting report is published on their website at: https://www.bcli.org/project/pension-division-review-project/ .

We would like to thank everyone who participated in our engagement process. Each response provides valuable insight on how these issues are experienced. The feedback received has helped expand our understanding of the issues and will contribute to further analysis and policy development.

Public Engagement Responses

In total, the Ministry received 42 written submissions and 609 survey responses. This feedback came from various stakeholders including lawyers, professional legal organizations, advocacy groups, Indigenous people and groups, public organizations and not-for-profits and members of the public.

Regarding the written submissions received, some responded directly to the questions posed in the discussion paper, while others offered more general feedback on the Phase 2 topics. The

length of the submissions ranged from a few sentences to over 60 pages, with some of these submissions including links or attachments to separate articles, caselaw and pleadings.

Regarding the survey, the public was invited to respond to online surveys related to different aspects of the Phase 2 topics. Below is a breakdown of the survey response distribution:

- Care and Time with Child Survey: 164 responses
- Family Violence Survey: 263 responses
- Views of the Child Survey: 151 responses
- Indigenous Perspectives Survey: 18 responses
- Youth Survey: 13 responses

The surveys asked if participants would describe their "role." When asked about their "role" in the survey, the following is a breakdown of the participants' responses:

- 373 identified as having been a parent or family member in a family law dispute (61.2% of respondents)
- 57 identified as advocates (9.4%)
- 52 identified as a lawyer (8.5%)
- 44 identified as an interested member of the public (7.2%)
- 17 identified as a legal professional other than a lawyer (2.8%)
- 9 identified as an academic professor, instructor or researcher (1.5%)
- 3 identified as a member of law enforcement (0.5%)
- 15 identified themselves as a child or youth (under 19 years old) (2.5%) (including the 13 responses to the Youth Survey)

Of the remaining 39 respondents, 36 indicated "other" and 3 did not answer the question.

For the gender breakdown, 499 of the 609 survey respondents (83% of respondents) identified themselves as a woman or girl. The specific percentage wavered between the surveys, the percentage only dipped below 80% in the Indigenous Perspectives Survey (50%) and Youth Perspectives Survey (76.9%).

When respondents were asked about their cultural background, the following is the breakdown of responses of those that answered:

- 301 (56.6%) identified as White
- 59 (11.1%) identified as South Asian (Indian, Pakistani, Bangladeshi, Sri Lankan, Indo-Caribbean)
- 50 (9.4%) identified as Indigenous (First Nations, Inuit, Métis)
- 31(5.8%) identified as East Asian (Chinese, Korean, Japanese, Taiwanese)
- 18 (3.4%) identified as Latino (Latin American, Hispanic descent)
- 14 (2.6%) identified as Black, or of African descent (African, Afro-Caribbean, African Canadian)

- 10 (1.9%) identified as Southeast Asian (Filipino, Vietnamese, Cambodian, Thai, Indonesian)
- 5 (0.9%) identified as Middle Eastern (Arab, Persian, Afghan, Egyptian, Iranian, Lebanese, Turkish, Kurdish, West Asian)

Thirty-one (5.8%) of respondents indicated that they preferred to not answer the question (5.8% of respondents), and 13 (2.4%) respondents answered "other."

In terms of geography, 581 of the 592 respondents who answered this question reported living in BC. Of the remaining 11 respondents, 9 reported living in Canada, but outside BC, and 2 reported living outside Canada. Regarding an urban/rural split, 461 of respondents of the 576 respondents who answered this question reported living in an urban or "big city" environment (80% of respondents), and of the remaining respondents, 114 reported living in a rural or "smaller city or town" environment (19.8% of respondents).

See Appendix A for more demographic information about the survey respondents.

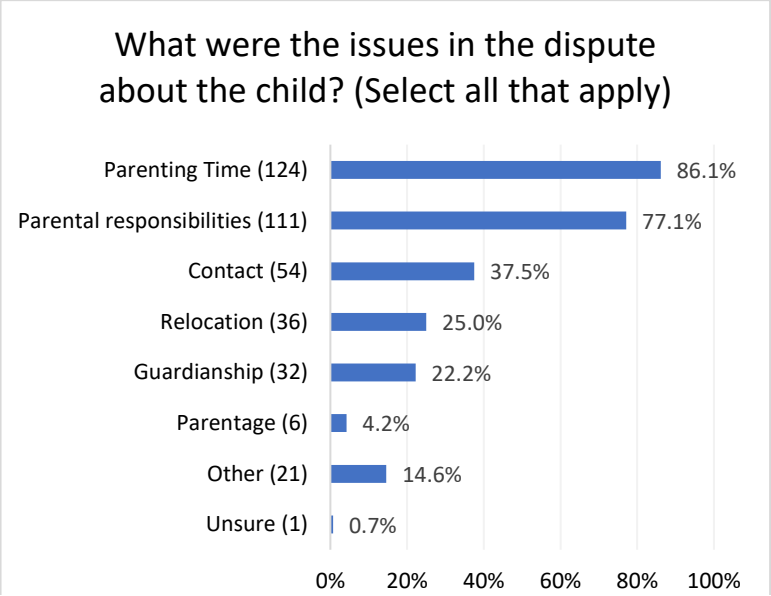
CHAPTER 1: Guardianship, Parenting Arrangements & Contact

Introduction

Phase 2 of the *Family Law Act* Modernization Project includes a review of the provisions in Part 4 – Care of and Time with a Child of the *Family Law Act* (FLA) that are related to guardianship, parenting arrangements and contact with a child.

We received feedback on these topics through responses to a detailed discussion paper, surveys, and dialogue sessions. The Care and Time with Children Survey provided a snapshot of what types of issues arise in disputes concerning children.

Figure 1-1: Issues in Dispute about the Child



As seen in Figure 1-1, parenting time and responsibility for making important decisions about children (parental responsibilities) were the most common issues in family disputes about a child. The results in the Views of the Child Survey were similar (89% and 81%, respectively). The number of people who completed the Indigenous Perspectives and Youth Perspectives surveys were much smaller, but they also indicated these were common issues in dispute.

This chapter reviews the feedback we received on issues related to guardianship, parenting time and parental responsibilities and contact with a child. Relocation is discussed in Chapter 2 and parentage was reviewed separately by the British Columbia Law Institute (BCLI) and a report is available online at https://www.bcli.org/publication/97-report-on-parentage-a-review-of-parentage-under-part-3-of-the-family-law-act/. Although guardianship issues arise in fewer cases than other topics, guardianship issues are a significant focus of this chapter because guardianship is central to caring for a child.

Guardianship

Default Guardianship

Under the FLA, only a child's guardians may have parenting time or parental responsibilities, which means only a guardian can make important decisions for a child. In most cases, a child's parents are also their guardians. The FLA provides that a child's parent is their guardian while the parents are living together and after they separate. However, if a parent has never lived with their child, they will not automatically be a guardian unless they have regularly cared for the child. They may also become a guardian by entering into a guardianship agreement with the child's other guardian(s), or by applying to the court under section 51 of the FLA for an 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.

Did you know?

In 2021, BC government and the Provincial Court implemented new Provincial Court Family Rules with language and forms that are easier to understand and use. These new rules apply to a variety of family law topics including guardianship, parenting arrangements and contact with a child.

We asked whether default guardianship provisions should be changed so that parents who have not lived with or regularly cared for their child would be considered guardians. In the alternative, we also asked whether a parent's guardianship should be based on some criteria other than living with or regularly caring for their child? Table 1-1 summarizes how people become guardians under the FLA and the feedback received on these provisions.

Table 1-1: How People Become Guardians under the FLA

Current Provisions in the FLA	Feedback suggesting changes
s.39 (1) While a child's parents are living together and after they separate, each parent of the child is the child's guardian	This default guardianship provision focuses on families where a child is born to two parents living together in a romantic relationship. It sets out who is a guardian during the relationship and after the relationship ends and the parents separate. It leaves a legislative gap in situations where parents have a child without a partner, or people who have a child together have either never lived together or separated before the child was born. Although case law has addressed this gap to ensure a child is not without a guardian in these situations, there was feedback it should be corrected in the FLA.

	Other feedback about the default guardianship provision was mixed. Some respondents feel default guardianship should be extended to include situations where the parents have never lived together. One respondent suggested certain circumstances where a parent who has not lived with the child should still be considered a guardian and not have to make an application under section 51, including if the parent seeks guardianship within a year of the child's birth or the parent becoming aware of the child's birth. However, other respondents favoured leaving the default guardianship provision as is, so that a parent who has not lived with or regularly cared for their child is not automatically a guardian. The rationale was that the current legislation protects some survivors of family violence from further abuse that occurs when the perpetrator takes advantage of their guardianship status and uses parenting arrangements as a way to gain coercive control. They felt there is flexibility in the FLA and a low bar to obtain guardianship by agreement, regularly caring for the child, or applying under section 51. There was further feedback that the courts are more likely to refuse an application for guardianship on the basis that a guardianship order is not in the child's best interests due to family violence as compared to terminating a parent's guardianship because of family violence. One response that supported leaving the requirement that a parent have lived with or regularly cared for the child suggested an exception in situations where the other guardian is obstructing or preventing the parent from caring for the child. Another concern about removing the requirement that a parent live with or regularly care for their child in order to establish default guardianship is that this would extend default guardianship to someone responsible for a sexual assault that results in a child being born. It would be up to the survivor parent to apply to court to have the perpetrator's guardianship terminated.

	There was also some concern that expanding default guardianship could lead to the Ministry of Children and Family Development inappropriately placing a child with a parent that had little or no relationship with the child if the child was removed from the primary parent. Under the current legislation, the parent who was not a guardian would likely have to apply to court for a guardianship order and the court would need to find that was in the child's best interests.
s. 39 (3) (a) A parent who has not lived with the child will still be a guardian if they are a parent under s. 30 of the FLA, which describes parentage established through a written agreement entered into before a child is conceived using assisted reproduction	No feedback. (Parentage provisions for when a child is born as a result of assisted reproduction or surrogacy was reviewed by the British Columbia Law Institute (BCLI). A final report setting out recommendations for amendments to Part 3 - Parentage is available on the BCLI website at https://www.bcli.org/publication/97-report-on-parentage-a-review-of-parentage-under-part-3-of-the-family-law-act/).
s. 39 (3) (b) A parent who has not lived with the child will still be a guardian if they have an agreement for guardianship with the child's other guardian(s)	No feedback.
s.39 (3) (a) A parent who has not lived with the child will still be a guardian if they "regularly care for" the child	The FLA does not presently define "regularly care for" although it has been considered in caselaw. There was feedback from both parents and legal professionals that the meaning of this phrase needs to be clearer, as it is confusing and interpreted "widely" differently from one judge to another. There were suggestions to either define the term in the FLA or add a list of criteria for the courts to consider when determining whether a parent has regularly cared for the child. There was also a suggestion that regular care should mean actual care rather than a willingness or intention to care for a child. On the other hand, there was feedback that the parent who is a guardian and has care of the child can block the other parent's attempts

	to establish regular care, creating a dynamic where the non-guardian parent is afraid to "rock the boat" and reduce their already limited time with the child. As described above, one response suggested a parent be considered a guardian if another guardian is preventing them from regularly caring for their child.
A parent who is not a guardian under one of the ways described above may apply to the court under section 51 for an order appointing them as guardian. They must follow the same process as a non-parent applying to court for a guardianship order. This includes filing an affidavit describing why the order would be in the child's best interests and filing a child protection record check, a protection order record check from the protection order registry and a criminal record check.	No feedback.
Provisions that end guardianship	
s.39 (2) There may be an order or agreement made after separation or when the parents are about to separate providing that a parent is not the child's guardian	No feedback.
s.51 (1) (b) The court may terminate a person's guardianship, except for a director who has guardianship under the *Adoption Act* or the *Child Family and Community Service Act*	No feedback.

Orders & Agreements for Guardianship

As outlined above in Table 1-1, a parent who is not a guardian because they have not lived with or regularly cared for their child may apply under section 51 of the FLA for a court order appointing them as a guardian. However, the FLA does not limit who may apply for guardianship of a child. Any person may apply under section 51 and may be appointed as a child's guardian if the court determines that is in the child's best interests, taking into account the person's relationship with the child and proposed plan of care described in the guardianship affidavit as well as the child protection record check, protection order check and criminal record check. Also, the court cannot appoint a non-parent as the guardian of a child who is 12 years or older without the child's written approval, unless the court finds it is in the child's best interests.

As also outlined above in Table 1-1, a parent who is not a guardian because they have not lived with or regularly cared for their child may become a guardian through an agreement with their child's other guardian(s). However, the FLA does not allow someone other than the child's parent to become their guardian by agreement; non-parents must apply to court under section 51. The process required under section 51 puts checks in place that are intended to ensure the child is safe and it is in the child's best interests to appoint the applicant as their guardian. There is feedback that the process is overly complicated and burdensome, especially when a family member is applying for guardianship of a child with the agreement of the child's parents or other guardians. Sometimes, the child is already living with another family member or a family friend and there was feedback that "litigation should not be the only recourse to appoint a guardian in such scenarios." It was suggested that checks and balances could be introduced to protect the child's best interests if a written agreement is used, such as making the appointment temporary with the time limit to be agreed on by the parties to the agreement and limiting the parental responsibilities of the temporary guardian.

Written agreements and kinship care/customary adoption arrangements

In some cultures, there is a tradition of extended family members and even the broader community members taking on responsibilities associated with caring for and raising children. Terms such as kinship care or customary adoption are often used to describe these arrangements, which vary depending on the culture, the community and the circumstances of the individual family. Written agreements may be one way to recognize an arrangement where a non-parent takes on something akin to a guardianship role and has certain parental responsibilities and parenting time with the child.

Most feedback generally supports making it simpler to extend guardianship, and in turn parental responsibilities and parenting time, to people that have taken on parental roles within diverse family structures. There was feedback that this is needed to better reflect Indigenous people's concept of family and their views and practices concerning the

responsibility for the care of children. There were comments that this should not be limited to Indigenous communities but should extend to other cultures and communities as well, including 2SLGTBQIA+ families.

However, some respondents also expressed caution around making it easier to recognize kinship care arrangements using a less formal process. Some of the concerns were around caregivers not understanding what benefits or supports they risk losing from the Ministry of Children and Family Development if they are recognized or appointed as guardians under the FLA. The concern is not that it would be inappropriate to recognize the guardianship role kinship caregivers have taken on, but that caregivers need to understand all of the potential impacts of legal guardianship.

A further caution was expressed around family violence and fear that someone may be coerced into signing a guardianship agreement. Within the current process this should be less likely because of the three checks that must be filed with the guardianship affidavit and the oversight of the court before the order is granted.

Indigenous Perspectives: Guardianship

In order to better understand the unique experiences and needs of Indigenous families, we conducted Indigenous dialogue sessions in May and June 2023 and prepared an Indigenous Perspectives survey, which was open from January to April 2024. The Indigenous Perspectives survey included questions about family violence and protection orders, and although the number of respondents was small (18), it provided additional insight on some of the feedback shared in the Indigenous dialogue sessions.

Participants in the dialogue sessions indicated the current FLA does not adequately recognize Indigenous families' interconnectedness with their community and their Nations. When asked to describe what needs to change in the FLA to address family law disputes involving Indigenous children or better reflect Indigenous families, survey respondents echoed this feedback, with respondents emphasizing the importance of Indigenous voices and perspectives being reflected in decisions about guardianship. As part of this, some respondents suggested the involvement of Indigenous representatives or family members in decision-making processes affecting Indigenous families and children. However, it is equally important that the involvement be meaningful, and that the decision-maker explain how the Indigenous perspectives have been considered in the decision. One Elder described how she had helped a member of her Nation applying for guardianship of their grandchild collect and shared information about their traditions and customs and how these would support the child. None of this information was reflected in

the reasons for judgement when the judge made a decision that was not in favour of the Indigenous grandparent.

What Was Said:

"I believe, considering the past, the most important thing would be for the Indigenous participants to feel represented. There should always be an Indigenous representative, preferable someone who could relate to the people being questioned/interviewed."

"... Services need to be bridged for family members who step in to provide for children regardless of the path they follow to get there."

"...in every stage of deciding on formation/changes to the Act, emphasis on taking direction/collaboration from/with Indigenous people."

"... change the definition of 'family' to make it more inclusive and in accordance with Indigenous laws and legal orders."

Feedback from the dialogue sessions and survey also indicated a need for better services and supports for guardians.

What Was Said:

"There needs to be alternative routes for them to access services, access support that doesn't feel colonial; there needs to be a lens that we can look at changing the system to better support them and have ways for them to feel welcomed and not governed by the government that they may have mistrust in due to generational trauma."

"The FLA overall fails to reflect unique family structures. It does not provide guidance or support after guardianship has been obtained through the FLA."

There was also feedback from the dialogue sessions indicating that the FLA's current approach towards guardianship is too "strict", and that a more flexible approach would be better situated to meet the needs of Indigenous families. As part of this, participants noted the challenges of obtaining court orders under section 51 of the FLA, and identified that a system allowing for temporary or fluid guardianship arrangements would be helpful.

The need to address family law matters under the FLA as well as child protection issues in a holistic and interdependent way was another theme that emerged in the feedback. Although government has assigned these to separate ministries, under different statutes, families are dealing with these issues at the same time and need to be able to resolve

guardianship and arrangements for the care of a child under both acts in a more seamless process.

Testamentary & Stand-by Guardianship

A testamentary guardian is someone appointed under section 53 of the FLA to take over the responsibilities of a child's guardian if that guardian dies. If a child's guardian is facing terminal illness or permanent mental incapacity, they can appoint a stand-by guardian to carry out their parental responsibilities when they become unable to do so. This can be done using a form included in the *Family Law Act Regulation* (Appointment of Standby or Testamentary Guardian (Form 2)), or a testamentary guardian may be appointed in a will. There is currently no court process to recognize a testamentary or stand-by guardian, and some testamentary and stand-by guardians have said it is challenging to get third parties to recognize they have responsibility for the child.

There was feedback that it seemed appropriate to at least file the documents appointing a testamentary or stand-by guardian with the court, even if there is no requirement that a judge approve the appointment. Others felt it would be appropriate to develop a court process to confirm the appointment of testamentary and stand-by guardians and issue a declaration or some other formal recognition of guardianship, potentially after reviewing criminal record and child protection checks as required in a section 51 guardianship application. The confirmation process could help to ensure the following: continuity of care, the appointment is in the child's best interests and that the person appointed as guardian understands the role and responsibilities of being a guardian.

Temporary Exercise of Parental Responsibilities

The FLA currently permits a child's guardian to give written authorization to another person to temporarily exercise some parental responsibilities on their behalf while they are unable to do so. The guardian is not transferring their guardianship to the other person, and they must specify which parental responsibilities the other person has.

There was feedback that agreed the FLA should be clear that a guardian authorizing another person to temporarily exercise specific parental responsibilities on their behalf continues to be the child's guardian and the other person will only exercise the parental responsibilities until the guardian ends the authorization. There was also feedback that it would be helpful if clear, simple and short forms were developed that guardians could choose to use to authorize the temporary exercise of parental responsibilities.

Although there was little feedback, one of the questions that has been asked is whether the temporary exercise of parental responsibilities is one way that kinship caregivers could

be recognized in their role, with a low degree of formality, and the ability for the child's guardian to easily end the authorization.

Parenting Arrangements

Parental Responsibilities

Some service providers who work with families reported the wording in the FLA should be improved to make it clearer to guardians which decisions they can make without having to consult or come to agreement with the other guardian(s). For example, it is not always clear that guardians do not need to consult on day-to-day decisions that need to be made during each guardian's parenting time.

There was also feedback that it is important to create parenting arrangements that best meet the needs and interests of each individual child, especially when a child is neurodivergent or has another medical condition. It was recommended the legislation should overtly read "diagnosis" as a factor to be considered when parenting arrangements are being formed and should require unique arrangements for such a child.

Parenting Time

The time that a child is in the care of their guardian, as set out in a court order or agreement between the child's guardians, is called parenting time.

The FLA directly sets out in section 40 that no specific parenting arrangement is considered to be in the child's best interests and there is no legal presumption that parenting time or parental responsibilities should be shared equally among guardians. Similarly, there is no presumption as to whether a child's guardians should make decisions about the child separately or together in a particular family. Parenting arrangements in each family are to be decided based on what is in the best interests of the child in that particular family, considering all of the child's needs and circumstances. Feedback strongly supported maintaining this provision. One

respondent agreed with the conclusions reached by the federal government when it purposely chose not to include an equal shared parenting presumption in the *Divorce Act* amendments implemented in 2021. The federal government explained such a presumption could increase conflict and litigation as well as risk of family violence, and was inconsistent with a child-centred, best interests analysis. Some respondents stated that including an equal shared parenting presumption in the FLA now would be inconsistent with the *Divorce Act* provisions and the emphasis on the best interests of the child, as well as prioritizing parents' rights to time with a child, compromising children's safety, and being insensitive to the impact of the presumption on family violence survivors.

In the Care and Time with Children Survey, parenting time was identified as the issue most often in dispute. Many respondents shared experiences of the other parent pressing for equal parenting time in situations where there was a history of family violence or substance use or mental health issues that created risk to the child. There were comments that stated that these circumstances were not considered when parenting time was determined, nor were the children given an opportunity to be heard. Another theme that emerged in the survey feedback was parents seeking increased parenting time to avoid or reduce child support payments. Under the *Child Support Guidelines*, if a child is in the care of a parent at least 40% of the time, each parent is responsible to pay the other child support according to their income, rather than one parent being the sole payor. Respondents spoke about parents fighting for equal parenting time and the corresponding reduction in child support payments, but not really wanting the extra time and often cancelling or changing arrangements at the last minute or leaving the child with other caregivers.

What Was Said:

> *"History of abuse not taken into account. History of long standing alcohol use disorder not being taken into account. And the impact and risk of both of these issues not being taken into account when deciding on the parenting time."*

> *"The other parent only wants the children 50% of the time so that they don't have to pay as much child support. The other parent told me this directly however will deny it to anyone of importance (court authorities, lawyers, etc)."*

> *"Child has always been mainly with me, I do all the actual parenting, make all decisions, take to all appointments, shopping, absolutely everything but because it's automatically a 50/50 system, dad gets equal time even though he doesn't do even 10% of the work in raising the child. The child doesn't want to spend 50% of time with dad but I have no recourse because it's automatic 50/50."*

Participants in dialogue sessions, survey respondents and people submitting written feedback expressed frustration with the failure to recognize that in many families, parents spent unequal time with children before they separated. One parent said it was an inappropriate starting point in the family justice system to pretend both parents had shared equally in parenting. Some parents of children with disabilities were particularly adamant that in situations where one parent had been the primary caregiver for the child it was not in the child's best interests to try and shift to equal time after the separation, particularly if the other parent does not have the capacity to take on those responsibilities. There was also feedback that co-parenting a child with disabilities is not successful when one parent undermines the child's medical and disability needs.

Another issue that many respondents commented on was the impact of family violence on parenting time. People spoke about orders for equal shared parenting time being made without the court hearing or giving sufficient consideration to evidence of family violence, including evidence from the child. There was feedback that the rights of parents were prioritized over children's best interests, and the non-violent parents were powerless to protect their children's safety in the face of orders that gave parents with a history of family violence unsupervised parenting time. This issue is discussed further in Chapter 5 – *Family Violence & Protection Orders*.

What Was Said:

> *"Despite an extensive history of violence, abuse, volatile behaviour and the granting of a protection order, my ex was still given 50% parenting time, putting my child at risk 50% of the time with no avenue for me to protect her."*

An issue that is often linked with family violence is parental alienation. Parental alienation is described in many different ways, but generally refers to behaviours by one parent or caregiver that manipulate a child to reject the other parent out of hatred, fear or disrespect. Sometimes, perpetrators of family violence falsely accuse the survivor of parental alienation when the survivor seeks to limit the perpetrator's parenting time out of concern for the child's safety, or when the child does not want to spend time with the perpetrator due to the violence. There was feedback that this has shifted the focus of the courts away from the claims of family violence and focused on the alleged wrongdoing of the parent accused of alienation (usually the mother). The FLA does not specifically reference alienation and there has been some feedback suggesting it should prohibit claims of parental alienation as this is typically a way to harass the mother and dissuade her from bring up family violence. On the other hand, there are parents whose relationships with their children have been damaged because of the other parent's campaign against them. They feel the FLA should specifically deal with this.

What Was Said:

> *"My daughter hasn't spoken to me in over two years. We were very close, until her mom and her family talked so badly about me [and] she eventually believed it, and the FLA has a serious deficit in addressing parental alienation. It's child abuse and co-parent abuse. It is torture to be a victim of this, and the ones doing it get away with it every day like they've done nothing wrong."*
>
> *"The other party is using a common tactic of false claims of parental alienation to alter the litigation path and dismiss the family violence that has occurred."*
>
> *"...some parents do not come to the table with the best interests of the children at the centre. It is very hard, and tiring, to try and explain this to those in the Family Law system. Parental alienation is real and needs to be brought into account in the Family Law Act."*

Youth who participated in dialogue sessions or completed a survey offered feedback about parenting time from their unique perspective as the children whose lives are perhaps most impacted by parenting arrangements, including parenting time schedules. Many are not happy with the arrangements – none of the 11 youth who responded to a question on the Youth Perspectives Survey that asked, "Are you happy with the parenting arrangements that are in place for you?" said they were happy.

Table 1-2: Youth Perspectives: Happiness with Parenting Arrangement

Are you happy with the parenting arrangements that are in place for you?	**%**
Just OK (2)	18.2%
Sort of unhappy (2)	18.2%
Very unhappy (7)	63.6%

Several of the young people were unhappy with the arrangements because they did not feel safe with one parent they were "forced" to spend time with. Some did not want to switch between homes or live in a particular community, away from friends. Several expressed anger at not having the right to decide what parenting arrangements were best for their own health and well-being.

What Was Said:

> *"It's a bit blurry since I was around 9 years old and my parents were separating. As one of the children of divorce, I had a 70/30 parenting time – the majority with my father. I remember parenting time being hard to understand, and I didn't want to go back and forth throughout the week. The parenting time (schedule) was difficult..."*

"I don't want to spend any time with my dad who scares me; hurts me emotionally and medically. I should have this right to my own physical and mental health."

Contact with the Child

The time that a child spends with someone other than a guardian, by way of an agreement with the child's guardians or a court order, is called "contact" in the FLA. Contact may occur in-person, or it may take place another way, including over the telephone or video calls. There is no limit on who may request contact with a child, but any arrangements for contact must be in the child's best interests.

