

CHAPTER 6: Parentage

Introduction

Part 3 of the *Family Law Act* (FLA), titled [Parentage](#), establishes who a child's parents are for all purposes of the law in BC, including when a child is born using surrogacy or assisted reproduction. Legal parentage is important to establishing a child's identity as well as inheritance rights. Although parents are usually also the guardians of their children, parentage and guardianship are different legal concepts. Unlike guardianship, parentage does not end when a child reaches adulthood, and although additional guardians may be appointed if needed or in certain instances guardianship may be terminated, a child's parents are fixed and cannot be changed except through adoption.

The provisions introduced in the FLA concerning surrogacy and assisted reproduction were new to the law of BC and continue to be one of the more comprehensive legislative schemes in Canada. The provisions in [Part 3](#) were guided by five principles:

- promoting family stability;
- providing certainty of parental status as soon as possible;
- treating children fairly, regardless of the circumstances of their birth;
- protecting vulnerable persons; and
- preferring out of court processes where possible.

Since the FLA was brought into force, assisted reproductive technologies have advanced and the diversity in family structures has continued to grow. It is important that BC's parentage legislation keeps pace and continues to meet the needs of all families in the province. The British Columbia Law Institute (BCLI) was funded by the Ministry to review [Part 3](#) as part of Phase 2 of the FLA Modernization project. BCLI began the project in late 2020 and concluded in June 2024 with the publication of their [Report on Parentage: A Review of Parentage under Part 3 of the Family Law Act](#). The report was informed by the work of the Parentage Law Reform Project Committee, which BCLI convened for this project, as well as a public consultation process. The report sets out 34 policy issues that were considered by the project committee, providing background information, analysis and a recommendation for each. Appendix A of the report sets out a summary list of the issues. The BCLI report recommended legislative change to address 24 of the 34 issues; amendments were not recommended with respect to 10 of the issues.

In response to recommendations in the BCLI report as well as other feedback received in relation to [Part 3](#) of the FLA, proposed changes will better reflect and accommodate the needs of modern family structures, remove inconsistencies that are based on how a child is conceived and reduce some of the financial barriers to using assisted reproduction. There will also be changes to terminology and language used in the Act to make the law gender-inclusive and generally clearer and easier to understand.

The key areas of change are:

- removing legislative inconsistencies for children conceived through sexual intercourse and children conceived using assisted reproduction. This includes amendments that would
 - allow a family to identify who a child’s legal parents will be, regardless of how they are conceived, as long as the intention to be a parent is set out in a written agreement between all parties before the child is conceived.
- considering parentage when a child is conceived using assisted reproduction from the lens of “intention to parent” (as evidenced before conception) rather than genetic connection.
- expanding and clarifying rules applicable when a donor is used to conceive a child.
- removing barriers that currently prevent the court from using declarations of parentage to recognize people as parents under Part 3 and making that process more accessible to families.
- ensuring language used in [Part 3](#) is both gender-neutral and clearly describes a person’s role in conception and birth (e.g. describing “birth mother” as “the person who gives birth to the child” rather than “birth parent” as the individual may not intend to be a parent).

Key Changes and How They Help Families

Recognizing parents based on intention to parent:

Proposed change: Align parentage provisions for children conceived using sexual intercourse with provisions for children conceived using assisted reproduction (other than surrogacy).

How this helps families: Families will be treated equally under the FLA, based on an intention to parent rather than how a child is conceived.

As noted, the FLA establishes who a child’s legal parents are for all purposes of the law in BC, including when a child is born using surrogacy or another form of assisted reproduction. However, under the current provisions, the method of conception impacts

who is recognized as a child's parent under the Act.¹² The effect of this distinction is that people are required to use assisted reproduction if they wish to build a family in which a child has more than two parents. This may mean expenses and medical interventions that some families would be able to avoid if the legislation recognized a broader definition of parents for children conceived using sexual intercourse.

Although guardianship is sometimes held up as an alternative to parentage for someone wanting to be an "additional" parent, guardianship is not equivalent. While a guardian has important responsibilities towards a child, it is a legal relationship that is intended to end, usually when the child reaches the age of majority. In contrast, parentage is lasting.¹³ It is associated with strong emotional bonds and shared connections, and legal implications arise under wills and estates legislation.

The intended changes extends the current ability of families to determine who the parents of a child will be, to all families regardless of how the child is conceived. The boundaries already set out in the FLA, listed below, currently apply to families who use assisted reproduction, but not those who use sexual reproduction:

- if there are more than two people who intend to be parents to a child, this intention must be set out in a written agreement that is signed by all of the parties before the child is conceived.
- the amendments will not support an unlimited number of parents. Under the current provisions in the FLA, when a child is conceived using assisted reproduction (not including surrogacy), a written pre-conception agreement is used to establish that the parents are, as applicable:
 - the person who gives birth to the child + the spouse of the person who gives birth to the child, unless the spouse does not consent to be the child's parent;
 - a person OR a person and their spouse who intend to be parents (no genetic or other physical connection to the child);
 - a person who is providing genetic material (egg, sperm or embryo) and intends to be a parent.¹⁴

