

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

Introduction

As discussed in Chapter 3 - *Child-Centred Decision Making*, the best interests of a child are the sole considerations in making decisions about who will spend time with and care for a child under [Part 4 - Care of and Time with Children](#) of the *Family Law Act* (FLA). A child's views are one factor to be considered in determining the best interests of the child, and there are many ways to obtain the views of a child. A common way in which a child's views may be obtained is through reports.

[Sections 202](#) and [211](#) of the FLA allow for a child's needs and views in a family law dispute to be obtained and presented through reports. Generally, there are two categories of reports that are prepared under the FLA – “evaluative reports” and “non-evaluative reports.” An evaluative report contains the report writer's opinions and recommendations on the family law issues being considered based on information collected through procedures like interviews and assessments. A non-evaluative report provides or summarizes a person's statements or perspectives on the issues but does not include the report writer's opinions or recommendations.

Within these categories, there are different types of reports and there are different understandings of what each type contains. The FLA does not list, define, or describe the types of reports that may be ordered or prepared. As described in blue box below, Hear the Child reports, Views of the Child reports, and Full Section 211 reports are common types of reports currently being prepared under the FLA.

Hear the Child Report

A non-evaluative report of a child's voice pertaining to target questions such as preferences for residence, school, and/or relocation. The interviewer does not assess the child or the parents, but rather reports the child's views, usually verbatim, so that the views can be heard and considered by the adults making decisions about the child's best interests. No opinion or recommendations are given.

Views of the Child Report

A report assessing the views of a child in relation to a family law dispute. The report is focused on providing the court with the views of the child and an assessment related to those views. Opinions are limited to those pertaining to the individual child or recommendations as to whether further assessments are needed. There are differing opinions on whether parenting arrangement recommendations are made in Views of the Child reports.

Full Section 211 Report

An evaluative report containing opinions to assist the court in assessing all factors under [section 211\(1\)](#) – the needs and views of a child in a family law dispute, and the ability and willingness of a party to satisfy the child’s needs. These reports use a multi-method assessment approach, including extensive interviews with each party, home observations of parent-child interactions, interviews with children and other people in the child’s life (i.e., collateral interviews), and other forms of data collection that may include culturally appropriate methods of assessment, or psychological/psychometric testing.

[Section 211\(2\)](#) of the FLA specifies that a person appointed by the court conduct an assessment and write a report 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 the parties agree. [Section 202](#) is silent on who may prepare reports.

Family justice counsellors are employees of the Ministry of Attorney General, Family Justice Services Division and prepare publicly funded Section 211 reports. Other common Section 211 report writers, such as social workers, psychologists, and clinical counsellors are generally professionals who are not employed by government and who charge for their services. However, because the FLA is silent on qualification or membership criteria for report writers, it is possible that anyone could be appointed by the court to write a report.

Past research reports and current feedback have criticized the FLA for not providing enough guidance about when different types of reports should be ordered, who is qualified to write reports, and what processes report writers must follow when doing assessments and writing reports. This lack of specificity has led to families incurring significant costs in obtaining private Full Section 211 Reports, or delays in obtaining publicly funded reports.

Concerns have also been expressed about the limited ways families have to challenge the content of a report or how a report writer conducted assessments or prepared their report.

The proposed policy changes are intended to balance the impacts of costs, delay and potential intrusiveness of assessments and reports in children's and families' lives, with ensuring that important information is appropriately obtained to make decisions in the best interests of the child. Proposed changes include:

- establishing a new framework in the FLA to clearly define three types of reports and establish criteria for when each type can be ordered by the court or decision-maker or requested by parties, based on what is needed in a particular case.
- establishing mandatory qualifications and practice standards for report writers in regulation, similar to what the FLA currently provides for family law dispute resolution professionals.
- addressing the unique needs of Indigenous children and families by allowing certain people from their Indigenous community to provide information about the views of an Indigenous child and to participate in or advise the assessor in the report writing process.