Although any person may apply for contact with a child, many of these applications are made by grandparents, sometimes in situations where one or more of the child's guardians oppose the application. There was feedback that it is currently too difficult for grandparents to obtain contact. It was proposed that the FLA lay out a clear test for grandparents to obtain contact, and that it should be possible for grandparents who have taken on a parent-like role for their grandchildren to obtain contact without litigation. It was suggested the FLA could include a test similar to one that has been used by the courts - a person applying for contact with a child must show:

- a pre-existing relationship with the child,
- the strength of the relationship with the existing guardian,
- whether there are any family violence issues, and
- the benefit of having an ongoing relationship.

There was also concern from a respondent that contact provisions in the FLA do not limit who may apply for contact, although any order for contact must be made only on the basis that it is in the child's best interest. In particular, there was concern that birth parents could apply for contact with the child after an adoption was finalized and the parties had agreed there would not be subsequent contact with the child. This situation creates uncertainty, stress and financial costs for the adoptive family.

Indigenous Perspectives: Parental Responsibilities, Parenting Time and Contact

Feedback from the dialogue sessions and survey emphasized the importance of every Indigenous child having the opportunity to grow up with their culture. Sometimes it can be difficult to implement parenting arrangements that achieve this objective when only one of the child's parents is Indigenous. Some survey respondents described the outcome of litigation as the non-Indigenous parent being chosen over the Indigenous parent or the family law process being unfair towards Indigenous parents.

One of the key points that came up often in feedback from Indigenous people was the traditional role of extended family and the broader community in caring for Indigenous children. Many considered it important that the FLA have flexibility to reflect this when determining who should make important decisions about a child and spend time with the child.

What Was Said:

"Common cultural practice in Nuu-Chah-Nulth would be the entire family raises the children (including) aunties, uncles, older cousins, grandparents."

However, there was also feedback that colonialism and intergenerational trauma has undermined traditional family structures and practices in some families and communities.

What Was Said:

"My family has a toxic dynamic when it comes to the responsibility of raising children, and this is intergenerational. Trauma and substance dependence has played a large part in this. Parents have viewed themselves as solely responsible and have been hostile towards family members who step in to care for children."

Additional Feedback

Alignment with *Divorce Act* provisions

There was feedback from legal professionals that there should be alignment between the FLA and the *Divorce Act* with respect to:

- How responsibility for making decisions about children is described and allocated
- The provisions for contact with a child

Challenges with respect to disability and neurodiversity

Parents living with disabilities provided feedback on some of the challenges they had faced while dealing with parenting arrangements in the family justice system. One parent described trying to function with a brain injury and the lack of understanding within the justice system of how difficult it is to regulate emotion and present information in legal proceedings that trigger trauma responses. This was echoed by others who had found it an ongoing challenge to have the nature of their disabilities recognized. Another parent commented that inconsistencies in their own behaviour were sometimes disruptive to the child's routine and sense of stability as well as stressful for the primary caregiver.

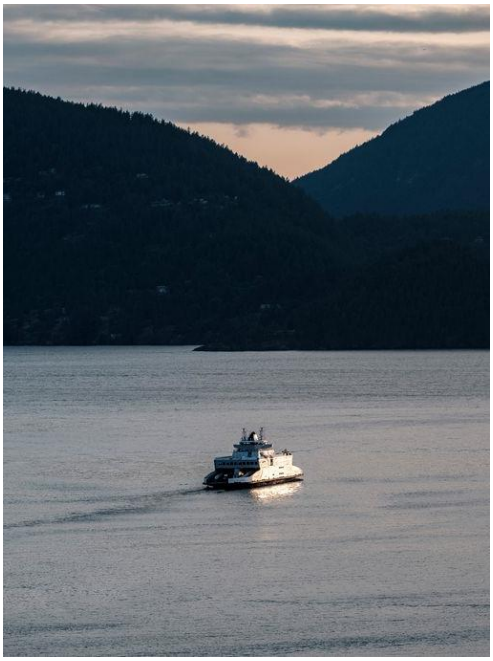
Financial challenges were another issue that was raised, both with respect to parents living with disabilities as well as children with disabilities. There was feedback that the FLA does not contemplate a child may have disabilities, except for acknowledging a child with a disability may need support beyond the age of majority. This does not recognize that these children may need extra child support to pay for higher food costs, increased wear on clothing, toys, furniture, household goods, or home improvements to manage special needs. Responsibility for making decisions about education and healthcare may also be complex. Parents living with disabilities also face significant financial barriers. Disability benefits may disqualify them from legal aid, yet they usually do not have enough income to hire a lawyer. They may also need certain accommodations within legal proceedings and have to fight for them, when that shouldn't be the case.

What Was Said:

> *"My neurodiversity created obstacles for my understanding as to what my child's mother was pushing for in terms of decision making. The lack of clarity around family law combined with challenges both financial and otherwise, getting legal help for those when neurodiverse challenges create an environment where we can easily be taken advantage of when the other parent is not acting in good faith."*

CHAPTER 2: Relocation of a Child

Introduction

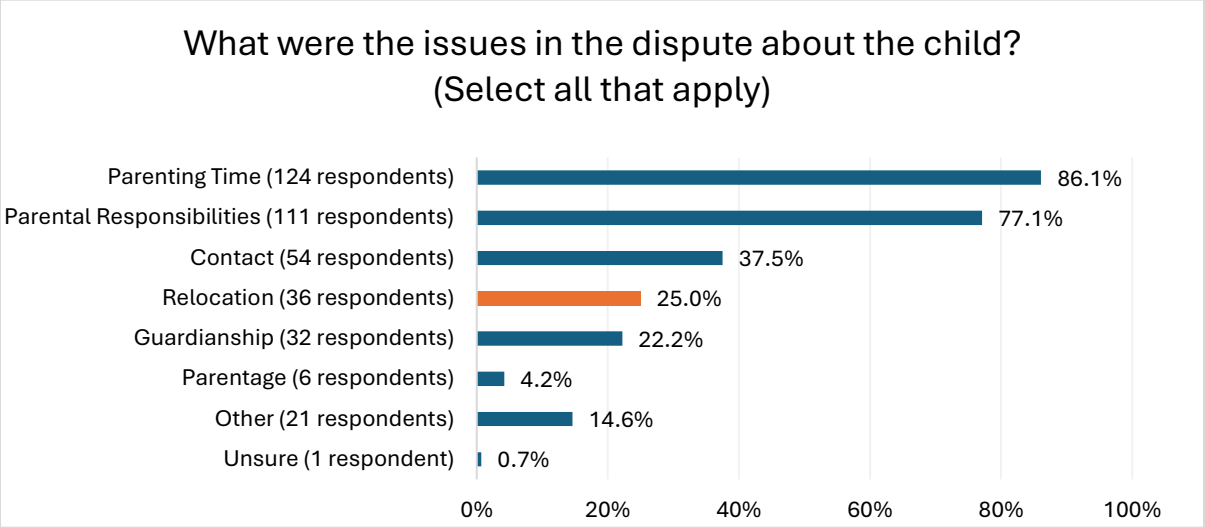


Part 4 of the FLA includes a division dedicated to the issue of the relocation of a child and Phase 2 of the Family Law Act Modernization Project includes a review of those provisions. Specifically, Part 4, Division 6 – Relocation addresses the following:

- Defining "relocation" (section 65),
- When, how, and to whom notice of an intended relocation is required (section 66),
- Required attempt of non-court resolution of relocation issues (section 67),
- When and how an objection to an intended relocation can be made (section 68),
- Presumptions/burdens of proof for orders about relocation (sections 69 and 70), and
- Clarifying that an order prohibiting relocation is not a change in the child's circumstances (section 71).

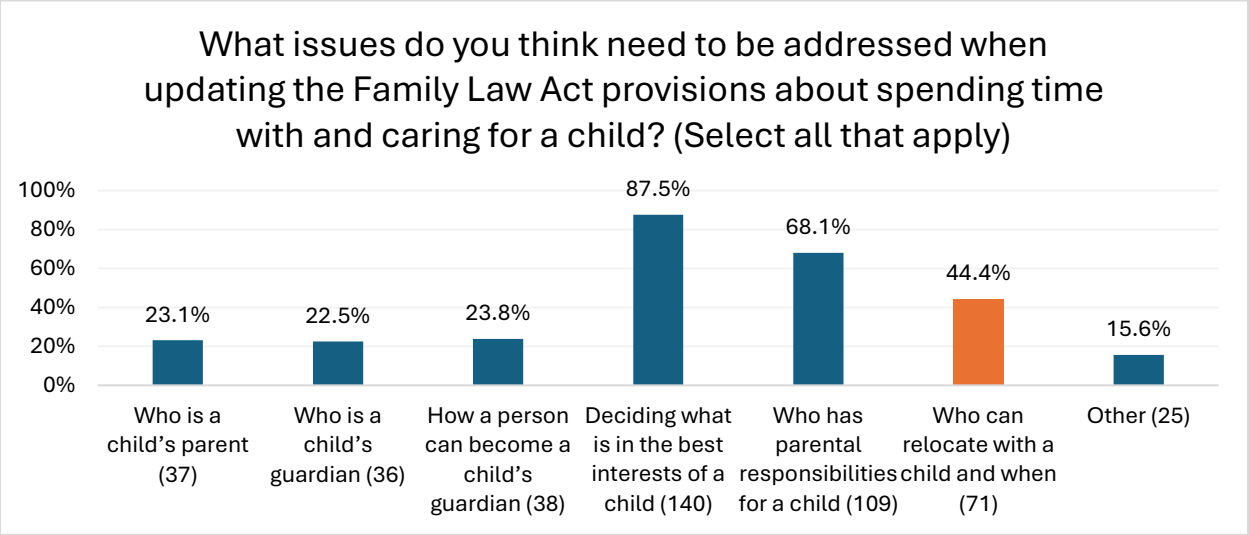
Responses from the survey highlighted the importance of the issue, as 25% of respondents listed relocation as an issue which they had to resolve (Figure 2-1).

Figure 2-1: Issues in Family Law Disputes



Also, 44.4% of survey respondents identified "Who can relocate with a child and when?" as one of the issues that needs to be updated in the Act (Figure 2-2).

Figure 2-2: FLA Issues Needing Updating



In the feedback received we heard a number of important themes.

We heard consistently about the importance of understanding and incorporating Indigenous traditional family practices within the FLA. This was offered as a way to improve specific provisions in the Act and as an important step in reconciliation with Indigenous persons.

We also heard that better alignment between the FLA and the *Divorce Act* is an important consideration for reform as a way of avoiding the development of inconsistent caselaw. Feedback was clear that an effort should be made to ensure different results do not emerge for similarly situated parties based only on the legislation used.

Further, the importance of understanding the unique impacts of relocation legislation on women was emphasized. The fact that an overwhelming majority of applications to relocate are brought by women needs to be recognized in the legislation to avoid exacerbating existing disadvantages they face.

What Was Said:

> *"Relocation is a zero-sum game. There is a winner and a loser and it is very hard to find a compromise. Sometimes a party just moves with the child and the other doesn't act quickly, so it creates a new status quo while the parties wind their way through court. Other times a party needs to move for reasons that are time sensitive, family issues, employment, etc… but the other party disagrees and so everyone is tied in place for 1 year or more while we wait for court, and the situation is radically different by the time trial arrives."*

Relocation

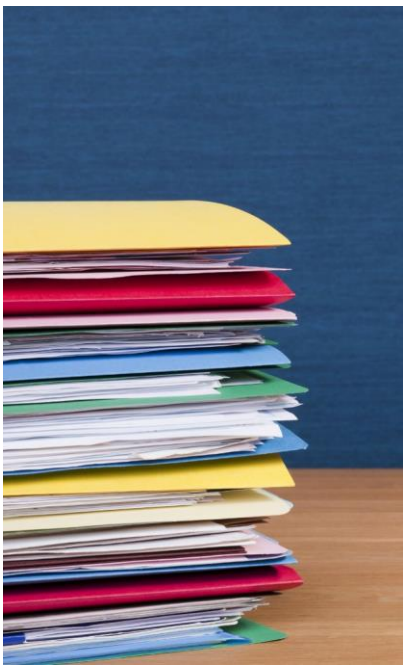
What is Relocation under the *Family Law Act*?

Section 65(1) of the FLA defines "relocation" based on how much a change in residence will affect a child's relationship with other guardians or "other persons having a significant role in the child's life." It has no geographical component such as a minimum distance between current and proposed residence. Section 65(2) of the Act indicates that the provisions in Division 6 - Relocation only apply to the change in residence if there is an existing written agreement or order indicating the parenting arrangements of the child.

If a guardian decides to change the residence of a child before a written agreement or order about parenting arrangements is made, it is governed by section 46 of the FLA which is not within Division 6 - Relocation. Under Section 46, the concern is only about the impact of the residence change on the child's other guardians and has no notice requirements.

As noted, we received feedback on the relationship between relocation provisions under the FLA and those under the *Divorce Act*. What is "relocation" under section 2(1) of the *Divorce Act* is similar but less broad than under the FLA. Like the FLA, relocation under the *Divorce Act* does not have a geographical component. However, unlike the FLA the *Divorce Act*'s definition is based on potential impact on only those with parenting time, decision-making responsibilities or contact with the child. The *Divorce Act*'s definition also has no requirement for an existing order or agreement and clarifies that it applies to a "pending application for a parenting order," which is the FLA section 46 equivalent.

Generally, feedback supported harmonizing the FLA and *Divorce Act* relocation definitions and bringing section 46 change of residence applications under Division 6 - Relocation. It was suggested that having a section that deals with a change of residence situation where there is no existing agreement or order separate from Division 6 - Relocation in the Act is confusing for parties.



Other feedback suggested that the definition of relocation in the Act should:

- Ensure parties cannot avoid it by, for example, maintaining a residence that would not trigger Division 6 but actually living somewhere else that would;
- Use a "geographic marker" to exclude short-distance moves and create additional clarity about whether a change in residence is a "relocation" despite the possibility of capturing relocations which are not significant to the persons involved; and
- (If section 46 is retained) clarify whether an interim order about parenting arrangements qualifies as an order about parenting arrangements for the purposes of the definition of "relocation".

Notice of and Objections to Relocation

Section 66 of the FLA says that notice of a relocation must be given to the child's other guardians and persons having contact with the child. There is no prescribed form for notice under the FLA as there is under the *Divorce Act*, and the *Divorce Act* requires significantly more information in a notice of relocation than does the FLA. Neither act prescribes a method for giving notice or requires proof that notice was given.

Section 66(2) allows the court to grant an exemption from giving notice only if satisfied that:

- Notice cannot be given without incurring a risk of family violence, or
- There is no ongoing relationship between the child and the other guardians or people with contact that would otherwise get notice.

By contrast, the *Divorce Act* does not limit the reasons that an exemption may be granted, although it does state that one reason can be that "there is a risk of family violence."

Section 67 of the FLA requires parties to use their best efforts to cooperate in resolving issues related to the proposed relocation after notice has been given. The section does not indicate what "best efforts to cooperate" means and imposes no consequences for non-compliance. Section 68 of the FLA gives a guardian 30 days from the date they receive a notice to file an application to prohibit the relocation.

Indigenous Perspectives: Relocation and Indigenous Families

An important theme that we heard when speaking with Indigenous people with lived experience is that the FLA needs to recognize Indigenous family networks. Indigenous families extend beyond the colonial concept of nuclear family, and include aunts, uncles, grandparents, and even non-related community members who may step in and act as a child's guardian. The FLA's relocation provisions require notice to be given to a child's other guardians and people who have formal contact with the child. The people who may object to a relocation application is further limited to guardians. The FLA's relocation provisions currently do not recognize people who may play a role in an Indigenous child's life unless they have formally obtained guardianship or an order for contact with the child, which may fail to recognize an Indigenous child's family network.

We heard that provisions related to giving notice can create problems in cases with family violence. The requirement to give 60 days advance notice often cannot be complied with if a person is fleeing family violence. Also, requiring them to provide a new address is potentially unsafe and the current section 66(2)(a) exemption is an application process only. Someone fleeing from family violence must take the chance that a court will agree that in their case "notice cannot be given without incurring a risk of family violence." It was also pointed out that a parent may not have 60 days before being required to accept housing offered by BC Housing which currently requires applicants for housing to relocate in less than 60 days.

Did you know?

In 2024, BC launched a systemic review into the legal system's treatment of sexual and intimate partner violence. The government launched this review recognizing that despite efforts to improve the legal system for survivors of sexual violence and intimate partner violence, survivor accounts and statistics demonstrate that these forms of violence continue to be pervasive and drastically underreported.

Further, we heard that the family violence exemption in section 66(2)(a) is unnecessarily onerous because it provides that establishing a risk of family violence is not enough. In addition, it requires a party to demonstrate that notice cannot be given without incurring

the risk. By contrast, an exemption under the *Divorce Act* can be granted if "there is a risk of family violence."

What Was Said:

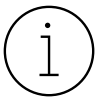
> *"I think relocating inside the province should not be classified as relocation within a certain distance. Such as moving from [the Lower Mainland] to Victoria. The distance is extremely close even though it has a ferry trip added, especially when the "relocation" is because the parent is fleeing an abusive relationship."*

There was some support for creating additional consequences for a failure to give notice of a relocation such as a loss of a presumption in favor of that parent, if applicable. However, feedback also cautioned that creating extra consequences could negatively affect survivors fleeing family violence. It was suggested that a better approach would be a case-by-case assessment about why notice was not given and followed by consequences if needed.

What Was Said:

> *"My ex-wife moved 2 hours away and expected me to do all of the driving to see our children. It was not known that I had a choice in saying no to this."*

Other feedback related to notices of relocation suggested the Act should:

	Create an optional prescribed form for both notice of relocation and notice of objection that would specify the information needed.
	Require the same information as the *Divorce Act*'s prescribed notice/objection forms except that the name of city/town should be sufficient if exact address is unknown.
	Remove the attempt to resolve requirement because there is already FLA provisions encouraging out of court settlement and it unfairly adds a burden on mothers seeking to relocate because they are the vast majority of relocation applicants.
	Require individuals outside the nuclear family to be given notices of relocation and allow them to object as a way of recognizing Indigenous family networks.
	Give non-guardians some way to share concerns they may have about a proposed relocation by, for example, granting them status to make representations.

Presumptions and Burdens

Section 69 of the FLA addresses who has the burden of proving to a court whether a relocation is or is not in the best interests of a child. The section adjusts who has the burden based on whether the parties have "substantially equal parenting time" or not in their existing parenting arrangements.

Although Section 16.93 of the *Divorce Act* addresses the issue of burdens of proof similarly, in the sense that the burden shifts based on whether the parties have substantially equal time with the child, the *Divorce Act* explicitly addresses whether the parties are "substantially complying with their parenting arrangements." The FLA does not address the issue of actual compliance.

Other important differences exist between the statutes related to the concept of "good faith" and whether "reasonable and workable arrangements" have been developed.

Section 69(4)(a) of the FLA requires a relocating applicant to establish that the proposed relocation is in "good faith," and that they have proposed "reasonable and workable arrangements" to preserve the child's relationships with other guardians, persons entitled to contact with the child, and other persons who have a significant role in the child's life. What "reasonable and workable arrangements" means is not expanded on in the Act but factors to be considered in a "good faith" analysis listed in section 69(6) include:

"(a) the reasons for the proposed relocation;

(b) whether the proposed relocation is likely to enhance the general quality of life of the child and, if applicable, of the relocating guardian, including increasing emotional well-being or financial or educational opportunities;

(c) whether notice was given under section 66 [notice of relocation];

(d) any restrictions on relocation contained in a written agreement or an order."

Section 69(7) of the FLA specifically prohibits the court from considering whether a guardian would relocate if the court were to prohibit their child's relocation. Section 16.92(2) of the *Divorce Act* mirrors this prohibition.

Support was received for modifying the burdens of proof to more closely follow those in the *Divorce Act*. As noted, the *Divorce Act* references a need to assess "substantial compliance" with existing parenting arrangements as part of determining who has the burden of proof. The FLA is less explicit in this regard.

Did you know?

Approximately 90 to 95 per cent of parties applying to relocate with their child are women.

There was also support for section 69 of the FLA to better reflect the gendered nature of relocations in the FLA by including a consideration of a perpetrator's ability to parent due to family violence and the survivor's ability to parent or keep the child safe when there is a risk of family violence.

The "good faith" requirement under section 69(4)(a) received criticism. We heard that, because of the gendered nature of applications to relocate, the requirement imposes an unfair and significant burden on mothers who seek to relocate. The provision requires them to give evidence about the factors listed in section 69(6) including the reasons for the proposed move and how the move enhances the quality of life of the child. The "good faith" requirement was also viewed as unnecessary and potentially harmful in that it carries an unwarranted moral judgement that is not imposed on the motives of an objecting guardian nor on any other type of applicant. A suggestion was made that if the good faith requirement is retained

there should be recognition in the Act that valid reasons for relocation can include things like:

- An applicant's right to be free from family violence,
- The socio-economic realities of the applicant including things like housing availability and affordability, employment or educational opportunities, and
- The proposed relocation's proximity to social and emotional supports.

Regarding the requirement in section 69(4)(a) of the FLA for a relocating guardian to propose "reasonable and workable arrangements," there was divided feedback on whether the Act should explicitly address technological advancements such as video communication as a way of preserving a child's relationship with another person. Some felt this recognition was important while others believed it unnecessary because the use of the technology was commonplace. Feedback also suggested imposing the same requirement to propose reasonable and workable arrangements on an objecting party as well.

The prohibition in section 69(7) of the Act against asking whether a parent would relocate without their child also generated interesting feedback. There was some support for removing the prohibition while others believed to do so would place survivors of family violence in an untenable situation. Feedback noted that not asking the question allows for the creation of parenting arrangements based on an assumption that the parent will relocate without the child. This can result in terms that are more favourable to the non-applicant guardian which is often a substantial departure from the existing arrangements. A subsequent variation application was considered to not be an adequate answer because survivors of family violence cannot apply to vary these orders because of their social and economic realities.

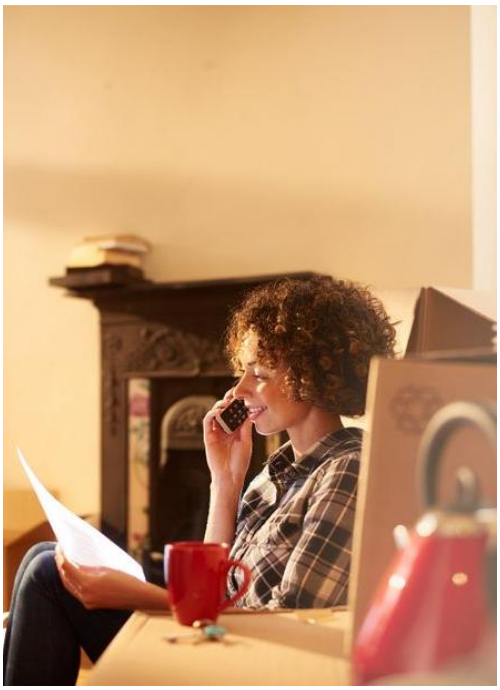
It was also pointed out that asking the question at least removes the need for a court to speculate about whether or not the parent would move and would be able to consider what the child's life would be like should the relocation be prohibited. The suggestion was that the court needs to know things like who would then care for the child if the primary caregiver moved away, and would these arrangements be in the best interests of the child or should the relocation be allowed. Further, if as a result of prohibiting the relocation, the primary caregiver has to give up the benefits and opportunities of the relocation to stay with the child, then the court ought to consider how those things will impact the child.

Factors to be Considered

In any relocation application, the court must consider the best interests of the child. In order to determine this, the court must consider all the factors listed in section 37(2) of the FLA and, under section 38, the impact of family violence on a child and on the ability of a person to care for and meet the needs of the child. Section 69(3) of the Act uniquely adds the factors of "good faith" and "reasonable and workable arrangements" listed in section 69 (4)(a) to the section 37 factors.

What Was Said:

> *"I would like relocation (within a reasonable distance) to be more easily obtainable, especially to be closer to family support and a healthier environment for children. I would like judges to be more abuse conscious and for children testimony to have more weight even at a young age."*



Section 16.92 of the *Divorce Act* provides best interests of the child factors that are to be considered in a relocation application. Some are similar to factors that the court must consider under the "good faith" requirement in section 69(6) of the FLA noted above.

In speaking with Indigenous people with lived experience, we heard is that it is vital for every Indigenous child to grow up with their culture and that the FLA should emphasize the importance of staying connected with both sides of their Indigenous families. Ideally, an Indigenous child should live within their Indigenous community, but if this is not possible, then maintaining the child's connection to their community and culture must be a priority.

There was also support for 'harmonizing' the factors to be considered in relocation cases with the best interests of the child factors listed in section 16.92 of the *Divorce Act*. Bringing sections 46 change of residence and 69 presumptions in line with the additional the *Divorce Act* would bring consistency to the approach used by the Supreme Court of Canada in the 2022 decision of *Barendregt v. Grebliunas* and make the law clearer and more accessible.

Another comment suggested that an objection to a relocation should also be some how assessed using the same best interests of the child factors. Consideration could be whether it was in the best interests of a child for the child to not relocate.

CHAPTER 3: Child-Centred Decision Making

Introduction

Phase 2 of the Family Law Act Modernization Project includes a review of child-centred decision making. This review considers the best interests of the child provisions in Part 4 - Care of and Time with Children, and the various mechanisms by which the views of a child can be obtained in family law disputes. For example, current mechanisms used in BC include children providing evidence through letters, affidavits, and judicial interviews, as well as appointing legal representation for a child in family law court proceedings that relate to them.

Reports prepared under sections 202 and 211 of the FLA are also commonly used to obtain and present a child's views in family law matters. For a summary of the feedback received related to these reports, including "Full" Section 211 reports, Views of the Child reports, and Hear the Child reports, please see Chapter 4 – *Children's Views & Parenting Assessments and Reports*.

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

- The best interests of the child factors;
- The ways in which a child's evidence can be obtained in a family law dispute; and
- When a children's lawyer is appointed in a family law dispute.

Best Interests of the Child

When making agreements and orders under Part 4 related to guardianship, parenting arrangements or contact with a child, section 37(1) of the FLA requires the parties and the court to consider the best interests of the child only. This was a change from the language in the former *Family Relations Act*, which required the court to only give "paramount consideration" to the best interests of a child in making those types of decisions.

Under the FLA, in order to determine the best interests of the child, the court must consider all of the child's needs and circumstances, including the factors listed in section 37(2):

37 (2) To determine what is in the best interests of a child, all of the child's needs and circumstances must be considered, including the following:

(a) the child's health and emotional well-being;

(b) the child's views, unless it would be inappropriate to consider them;

(c) the nature and strength of the relationships between the child and significant persons in the child's life;

(d) the history of the child's care;

(e) the child's need for stability, given the child's age and stage of development;

(f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise the person's responsibilities;

(g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;

(h) whether the actions of a person responsible for family violence indicate that the person may be impaired in the person's ability to care for the child and meet the child's needs;

(i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;

(j) any civil or criminal proceeding relevant to the child's safety, security or well-being.

In addition, section 37(3) clarifies that:

> an agreement or order is not in the best interests of a child unless it protects, to the greatest extent possible, the child's physical, psychological and emotional safety, security and well-being.

And, section 37(4) restricts the court's ability to consider a person's conduct to only situations where the conduct substantially affects one of the listed factors in section 37(2), and only to the extent that it affects the factor.

Section 38 requires a court to consider a number of factors when assessing section 37(2) (g) and (h) related to the impact of any family violence:

Did you know?

Family violence considerations have been part of the best interests of the child analysis in family law in BC since 2013. Family violence includes both violence directed toward a child, as well as violence directed toward another person but that the child witnessed. Exposure to family violence is an adverse childhood experience that can have life-long impacts on a person.

Assessing family violence

38 For the purposes of section 37 (2) (g) and (h) [best interests of child], a court must consider all of the following:

(a) the nature and seriousness of the family violence;

(b) how recently the family violence occurred;

(c) the frequency of the family violence;

(d) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at a family member;

(e) whether the family violence was directed toward the child;

(f) whether the child was exposed to family violence that was not directed toward the child;

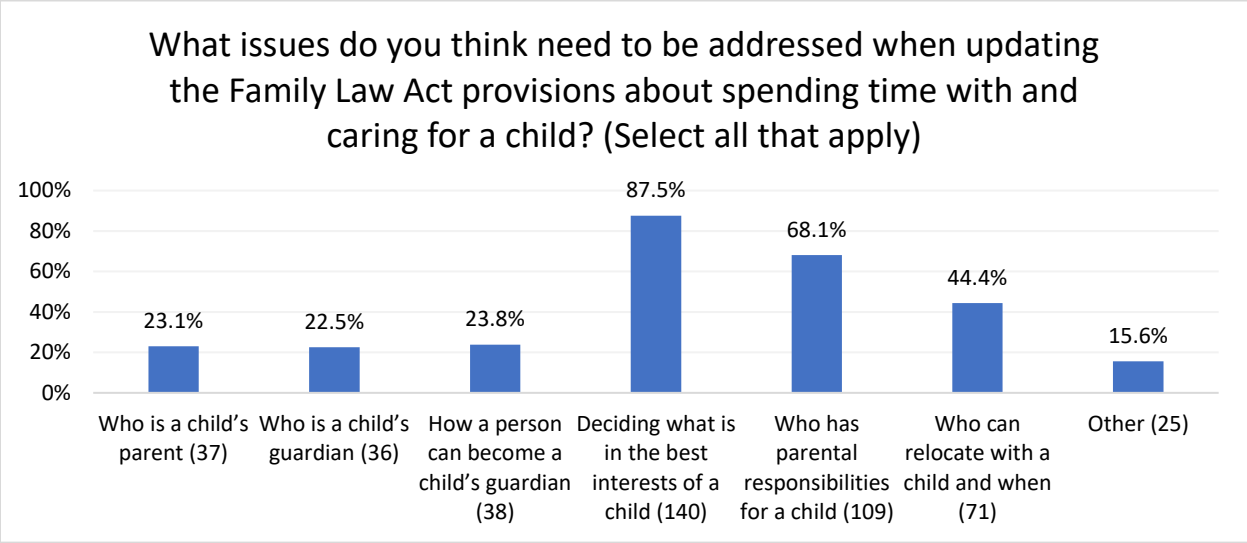
(g) the harm to the child's physical, psychological and emotional safety, security and well-being as a result of the family violence;

(h) any steps the person responsible for the family violence has taken to prevent further family violence from occurring;

(i) any other relevant matter.

Given the importance of determining the best interests of a child in decisions related to caring for and spending time with a child, it is significant that it was the issue identified by survey respondents as most needing to be addressed in updating the care of and time with children provisions of the FLA (See Figure 3-1).

Figure 3-1: Survey Responses: Issues Needing to be Addressed in FLA Update



Considering the Best Interests of the Child

Several themes emerged in the survey results related to the best interests of the child in family law disputes. Based on people's lived experiences, failure to consider or not adequately considering the best interests of a child was identified as the biggest concern when determining who would have responsibility for caring for a child in a family law dispute. Survey feedback highlighted two specific best interests of the child factors which seemed to be resulting in the most concerns for those with lived experience in family law disputes: (1) the history of the child's care, and (2) family violence.

Failing to consider or not adequately considering the history of the child's care was a common theme, as feedback suggested that 50/50 parenting time was often ordered regardless of the history of care. Stability in safety, housing and parenting was identified as an important factor that ought to be considered when determining the best interests of a child.

What Was Said:

> *"Child has always been mainly with me, I do all the actual parenting, make all decisions, take to all appointments, shopping, absolutely everything but because it's automatically a 50/50 system dad gets equal time even though he doesn't do even 10% of the work in raising the child."*

> *"Dad has been absent for 9 months and prior to legal action in and out of the kids lives randomly, now he is wanting 50/50 stating it is best for the kids. The children do not want this and he is dismissive of their views."*

"It seemed to me that the arbitrator defaulted to 50:50, regardless of the history of the child's care (which was 80% me parenting), history of child abuse (from dad to my kids), etc."

Secondly, a significant amount of survey feedback indicated that family violence was not adequately considered when determining the best interests of a child. Responses from people with lived experience with family violence provided common examples of ways that family violence considerations were deficient in family law decision-making concerning children, including:

- Parties were often advised by professionals not to mention family violence in the dispute
- The decision-maker did not consider family violence directed toward the other parent, even if it was witnessed by the child
- The decision-maker prioritized the other parent's relationship with the child over evidence of family violence when determining the best interests of a child

What Was Said:

"... I was directed by all levels not to bring [family violence] up or focus on it as I would risk losing my child..."

"... My lawyer basically said there was no point bringing [family violence] up as the law didn't really recognize family violence much."

"... all doctors, lawyers, mediators, family coaches, etc. told me not to speak of the violence."

"Court seemed to place more importance on the other parent having a relationship with a child and they do the child's emotional or physical well-being"

"Many judges still regularly simply say things like "The child did not see what the father did to the mother so I am not considering the abuse." I am part of a group of over 5000 single moms and we are collectively horrified by how women who have been abused are treated in court. There are certainly some trauma informed judges who are a gift to the family law system, but many judges simply contribute to further traumatizing women."

"The law gives parenting time to the abusive parent, often who has physically hurt the mother and/or child, mentally abuses them, displays substance abuse, and the child is powerless to get away. It's tragic."

"If an adult is abusive to another adult, they are not capable of caring for a child. Specifically, where there are recurring patterns and most often the children become weaponized. The family violence needs to be properly analyzed to show who is the aggressor, not label it high conflict and punish both parents or split the difference."

Parental Alienation

Related to both history of a child's care and family violence, many concerns were raised in the survey feedback about parental alienation. In survey responses to a question about whether family violence was adequately considered in the family law dispute, many respondents indicated that if they had alleged family violence, the other party often accused them of parental alienation. When parental alienation claims were made, some respondents commented that the court then forced children to spend time with the abusive parent.

What Was Said:

"... we are in court and the issues of family violence (which in my case was psychological, emotional, towards and in the presence of the children, and intentionally damaging property) are all being dismissed and not brought to light because this violence is hard to have solid evidence. And the dad is now trying to minimize the voice of the children ... because he knows they will speak the truth, so he is using the common tactic of allegations of parental alienation to dismiss the family violence that has occurred."

"The children's claims of neglect, emotional, psychological and physical abuse were dismissed on the grounds that they were 'too young' or that I had coached them into reporting such things (parental alienation was alleged instead of acknowledging the abuse going on.)"

"Once family violence is said then other party falsely claims alienations and then the kids views and voices are not considered at the highest level that it should be."

"Currently there is a detrimental trend of children and victims speaking out about family violence and it being dismissed and the litigation path altered due to the false allegations made after the fact of parental alienation."

"There is a huge trend of false alienation claims that is too common tactic that makes judges dismiss the family violence."

"The term 'alienation' should NEVER apply to rape or abuse. Kids and mothers lose their lives, stop using the term alienation (created by pedophile)."

"Currently there is a detrimental trend of children and victims speaking out about family violence and it being dismissed and the litigation path altered due to the false allegations made after the fact of parental alienation."

"Making false claims of parental alienation in order to distract from family violence is family violence."

"View of the child is irrelevant when parental alienation is happening."

On the other hand, a few survey respondents suggested that parental alienation was an issue in their family law disputes that should be seriously considered when making decisions.

What Was Said:

"It has been 6 years of disagreements, and concerns that my ex-wife was working on alienating our children against me."

"He was a baby when she ran away with him. There was a lot of alienation and no recourse for her not following court orders."

"Naming parental alienating behaviours (PABs) as a form of family violence (i.e. coercive control) was not done by the courts."

Some suggestions were offered on how to respond to concerns of parental alienation allegations broadly or in specific cases. For example, there were suggestions that more training and education on family violence is needed for family justice professions, including judges and lawyers. Another suggestion was to add parental alienation as a factor to be considered when determining the best interests of a child and whether there is family violence. Other respondents suggested that the FLA be clarified further to emphasize that there is no presumption of equal parenting.

What Was Said:

"I would like to have judges be educated on intimate partner violence and family violence we can put as much as we want in writing but until this happens it will be the same problem. Each community should partner with anti violence organizations or obtain training."

"Just because a person is the child's parent does not mean they have the child's best interests at heart. Parental alienation is a factor that needs to be considered."

"I think the act itself is fine, however, it remains commonplace for most courts to act on the presumption that 50/50 parenting time is in the best interest of the child (even in some cases where there is family violence!). This directly conflicts with the Act itself."

"A seized judge (or, better yet, a team of judges within an integrative psycho-judicial system) would have better served a high conflict situation like ours."

"Parental alienation is real and needs to be brought into account in the Family Law Act."

"More in depth understanding of trauma informed care for lawyers and judges. Shocking how damaging they are."

"Training and accountability for judges to take coercive control and domestic violence seriously. No repercussions reinforces the behavior, how many primary care givers must die before we take the early signs of domestic violence seriously."

From youth's perspectives, the youth who responded the Youth's Perspective's survey felt that they should have a say in their relationships and they should not be forced to spend time with a person, especially if they do not feel safe with them.

What Was Said:

"Do not force reunification when there is family violence."

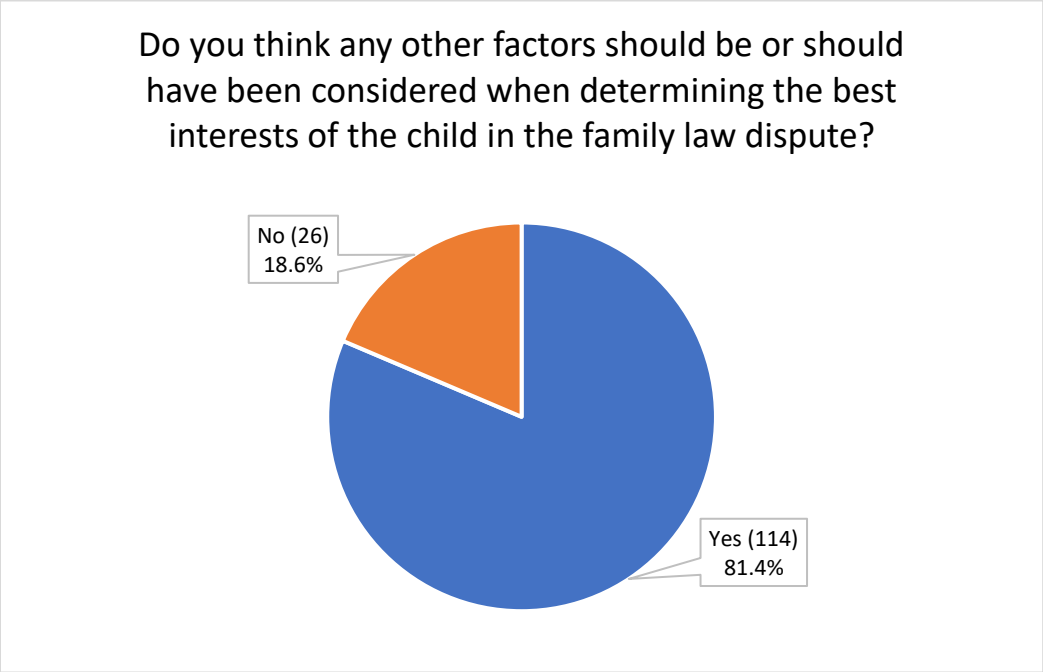
"…no forced therapy with dad if there is family violence. Ten and over should be able to decide if there is family violence where to love and who they want to see, this will result in better healing for the child."

"…I should be able to choose not spending time with an abusive and scary parent."

Best Interests of the Child Factors

The public engagement feedback suggested some changes may be needed to the current list of factors that must be considered when determining the best interests of a child in section 37 (2). Figure 3-2 demonstrates that 81.4% of survey respondents felt that other factors should be or should have been considered in a family law dispute in which they were involved.

Figure 3-2: Should Other Best Interests of the Child Factors Be Considered?



Many suggestions were offered in both the written and survey feedback on what factors should be added, amended or removed. The suggestions are summarized in the Table 3-1 below.

Table 3-1: Suggestions for Best Interests of the Child Factors

Current BIOC Factors	Feedback Suggested Changes
(a) the child's health and emotional well-being;	Add that not following a professional's instructions (e.g., the child's doctor or counsellor's instructions) is contrary to the child's best interests.
(b) the child's views, unless it would be inappropriate to consider them;	Remove the qualifier of "unless it would be inappropriate to consider" the child's views.
	Add that the obligation to consider the child's views must be ongoing and should be age-appropriate

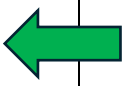
(c) the nature and strength of the relationships between the child and significant persons in the child's life;	
(d) the history of the child's care;	Add a requirement for parents who suddenly become interested in parenting a child after separation to explain their change of interest.
	Add a requirement to also consider future plans for the child's care.
	Add a specific requirement to consider who in the past has performed and who in the future is going to perform the specific responsibilities of giving the child their medications, taking them to appointments, and meeting with the doctors, specialists and counsellors, especially if the child has a disability.
(e) the child's need for stability, given the child's age and stage of development;	
(f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise the person's responsibilities;	Add a requirement that where a parent's parenting skills or self-regulation is found to be wanting, the parent must show how they have "taken responsibility and evolved to the point of overcoming the problem."
	Add a requirement to consider who will actually be caring for the child when they are in the person's care (for example, the parent themselves or a nanny).

(g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;	Add a requirement to consider whether the person responsible for family violence has acknowledged, expressed remorse, taken accountability for or takes steps to address the family violence.
	Add a requirement to consider the safety of the parent experiencing family violence, as the child's safety is intertwined with the caregiver's safety.
(h) whether the actions of a person responsible for family violence indicate that the person may be impaired in the person's ability to care for the child and meet the child's needs;	Add a requirement to consider whether the person responsible for family violence has acknowledged, expressed remorse, taken accountability for or takes steps to address the family violence.
(i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;	Specifically add a requirement to consider the guardian's conduct in following court orders. The cost of obtaining legal advice and litigation is a hardship on families. The FLA should add pressure on and stricter penalties for guardians who do not adhere to court orders, including failing to provide financial disclosure or make child support payments.
	Parental alienation, where one parent is undermining the child's relationship with the other parent is a factor that should be considered.
(j) any civil or criminal proceeding relevant to the child's safety, security or well-being.	Evidence of criminality or that a parent may be violent or unfit ((e.g., Ministry of Children and Family Development (MCFD) investigations, criminal records, past protection orders) should be considered, including allegations regardless of whether they led to convictions.

OTHER FACTORS	
A child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage.	Add this as a specific best interests of the child factor, rather than only a parental responsibility.
A child's Indigenous identity and culture.	Add that the court must consider a child's Indigenous identity and culture.
	Do not add specific factors to determine the best interests of an Indigenous child only, as it is sufficient to add "a child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage" instead.
The importance of preserving cultural connections and relationships with groups and communities.	Add this factor which was identified as being important for children from all cultural backgrounds, including maintaining connections with multiple cultures if their family is from multiple backgrounds.
	Some mixed feelings about adding this factor as it could already be covered under another potential new factor – each guardian's willingness to support the development and maintenance of the child's relationship with the other guardian.
The needs of a child with disabilities.	Add that the court must consider the unique needs of a child with disabilities.

	Some mixed feelings about adding this factor as it may already be covered under the existing s. 37 (2) (a), "the child's health and emotional well-being." However, there could be value in specifying certain situations, such as a parent's willingness to accept a disability and support care for it.
The importance of housing.	Add consideration for a child experiencing housing instability and recognition of impacts on the child's connection to a parent facing housing instability if they are separated. Specific guidance for considering the best interests of a child when moving schools should also be added.
Divorce Act s. 16 (3) (c) each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse.	The FLA should not adopt a factor similar to s. 16 (3) (c) of the *Divorce Act*, as doing so could result in it being 'weaponized' (i.e., be used against a parent who wants to relocate or who makes allegations of FV).
	If the FLA adopts this factor, it should be qualified in cases of family violence to ensure it is only necessary insofar as it is consistent with the best interests of the child and should be interpreted in a manner that is consistent with the other parent's history of parenting.
	The FLA should adopt this factor to address incidents of parental alienating behaviours.

Divorce Act s. 16 (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.	The FLA should not adopt this provision as it "arises from a long-standing assumption that children need a relationship with both of their parents, and more specifically, their fathers, to thrive," which "often has the effect of minimizing the harms arising from a child's relationship with an abusive parent". Further, to the extent that this assumption "factors into a court 's analysis, it can be used to discourage or punish a parent who seeks to protect their child from family violence."
A child or a child's family member must be able to exercise their rights without discrimination, including discrimination based on sex or gender identity or expression (similar to s. 9 (3) (b) and (c) of *An Act respecting First Nations, Inuit and Métis children, youth and families*).	The FLA should adopt this consideration in determining the best interests of a child.
	The FLA should not adopt a consideration similar to s. 9 (3) (b) and (c) of *An Act respecting First Nations, Inuit and Métis children, youth and families* as doing so could potentially open the door for a father to argue that not ordering equal parenting time is discriminatory towards men.
	The FLA should not add this consideration as, for example and based on experience, it suggests that a parent opposed to hormone blockers, could be left with less parenting time, even if they were supportive of their child's gender identity and transition (which is dynamic). It seems that the existing s. 37 (2) (a), "the child's health and emotional well-being" covers this issue more broadly. For example, there is research that the court could consider suicide rates for cases where parents are deciding on gender

	expression options. The suggested language seems more politically-motivated, whereas the actual best interests of the child issues are already covered in s. 37 (2).
Whether a parent has a mental illness or substance abuse disorder 	A parent's mental illness or substance abuse should be a factor considered when determining the best interests of a child. In particular, a child should not be forced to go with a parent with a mental illness or substance abuse disorder.

Weight

The feedback was mixed on whether any factors should be given more weight than others when considering the best interests of a child. One written response suggested that the history of the child's care and family violence should be prioritized, and stronger language should be added to emphasize that family violence is inconsistent with and undermines the best interests of a child. Some survey feedback suggested that a child's views or preferences on a matter should be of upmost importance or should even be determinative after a child reaches a certain age.

Some suggested that maintaining an Indigenous child's connection to their culture is the most important factor for an Indigenous child, while others suggested that it should be equally weighted with the other factors.

Unique Best Interests of the Child Factors

Engagement feedback suggested that unique lists, or unique factors within existing lists of best interests of the child factors, should be established specifically for Indigenous children and children with disabilities.

For an Indigenous child, feedback pointed to best interests of the Indigenous child factors which have recently been established in other child protection-related legislation, such as the federal *Act respecting First Nations, Inuit and Métis children, youth and families*, as well as BC's *Adoption Act* and *Child, Family and Community Service Act*.

Did you know?

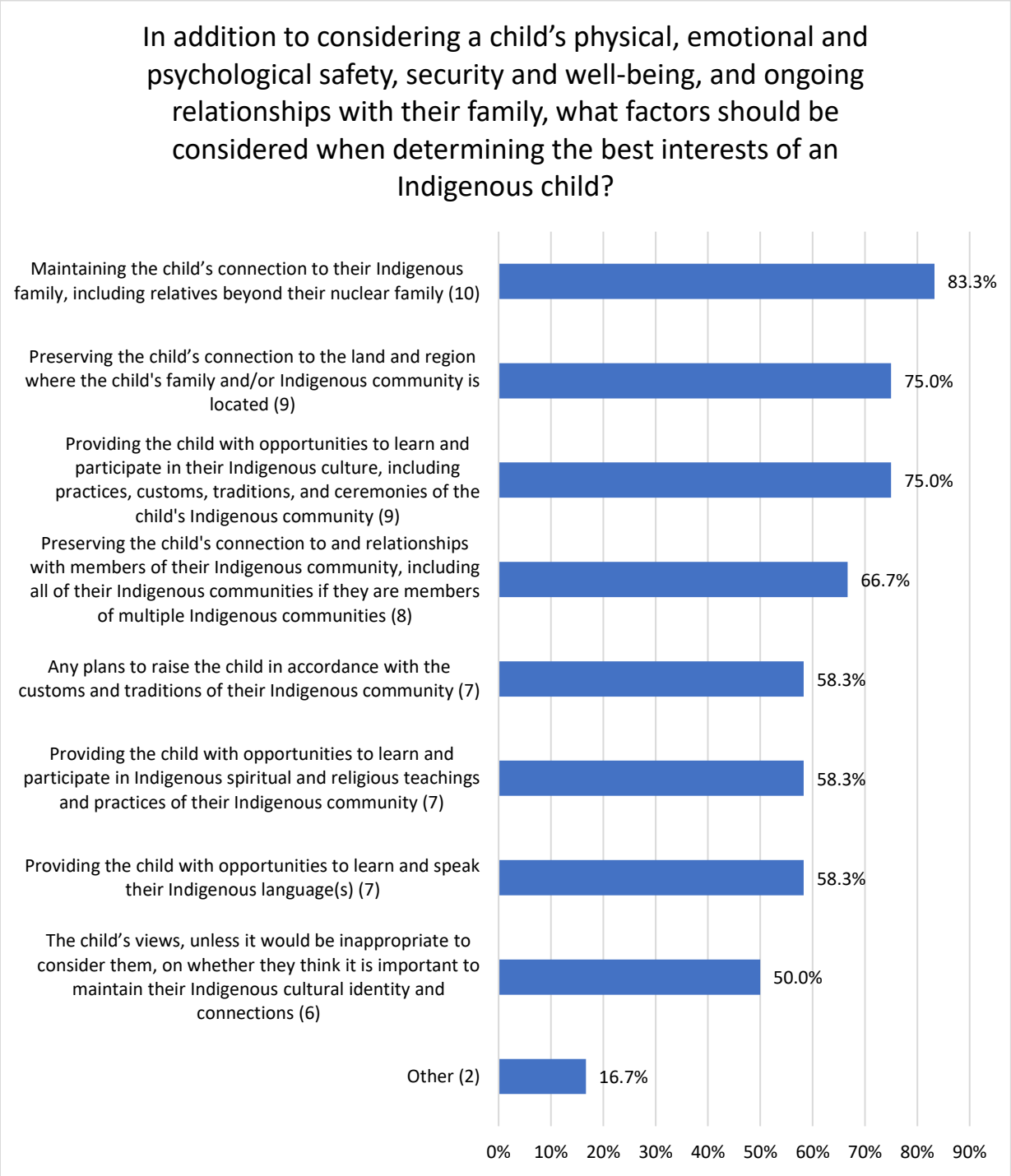
There are at least five different lists of best interests of the child factors that could apply to a child in deciding their family situation in BC. Different lists apply depending on whether the child's parents are divorcing or separating, whether there are child protection concerns, whether the child is Indigenous or whether the child is being adopted.

Indigenous Perspectives: Best Interests of the Indigenous Child Factors

In speaking with Indigenous people with lived experience, one of the themes that emerged was that it is vital for every Indigenous child to grow up with their culture. For an Indigenous child, culture is something that begins at birth, is nurtured through their lifetime, and is passed down from generation to generation. It was therefore suggested that the FLA's best interests of the child factors should emphasize the need for Indigenous children to stay connected with their culture. This should include maintaining connections to the culture of all sides of their family, when making family law decisions that relate to the child. However, there were mixed views on whether maintaining an Indigenous child's connection to their culture is more important than other best interests of the child factors, such as the child's health and emotional well-being, the child's views, and the impact of any family violence on the child.

Figure 3-3 summarizes the factors that survey respondents felt were most important to consider when determining the best interests of an Indigenous child in FLA decisions.

Figure 3-3: Best Interests of an Indigenous Child Factors



For a child with disabilities, some feedback supported a separate list of best interests of the child factors because these considerations are more complex and not all disabilities are the same. It was specifically noted that in determining parenting arrangements for a child with disabilities, consideration needs to be given to who has been giving and who is

going to give the child their medication, take them to appointments and meet with their doctors, specialists, and counsellors.

Other feedback suggested that separate lists or factors should not be established, as specific best interests of the child factors for Indigenous children and children with disabilities can be captured by more general factors. It was suggested, for example, that adding a requirement to consider "a child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage" would sufficiently capture considerations for an Indigenous child.

It was similarly suggested that considerations for a child with disabilities may already be captured under s. 37 (2) (a) "the child's health and emotional well-being," however, it may be helpful for the FLA to specify certain situations, such as a parent's willingness to accept a disability and support care for it.