Key Changes and How They Help Families

Types of reports:

Proposed change: Specify the following three types of reports the court can order or parties can request to obtain the views of a child and assessing parenting in family law matters and add criteria that a court must consider when deciding whether to order a report or which type of report to order:

- Views of the Child Report
- Focused Evaluative Report
- Full Evaluative Report

How this helps families: Families will be able to obtain the type of report that will help resolve the family law issues in their specific case balancing the type of report is needed, the impacts of costs, delay and intrusiveness of the assessment process on the family with the need to obtain information to make a decision in the best interests of the child.

The FLA currently does not clearly provide the types of reports that may be ordered or prepared under the Act. In addition, there is no legislative guidance for parties or the court to know when it may be appropriate to order or request the different types of reports.

Engagement suggests that this lack of clarity is problematic as the public, legal professionals and report writers have expressed different understandings of what the various types of reports are and what information they should contain. The lack of guidance also risks the ordering of the most intrusive, costly, and time-consuming reports when a more tailored report would meet the needs of the family. The uncertainty has also been seen to be a point of conflict for families leading to disputes over what report is needed, with the impact of costs and delay adding to the tension.

Proposed changes will define three types of reports that will be available under the FLA (see Figure 4.1). Specifying the three types of reports in the Act, from least intrusive, costly and time-consuming, to the most intrusive, costly and time-consuming, will help judges, parties and report writers identify what information and what type of report is specifically needed in each case.

Figure 4.1 – Proposed Reports in the *Family Law Act*

<p>Views of the Child Report</p> <p>A report that shares the views of a child (for example, by transcribing or summarizing them), but does not make any recommendations about the family law issues.</p>	<p>Focused Evaluative Report</p> <p>A report that only focuses on and makes recommendations about specific identified issues.</p>	<p>Full Evaluative Report</p> <p>A report similar to what is currently referred to as a “Full” s. 211 report that makes recommendations about all issues related to time with or care of a child.</p>
---	--	--

Changes will also establish criteria that will provide the court and parties with guidance and flexibility to determine if a report is needed, and if so, which report may be needed in each case.

As is currently the case with Section 211 reports, the proposed reports could be ordered directly by the court without needing an admissibility hearing.⁴

The following non-exhaustive list of criteria for ordering or requesting a report will be considered for inclusion in these amendments:

- whether the views of the child could be or have been obtained in another way;
- whether a previous report has already been prepared;
- which family law issues need to be resolved;
- the cost of the report and the parties’ ability to pay;
- the impact of any delay;

⁴ An admissibility hearing is required for other types of expert reports that one party may try to use as evidence to support their case. These hearings allow the court to decide whether an expert is qualified and whether their report meets admissibility requirements.

- the assessor's qualifications; and
- any other factor the court considers relevant.

Example

When Reese and Casey separated 5 years ago, their son Tate was 9 years old. At the time, Tate wanted to stay in the same school with his friends, so Reese and Casey found homes in the same neighbourhood. Tate is musically gifted and wants to keep studying music. He's 14 now and Reese and Casey don't agree which high school Tate should attend. Reese wants Tate to go to the same neighbourhood school as his friends, although it doesn't have a strong music program. Casey wants Tate to attend a private school an hour away that specializes in music. If Tate goes to the private school, the parenting arrangements may need to change, as Reese's work schedule won't permit them to drive Tate to school. Reese is also concerned they can't afford their share of the tuition fees. Reese and Casey haven't been able to resolve the conflict and school registration deadlines are approaching.

Is a report needed to help resolve the dispute? Reese, Casey and potentially the court will need to consider certain criteria to decide if a report is needed. Although the specific criteria will be set out later in regulations, they might include things like:

- What issues are in dispute?
- Have Tate's views already been obtained? Can Tate's views be obtained in another way, or is a report necessary?
- What would a report cost and what are Reese and Casey's ability to pay for it?
- How long would it take to get a report, and what would be the impacts of delay?

Obtaining a report by agreement:

Proposed change: Clarify that a report may be obtained either by court order, or by agreement between the parties.

How this helps families: Allowing families to obtain a report by agreement will help children share their views early in the dispute resolution process and can help prevent the escalation of conflict and result in earlier resolutions.