Children's Evidence

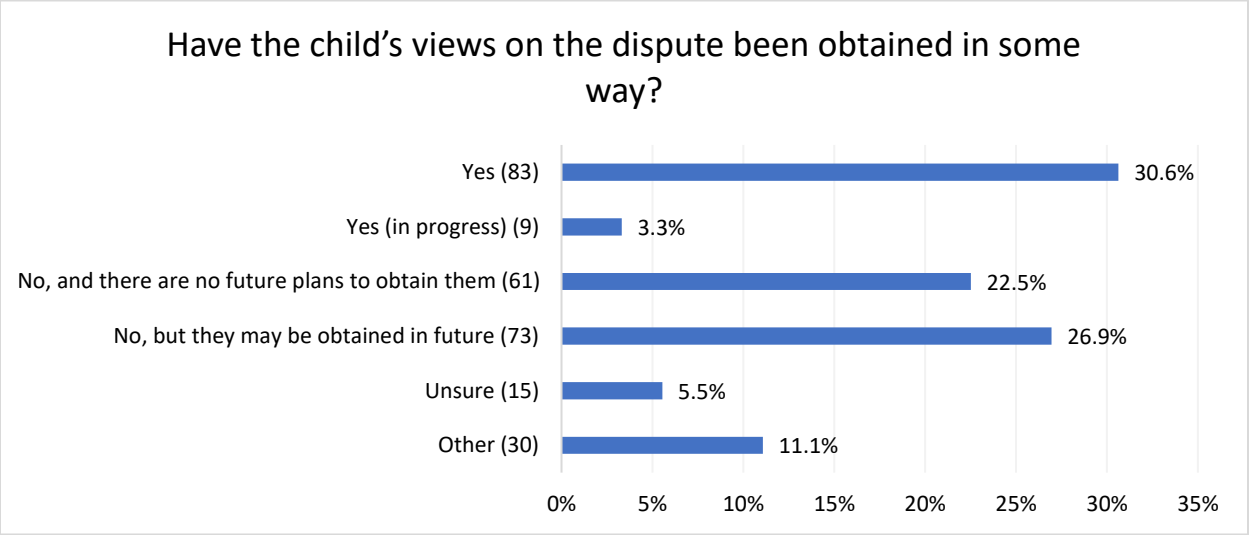
Section 37(2)(b) of the FLA states that a child's views must be considered unless it is inappropriate to do so, but the Act does not provide any mandated or preferred method for obtaining the child's views. Instead, section 202 gives the court the broad authority to admit a child's hearsay evidence as well as make any other order related to receiving a child's evidence:

> **Court may decide how child's evidence is received**
>
> **202** In a proceeding under this Act, a court, having regard to the best interests of a child, may do one or both of the following:
>
> (a) admit hearsay evidence it considers reliable of a child who is absent;
> (b) give any other direction that it considers appropriate concerning the receipt of a child's evidence.

Section 202(a) of the FLA seems to expand possibilities beyond formal report writers to include evidence introduced by parents, teachers or any other person who may have information to share about a child's opinions and wishes. Section 202(b) of the FLA provides additional flexibility which the courts have used when it would be potentially harmful for children to testify in a high conflict proceeding.

Survey results indicated that a child's views were obtained or will be obtained in some family law disputes, but not all. As depicted in Figure 3-4, 22.5% of respondents said that a child's views were not obtained and that there were no future plans to obtain them in a family law dispute. The most common reasons for not obtaining a child's views were that the child was too young, one party did not want the child's views obtained and that the parties did not want to distress the child.

Figure 3-4: Views of a Child



As depicted in Figures 3-5 and 3-6, based on the results of the Youth Perspectives Survey, only one out of 12 youth who had lived experience with family law disputes said they were able to share their views on family law decisions that were made about them. Of the 11 youth who did not share their views, nine stated that they would have liked to have been able to do so. The most common reasons why the youth did not share their views were:

- They tried but no one listened (72.7%)
- No one asked them (36.4%)
- They were too young (36.4%)

Only 2 youth said they did not want to share their views.

Figure 3-5: Youth: Did you share your views?

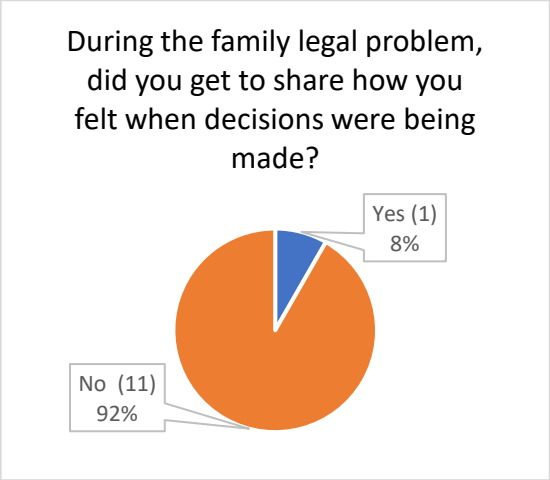
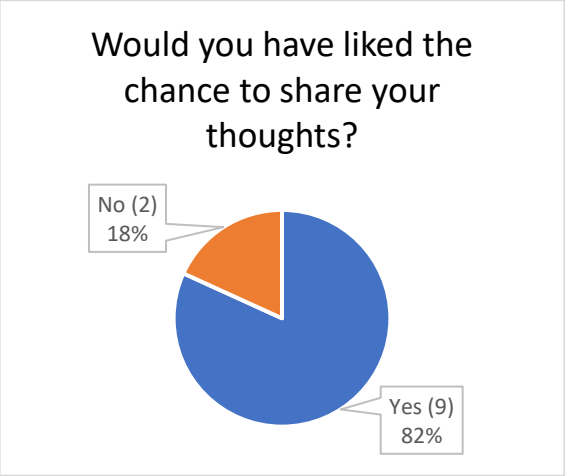


Figure 3-6: Youth: Did you want to share your views?



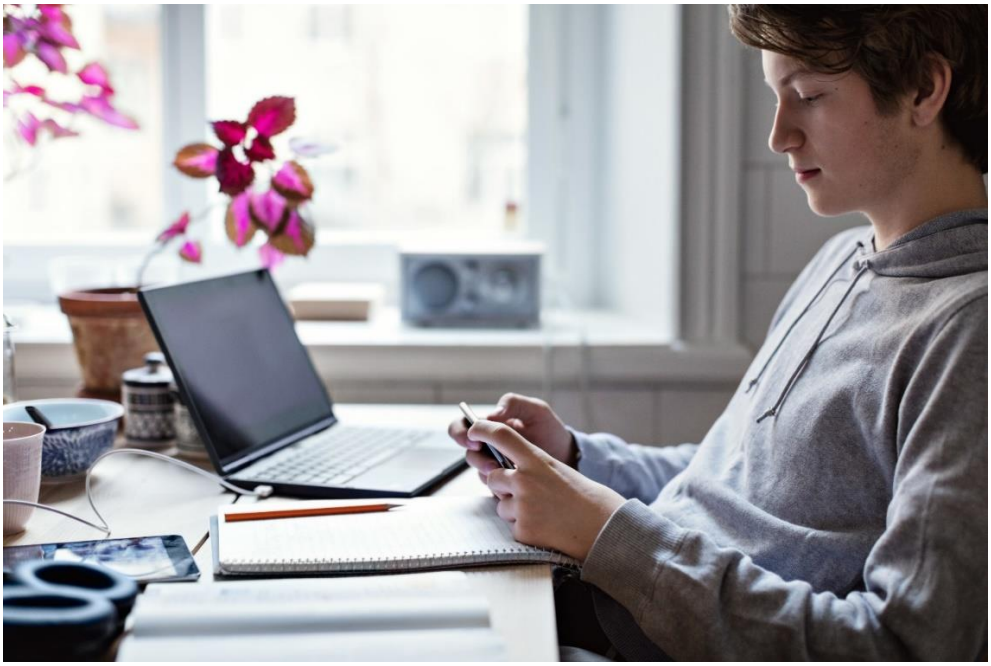
Written feedback supported that a child's views should be heard in family law proceedings and that having the views of a child present in court and communicated to the judge is an essential part of a family court process. This feedback was echoed in survey results which emphasized that children's views should be heard in a manner that works best for them.

However, there were mixed views on whether the FLA should be amended to ensure this appropriately happens. Some feedback suggested that it would be helpful if the FLA included a non-exhaustive list of factors or even a new part that listed all the mechanisms available for obtaining a child's views that the court should consider. Whereas other feedback suggested that section 202 of the FLA should not be amended as it is sufficiently broad to allow the flexibility to hear the child in a variety of ways.

What Was Said:

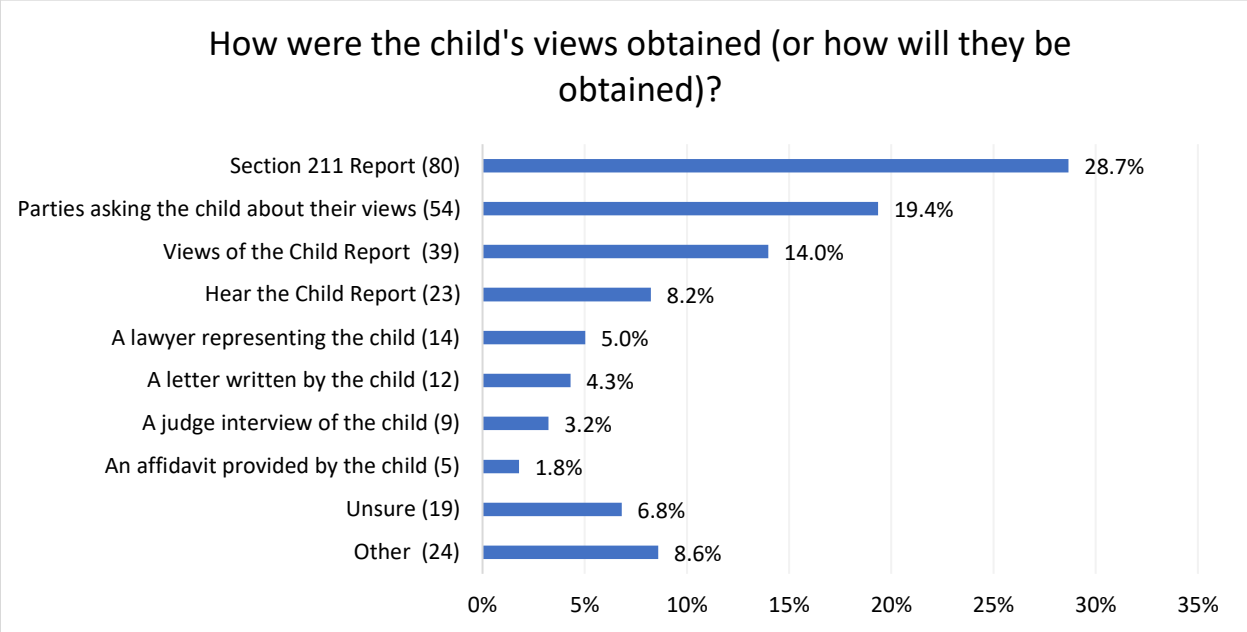
> *"Children's voices and behaviour should always be considered. Their rights are not second to the parents."*

> *"I believe all children should be asked their views. The court may still decide that what the child wants is not in their best interest but they should be heard."*



Survey results showed that Section 211 reports (see Chapter 4 for more feedback on Section 211 reports) were the most common method for obtaining the views of a child, followed by the parties simply asking the child about their views.

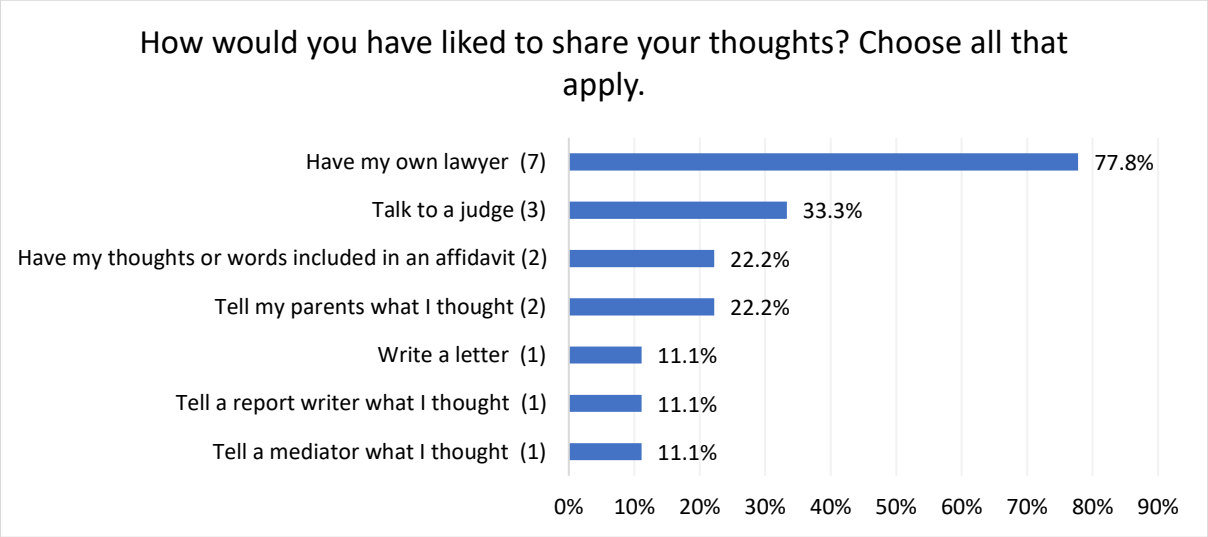
Figure 3-7: How a Child's Views Were Obtained



Some feedback suggested that the child should have more say in how their views are obtained, including requiring the child's expressed consent before providing their views and considering the child's preferences as to how their views will be heard. It was also suggested that the court should be required to consider how a child's views will be heard early in the proceedings.

Based on what we heard from youth who had experienced family law disputes, not only being able to share their views, but how they shared their views was very important to them. For example, in dialogue sessions, youth provided examples of how it was inadequate for a stranger to come to their school to ask them questions about the family law dispute, and then they never saw or heard from the stranger again. The youth felt it was important to establish a connection with the interviewer and to have the person explain the process to them. Based on survey results, the majority of youth said they would have liked to have been able to share their views through their own lawyer (77.8%) or by talking directly to the judge (33.3%)(Figure 3-8).

Figure 3-8: How Youth Would Like to Share Their Views



What Was Said:

> *"Children aged 10 and older need to be appointed a lawyer at the onset of a family law case without permission needed from parents or a judge. The views of a child aged 10 and older need to be more determinative of who they spend time with and live with. The child should be given a choice of how they want to give their views, such as lawyer or letter or affidavits."*

One lawyer suggested that regardless of whether the FLA legislates factors that should be used to assess the reliability of a child's hearsay evidence, there should be attention paid to the legitimacy of such factors and whether they reflect misconceptions, myths and biases regarding children's behaviour and psychology.

Also, it could be beneficial if the FLA stipulated that an Indigenous child have a support person from their Indigenous community present during a judicial interview or allowed an Indigenous child to provide evidence through other processes, such as through art or storytelling.

Affidavits & Letters to the Court

Written feedback indicated that the FLA should provide some parameters around children's affidavits and letters to the court. Some feedback suggested that the FLA should provide guidance on these two methods of providing a child's views. Other feedback suggested that affidavits should only be permitted if the child has received independent legal advice and possibly has reached a particular age, while letters to the court should be prohibited as it is uncertain who wrote the letter and under what circumstances.

Judicial Interviews

Written feedback unanimously stated that there should be guidelines for judicial interviews. Suggestions for guidelines included requiring judges to have specific training and education prior to interviewing children, and requiring judges to clearly define the purpose of the judicial interview and the process the judge will follow in conducting the interview.

Another suggestion was that children should have the right to choose whether or not to participate in a judicial interview.

Survey results indicated that support and training should be provided for judges who conduct interviews with children.

What Was Said:

> *"We need guidance regarding judicial interviews with children! Judges, by default, have zero training on how to engage with children. The FLA could codify a set of guidelines on 'how' and 'when' such interviews should take place."*
>
> *"Additionally, it would be wise for the court system to have a lawyer or other staff person that works with judges to solicit the views of the child by preparing children to meet with a judge, briefing a judge... but in an impartial manner."*

"It should be easier and more common for judges to have a couple meetings with the child to obtain their views."

The Age 12 Cut-Off

The feedback from dialogue sessions and written responses to the discussion paper indicated unanimous support for having no age cut-off to consider the views of a child. Feedback supported that the views of a child should always be considered, although the method for obtaining their views should be age appropriate. For example, for younger children, it was suggested that art therapy or play therapy could be used.

One group suggested that the FLA should include a provision that explicitly recognizes that a child presumptively has the capacity to provide their views and that they should be given the opportunity to do so in accordance with their wishes.

One response indicated experience with lawyers intentionally drawing out family law proceedings to wait for the child to reach the "magical" age 12 cut-off, which was not intended in the FLA and should be considered in this review.

Some survey responses indicated children aged 10 to 12 or older should be able to share their views, while others indicated younger ages or no age limit.

What Was Said:

"Views of a child should be obtained, by default from all children involved ages 5 and older."

"We need to listen to children of all ages, young children know how to express their needs, and we need professionals to really hear them."

"I believe a child of 10 years of age and older are very capable of deciphering their feelings and views. … They should have an instant right to obtain a lawyer if they wish and voice to do so, right now it is shunned upon and it shouldn't be when their lives are at play. The option of judge interview, affidavit, or writing a letter should also be common place and acceptable for children especially 10 and older."

Children's Lawyer

Section 203 of the FLA allows the court to appoint a lawyer to represent the interests of a child in a proceeding under the Act. Before appointing such a lawyer, the court must be satisfied that the degree of conflict between the parties is so severe that it significantly impairs the capacity of the parties to act in the child's best interests, and that the appointment is necessary to protect the child's best interests. The court may also decide whether one or both parties will be responsible for paying the lawyer's fees and disbursements.

The majority of written and survey feedback suggested that current restrictions to appointing a children's lawyer should be removed under the FLA. Some feedback suggested that the current section 203 test is problematic because it prevents children from having lawyers in many cases where a child wants and would benefit from having their own lawyer. One written response also stated that the current test requiring the court to find that the parents "are not acting in the child's best interests" is unnecessarily stigmatizing and implies moral blameworthiness with respect to the parties' "severe conflict" – a concept that often masks family violence and safety concerns. Some proposed alternatives were that a children's lawyer should be appointed when it is in the child's best interests, or when the court considers it to be appropriate.

What Was Said:

> *"The test for a lawyer is too hard to meet. It requires the child to have been put in a position that neither parent can address their best interests before a lawyer is appointed. By then, too much damage has been done."*
>
> *"Children over a certain age, maybe 12, should have access to a lawyer, at least to get some [independent legal advice] and make their views known, or maybe a social worker advocate."*
>
> *"Children can only gain access to a lawyer if their guardian approves - this should change so that children can advocate for their best interest when needed against their guardian."*
>
> *"Changing when and how a lawyer can be appointed to a child or when a child can retain a lawyer - this should not be based on whether or not a parent can make an application to the court for the child to obtain a lawyer and should not be based upon agreement of both parents."*

Feedback from youth who have had a children's lawyer described positive experiences. In particular, the youth noted that when they had a lawyer, they felt like their voices were heard they were taken seriously, and they better understood the family law process and implications of decisions that were being made about them. For youth who did not have a children's lawyer, many indicated that they would like to have one and to have a one-on-one relationship with a person who could help their voices be heard.

What Was Said:

> *"My parents are getting divorced and I want a say in my life and who I spend time with and where I live. I want a children's lawyer but apparently, I need permission from both parents but by dad is just dismissing me and saying no because he is the one that hurt us."*
>
> *"Make it so that any child 10 years old and older can have full say in who they spend time with and who they want to live with especially when there is abuse. Also, we should be able to get a lawyer, choose our counsellor and not be forced into anything that affects us medically or emotionally."*
>
> *"Yes, I think a child should have a right to and get a lawyer right away at the start of legal stuff so that our voices are heard immediately in cases involving us."*
>
> *"Yes, I was told parents need to agree on a children's lawyer. My dad said no. I think if a child is 10 and over they should be able to get a lawyer if they want without a parents or judges permission."*
>
> *"A children's lawyer should be given to every child at the start of a divorce - we deserve to be heard because this is our lives and safety at stake. Age 12 is a mature age that should be considered to be taken what I want to be ordered."*
>
> *"I should be able to get a lawyer without permission and I should be able to choose not spending time with an abusive and scary parent."*

Some family lawyers suggested that if a children's lawyer is appointed, then the FLA should specify that a child has the rights of a party, unless the court orders otherwise. It was suggested that allowing counsel to fully participate on behalf of the child, while not making the child a party to their parents' legal dispute, will ensure that the child's needs

and preferences do not get diluted by the parents' separate assessments of what is best for the child.

It was noted that a children's lawyer could be especially helpful in cases spanning multiple years as the lawyer could provide the court with ongoing updates on the child's perspectives, which would be more efficient and less expensive than getting updated Section 211 reports. It would also likely be easier on the child who could build a rapport with their lawyer.

What Was Said:

> *"Having a snapshot view at one point of time where parental influence can impact child is not helpful. Legal advocates/ lawyers specifically working solely with child over time with no involvement of parties would provide a much more accurate assessment and representation of the child's view."*

There was some support for the role of a children's lawyer to be set out in the FLA and that the court could specifically appoint a lawyer to fulfill one or more specific roles (for example, to obtain the views of the child or to advocate for the child). However, other feedback cautioned that the FLA should not be amended to include additional criteria that could limit judicial discretion to appoint counsel for the child.

There were mixed views on whether factors the court must consider in deciding whether to appoint a children's lawyer should be added to the FLA. There was some agreement that requiring harm to be proven before a child can have legal representation is not in a child's best interests and represents a marked departure from the approach in other provinces. One suggestion was that the section 203 test should focus on the best interests of the child and whether a child's views are adequately presented to the court. To the extent that the test considers conflict between the parties, it should also consider the presence of family violence and safety concerns.

What Was Said:

> *"Lawyers should be appointed for children in any case involving potential abuse."*
>
> *"Children should have the right to get a lawyer asap when aged 10 and older. More weight needs to be put into their views and forces and costly reunification should not be ordered in family violence cases."*

It was noted that any reforms to section 203 should be accompanied by additional funding for free children's lawyer services through the Child and Youth Legal Centre. Without such funding, a relaxed test under section 203 may either have no practical effect on children's rights to be heard or have the unintended consequence of making family law matters even more unaffordable and detrimental to parents' financial security.

Indigenous Perspectives: Advocate for an Indigenous Child

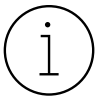
Feedback from Indigenous dialogue sessions supported the idea that an Indigenous child who is the subject of a family law matter should be able to have a person who is a member of their Indigenous community, such as an Elder or a matriarch, support them or advocate for them during the family law proceedings. However, if a person from outside the Indigenous community interviews an Indigenous child, the person needs to have knowledge of the child's community, culture and traditions before the interview begins. Priority should also be given to processes that make the child feel safe and allow the child to share their views without negative outcomes.

What Was Said:

> *"Having child advocates (especially First Nation, Inuit, and Métis advocates) to continuously advocate for the rights of the child would be ideal throughout the Family Law Act."*

Other Child-Centred Decision Making Feedback

Written feedback was received on other issues related to child-centred decision making that were not expressly discussed in the discussion paper. Other feedback related to child-centred decision making suggested:

	There should be legislated limits on requiring parents to disclose their health records such as counselling records.
	FLA should be consistent with and incorporate elements of the *UN Convention on the Rights of the Child* and the *Declaration on the Rights of Indigenous People Act*.
	Judges should have discretion to disregard evidence collected through surreptitious recordings, unless the recordings are being used to disclose a party bringing about or threatening harm to the child or spouse's safety and the recordings do not encroach on the child's rights or perpetuate adverse childhood experiences.

Family Dispute Resolution Practitioners should be required to complete training on obtaining the views of children.

CHAPTER 4: Children's Views and Parenting Assessments and Reports

Introduction

Phase 2 of the Family Law Act Modernization Project includes a review of child-centred decision making. This includes the best interests of the child provisions in Part 4 - Care of and Time with Children of the FLA, and the various mechanisms by which the views of a child can be provided for consideration in family law disputes that relate to them.

One way a child's views on a family law dispute may be obtained and presented is through interview or assessment processes and reports prepared under sections 202 and 211 of the FLA. These include "Full" Section 211 reports, Views of the Child reports, and Hear the Child reports.

Although the authority for some types of reports is under section 202, that provision is intended to give the court flexibility in ensuring that a child's evidence is heard, which can include other mechanisms for obtaining a child's views such as:

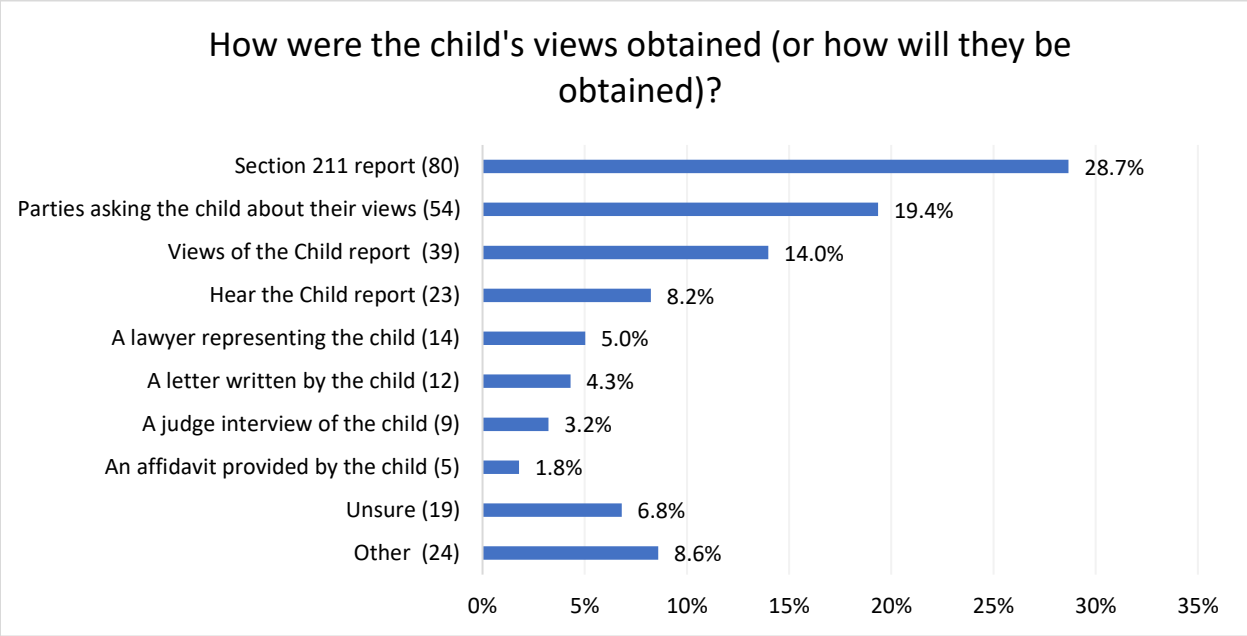
- letters written by the child
- affidavits of the child
- judicial interviews of the child
- the appointment of a lawyer to represent the child (i.e., a children's lawyer)

Please see Chapter 3: Child-Centred Decision Making for feedback related to these other ways to obtain the views of a child.

Assessments and Reports

Based on survey results, reports were the most common way that a child's views are being obtained in a family law dispute. Section 211 reports were the most frequent way to obtain the views of a child, with Views of the Child reports and Hear the Child reports being less common.

Figure 4-1: How a Child's Views Were Obtained



However, when asked to describe positive or negative experiences with reports, survey respondents overwhelmingly described negative experiences. Common reasons for the negative experiences included the following:

- The report writer was biased, or the process used by the report writer was biased or flawed
- The report was useless and did not address important topics
- The report was costly and delayed the family law matter
- The process was distressing for the respondent and/or the child
- The report writer did not understand family violence

What Was Said:

> *"It was incredibly intrusive and very expensive and didn't really help resolve anything."*
>
> *"The whole process was opaque and frightening. We never felt heard or taken seriously by the assessor."*

Other engagement feedback, however, highlighted that reports were an opportunity for a child's voice to be heard in the family law dispute. Feedback from youth suggested that reports could be a valuable way to obtain the views of a child if done properly. From the youth's perspectives, the following were important elements of interviews and preparing reports on their views:

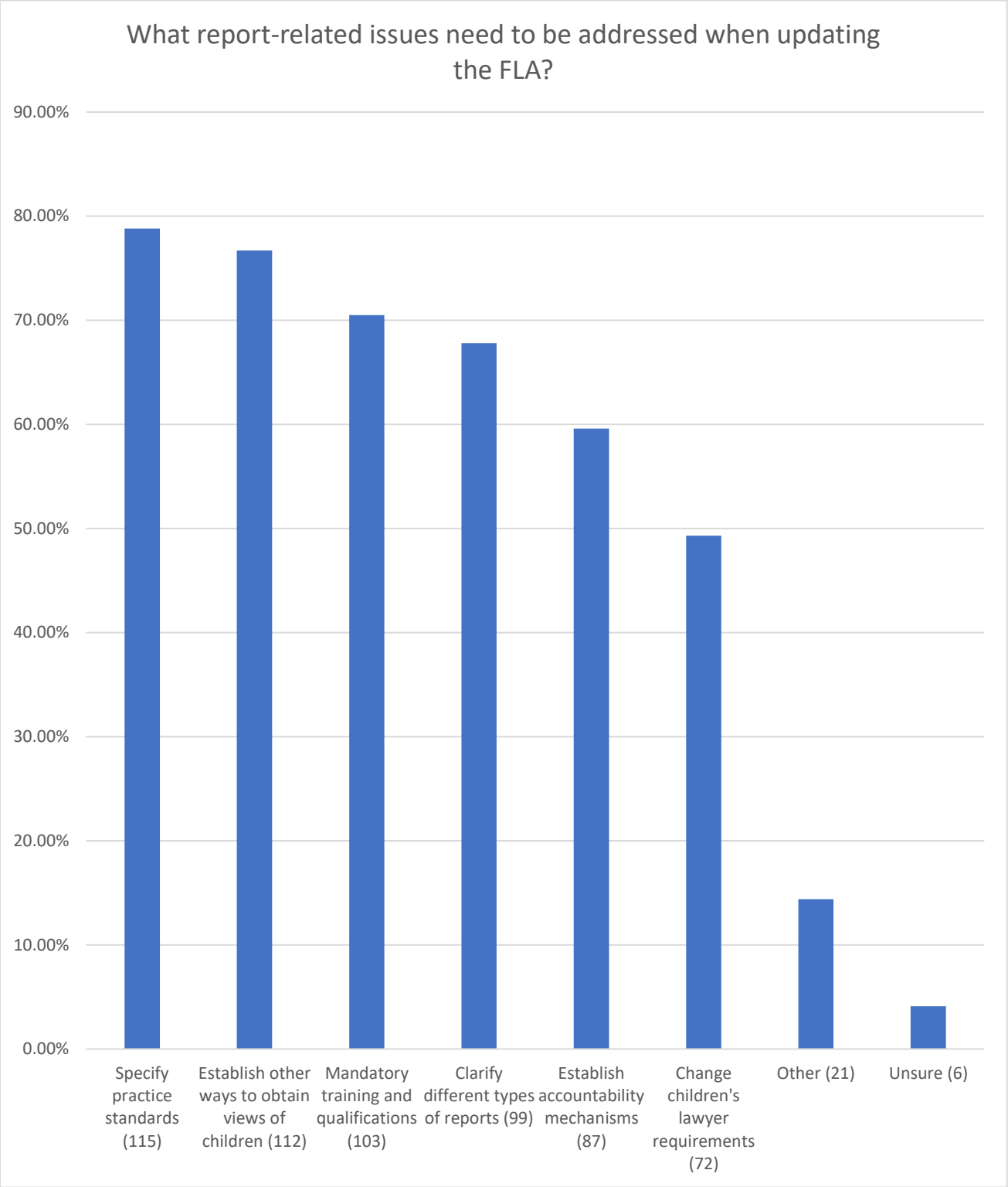
- The report writer should establish a relationship with the child first, and not conduct a one-off interview where the child will never see the person again
- The report writer needs to explain to the child why they are being interviewed and what the child's answers will be used for
- The youth should be allowed to express their views in different ways, such as through the use of art, or in another manner in which the youth is comfortable
- Youth are often more comfortable in one-on-one interviews or discussing issues in small circles, rather than in large groups.

All engagement feedback pointed to the need for FLA amendments to address issues related to reports. For example, as depicted in Figure 4-1, when asked what issues need to be addressed related to reports, 67.8% of survey respondents indicated that the different types of reports need to be clarified. Over 70% of survey respondents also suggested that the FLA should be updated to establish mandatory training and qualification requirements for report writers, practice standards for report writers to follow, and provide guidance on other ways that a child's views may be obtained (see Chapter 3 for more discussion).

Did you know?

Although the views of a child must be considered in determining the best interests of a child (unless it would be inappropriate to consider them), the FLA does not specify how the views of a child must be obtained. Hear the Child reports, Views of the Child reports, and "Full" Section 211 reports are some examples, but there is currently no restriction on the ways the views of the child may be obtained.

Figure 4-2 – Report-related FLA Issues



Types of Reports

Sections 202 and 211 of the FLA do not specify different types of reports that may be prepared, but research and early engagement indicated the following are some common reports being requested by parties or ordered by the court:

- "Full" Section 211 reports
- Views of the Child reports
- Hear the Child reports

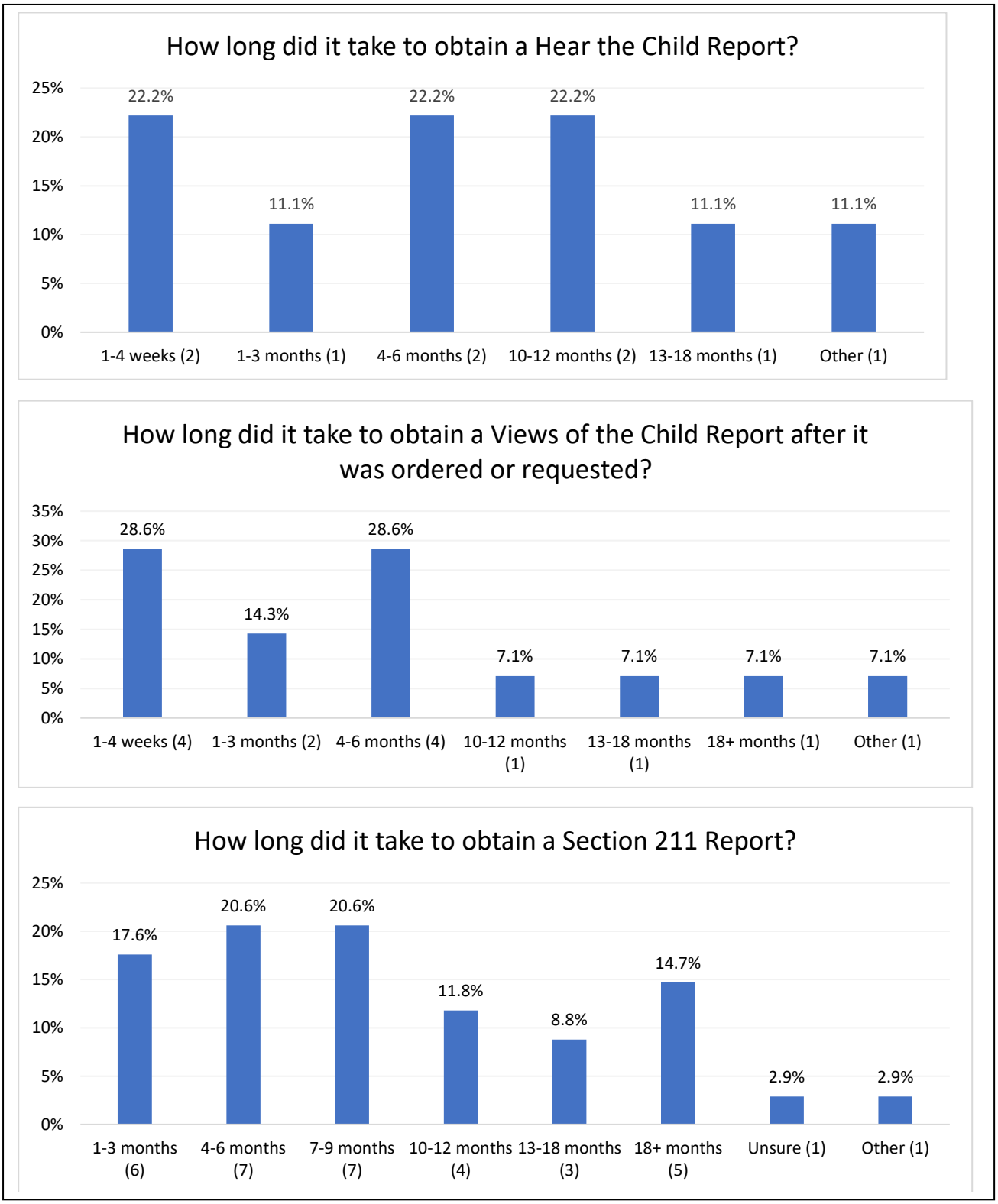
The FLA currently does not list, define, or describe in detail the types of reports that may be ordered or prepared under the Act. There is also no legislative criteria for when each type of report should be ordered.

The written feedback unanimously supported clarifying the different types of reports that a court may order under the FLA, particularly the differences between the purpose of each type of report, who can prepare each type of report, and the process to be followed for each report. There were some discrepancies between the terms used with respect to different types of reports (for example, evaluative vs. non-evaluative views of the child reports), which also supported the need for clarification in the FLA.

There was a suggestion that the FLA should expressly allow and support a child's right to be heard in a non-evaluative format (i.e., without an expert using their views to inform an opinion, assessment or recommendation) and that it should be included in Part 4 of the Act (Care of and Time with Children). However, others cautioned that some reports that were intended to give a child a voice in family law proceedings, have instead resulted in the child being put in the middle of the parents' conflict, creating an unhealthy situation for the child, especially in situations where there is family violence.

The survey results showed that a Full Section 211 report was the most frequently ordered report, followed by a Views of the Child report, then a Hear the Child report. Results also highlighted differences between the reports based on cost and time it took to complete the reports. The costs of the reports varied with Hear the Child reports and Views of the Child reports generally costing less than Section 211 reports (see more discussion about costs of reports below).

Figure 4-3: Length of Time to Complete Reports



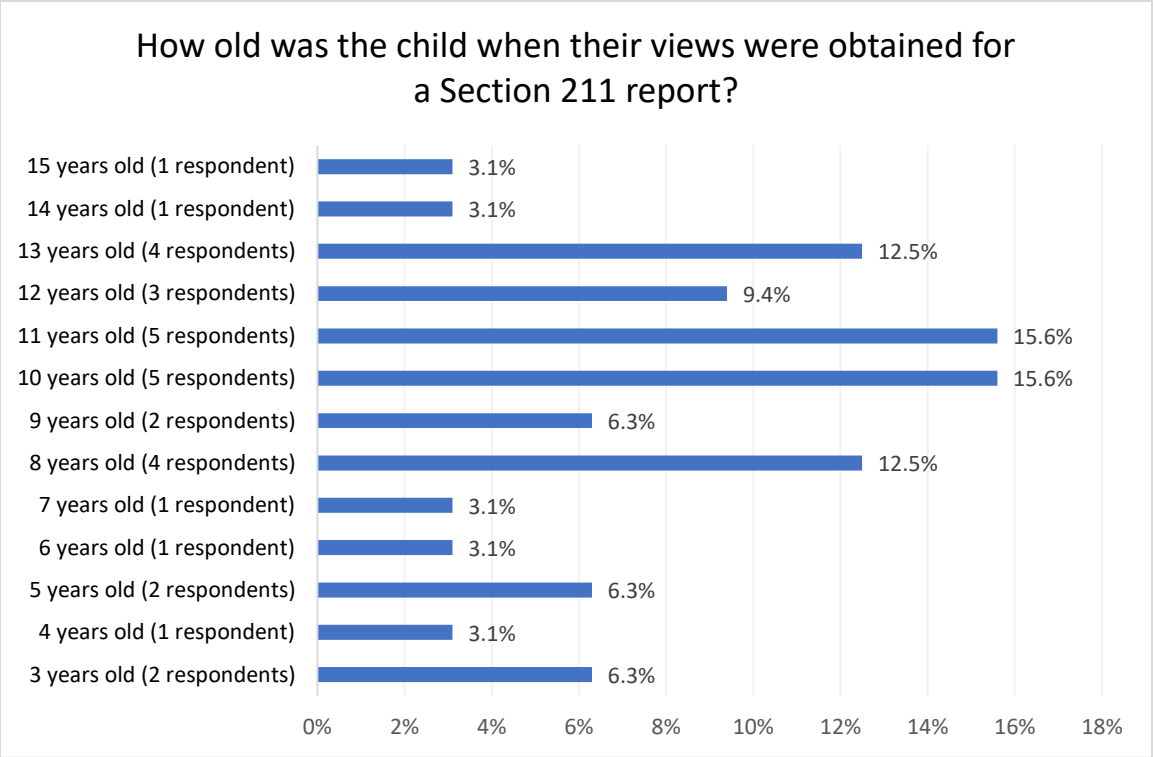
According to survey results, the length of time it took to complete a report varied for all reports. Some reports were completed within 1 to 3 months, whereas others took over 18 months to complete.

What Was Said:

> *"I think the different types of reports should be more clearly explained. For example, the report I referred to in this survey was titled a section 211 report; however, it was more a voice of the child report with a summary based on what mom and dad said. It did not provide any recommendations. It is difficult to distinguish between the reports as the report writers tend to do what they want with the report."*
>
> *"Absolute clarity as to types of reports. This was a cash grab by lawyers, then the child turns 12 and everybody puts all the responsibility on the child."*
>
> *"Name Views of the Child and Full Reports and do not list both as Section 211 reports."*
>
> *"It would be helpful to have a clear framework for who can write which type of reports, what they must contain, and when they should be obtained. It seems to me the legal test at the moment is along the lines of 'if the report would be helpful to the court in making a decision about the best interests of the child it should be ordered. I think added clarity might help the expense issue but giving mid-range options."*

The age of the children being interviewed varied for all three types of reports, especially the Section 211 reports. Based on survey responses, the views of children between the ages of 3 and 15 were obtained through Section 211 reports, with most children being between the ages of 8 and 15 years old (see Figure 4-4).

Figure 4-4: Age of Children in Section 211 Reports



Criteria for Ordering Reports

The written feedback supported that criteria should be established for a decision-maker to consider in determining when to order different types of reports. However, there were different views on what the criteria should be.

Some submissions suggested establishing similar criteria as New Zealand's *Care of Children Act* (s.133(6)), such as whether the report is essential, whether it is the best source of information, and delay implications. Submissions also suggested that the cost and the ability of the parties to pay for a report are considered, similar to Alberta's PN8 and Ohio's Rule 91.05 (F)(a). It was also suggested that the court should not order a report for the sole or primary purpose of obtaining a child's wishes. It was further suggested that the

court should confirm that the recommended assessor or report writer has completed any necessary training and experience requirements, particularly if the report is expected to address specific issues (e.g., disabilities, addictions, substance misuse) when ordering a report.

What Was Said:

> *"The cost- bankrupt me."*
>
> *"Prohibitively expensive for most of my clients."*
>
> *"Courts need to be able to assign the clear best choice for the child regardless if their cost or timeline on paper is longer/higher than another. Problematic writers are being assigned because they skirt the system this way, writing a lower quote and faster turnaround but taking longer and ultimately costing more in reality."*

Alternatively, another submission suggested that despite cost, intrusiveness and delay implications, a Full Section 211 report should be ordered in certain circumstances, such as when there is a history of family violence, possible child coercion or alienation, addictions or mental health concerns, or involvement of the Ministry of Children and Family Development or the police.

There were differing views on the use of psychometric testing. One submission said that once a Section 211 report is ordered, there should be no limit on the tools the assessor can use in conducting the assessment.

We heard that a non-evaluative report should be ordered when the court wants to obtain the views of the child and they have not been obtained in another way. However, another submission cautioned that a non-evaluative report should not be a default starting point when risk factors could result in retribution toward the child.

When a Report is Ordered

Early engagement suggested that obtaining the views of children involved in family law disputes earlier in the dispute resolution processes may help resolve disputes in a timelier and more cost-effective way and help reduce escalation of the conflict.

It often occurs that a report is ordered by a judge after parties have been unsuccessful in resolving their family law dispute using out-of-court processes. However, most of the written feedback supported reports being ordered earlier in family law disputes. The feedback suggested that Section 211 reports ordered as early as possible in the dispute

resolution process could support earlier resolution in parenting-related issues. It was also suggested that in cases where the parties are represented, the lawyers should be required to prepare a joint summary document, memorandum or instructions to the report writer outlining agreed upon facts, issues in dispute, clear instructions or guidance on the types of issues the report should focus on, and any materials permitted to be reviewed as evidence.

There were mixed views on whether the views of a child should be obtained earlier in the process. Some feedback supported this, while other feedback suggested that it may be unhelpful as the child would still be adjusting to their parents' separation and their views might change over time.

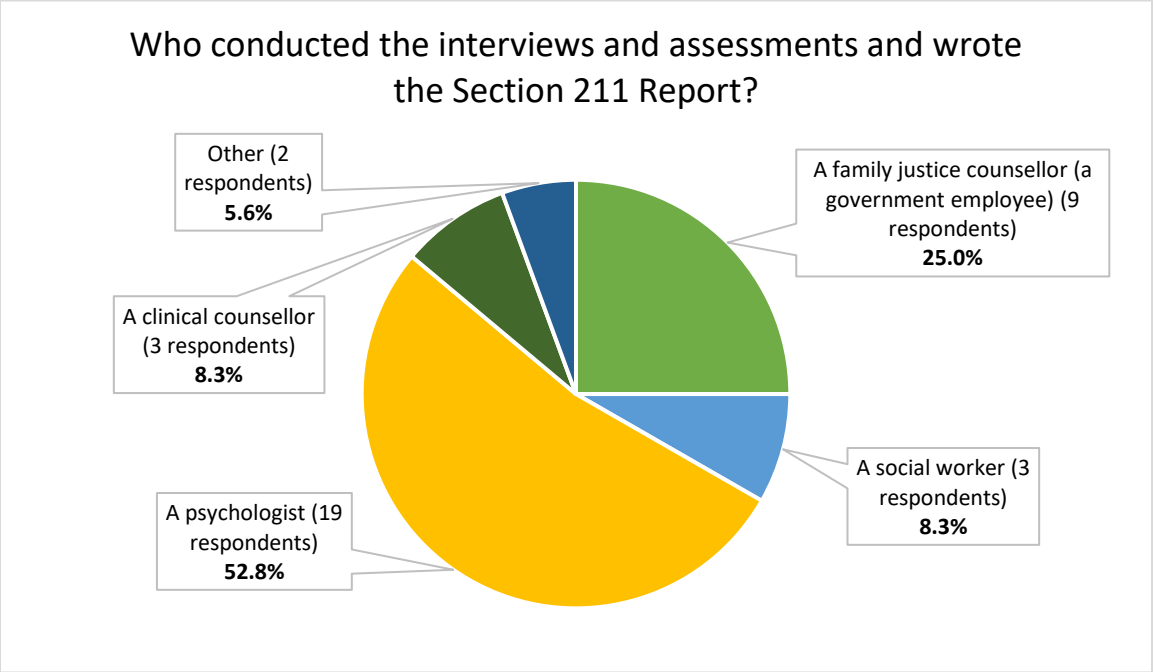
Report Writers

Who Can Write Reports

Section 211(2) of the FLA specifies that a person appointed by the court to assess the needs and views of a child, and the ability and willingness of a party to satisfy those needs, must be a "family justice counsellor, a social worker or another person approved by the court." The person must also not have any previous connections with the parties unless they agree. The FLA is silent on qualification or membership criteria for report writers.

Family justice counsellors are employees of the Ministry of Attorney General, Family Justice Services Division and prepare publicly funded Section 211 reports. Other Section 211 report writers, such as social workers, psychologists, and clinical counsellors are generally professionals who are not employed by the government and who charge for their services. As seen in Figure 4-5, many survey respondents indicated that Section 211 report writers involved in their family law dispute were psychologists (52.8%), followed by family justice counsellors (25%).

Figure 4-5 Section 211 Report Writers



Section 202 of the FLA does not refer to the preparation or admission of reports. However, it is used as authority for accepting reports other than Section 211 reports into evidence. Section 202 also does not specify any profession or other qualification a person must have to write a report or submit evidence on the views of a child in a family law dispute. The BC Hear the Child Society has established a Child Interviewer Roster of professionals who conduct non-evaluative child interviews and prepare reports referred to as Hear the Child Reports, but membership on this roster is not required under the FLA.

Some report writers may be members of professional governing bodies or rosters or employed by the Ministry of Attorney General as family justice counsellors with specialized training to prepare reports. Some professional governing bodies and employers may establish their own qualification requirements for the professional generally, or for report writers specifically. However, the qualification requirements differ based on which body established them, and membership or employment with certain bodies is not always mandatory.

The FLA regulations also do not provide any qualification requirements for report writers. As a comparison, Part 3 of the Family Law Act Regulation establishes qualification requirements for three types family dispute resolution professionals – family law mediators, family law arbitrators, and parenting coordinators.

The majority of feedback supported the need for report writers to meet qualification requirements, including training and experience. Feedback suggested that the qualifications could differ depending on the type of report being prepared – Full Section 211 report writers need to meet the most stringent qualifications, whereas non-evaluative report writers should have to meet less stringent qualifications.

There were mixed views on whether there should be professional requirements for report writers. For example, one suggestion was that Full Section 211 report writing should specifically be limited to professionals trained in mental health, with a recognized level of expertise (i.e., Registered Counsellor, Registered Social Worker, Registered Psychologist) and registered with a professional association or a regulatory body. It was highlighted that registration with a professional association can help provide oversight and accountability. Another suggestion, however, recommended not limiting professional requirements for report writers, because this will restrict report writing to an "elite" group of professionals who may not have the right skill set and expertise in dealing with complex family issues.

It was suggested that before appointing an evaluator in a case that involves a specific issue (e.g., substance abuse, neuro-diversity, etc.), the court should meaningfully inquire into the qualification of the proposed evaluator, especially if the parties disagree, and not assume that general qualifications, or a single course or limited work experience are sufficient.

Indigenous Perspectives – Report Writers for Indigenous Families

Figure 4-6 highlights the survey results regarding who Indigenous people feel would be appropriate interviewers and report writers for their families.

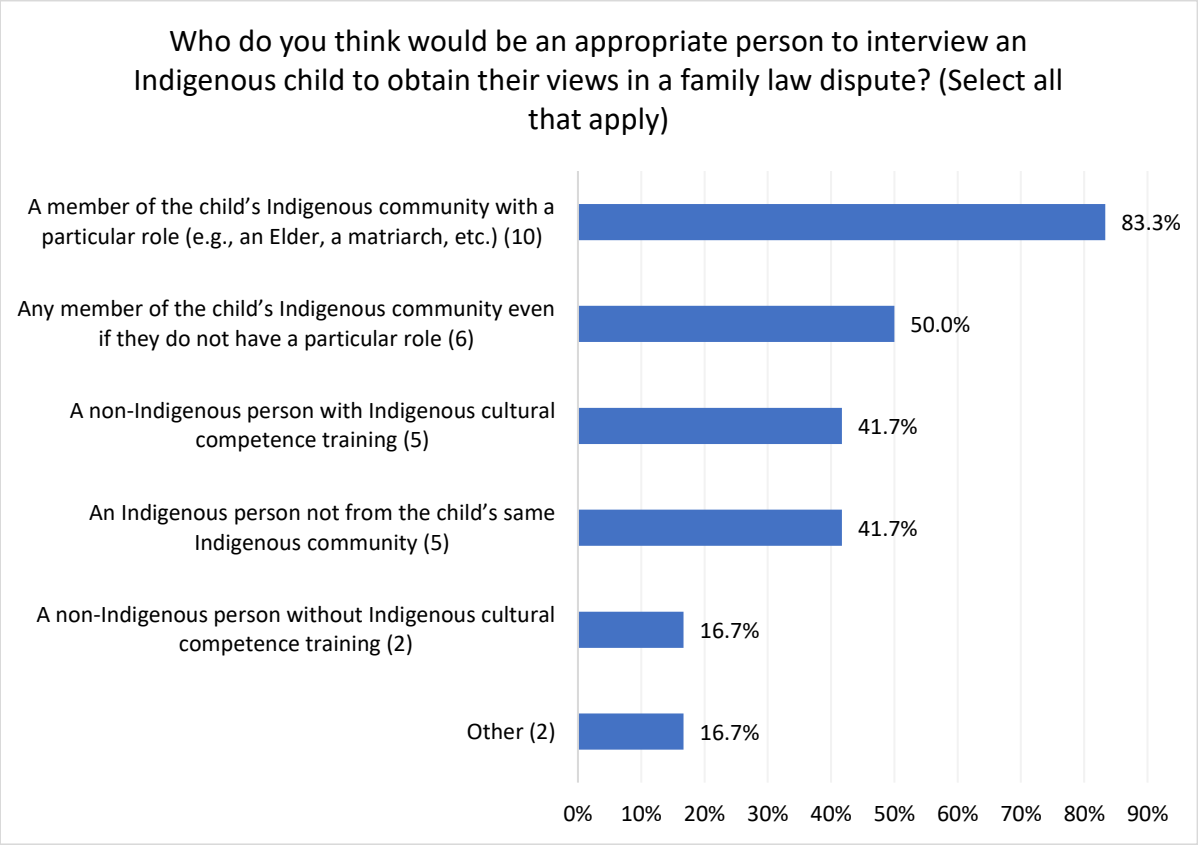
In speaking with Indigenous people with lived experience, it was suggested that the FLA should recognize that there are members of an Indigenous community who may be better qualified to assess their community members' parenting abilities and to obtain their children's views. For example, Indigenous (First Nations, Inuit, and Métis) communities may have Elders, Matriarchs, knowledge keepers, or other community members such as

Indigenous family support workers who should be qualified to make assessments or write reports to submit to the court related to their own member families.