As a child's views are a factor in determining the best interests of a child, obtaining a report early in the dispute resolution process can help ensure their views are considered when decisions are being made.

Currently, while the court may order reports, in some cases, parties may want to obtain a report before going to court. Engagement feedback supported reports being obtained earlier in the dispute resolution process. Suggestions were also provided for how requests for reports and information could be provided to report writers without a court order.

The proposed changes will clarify that a report can be obtained by agreement of the parties, which will help to obtain the views of a child earlier in the process. As discussed above, hearing from children early in the process can lead to more timely and less costly resolutions and prevent the escalation of conflict. Changes will also encourage parties to consider the criteria to determine which type of agreement is suitable in their case in making an agreement to obtain a report.

Report writer qualifications:

Proposed change: Authorize the creation of regulations that establish mandatory qualifications for report writers, including training and experience requirements.

How this helps families: Establishing mandatory qualifications will ensure that report writers have the necessary training and experience to conduct interviews and assessments on children and family members about family law issues. This will benefit families as report writers will have knowledge and experience necessary to address their specific needs, such as if family members have experienced trauma or family violence.

As noted, [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, social worker or "another person approved by the court." The FLA is otherwise silent on qualification or membership criteria for report writers.

Past research reports as well as the feedback received raised concerns about the lack of qualification requirements in the FLA for report writers. The observation has been made that because reports are often heavily relied upon in making decisions about children, it is critically important that parties and the courts have confidence that report writers are qualified to conduct interviews and assessments and to write quality reports.

The changes will authorize the addition of qualification requirements for report writers that are similar to those of other jurisdictions. The qualifications may follow a similar format to

the current [section 245](#) of the FLA respecting family dispute resolution professionals. [Part 3](#) of the Family Law Act Regulation provides qualification requirements and practice standards for family dispute resolution professionals such as family law mediators, arbitrators, and parenting coordinators. Report writer qualifications could be similar to those already established for family dispute resolution professionals, along with report writing-specific qualifications, such as:

- membership in a relevant professional governing body, and/or
- training and experience related to topics such as:
 - family violence;
 - mental health;
 - child development and interviewing children;
 - families with members with disabilities;
 - trauma-informed practice;
 - family law; and
 - cultural or language-specific training and experience.

Qualifications of report writers for Indigenous families:

Proposed change: Allow the court to consider a report or evidence about the views of an Indigenous child or parenting assessments from an appropriate person who has knowledge of and experience with an Indigenous family’s community, culture, customs and traditions.

How this helps families: Allowing an appropriate person identified by an Indigenous community to write a report about an Indigenous family will help Indigenous families feel confident that interviews and assessments are being done by a person from their community and who understands and will incorporate their culture, customs and traditions in the report writing process.

Indigenous perspectives:

[Section 211](#) currently gives the court broad discretion to appoint “another person approved by the court” to prepare a report, which could include an Elder, knowledge keeper or other respected community member in the case of Indigenous families.

While public engagement feedback has strongly suggested that qualification requirements are important for report writers, feedback from Indigenous people also strongly supported the need for Indigenous communities to be able to identify people within their community who should be able to write reports and provide evidence about their families. In proposing to establish qualifications for report writers, the Ministry does not intend to limit the court’s

existing flexibility to appoint report writers or hear from people who are appropriate and qualified according to their Indigenous communities and Indigenous families.

In considering who can provide a report or evidence about an Indigenous family in a family law matter, it will be important for the court to recognize distinctions between Indigenous Nations and communities. For example, a person holding a certain title might be considered an appropriate person to write a report by one Indigenous community, but another Indigenous community might consider a different person or title holder to be appropriate.

Report writer practice standards:

Proposed change: Add mandatory practice standards for report writers to follow. This change is ultimately likely to be found in the regulations.

How this helps families: Establishing practice standards will ensure that all report writers follow certain common procedures when conducting interviews and assessments and writing reports. This will benefit families as all report writers will have to take important steps, such as screening for violence, which will help provide more accurate information and lead to better decision-making on family law matters.