Feedback from Indigenous Perspectives Survey and the Indigenous dialogue sessions suggested that the FLA should allow individuals who an Indigenous community considers as being qualified to conduct interviews, assessments and write reports to the court about Indigenous families and children from their community.

Some concern was raised about potential conflicts and difficulty in finding an Indigenous community member to write a report who has no previous connection with the parties. There could also be challenges if the parties are members of different Indigenous communities with different community members who may write reports. It was suggested that in those cases, it could be open to the parties to consent to a particular report writer, or the report could be jointly written by multiple report writers, for example, by one report writer from each community.

Figure 4-6: Indigenous Perspectives: Who Can Write Reports



Types of Qualifications

If it is desirable to establish consistent qualification requirements for report writers, there are various types of qualifications that can be established. As a comparison, Part 3 of the FLA Regulation establishes mandatory qualification requirements for Family Dispute Resolution Professionals, including the following:

- Membership with a Professional Governing Body
- Experience Requirements
- Training Requirements

Did you know?

All of the following are considered "Family Dispute Resolution Professionals:"

- Family law mediators
- Family law arbitrators
- Parenting coordinators

In order to act in any of these family law roles, a person must meet the qualification requirements set out in Part 3 of the FLA Regulation.

Written feedback provided a variety of suggested mandatory qualifications for report writers. Some groups suggested that initial and ongoing evaluation-specific training and experience should be required for all report writers, especially in relation to screening for and assessing family violence. Mandatory training in child development and capacity, and fundamentals of family law.

A common theme in survey responses was that mandatory training specifically in family violence should be established for report writers, as well as other justice professionals such as police, lawyers, and judges. Feedback indicated that the interviews and report writing process were distressing for many respondents and/or their child and the report writer did not understand family violence.

What Was Said:

> *"All lawyers, judges, family justice counsellor, support workers should have relevant training on family violence. There are stories of terrible conducts of legal and service professionals who have re-traumatized the survivors through the process without proper understanding and. training."*

> *"Psychologist need to be required to have family violence training..."*

"Report writers should have substantial training in child psychology and trauma-informed interview practices, along with cultural competency training."

"ALL section 211 report writers should have some training in procedural fairness. This was totally absent in our section 211 report."

"Special needs training."

"... a writer assessing a neurodivergent child and/or family/ parent be explicitly trauma informed and neurodivergent affirmative and follow the tenants set out by Therapist Neurodiversity Collective..."

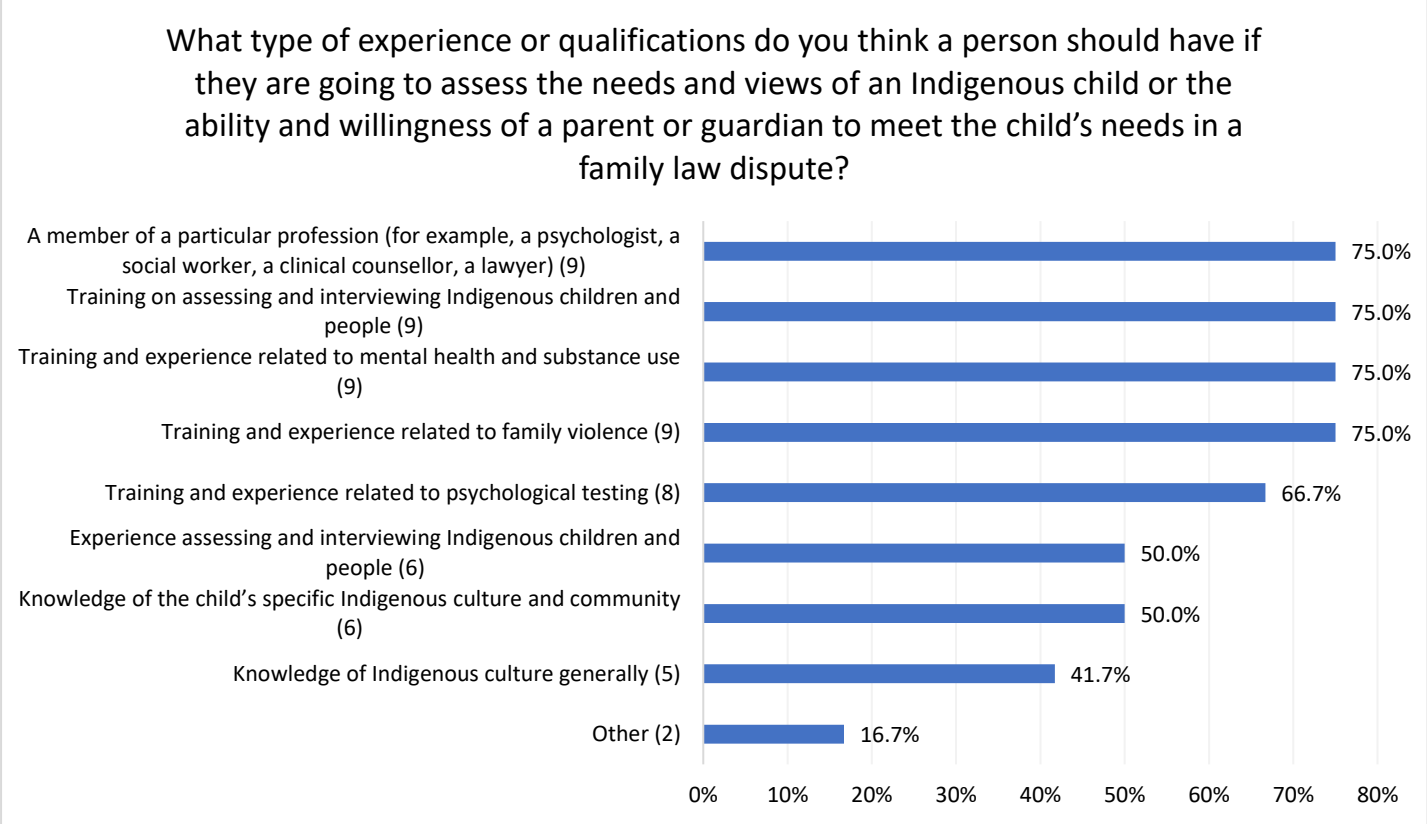
"Cultural competency training must include cultural humility -- they are integral to each other, however the latter is more important than the former. Report writers must be required to take family violence training."

Indigenous Perspectives: Report Writer Qualifications

Engagement feedback supported establishing requirements for report writers to cultural training and experience when interviewing and writing reports about Indigenous families. Some survey respondents indicated that training and experience specifically in interviewing Indigenous children, knowledge of the child's specific Indigenous culture and community, and knowledge of Indigenous culture generally should be mandatory requirements for report writers working with Indigenous families (Figure 4-7).

Feedback suggested that the participation of Indigenous people as educators of Indigenous culture would help ensure report writers receive appropriate and training for assessing and writing reports about Indigenous children and families.

Figure 4-7: Indigenous Perspectives: Report Writer Qualifications



It was suggested that qualification requirements for non-evaluative report writers should be guided by the Hear the Child Society's roster requirements, which includes being a member in good standing of a professional association, as well as specifical experience and training requirements, a criminal record check, and references.

Allowing new report writers to shadow more experienced ones, might help the writers obtain any necessary experience required.

It was also suggested that there should be an overarching body, such as a roster or committee, that approves and oversees training and the accreditation process. Some said that a roster would be helpful and should be administered by a public body, such as administration by the courts or by the BC Ministry of Attorney General. One written response, however, stated that implementing a roster would be overly bureaucratic solution to something that is not a problem.

Practice Standards

Like the qualifications of report writers, there are currently no consistent mandatory practice standards evaluative and non-evaluative report writers must follow. Report writers who are members of professional governing bodies, rosters, associations, or are employees of the Ministry of Attorney General, may be required to follow certain practice standards or guidelines when conducting assessments and writing reports. However, the practice standards that apply to report writers may differ based on which body established them, and there is no requirement for all report writers to be members of the same body. Also, some practice standards may be mandatory for some report writers to follow, while others may be non-mandatory guidelines.

Most of the feedback supported that mandatory practice standards are needed for report writers conducting assessments or writing reports under the FLA. Establishing practice standards was the report-related issue most identified by survey respondents as needing to be updated in the FLA. However, one written submission said that qualification requirements should be established for report writers, and not practice standards.

Survey respondents particularly highlighted concerns with the interview and report writing process in their family law disputes. Some concerns raised included report writer bias and errors with no opportunity to correct them.

What Was Said:

> *"Creepy interviewer, biased from the start."*
>
> *"Took a long time, and the assessor did not do some of the psychological testing that other assessors do, which was not ideal. there should be standard tests they have to do."*
>
> *"Aside from the logistical bias, the interviews were poor. Before we began, the assessor told me he had no interest in being educated about abuse or alienation, and then he laughed. The assessor repeatedly got angry when I didn't give him the answers he wanted to hear, rolling his eyes, slapping his papers down, getting upset when I didn't answer fast enough."*

"There were multiple errors, mixed up names, and did not give any insight into what might be the best course of action should be taken. Even the judge said there was nothing beneficial from the report."

"Did not abide by her retainer agreement, was completely bias in her interviews and report, made recommendations outside of her scope, did not give any weight to my kids views, did not provide recommendations on issues that were required, provided recommendations that are untenable and not viable, destroyed my credibility to the court as a person, and mother, minimized family violence as harsh discipline, was not transparent, forced me to do things I didn't want to do."

Submissions suggested that mandatory practice standards could enhance the quality of reports, help parties understand the process, and will reduce conflict after the reports are released. Many submissions pointed to practice standards that already exist in other jurisdictions, such as those set out in the California Rules of Court, the Australian Standards of Practice for Family Assessments and Reporting, and in the Association of Family and Conciliation Courts' Guidelines for Parenting Coordination.

Suggestions for what the mandatory practice standards should be included:

- Screening for family violence, which should be done in a trauma-informed and culturally sensitive way
- Where allegations of family violence are proven, there should be a legislative avenue to seek an assessment of the parent found to have perpetrated family violence (rather than always an assessment of both parties' parenting capacity)
- Mechanisms to determine when the disclosure of sensitive information is necessary
- Criteria for when psychometric testing is applied, including requirements to explain why the testing was done, which tests or diagnostic models were used, what it was intended to measure
- When other healthcare professionals (such as a family doctor) should be included in the analysis, ensure that the tester considers equity, diversity and inclusion principles, and information similar to the cautions and disclaimers mandated by the Ontario Family Law Rules
- Report writers should clearly and accurately describe what was said by everyone interviewed
- Peer review of reports

What Was Said:

> *"This was extremely traumatic. Despite there being screening for family violence as part of the intake process, all suggestions and claims of family violence were turned around by the evaluator and made out to be my fault."*
>
> *"Clearer standards for obtaining views. Inequity in the information gathering process and who may or may not influence report writing."*
>
> *"Standardized guidelines for report writers. Making the s. 211 process more accessible to more people. There is a dearth of qualified, competent report writers. Those who are qualified and competent have long waiting lists and the cost of their reports is prohibitive."*

Indigenous Perspectives: Practice Standards

With respect to reports written for Indigenous families, feedback suggested that report writers should be required to follow laws, customs and practices of the relevant Indigenous Nations, including possibly speaking with or working with a member or members (for example, an Elder, a Matriarch or another person chosen by the community) of the Nations who can ensure the process is culturally appropriate. For example, the Australian Standards of Practice for Family Assessments and Reporting require assessors to consider cultural issues in the process and the report itself, including whether engagement with an Indigenous consultant or advisor is needed.

To avoid delays, it was suggested that case management could be helpful when a report is ordered. However, one submission cautioned against computerized reports designed to generate hundreds of reports per year, as issues like parenting responsibilities and what is in the best interests of a child can be complex and nuanced.

Accountability Mechanisms

A party with concerns about the preparation of a report under section 202 or 211 of the FLA has limited options to address those concerns. Currently, a party's options are to raise their concerns during the court proceeding or through administrative processes outside the court proceeding; however, both options have limitations.

Based on survey results, over 80% of respondents indicated that they had a complaint about the interviewer or the report in the Section 211 report process (see Figure 4-8).

However, when asked how they dealt with their complaint, most respondents said that they did not take any action (55.2%)(see Figure 4-9). The next most common action respondents took to deal with their complaint was to complain to a professional governing body (27.6%) or to cross-examine the report writer (20.7%).

Figure 4-8: Section 211 Report Complaints

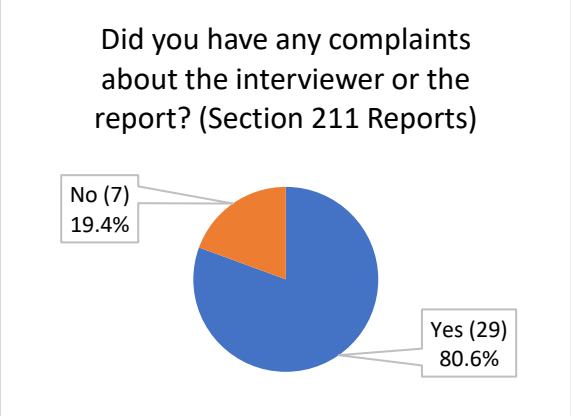
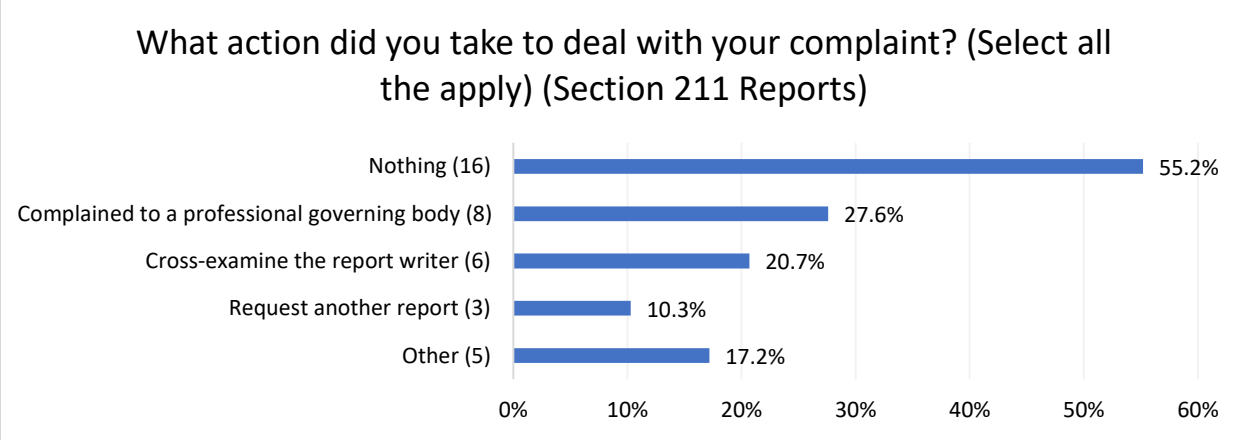


Figure 4-9: How People Dealt with Section 211 Complaints



A variety of reasons were provided by survey respondents for not taking any action to deal with their complaint, including difficulties with the process and being advised by professionals not to complain.

What Was Said:

> *"Brought concerns to my lawyer and my trauma therapist, both said nothing could be done."*
>
> *"Discussed with lawyer but felt it would be unaffordable to pursue a complaint further."*
>
> *"I was told by my lawyer that fighting a 211 reporter either for another report to change the report was a waste of money and would not be successful."*
>
> *"Contacted the report writer's supervisor who made a note on the file. However, the error could not be corrected as the report was already submitted to the court."*
>
> *"Requested to cross-examine report writer was denied by the court."*
>
> *"I tried to make a complaint but would need to give my name and since this person was court ordered and may be ordered to do another report, I am terrified of the consequences of reporting him."*
>
> *"Attempted to make a complaint but was never processed because the writer is a system 'favorite' despite having a horrible reputation for misogyny and other problematic views."*

The written feedback supported the need for ways to challenge Section 211 reports, however there was no single accountability mechanism that stood out as the best way to do so.

Court Processes

Current court processes that may be used to challenge expert reports include:

- Cross-examination of the report writer
- A "critique" or "review" report to refute the conclusions of the original report
- An admissibility hearing where criteria such as the relevance and necessity of the report and qualifications of the writer are considered in order to determine whether an expert report is admissible (section 211 reports are currently exempt from admissibility hearings)

The written feedback supported the need for accessible accountability mechanisms, although it also suggested that establishing report writer qualifications and practice standards and ensuring compliance with them could help reduce the number of complaints or challenges to reports.

What Was Said:

> *"These reports can be obtained out of normal expert report rules which is a problem. This does not give those opposing the report or having issues with the report a legal mechanism to challenge the report. Second, not allowing a second report is problematic as many report writers do not understand family violence, default to equal parenting time, and will diagnose parents with personality disorders after a 30 minute appointment. Section 211 reports should be ordered as any other expert report and treated the same way in regards to the rules of evidence."*

It was suggested that it would be helpful for the FLA to include an accountability mechanism or even multiple ones that operate as a coherent framework. There were suggestions that review reports should be more readily allowed, particularly where expert opinion is needed (for example, to refute psychological testing) and that there could be alternatives to cross-examination, such as something like Ontario's disclosure meetings or Alberta's "work file critique" process or case management conferences after the report is complete.

Administrative Processes

Currently, there are some administrative processes in place that people use to make complaints about a report or report writer outside of court. For example, if the report writer is a member of a professional governing body like the former College of Psychologists of BC (now the College of Health and Care Professionals of BC) or the BC College of Social Workers, then it may be possible to make a complaint through that body's dispute resolution process. A complaint about a family justice counsellor report writer may also be made through the Ministry of Attorney General's internal dispute resolution processes.

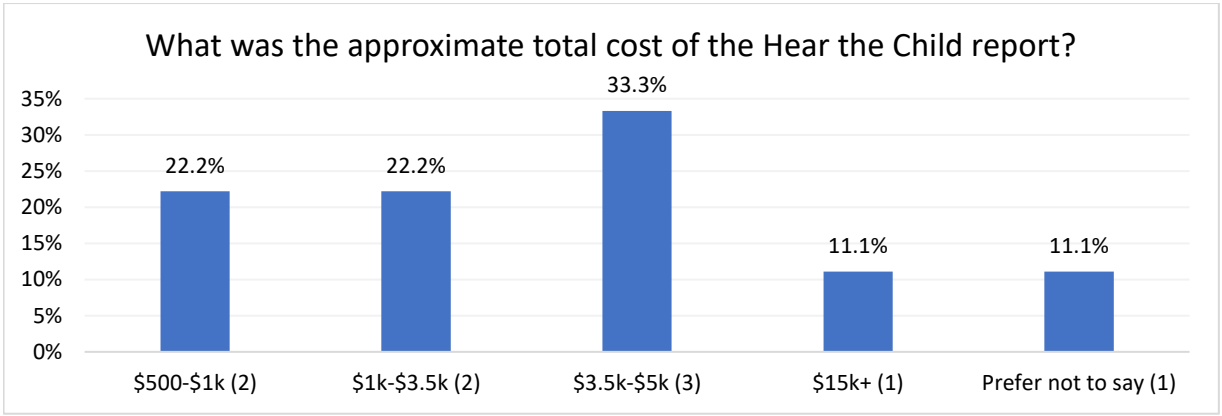
While feedback supported the need for accessible ways for the public to challenge report writers and reports, it was also noted that report writers need protection from complaints as they regularly face undue complaints, harassment, reputational damage, and safety concerns. Private assessors face particular difficulties in this regard. When a complaint was made to the College of Psychologists of BC, for example, the report writer had to appeal the case which requires time and resources, including hiring counsel. The assessor is not reimbursed or compensated for the loss of income.

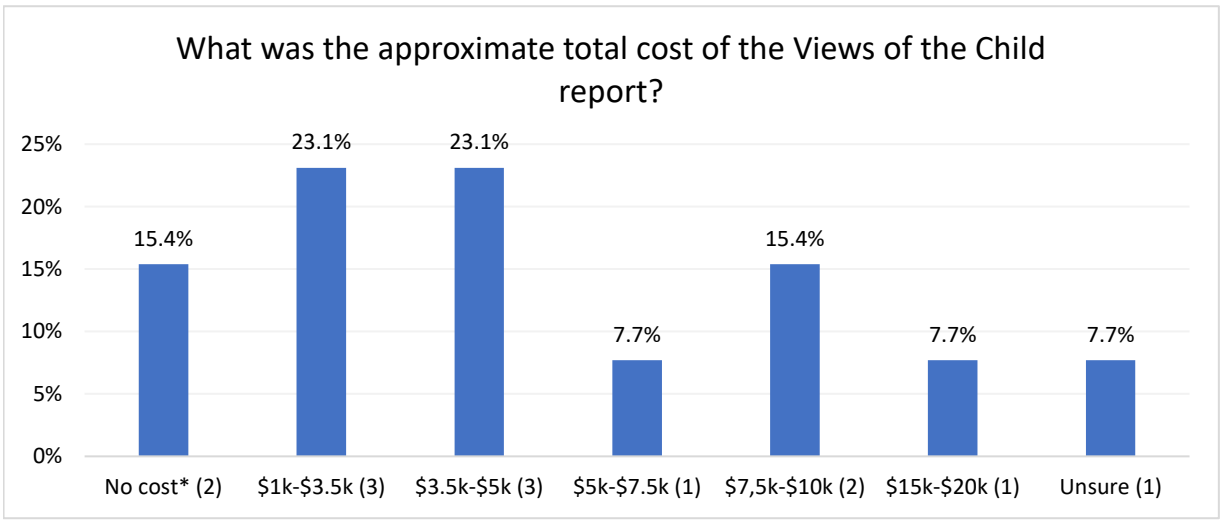
Cost

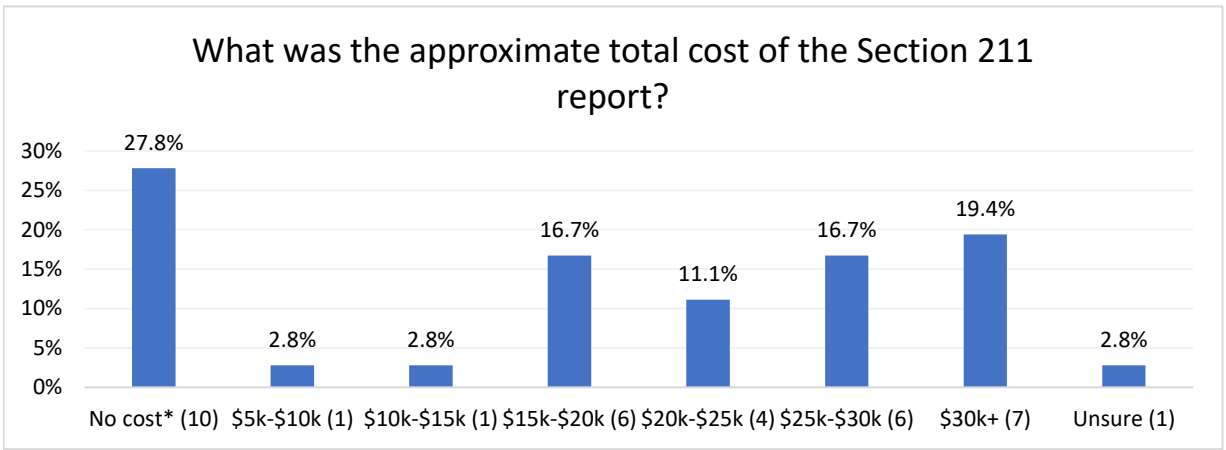
The financial costs of assessments and reports was highlighted in many submissions. Some feedback noted that the current costs of reports make them inaccessible to many families, and that the availability of publicly funded or partially funded reports needs to be enhanced. Providing tax deductions or credits in relation to reports were also suggested. It was suggested that the cost and ability of the parties to pay for a report should be factors the court must consider when deciding whether to order a report. One psychologist, however, felt that placing a financial cap on these reports does not align with the costs of services by other professions such as lawyers or doctors.

Figure 4-10 shows the differences in costs between Hear the Child reports, Views of the Child reports, and Full Section 211 reports based on survey results. The costs of Hear the Child reports and Views of the Child reports tended to be below $5,000, whereas the cost of Full Section 211 reports tended to be above $15,000. Almost 20% of survey respondents indicated that their Section 211 report cost $30,000 or more.

Figure 4-10: Costs of Reports







Accessibility of reports was a prominent theme in the survey responses, as many respondents wrote about the need to reduce the financial burden and hardship associated with reports, and to reduce the delay in obtaining a report. The no cost reports indicated in Figure 4-10 represent Views of the Child reports and Full Section 211 reports prepared by family justice counsellors. However, engagement feedback also indicated that there can be long delays to access these publicly funded reports.

What Was Said:

> *"The cost of having a real report done is prohibitive. The free version is too slow, and is often used as a tactical measure to add a lot of delay to a case. The mid-range reports have generally been helpful. The high-end reports have either been very insightful, or seemingly boilerplate."*

CHAPTER 5: Family Violence & Protection Orders

Introduction

Phase 2 of the Family Law Act Modernization Project includes a review of the provisions in the FLA related to family violence and protection orders. In the FLA, family violence is considered under Part 9 – Protection from Family Violence when decisions are being made about protection orders. Family violence is also a consideration under Part 4 – Care of and Time with Children when determining what is in a child's best interests with respect to guardianship, parenting arrangements and contact with the child. As of January 15, 2024, family violence is also a factor a court must consider under Part 5 – Division of Property when determining the ownership of companion animals (pets) when spouses separate.

Did you know?

Since 2020, employees affected by domestic or sexual violence can access to up to 5 days of paid leave and 5 days of unpaid leave per calendar year. This leave also applies to parents or guardians of a child or of a dependent adult affected by this kind of violence.

This chapter summarizes feedback the Ministry received in response to a detailed discussion paper, surveys, and dialogue on this topic. Some of the larger issues that people provided feedback on included how family member is defined for the purpose of determining whether a protection order can be applied for under the FLA; the definition of family violence; risk factors; protective terms and conditions; duration and enforcement of protection orders; and accounting for family violence when determining parenting arrangements.

Definitions

"family member"

"Family member" is defined in the FLA and includes someone you are or were married to or lived with in a marriage-like relationship, your child's other parent or guardian, and others listed in Section 1 of the act. When an application for a protection order is made this definition needs to be read together with the definition for an "at-risk family member." Under these definitions, anyone who meets the definition of "family member" in Section 1 of the FLA is eligible for a protection order if their safety and security is or is likely at risk from violence carried out by another "family member."

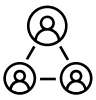
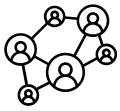
"**family member**", with respect to a person, means
(a) the person's spouse or former spouse,
(b) a person with whom the person is living, or has lived, in a marriage-like relationship,
(c) a parent or guardian of the person's child,
(d) a person who lives with, and is related to,
    (i) the person, or
    (ii) a person referred to in any of paragraphs (a) to (c), or
(e) the person's child, and includes a child who is living with, or whose parent or guardian is, a person referred to in any of paragraphs (a) to (e);

"**at-risk family member**" means a person whose safety and security is or is likely at risk from family violence carried out by a family member

Although the definition of family member is quite broad and includes relatives who are living in the same household, we asked whether the definition should be expanded to include any additional categories of relationships. The responses are summarized below. An additional comment was that there are currently some inconsistencies from one case to another in how "family member" and "at-risk family member" are interpreted.

Table 5-1 Suggestions for relationships that should be included in "family member"

Proposed category	Feedback suggesting changes
 Dating relationships	Feedback was mixed. Those who supported making FLA protection orders available in dating relationships cited the difficulty of obtaining protective orders through peace bonds or criminal justice orders. There was a suggestion that the dating relationship should have some significance, i.e. more than just a few dates. Others felt there should be stand-alone protection order legislation for dating relationships rather than including them in the FLA.
 Care-giving relationships	Feedback was mixed. There is some feedback that care-giving relationships should be included. Persons living with disabilities describe how these relationships can take on a type of intimacy and dependency. Those opposed to including these relationships within

		the FLA felt they should be addressed in separate legislation.
	Adult children who do not live in the same household	There was support for including adult children who do not live in the same household.
	Family members who do not live in the same household	There was support for including extended family members who do not live in the same household, including step-families.
	Expansive views of family members in Indigenous and other cultures	There was support for including people who are considered family within Indigenous and perhaps other cultural groups, even if they are not related by biology or marriage. Consultation is needed to ensure amendments appropriately capture this expansion.
	Chosen families	There was support for expanding the concept of family member to include people who may not be related by blood or marriage but are in a family-like relationship.
	Companion animals	There was feedback that companion animals should be included in the definition of an at-risk family member.
	"Other"	Although there was a comment that a general "other" category would give flexibility for a judge to consider whether the relationship was captured within the FLA on a case-by-case basis, there were more people who felt a catch-all category should not be added.

Survey respondents strongly supported expanding the types of relationships that are included within the definition of "family member" and therefore fall within the protection order provisions in the FLA. Over 70% of respondents felt the definition should be expanded to include all the categories above, excluding the companion animals and "other" categories.

"family violence"

The definition of family violence in the FLA is important because it describes what kind of behaviour constitutes family violence when decisions are being made about protection orders, the best interests of the child or ownership of a companion animal. The FLA introduced a broad definition when it came into force in 2013, and amendments in 2021

clarified there is no requirement to demonstrate an intention to harm a family member. The current definition in section 1 of the FLA is as follows:

> **"family violence"** includes, with or without an intent to harm a family member,
>
> (a) physical abuse of a family member, including forced confinement or deprivation of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm,
>
> (b) sexual abuse of a family member,
>
> (c) attempts to physically or sexually abuse a family member,
>
> (d) psychological or emotional abuse of a family member, including
>
> (i) intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,
>
> (ii) unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy,
>
> (iii) stalking or following of the family member, and
>
> (iv) intentional damage to property, and
>
> (e) in the case of a child, direct or indirect exposure to family violence;

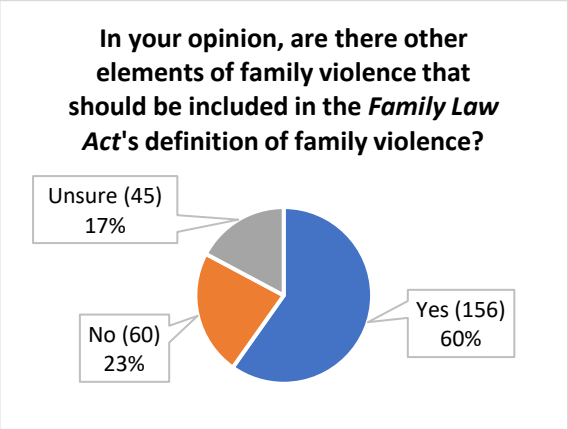
Did you know?

In 2021, the Legislature amended the FLA to clarify that survivors of family violence do not need to show that the person who harmed them *intended* to harm them to establish that family violence occurred.

A definition of family violence introduced in the *Divorce Act* for the purpose of deciding what parenting arrangements are in a child's best interests is similar but not identical to the definition in the FLA. In the consultation, people were asked whether there were elements of family violence that were not adequately captured in the definition and whether the differences between the FLA and the *Divorce Act* created problems.

The feedback from some family law lawyers stated that it would be helpful if the definitions of family violence in the *Divorce Act* and the FLA mirrored or were more directly aligned with each other, to minimize confusion and reduce forum shopping or people making

Figure 5-1: Other Elements of Family Violence



applications based on which act will give them an advantage. As to whether the definition of family violence should include any different or additional elements of family violence, feedback was somewhat mixed.

Some respondents felt no changes to the definition of family violence are needed and others were unsure. However, many respondents indicated there are elements of family violence that could be added to the definition (Figure 5-1). These are summarized in Table 5-2 and described in more detail below.

Table 5-2 Suggestions for new elements that should be captured within "family violence"

Elements / types of behaviour	Feedback suggesting changes
Coercive and controlling behaviour	Although some respondents did not see benefit in expanding the reference to coercive and controlling behaviour in the definition, there were many more responses that did. Some felt it was important to make it clear what coercive and controlling behaviour is within the FLA while others felt this was the role of education.
Technology-based violence	Although some respondents did not see benefit in making a specific reference to technology-based violence in the definition, there were more many responses that did. Some suggested examples of technology-based violence would be helpful, although it was noted that technology changes rapidly.
Sexual coercion and sexual exploitation	Although the definition currently includes "sexual abuse" or attempts to sexually abuse a family member, there was feedback that the definition should specifically include sexual coercion and sexual exploitation.
Identity abuse	A few respondents suggested the FLA should clarify that psychological and emotional abuse includes "identity abuse" (e.g. intentional misgendering, threats to or "outing" another person's gender identity or sexual orientation).

 Violence towards companion animals	There was feedback suggesting the definition should go beyond recognizing abuse of an animal or a threat towards a pet as psychological or emotional abuse and state that family violence also includes direct or indirect exposure of a companion animal to violence.
 Litigation abuse	Many survey respondents recommended the definition be expanded to include "litigation abuse" (e.g., misusing/abusing legal processes to control and intimidate another person). This is often linked with financial abuse.
 Financial abuse	Although the definition already includes "unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy" the current language didn't resonate with some respondents; there was feedback that financial abuse in all its forms needs to be more directly included.

There were some comments about the definition generally. Although there were a couple of comments that the current definition is too broad and easily manipulated by people falsely characterizing a relationship as violence, most respondents felt the legislation could go further to address family violence. Some felt language in the definition was "vague" or "too loose" which made some forms of family violence hard to prove. There were suggestions that more detailed lists or descriptions of the types of behaviours that are included within the different forms of family violence would make it easier to recognize and prove. There were also comments that forms of violence other than physical violence continue not to be taken seriously. There were numerous comments that emotional, verbal and psychological abuse are not properly addressed or taken seriously in the current legal system, even though the damage to victims is often higher than from physical abuse.

What Was Said:

> *"The Family Law Act does not go far enough to define family violence in its various forms with clear examples of what constitutes family violence within the broad categories listed resulting in analytical gaps and an inconsistent application of the law. It needs to be updated to better define actions or conduct that constitutes family violence to ensure that certain forms of non-physical violence are not minimized, disregarded, or overlooked, and that the impact of such family violence is recognized as being deeply harmful to persons' physical, emotional, psychological, and financial well-being, which in turn, impacts the children, either directly or indirectly."*

Coercive and controlling behaviour

Coercive and controlling behaviour was one of the forms of abuse respondents commented on the most. 93% of survey respondents felt coercive and controlling behaviour should be included in the FLA definition. There was feedback this form of abuse is underestimated, poorly understood and difficult to prove. People commented the FLA needs to clearly describe and respond to coercive control tactics such as gaslighting, threats of suicide or self-harm, threats to or actually making false reports about the victim to police or child protection officials, and depriving the victim or children of medical or developmental supports. Involving children as part of the strategy of coercion and control was another tactic that came up in the feedback, including restricting or threatening to restrict time with a child, trying to alienate or damage the child's relationship with the other parent, or falsely accusing the other parent of parental alienation, often as a strategy to shift the focus away from violence in the relationship.

Did you know?

The BC Legislature passed the 2023 *Intimate Images Protection Act* to respond to some of the unique harms caused by technology-based violence. This Act provides new protections and fast-tracked processes to better protect people from the harmful effects of having their intimate images shared without their consent.

Technology-based violence

92% of survey respondents supported updating the definition of family violence to respond more directly to technology-based violence. There were comments that the ways technology can be used to facilitate violence against a family member can be frightening and unfamiliar for a lot of people living in or trying to leave a relationship. Respondents described some of the technology-based violence that needs to be captured within the definition:

- Stalking the victim's activities and interactions online, hacking email and other accounts
- Tracking mobile phones or otherwise monitoring the victim's physical location,
- Harassment by text or email or posts on social media accounts, including posting slanderous or inaccurate information
- Harassment using random telephone numbers and email addresses,
- Making derogatory statements about the victim or other people connected to the victim online, publishing personal information about the victim online ("doxxing"),
- Filming, sharing or publishing compromising or intimate images or videos of the victim without consent ("revenge porn").

Identity abuse

There was feedback that the definition of family violence should recognize "identity abuse" as a form of psychological and emotional abuse to address harmful behaviour against a family member based on their gender identity or sexual orientation. This may include a parent refusing to accept or actively punishing a child's expression of non-conforming gender identity. Intimate partners and other family members may also be subject to family violence based on their gender identity or sexual orientation.

Violence towards companion animals

Respondents commented on the ways that animals are used in a campaign of violence against family members. This was usually described as threatening to or actually harming an animal either during the relationship or when a victim attempted to leave the relationship. One survivor described the abusive partner refusing to let her take her dog's kennel when she left the relationship and returned with police to gather her belongings.

Litigation abuse

Survey respondents also spoke at length about litigation abuse, where the abusive behaviour included:

- Mis-using the court process to repeatedly file applications and set appearance dates, or not attending court appearances which delays resolution and adds expense to the other party
- Using the court system to force survivors to face their abusers over and over;
- Refusing to disclose information or follow court orders, including parenting and support orders
- Using the family court system and a survivor's mental health history to further abuse or discriminate against them, often drawing out legal proceedings to frustrate resolution and terrorize the survivor
- Being uncooperative, making false claims, refusing to participate in out of court resolution processes (e.g. mediation) to drive up legal costs for the survivor
- Posting court documents to shame or otherwise harass the survivor.

Financial abuse

Some of the financial abuse that respondents commented on was related to litigation abuse (e.g. driving up legal costs, refusing to follow child and spousal support orders, refusing to file taxes or disclose accurate financial information in order to avoid appropriate support payments, using the court to freeze the survivor's access to financial assets and lines of credit). However other forms of financial abuse were also mentioned, including controlling all the money in a relationship, withholding agreement on parenting arrangements until financial demands are met, threatening not to provide for the basic

needs of the survivor or the children, and draining joint bank accounts and children's registered education savings plans (RESPs).

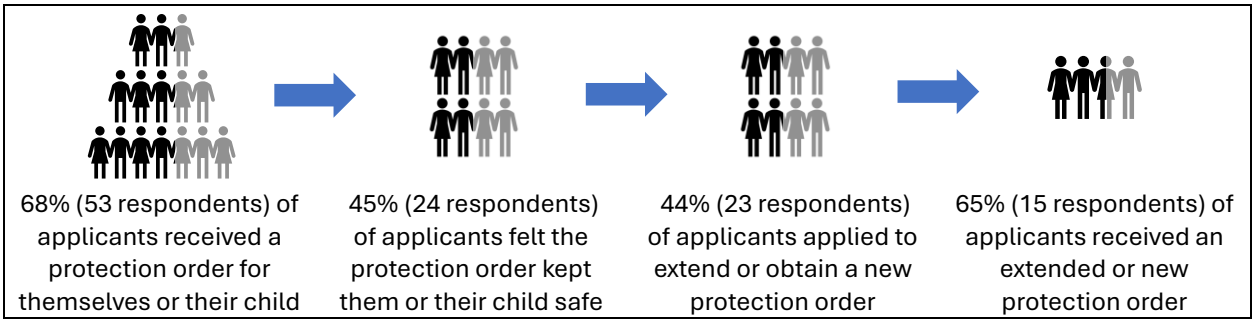
Unlike the different opinions on amending the definition of family violence, most respondents agreed on the importance and need for more education on family violence, including the prevalence and impacts of family violence and what behaviours constitute coercive control and other forms of family violence. It was also suggested that continuous education and training in screening for family violence be made mandatory for family dispute resolution professionals and judges. There were comments that the existing definition often isn't understood or followed; that judges and lawyers don't seem to understand what different forms of psychological and emotional abuse look like in practice or the impact this violence has on all family members.

Issues Related to Protection Orders

Respondents' experience with protection order applications

One hundred and fifty people who completed the Family Violence Survey responded to a question asking whether they had ever applied for an FLA protection order for themselves or their child. Fifty-two percent (78) had applied. Of those who applied, 68% (53) received a protection order, and 44% (23) later applied to extend their protection order or obtain a new one. Sixty-five percent (15) of respondents who applied for subsequent orders were successful. Forty-five percent (24) of respondents who received a protection order said they felt it had helped to keep them and/or their children safe. These same questions were asked of respondents who had supported a person (e.g. partner, friend, client) applying for a protection order. Although the number of respondents was smaller, the percentage of applications granted and the perception that the protection order had helped to keep the protected person safe was almost identical.

Figure 5-2: Protection Order Applications and Perception of Safety



Feedback from those people who felt the protection order had helped to keep them safe sometimes said the other party followed the order because they didn't want to be involved

with the police, and often described the order as relieving some of the fear and stress and anxiety that they and their children had been living with daily.

What Was Said:

> *"It took a lot of anxiety out of our daily lives knowing he cannot approach us or communicate with us."*
>
> *"It provided safety as the other party did not want to have the cops called on him so he complied."*
>
> *"It helped take away fear and stress from my kids and I during this difficult time."*

People who felt the order had not helped to keep them safe mostly complained that police would not enforce the order and so the violence continued, with the abusive family member knowing there were few consequences for their behaviour. Some respondents described the type of family violence they were subjected to shifting after the protection order was made, occurring as financial violence or litigation abuse which is harder to prove and often easier to get away with.

What Was Said:

> *"He just got other people to harass us, and the police didn't enforce it. He laughed at me when I brought it up."*
>
> *"RCMP basically wouldn't enforce the order"*
>
> *"Regardless of the order he continued to behave abusively towards my sibling, mother, and myself. There were no consequences for his actions and he therefore knew he was able to get away with his behaviour."*

We asked the remaining 48% who had experienced family violence but didn't apply for an FLA protection order why they hadn't applied, and here's what they said (keep in mind they may have replied with more than one reason):

44.6%	"Didn't think I would be successful" (29 respondents)
41.5%	"Protection order would make co-parenting with the other person difficult" (27 respondents)
36.9%	"Didn't think a protection order would be helpful" (24 respondents)
26.2%	"Lack of access to legal services or representation" (17 respondents)
24.6%	Didn't know I could apply" (16 respondents)
24.6%	"Process would be too difficult" (16 respondents)
23.1%	"Didn't know how to apply" (15 respondents)
20%	"Lawyer advised me not to" (13 respondents)
13.8%	"Not eligible for protection order" (9 respondents)

Additional reasons included not having enough time, not wanting others to know about the violence, not being able to access a courthouse, and not wanting to get their abuser in trouble. Several respondents explained they had not sought a protection order because violence other than physical violence is often not acknowledged by the justice system. They said they didn't know how to prove the danger they were in and commented that emotional and psychological abuse are hard to quantify and explain, especially when judges, police or lawyers are not sufficiently educated about family violence.

Interestingly, the top reason for not applying for a protection order in the first place was also the most common reason (42%) for not applying to extend or obtain a new protection order even after the initial application was successful. Other frequent reasons were "the protection order wasn't helpful" (25%) and "fear of the other person" (25%). Only 12% of respondents said they didn't need a protection order anymore and 4% had reconciled with the other person.

Although most of the feedback about protection orders was from survivors of family violence or people that have supported survivors in the family justice system, there was some feedback from the perspective of a person restrained by a protection order.

Risk Factors

When a judge is deciding an application about a protection order, they must consider a list of risk factors set out in section 184. It is a non-exhaustive list, meaning the judge may consider any other risk factors that are relevant. If a child is involved, the court must also consider whether the child may be exposed to family violence if a protection order is not made, and whether there should be an order protecting the child if an order is made to protect the child's parent or guardian.

We asked whether any additional risk factors should be added to the FLA, and whether any risk factors should be flagged as being higher risk. Although there was some support for flagging those factors that are known to indicate higher risk for serious harm or death (e.g. strangulation, violence during pregnancy), more people were opposed to what might be seen as ranking or creating a hierarchy of risk factors. The concern is that this may negatively impact survivors, making it more difficult to obtain a protection order if the court does not find evidence of any high-risk factors. One of the common threads that came up in feedback about weighting risk of violence was that many risk factors aren't being given enough weight currently. Some respondents felt that a history of physical or sexual violence was the only risk factor being seriously considered and advocated for more training and awareness in the family justice system:

What Was Said:

> *"I don't necessarily feel any other risk factors should be included, but currently I do not feel the court adequately considers or weighs these above risk factors as they stand. The court needs more education."*
>
> *"I just want the existing legislation to actually be followed by lawyers and justices. Legislation does NOTHING when it is IGNORED by the family court players."*

There was feedback that cautioned against becoming too specific when describing risk factors. People had mixed views as to whether more risk factors should be added to the FLA – 49% of survey respondents said yes and 28% were unsure. One concern is that creating a very specific list may suggest the list is intended to be exhaustive and factors that are not included are not indicative of a risk of violence. On the other hand, there were several suggestions on additional risk factors to consider adding to section 184. These included:

- A history of condoning, inciting or committing violence of any kind
- A history of marked sexist attitudes, remarks and/or behaviour
- A history of perpetrating sexual coercion
- A history of strangulation or suffocation
- Survivor experiencing isolation and/or difficulty accessing services due to barriers such as language, disability or neurodiversity
- Living in a rural or remote location
- A history of involvement with gangs, participating in criminal activity or associating with others involved in crime
- A history of not following or breaching court orders
- A history of denying violence has occurred or retaliatory behaviour
- A history of suicidal ideation or attempted suicide

- A history of withholding access to children, using violence against or in front of a child, subjecting a child to coercion and control

Although living in a rural or remote location may be a factor that increases risk of violence, there was further feedback that adding it to the list of factors in the FLA is not sufficient to address this issue. Another respondent felt it was not necessarily a risk factor but should be considered as a reason for delay in applying for a protection order. Similarly, it may limit a respondent's ability to apply to change or set aside a protection order. It was emphasized that more needs to be done to increase safety to survivors living in these areas, including developing mechanisms to remotely support survivors applying for protection orders and to have their applications heard easily and in a timely manner.

Although many of the comments suggested that a history or pattern of certain behaviours created risk factors that need to be considered in deciding whether to grant a protection order, there were a few comments that cautioned against using the words "patterns" or "history" in legislation. The concern is that a behaviour that indicates a risk for family violence may only need to have happened once; the at-risk family member should not have to prove it has happened repeatedly before they need a protection order.

Terms Used in Protection Orders

Protection orders are stand-alone orders that may only contain terms and conditions needed for the safety of the protected person. Section 183 of the FLA lists the terms that may be included in the order, including a catch-all term allowing the judge to order any term necessary to protect the at-risk family member or implement the protection order. Early feedback suggested that section 183 of the FLA is already flexible enough to permit judges to include any terms that may be needed in a protection order, and the more pressing issues are related to accessing and enforcing protection orders.

The public engagement materials asked whether section 183 should include any different or additional terms. Much of the feedback to this question came from people with lived experience of protection orders who completed the family violence and protection orders survey. Many respondents discussed the need for a term that would support very specific restraints against behaviours that used technology to perpetrate family violence. Feedback suggested there is a need for protection orders to include detailed terms restricting the use of social media, online stalking or communication, tracking technologies, and "smart home" technologies. There was also feedback that suggested protection orders may not be doing a good job of preventing communication, harassment, threats or spying. The list below summarizes the additional categories of protective terms respondents felt should be added to section 183:

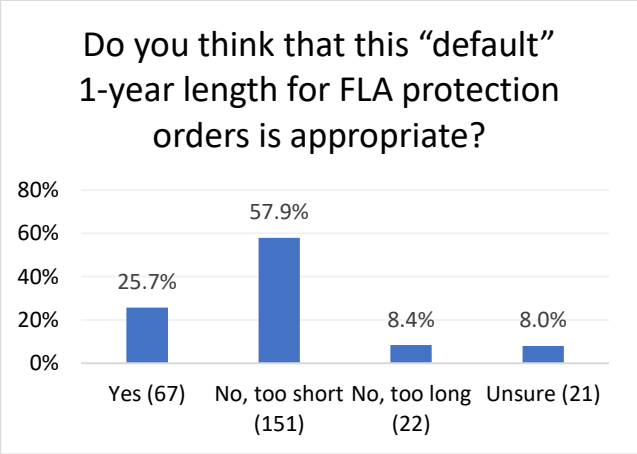
- A provision that would support restraining technology-based violence, including orders against third-party technology/internet service providers
- A provision that could be used to conceal the applicant's home and/or work addresses (a family member may learn where the applicant lives/works through the protection order process) and protect the confidentiality of other personal information
- A provision that would restrain the family member from harassing the applicant's family members, friends, co-workers and other people close to the applicant
- A provision enabling a "restorative justice" process between the applicant and family member (under the current regime, the applicant has no means of knowing whether the family member is still a threat, or if they are getting help)
- A provision restraining the family member from seeing the parties' children, or requiring the family member's parenting time to be supervised or include a supervised exchange in all situations where a protection order is granted even if there was no specific finding that the child had been subjected to family violence
- A provision requiring the family member to stay a specific distance from the applicant or requiring them to leave a location where the applicant is already located (i.e., requiring the family member to avoid being proximate to the applicant, rather than simply requiring them to avoid specific locations)
- A provision restraining the family member from removing or hiding a companion animal

Some of the feedback focused more on making existing terms more effective, rather than suggesting new terms that need to be added. For example, there were comments from some respondents that there should be a term in protection orders stating that it is enforceable by police, or that a breach of a protection order is enforceable as a criminal offense. Under the FLA, breaches of a protection order are already enforceable as a criminal offence, however people experienced police refusing to enforce the orders or advising that the order specifically needed to state that it was enforceable by police.

Another example concerned terms that direct police officers to accompany a family member to remove their belongings from the family residence. There were comments this cannot be accomplished in a single visit, rather the person remaining in the residence should have to leave the home for enough time to allow the other family member to pack all their belongings. Similarly, orders need to consider how the protected family member will access bank/credit cards, medical information and devices, passports, children's documents, keys and vehicles, as well as preventing the restrained party from cutting off the at-risk family member's utilities, lease or mortgage payments, financial access and other accounts.

How Long a Protection Order Lasts & What Happens When It Expires

Figure 5-3: Length of Protection Orders



Protection orders made under the FLA are in effect for 1 year from the date the order is made, unless the judge specifies another time period. Although this was not clear to all respondents, the judge always has the option of specifying whatever length they feel is best in each application. When a protection order expires, the onus is on the protected person to apply for another order, demonstrating they continue to be at risk of family violence.

As seen in Figure 5-3, about 58% of survey respondents felt the 1-year default period is too short, while about 26% feel the length is appropriate. Early feedback suggested many feel the current provisions place too high a burden on survivors, requiring them to repeatedly demonstrate a continuing risk. Moreover, it can be difficult to prove the risk remains if the protection order operated to deter violence while it was in place; in other words, just because the protection order worked and prevented violence while it was in place doesn't mean the risk won't recur once the order has expired.

Subsequent feedback further explained the frustration with protection order timelines. There were several comments about without notice protection orders (sometimes called "*ex parte*" protection orders). These orders are applied for without the applicant notifying the person they are seeking protection from, although if a protection order is granted it must be served on the restrained party. Sometimes a without notice order is set to expire within a few weeks or on the exact date that both parties are supposed to return to court to further speak to the application. This may leave the at-risk family member without protection if the hearing does not go ahead as planned. Short-term orders were also described as disadvantageous for both parties because they traumatized the survivor, often leave insufficient time for the respondent to obtain legal services and prepare a response and may waste court resources. It was proposed that without notice protection orders should not be short or time-limited to an adjourned date. Instead, they should be made subject to the respondent's right to give notice to the protected person and apply to have the order changed or set aside. There was also feedback that the 1-year default period is not a good approach, and several options were suggested to replace it:

- Change the 1-year default period to 2-3 years, on the basis that it often takes that long for family matters to proceed through the courts.
- Instead of basing the default period on length of time, base it on an event occurring. For example, the default period could be based on a date associated with the family law matters being resolved (e.g. a certain number of days after final reasons for judgment are pronounced)
- The initial default period could be one year, however if another protection order is made at the end of year one, the new order would continue until there was a successful application to terminate it.

There was an overall theme in the feedback expressing dissatisfaction with the current regime. Many respondents felt that once a survivor has demonstrated family violence and need for protection, the responsibility for changing, setting aside or terminating a protection order should shift to the respondent. The survivor should not have to prove over and over that they continue to be at risk; instead the respondent should have to demonstrate their behaviour is not a threat and it is appropriate to change or terminate the protection order. If the respondent chooses to return the matter to court to prove the protection order is not required or the terms should be changed, sufficient notice needs to be given to the protected family member. Taking a trauma-informed approach, the survivor should not have to prove their case from the beginning, as they demonstrated they needed protection in the initial application. There were also comments that survivors should not have to deal with the challenge of documenting breaches and bear the expense or trauma of going back to court for another order. Many survey respondents commented that protection orders should be indefinite, or not expire unless there is a court application to terminate the order.