Like the qualifications of report writers, the FLA currently does not provide any mandatory practice standards that 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 their profession. Also, some practice standards may be mandatory for some report writers, while others may be non-mandatory guidelines.

Past reports and feedback have expressed concerns that the FLA does not provide practice standards for report writers when preparing reports. As with mandatory qualifications discussed above, adding practice standards for report writers when preparing reports will be similar to other jurisdictions and to the current [section 245](#) of the FLA respecting family dispute resolution. While specific practice standards will need to be developed in regulations, based on practices standards from other jurisdictions and engagement feedback, they could include standards such as:

- screening for family violence,
- addressing cultural bias, and

- specifying content that must be included in reports.

The proposed changes do not include specific parameters around psychological testing in the FLA or in the regulations. Despite some feedback suggesting that the FLA should prohibit qualified report writers from conducting psychological testing in some cases, it is more appropriate for qualified report writers and the practice standards established by their governing bodies to determine whether psychological testing is appropriate in each case than to address it in the FLA. In addition, establishing criteria for ordering different types of reports will result in Full Section 211 Reports with assessments (potentially including psychological testing if needed) and recommendations being ordered only in cases where it is determined to be necessary.

Practice standards for report writers for Indigenous families:

Proposed change: Establish a requirement for a report writer, if requested by the family, to consult with a person or people designated by an Indigenous Nation to which the family belongs during the assessments and report writing process to ensure the process aligns with the Nation's customs, traditions and practices.

How this helps families: Requiring a report writer to consult with an Indigenous family's nation upon request will help the Indigenous child and family in being able to participate in the assessment and report writing process in a meaningful way and can lead to better resolutions for the family.

Indigenous perspectives:

Engagement feedback with Indigenous people strongly indicated that it would not always be sufficient for a non-Indigenous report writer to interview, assess and write a report for an Indigenous family, even if they meet other qualification requirements. It is important for the assessment and report writing process to be conducted in a way that aligns with the culture, customs, traditions and practices of an Indigenous family's nation. For example, conducting interviews in a manner and setting that incorporates Indigenous practices can help an Indigenous child feel safe and comfortable sharing their views. Obtaining information in culturally appropriate ways can also result in better resolutions for families when making decisions in the best interests of the Indigenous child.

It was therefore recommended that report writers who are not from an Indigenous family's community should engage with a person from the community when writing a report about the family, if the family requests it. Requiring report writers to work with an Indigenous community to ensure the information-gathering and report writing processes are done in a

culturally appropriate way is consistent with engagement feedback and with government's commitment to reconciliation.

This process will also acknowledge distinctions between Indigenous Nations and ensure that assessments and reports are conducted and written in ways that incorporate the specific communities' culture, values, processes and traditions. For example, this could include requiring a report writer to consult with a person designated by the Indigenous community in preparing interview questions, determining how interviews and assessments will be conducted, or approving a report before it is submitted to the parties or the court. This proposed change will ensure the parties and the court receive important information about the views of an Indigenous child and family to make a family law decision in the best interests of the Indigenous child.

In further developing this proposed change, consideration will also be given to situations where families are from multiple Indigenous communities, the capacity of Indigenous communities to participate in the process, and to Indigenous families living in urban centres or away from their Indigenous community.

Accountability mechanisms:

Currently, a party with concerns about the preparation of a report under [section 202](#) or [211](#) of the FLA has options to address those concerns through the court proceeding or through administrative processes outside the court proceeding. Proposed changes do not include additional accountability measures at this time.

Although there may be limitations to both the court and administrative processes, feedback suggests many of the current complaints relate to the report writer not being qualified or not following practice standards such as screening for family violence or giving adequate consideration to cultural biases.

In light of the changes being made to report writer qualifications and practice standards described above to address these issues, it is premature to determine whether additional accountability mechanisms will still be needed. The Ministry will continue to monitor complaints and engagement with the professional governing bodies to determine whether the issue of complaints persists after any qualification and practice standard amendments are made.