What Was Said:

> *"They should not have to go through the stress, time suckage, and danger of having to apply to renew the order. Someone who is a risk to someone should be considered a continued risk - and if that ever changes in the victim's mind, they could then apply to end the order. The system needs to stop re-victimizing the victim by making them prove something over and over. If Bill hasn't threatened me or stalked me for a year because there's a protection order in place, I will not be able to 'prove' he's still a threat to me - but he most likely is. Look at the statistics. We know the recidivism rates for abusers. Let's stop pretending abusers magically stop being abusers."*
>
> *"...all I know in this moment is that I am fearful everyday once my protective conditions end. I am also afraid to extend because I am afraid it would make the other party upset."*

On the other hand, there were respondents who would leave the default period and requirement to reapply for a new protection order as is. There were comments that it is reasonable for the protected family member to have to reapply to extend or obtain a new order with different terms, providing evidence to show the order is necessary. They suggested short durations for without notice orders (e.g. 30 days) are appropriate because the respondent has not had an opportunity to present their side when the without notice order is made. There was also feedback that protection orders, especially without notice orders, should be easier to set aside or terminate. There was a recognition that there are sometimes delays in obtaining a hearing date and that can create safety concerns if an order has expired, so there was a recommendation that applications for protection orders should receive priority in both levels of court, following a simple, streamlined application process. There were several comments about the need for an automatic review process that would alert the parties and ensure the court considered whether the protected person continues to need a protection order before it expired. Some felt this may require a qualified neutral third party to assess this question and report to the court or specialized supports to assist with a renewal application.

Enforcing an FLA Protection Order

From the moment a judge grants a protection order, a person identified in a protection order is required to follow its conditions. If the person breaches its conditions, police officers can respond and have access to the Protection Order Registry (POR). The POR is a confidential database that contains all family law and criminal protective orders issued in

the province to help police respond to allegations that person has breached a protection order's conditions. A breach of a protection order is an offence that can be prosecuted under Canada's *Criminal Code*.

When contacting the police to report breaches of a protection order's conditions, some respondents reported receiving help from the police, while others reported difficulties obtaining help from the police. Respondents who reported these difficulties shared experiences of police officers telling them that that they could not enforce the order because it did not specify that it was "police enforceable" or include a "police enforcement clause". Other respondents described incidents of police officers declining to act based on a belief that the alleged breach was not "serious" or that the breach did not pose a risk of harm because it related to a "family matter or civil matter." Feedback indicates that these challenges negatively impacted respondents' feelings about protection orders and the ability of protection orders to keep them and/or the child safe from family violence.

What Was Said:

> *"…every (protection) order should be police enforceable. Too many officers refuse to assist and say it's a family matter or civil matter."*
>
> *"more police enforcement or 'contempt' (jail?) consequences for breaches. Make the orders mean something."*
>
> *"…With over 2 dozen documents occurrences of legitimate breach, the RCMP would not take action on any of the breaches because as the last police office put it "this is a waste of my time." Why have a PO if the RCMP won't do anything about it?"*

Enforcing a Civil Protection Order from Another Province or Territory

Section 191 of the FLA says that a civil protection order made in another Canadian province or territory that is similar to a protection order made under Part 9 of the FLA can be enforced in BC, without having to register the order or appear in court in BC. Service providers reported that it is stressful and re-traumatizing to have to deal with court processes and register the out-of-province order when police refuse to enforce it and this may be enough of a barrier to prevent a survivor from advocating for their safety. There was feedback that there needs to be more information about this issue for the protected family members. Judges and lawyers also need training and education, including on how to draft terms in protection orders so they can be enforced in another jurisdiction. For example, if the protection order only restrains the abusive person from going within one kilometre of the protected party's specific home address in Maple Ridge, police will not be able to enforce that term to protect the party in her new home in Lethbridge.

Did you know?

In 2022, the federal government committed $869,861 over 4 years to the National Judicial Institute for judicial training on intimate partner violence and family violence in the family justice system through its Justice Partnership and Innovation Program.

Indigenous Perspectives: Protection Orders

In order to better understand the unique experiences and needs of Indigenous families, we conducted Indigenous dialogue sessions in May and June 2023 and prepared an Indigenous Perspectives survey, which was open from January through April 2024. The Indigenous Perspectives survey included questions about family violence and protection orders, and although the number of respondents was small (18), it provided additional insight on some of the feedback shared in the Indigenous dialogue sessions.

Feedback collected through the dialogue sessions and survey indicate that Indigenous communities face difficulties responding to family violence. In the survey, questions were asked to understand how often family violence is an issue in Indigenous families, and what is done to address the problem. Ten of the twelve people who answered this question said they or a family member had experienced family violence in their Indigenous community. Among those who identified that they or a member of their family had experienced family violence:

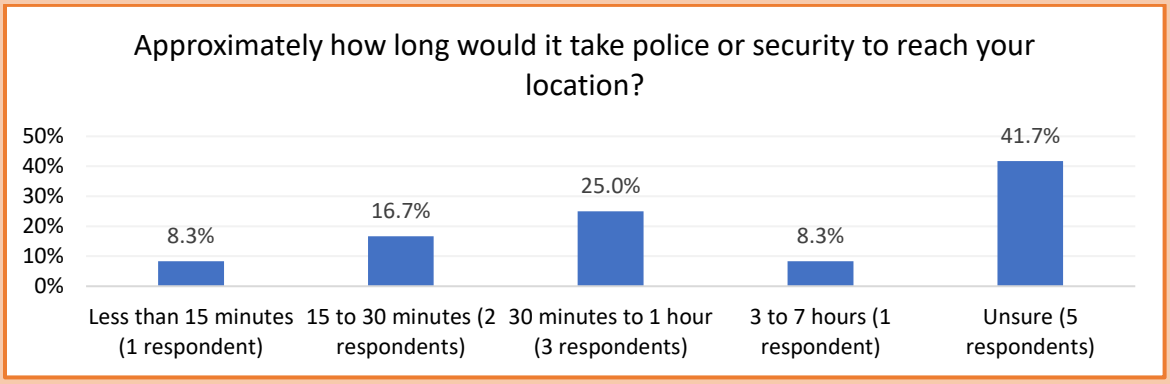
- 60% reported no action being taken,
- 30% reported contacting the police and no charges being laid,

- 30% reported applying for a protection order,
- 20% reported contacting the police and charges being laid, and
- 20% reported fleeing to a transition house.

This matched the responses to a question that asked how family violence was dealt with in Indigenous communities. Again, the most common response was "it is ignored or not dealt with". Other ways included band council resolutions, criminal charges, help from family members or community leaders, criminal charges and protection orders.

Feedback from the dialogue sessions and survey also highlighted challenges that survivors of family violence face getting and enforcing protection orders when one or both parties live on a reserve. When survey respondents who did not apply for a protection order were asked why they did not apply, they cited various reasons including: (a) fears about the other person's response to the order, (b) concern that the order would get the other person in trouble, (c) doubts about the helpfulness of an order, (d) difficulties obtaining the order (e.g., a lack of time or legal representation), and (e) police being too far away to enforce a protection order in the community. These reasons echoed feedback we heard during our dialogue sessions with Indigenous stakeholders and communities. Having heard in early feedback that people believe police will arrive too late if they are called to respond to a breach of a protection order or an incidence of family violence, the survey asked "How long would it take for police or security to reach your location?". 42% of respondents were unsure. As illustrated in Table 5-3, the rest indicated it can take anywhere from 15 minutes to 7 hours for police or security to respond to reports of family violence in their community.

Table 5-3: Time for police/security response



Survey feedback also indicated that many people do not know who is responsible for responding to family violence and enforcing protection orders in Indigenous communities. 43% of respondents were unsure and the rest of the responses were divided between municipal police or the RCMP (29%), Indigenous police (7%), and other Indigenous community members (14%).

Failing to properly address family violence within Indigenous communities was a theme throughout the feedback. Respondents commented that community members who report family violence may not be believed, or paid attention to, or are silenced.

What Was Said:

"In my community the predators are protected due to residential school experience"

"This is an area that has not been explored, examined, or considered in Metis communities in BC"

"It is largely not dealt with because we do not want police on the reservation"

"Nothing is taken seriously when the woman is the perpetrator."

There were also comments about what needs to change to better address family violence in Indigenous communities. Better prevention was one of the themes that emerged. There was a call out for prevention seminars and presentations, improved child wellness checks, and a recognition that *"they aren't bad people, just people normally under the influence of alcohol or other drugs doing bad things. Need to address the underlying mental health crisis, not punish individuals."* Others echoed concerns about the difficulty of "proving" family violence, especially when judges, police or lawyers are not sufficiently educated about family violence.

Family Violence and Parenting Arrangements

Decisions about guardianship, parenting arrangements and contact with a child must be made considering only what is in the child's best interests. To make this decision, all of the child's needs and circumstance, including a list of factors set out at section 37 of the FLA must be considered. Several of these factors are related to family violence:

> (g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
>
> (h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs;
>
> (i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or wellbeing of the child or other family members;

(j) any civil or criminal proceeding relevant to the child's safety, security or wellbeing.

If there is family violence, a list of factors in section 38 guide the court in assessing the impact of the violence on the child's safety, security and well-being as well as whether the person responsible for the violence is impaired in their ability to care for the child and meet their needs.

Despite the guidance in sections 37 and 38, there are significant concerns about the way that family violence is being taken into account when decisions about children are made. Many feel it is a myth that a person responsible for violence directed at a family member other than the child can still be a good parent. They suggest the perspective that such a person could be a good parent fails to consider the trauma to children who witness family violence against their parent or other family members, and the way that a child is negatively impacted when their parent is living with the harmful effects of abuse. There was feedback that the FLA should be amended to require a more sophisticated analysis of the impact of the family violence on the perpetrator's ability to parent as well as the survivor's ability to parent and keep the child safe. It should be recognized that choosing to behave violently towards a family member reflects an attitude of self-interest and entitlement which conflicts with the ability to put a child's needs and interests first.

What Was Said:

> *"I believe the reality of family violence should play a larger role in the court's decision. I believe the willingness of one person to continue to engage in coercive ways towards their child's other parent clearly reflects they do not have the children's best interests at heart if they are willing to inflict that amount of suffering and abuse upon their child's other caregiver. The impact of that necessarily ends up trickling down to the child. As a child counselor, I deal with the immediate aftermath of these types of behaviours, and I see directly the harm it causes to the child. The courts need to recognize that abuse to your child's other parent is just as damaging to the child as abuse to the child themselves."*

Although there were many comments that parents responsible for family violence should not have any parental responsibilities or parenting time, there was other feedback that discussed how a child might safely spend time with an abusive parent. Supervised parenting time or contact is one mechanism that is sometimes used to maintain the parent/child relationship when there is a risk of family violence. There was feedback that the court should be required to consider whether supervision is needed whenever family violence is an issue. It is a concern that affordable supervision services are often not accessible, particularly in rural or remote communities. There was also feedback that the parent responsible for the violence should bear the full cost of supervision services rather than dividing it between the parties.

Feedback was also received about parental alienation allegations in family law proceedings involving family violence. Parental alienation generally refers to behaviours by one parent or caregiver that manipulate a child to reject the other parent, out of hatred, fear or disrespect. There are concerns that parents responsible for family violence are using false parental alienation allegations to shift the focus away from violence they are responsible for, accusing the survivor parent of withholding the children or poisoning their relationship with the child. Frequently, the effect of this is to silence the survivors of family violence, most often women and children. It was suggested that children in these situations need counselling and a child advocate, which would support them to maintain relationships with both parents, on terms that the child is comfortable with. There was also feedback that the FLA should bar parties from making parental alienation allegations because these claims are so often made against victims of family violence, leading to further abuse as well as harming the children involved.

The family violence and protection order survey asked respondents who had experienced family violence whether it was considered in the dispute involving the child. 31% said no.

What Was Said:

> *"I was told by the judge that what happened to me was about me and not about our children and therefore the violence would not be taken into consideration on parenting time for my ex-husband."*
>
> *"The acts of intimidation were not taken seriously or considered in JCC [judicial case conference] or other hearings. The lawyer suggested dropping it because it '[heightened] the conflict'."*

Although there was some feedback that family violence is considered appropriately when making decisions about the children, many parties and people supporting families said it is not. Survivors reported being told not to mention family violence because they would risk

losing their children, it would make the separation harder, or the courts were unlike to recognize it. Others commented that the courts put a higher priority on the abusive parent having a relationship with the child than the child's well-being and need for protection.

What Was Said:

> *"All parties including my lawyer and the [other party's] lawyer, and every justice before whom we have to date appeared, has been quick to dismiss family violence as an issue relevant to litigation. 'Judges won't consider it, unless the Ministry of Children and Family Development is currently involved,' my lawyer told me in quickly dismissing raising regular, repeated family violence as a factor relevant to parenting time. My ex is now using litigation *as* family violence, including financial control, to police my activities & review my purchases since the relationship start; he has unilaterally reduced child support 3 times since separation in 2020, and evicted my children and I from our family home to move in & apply for 50% parenting time (i.e., to reduce child support again)."*

Feedback from youth echoed these comments. Young people who completed the Youth Perspectives Survey shared feedback suggesting that they also feel family violence is poorly addressed in family law matters, with 75% of them reporting that they felt unsafe at home. They described feeling their physical safety, emotional safety and mental health were at risk due to violence within their family. Many described stress, fear, and anxiety, often because of being forced to spend time with a parent who had a history of violence and with whom they did not feel safe.

Respondents who were accused of committing family violence agreed it was not properly considered when deciding what was in the child's best interests, however it was their view that they were considered guilty of violence unless they could prove their innocence.

Appendix A: Demographics by Survey

Role in Survey

Appendix A Summary Table	
I am an interested member of the public (44) Care and Time with Children Survey: 7 Family Violence Survey: 21 Indigenous Perspectives Survey: 4 Views of the Child Survey: 12	7.42%
I am an advocate (57) Care and Time with Children Survey: 10 Family Violence Survey: 33 Indigenous Perspectives Survey: 4 Views of the Child Survey: 10	9.61%
I am or have been a parent or family member in a family law dispute (373) Care and Time with Children Survey: 123 Family Violence Survey: 152 Indigenous Perspectives Survey: 4 Views of the Child Survey: 94	62.9%
I am a lawyer (52) Care and Time with Children Survey: 9 Family Violence Survey: 28 Indigenous Perspectives Survey: 2 Views of the Child Survey: 13	8.77%
I am a legal professional other than a lawyer (for example, paralegal, legal assistant, court worker, etc.) (17) Care and Time with Children Survey: 5 Family Violence Survey: 7 Views of the Child Survey: 5	2.87%
I am an academic professor, instructor or researcher (9) Care and Time with Children Survey: 2 Family Violence Survey: 3 Indigenous Perspectives Survey: 1 Views of the Child Survey: 3	1.52%
I am a member of law enforcement (3)	0.51%

Family Violence Survey: 1 Views of the Child Survey: 2	
Other (36) Care and Time with Children Survey: 6 Family Violence Survey: 15 Indigenous Perspectives Survey: 3 Views of the Child Survey: 12	6.1%
I am a child or youth (under 19 years old) (2) Family Violence Survey: 2 Youth Survey: 13	0.34%

CARE AND TIME WITH CHILDREN SURVEY What best describes your interest in family law? *(2 respondents did not answer this question)*	**%**
I am an interested member of the public (7)	4.3%
I am or have been a parent or family member in a family law dispute (123)	75.9%
I am a lawyer (9)	5.6%
I am a legal professional other than a lawyer (for example, paralegal, legal assistant, court worker, etc.) (5)	3.1%
I am an academic professor, instructor or researcher (2)	1.2%
I am an advocate (10)	6.2%
Other (6)	3.7%

FAMILY VIOLENCE SURVEY: What best describes your interest in family law? *(1 respondent did not answer this question)*	**%**
I am or have been a parent or family member in a family law dispute (152)	58%
I am an advocate (33)	12.6%
I am a lawyer (28)	10.7%
I am an interested member of the public (21)	8%
Other (15)	5.7%
I am a legal professional other than a lawyer (for example, paralegal, legal assistant, court worker, etc.) (7)	2.7%
I am an academic professor, instructor or researcher (3)	1.1%
I am a child or youth (under 19 years old) (2)	0.8%
I am a member of law enforcement (1)	0.4%

INDIGENOUS PERSPECTIVES SURVEY: What best describes your interest in family law?	%
I am an interested member of the public (4)	22.20%
I am or have been a parent or family member in a family law dispute (4)	22.20%
I am a lawyer (2)	11.10%
I am an academic professor, instructor or researcher (1)	5.60%
I am an advocate (4)	22.20%
Other (3)	16.70%

VIEWS OF THE CHILD SURVEY: What best describes your interest in family law?	%
I am an interested member of the public (12)	7.9%
I am or have been a parent or family member in a family law dispute (94)	62.3%
I am a lawyer (13)	8.6%
I am a legal professional other than a lawyer (for example, paralegal, legal assistant, court worker, etc.) (5)	3.3%
I am an academic professor, instructor or researcher (3)	2%
I am an advocate (10)	6.6%
I am a member of law enforcement (2)	1.3%
Other (12)	7.9%

Respondent Gender Identity

Appendix B Summary Table					
Survey	**Woman/ Girl**	**Man/ Boy**	**Gender-fluid, Non-Binary and/or Two-Spirit**	**Prefer not to say**	**Sum**
Care & Time with Children Survey	131	22	4	5	162
FV Survey	223	21	8	8	260
Indigenous Perspectives Survey	9	6	1	2	18
Views of the Child Survey	126	14	4	4	148
Youth Survey	10	3	0	0	13
Sums	499	66	17	19	601
Total %	83.03%	10.98%	2.83%	3.16%	n/a

Care and Time with Children Survey - How would you best describe yourself?	**%**
Woman (131)	80.90%
Man (22)	13.60%
Gender-fluid, non-binary and/or Two-Spirit (4)	2.50%
Prefer not to say (5)	3.10%

Family Violence Survey - How would you best describe yourself? (Gender Identity)	%
Woman (223)	85.80%
Man (21)	8.10%
Gender-fluid, non-binary and/or Two-Spirit (8)	3.10%
Prefer not to say (8)	3.10%

Indigenous Perspectives Survey - How would you best describe yourself?	Column1
Woman (9)	50.00%
Man (6)	33.30%
Gender-fluid, non-binary and/or Two-Spirit (1)	5.60%
Prefer not to say (2)	11.10%

Views of the Child Survey - How would you best describe yourself?	%
Woman (126)	85.10%
Man (14)	9.50%
Gender-fluid, non-binary and/or Two-Spirit (4)	2.70%
Prefer not to say (4)	2.70%

Youth Survey - How would you best describe yourself?	%
Woman (10)	76.90%
Man (3)	23.10%

Cultural Background

Cultural Background – Summary Table no. 1		
Identity	**Total**	**Total %**
White (Western and Eastern European)	301	56.6%
South Asian (Indian, Pakistani, Bangladeshi, Sri Lankan, Indo-Caribbean)	59	11.1%
Indigenous (First Nations, Inuit, Métis)	50	9.4%
East Asian (Chinese, Korean, Japanese, Taiwanese)	31	5.8%
Prefer not to say	31	5.8%
Latino (Latin American, Hispanic descent)	18	3.4%
Black, or of African descent (African, Afro-Caribbean, African Canadian)	14	2.6%
Other	13	2.4%
Southeast Asian (Filipino, Vietnamese, Cambodian, Thai, Indonesian)	10	1.9%
Middle Eastern (Arab, Persian, Afghan, Egyptian, Iranian, Lebanese, Turkish, Kurdish, West Asian)	5	0.9%

Cultural Background - Summary Table no. 2							
Identity	**Care & Time with Children Survey**	**FV Survey**	**Indigenous Perspectives Survey**	**Views of the Child Survey**	**Youth Survey**	**Sum**	**%**
Black, or of African descent (African, Afro-Caribbean, African Canadian)	4	4	2	3	1	14	2.6%
East Asian (Chinese, Korean, Japanese, Taiwanese)	8	12	1	8	2	31	5.8%
Indigenous (First Nations, Inuit, Métis)	11	20	9	9	1	50	9.4%

Latino (Latin American, Hispanic descent)	6	8	0	4	0	18	3.4%
Middle Eastern (Arab, Persian, Afghan, Egyptian, Iranian, Lebanese, Turkish, Kurdish, West Asian)	1	3	0	1	0	5	0.9%
Other	2	10	0	1	0	13	2.4%
Prefer not to say	2	17	1	11	0	31	5.8%
South Asian (Indian, Pakistani, Bangladeshi, Sri Lankan, Indo-Caribbean)	13	28	0	12	6	59	11.1%
Southeast Asian (Filipino, Vietnamese, Cambodian, Thai, Indonesian)	5	2	0	2	1	10	1.9%
White (Western and Eastern European)	9	176	7	106	3	301	56.6%

Care and Time with Children Survey - How would you describe your cultural background? (Select all that apply)	**%**
Black, or of African descent (African, Afro-Caribbean, African Canadian) (4)	2.5%
East Asian (Chinese, Korean, Japanese, Taiwanese) (8)	4.9%
Indigenous (First Nations, Inuit, Métis) (11)	6.8%
Latino (Latin American, Hispanic descent) (6)	3.7%
Middle Eastern (Arab, Persian, Afghan, Egyptian, Iranian, Lebanese, Turkish, Kurdish, West Asian) (1)	0.6%
South Asian (Indian, Pakistani, Bangladeshi, Sri Lankan, Indo-Caribbean) (13)	8%
Southeast Asian (Filipino, Vietnamese, Cambodian, Thai, Indonesian) (5)	3.1%
White (Western and Eastern European) (111)	68.5%
Prefer not to say (9)	5.6%
Other (2)	1.2%

Family Violence Survey - How would you describe your cultural background? (Select all that apply)	**%**
White (Western and Eastern European) (176)	67.2%
South Asian (Indian, Pakistani, Bangladeshi, Sri Lankan, Indo-Caribbean) (28)	10.7%
Indigenous (First Nations, Inuit, Métis) (20)	7.6%
Prefer not to say (17)	6.5%
East Asian (Chinese, Korean, Japanese, Taiwanese) (12)	4.6%
Other (10)	3.8%
Latino (Latin American, Hispanic descent) (8)	3.1%
Black, or of African descent (African, Afro-Caribbean, African Canadian) (4)	1.5%
Middle Eastern (Arab, Persian, Afghan, Egyptian, Iranian, Lebanese, Turkish, Kurdish, West Asian) (3)	1.1%
Southeast Asian (Filipino, Vietnamese, Cambodian, Thai, Indonesian) (2)	0.8%

Indigenous Perspective Survey - How would you describe your cultural background?	**%**
Black, or of African descent (African, Afro-Caribbean, African Canadian) (2)	11.1%
East Asian (Chinese, Korean, Japanese, Taiwanese) (1)	5.6%
Indigenous (First Nations, Inuit, Métis) (9)	50%
White (Western and Eastern European) (7)	38.9%
Prefer not to say (1)	5.6%

Views of the Child Survey - How would you describe your cultural background? (Select all that apply)	%
Black, or of African descent (African, Afro-Caribbean, African Canadian) (3)	2%
East Asian (Chinese, Korean, Japanese, Taiwanese) (8)	5.3%
Indigenous (First Nations, Inuit, Métis) (9)	6%
Latino (Latin American, Hispanic descent) (4)	2.6%
Middle Eastern (Arab, Persian, Afghan, Egyptian, Iranian, Lebanese, Turkish, Kurdish, West Asian) (1)	0.7%
South Asian (Indian, Pakistani, Bangladeshi, Sri Lankan, Indo-Caribbean) (12)	7.9%
Southeast Asian (Filipino, Vietnamese, Cambodian, Thai, Indonesian) (2)	1.3%
White (Western and Eastern European) (106)	70.2%
Prefer not to say (11)	7.3%
Other (1)	0.7%

Youth Survey - How would you describe your family's heritage or culture?	%
Black, or of African descent (African, Afro-Caribbean, African Canadian) (1)	7.7%
East Asian (Chinese, Korean, Japanese, Taiwanese) (2)	15.4%
Indigenous (First Nations, Inuit, Métis) (1)	7.7%
South Asian (Indian, Pakistani, Bangladeshi, Sri Lankan, Indo-Caribbean) (6)	46.2%
Southeast Asian (Filipino, Vietnamese, Cambodian, Thai, Indonesian) (1)	7.7%
White (Western and Eastern European) (3)	23.1%

Location: Relationship to BC

Appendix D – Summary Table			
Survey	**In BC**	**In Canada, outside BC**	**Outside Canada**
Care and Time with Children Survey	156	4	1
Family Violence Survey	256	4	1
Indigenous Perspective Survey	9	0	0
Views of the Child Survey	147	1	0
Youth Survey	13	0	0
Totals	**581**	**9**	**2**

Care and Time with Children Survey - Where do you live?	%
In B.C. (156)	96.9%
In Canada, outside B.C. (4)	2.5%
Outside Canada (1)	0.6%

Family Violence Survey - Where do you live?	%
In B.C. (256)	98.1%
In Canada, outside B.C. (4)	1.5%
Outside Canada (1)	0.4%

Indigenous Perspective Survey - Where do you live?	%
In B.C. (9)	100%

Views of the Child Survey - Where do you live?	%
In B.C. (147)	99.3%
In Canada, outside B.C. (1)	0.7%

Youth survey - Where do you live?	%
In B.C. (13)	100%

Location: Rural/Urban

Appendix E – Summary Table			
Survey	**Urban / Big City**	**Rural / Smaller City or Town**	**Don't Know**
Care and Time with Children Survey	130	25	
Family Violence Survey	199	55	
Indigenous Perspective Survey	5	4	
Views of the Child Survey	118	27	
Youth Survey	9	3	1
Totals	**461**	**114**	**1**

Care and Time with Children Survey - How would you describe the area where you live?	%
Urban (130)	83.9%
Rural (25)	16.1%

Family Violence Survey - How would you describe the area where you live?	%
Urban (199)	78.3%
Rural (55)	21.7%

Indigenous Perspective Survey - How would you describe the area where you live?	%
Urban (5)	55.6%
Rural (4)	44.4%

Views of the Child Survey - How would you describe the area where you live?	%
Urban (118)	81.4%
Rural (27)	18.6%

Youth Survey - How would you describe the area where you live?	%
Big city (9)	69.2%
Smaller city or town (3)	23.1%
I don't know (1)	7.7%