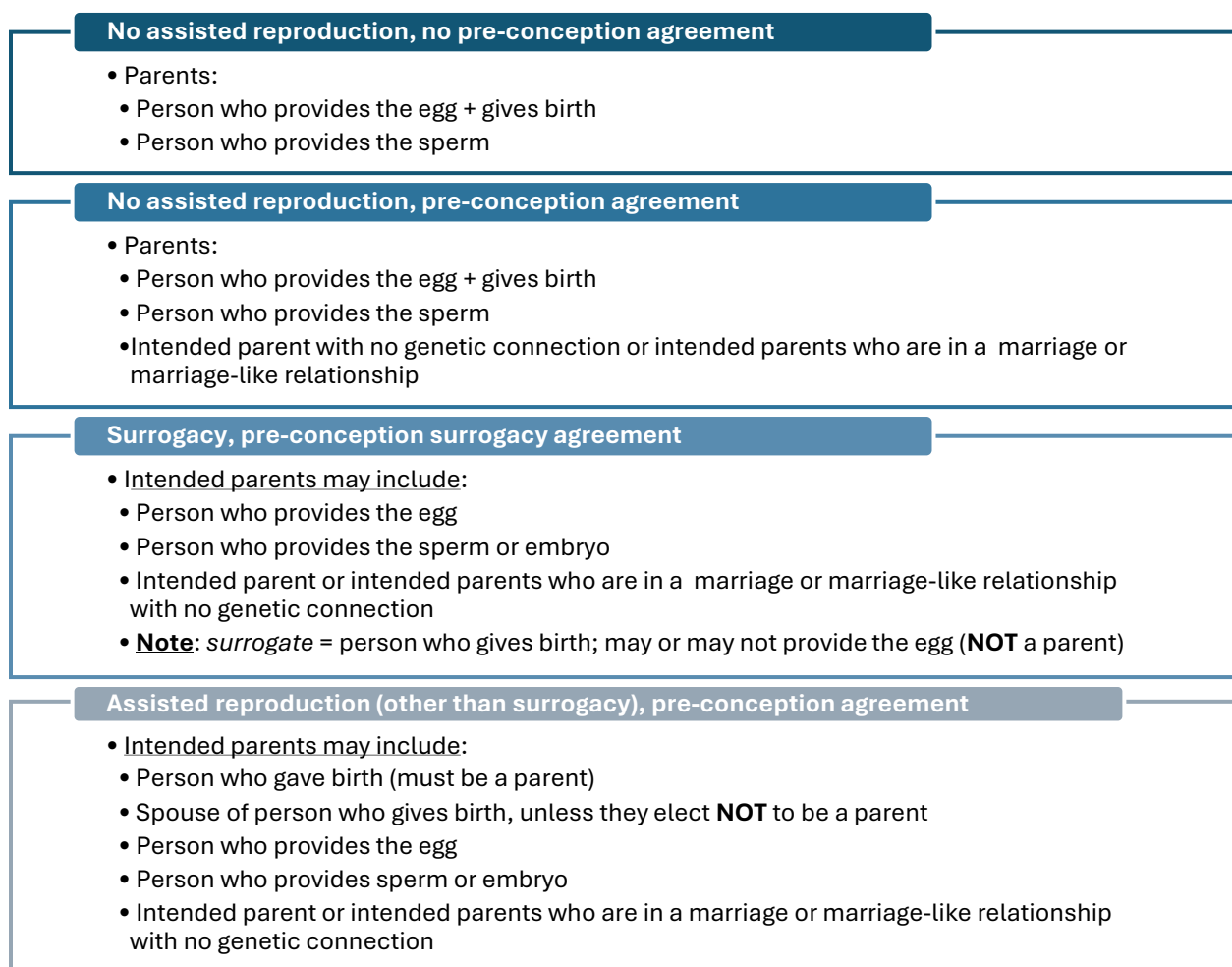
¹² [Section 26](#) of the FLA sets out who a child's parents are when the child is conceived and born without using assisted reproduction. The parents are the birth mother and the biological father, with a list of presumptions that can be used to establish the biological father. It is acknowledged that this language is gendered and alternative terms are being considered.

¹³ The exception is a situation where a child is adopted and under the terms of the adoption the parent ceases to have any parental rights or obligations with respect to the child, as per [section 37](#) of the *Adoption Act*.

¹⁴ [Section 30](#) of the FLA describes who may sign a pre-conception agreement as a potential parent when a child will be conceived using assisted reproduction. There have been competing interpretations as to whether the agreement may include intended parents (as defined in the FLA) as well as people providing genetic materials who intend to be parents. There are no reported decisions that address this issue. The amendments will clarify intended parents as well as people providing genetic material who intend to be parents may sign the pre-conception agreement.

The changes will ensure the same parameters apply when a child is conceived using sexual intercourse and more than two people intend to be parents. This removes the inconsistencies based on how a child is conceived and recognizes that families are built in different ways.

The following diagram is a visual overview of who may be a parent under the FLA if the proposed policy reforms are implemented. The overview is organized according to different reproduction scenarios, but one of the lenses is people's intention to parent. More detailed explanations of the proposed policy reforms follow the overview.



Proposed change: Recognize the parentage of a person whose child was conceived after their death (posthumously) in circumstances where the deceased intended to be and consented to be a parent but has no genetic link to the child.

How this helps families: Families will be treated equally under the FLA, based on an intention to parent rather than how a child is conceived.

The FLA currently recognizes parentage in some circumstances where the child is conceived using assisted reproduction after an intended parent has died. The legislation refers to this as “posthumous conception”. In these circumstances the deceased intended parent must have left written consent to be a parent of a child conceived after their death and there must be genetic connection between the deceased and the child (i.e. the deceased must have provided their own eggs, sperm or embryo).

The requirement that a genetic connection exists between the deceased and the child is inconsistent with the focus on intention to parent. It is also different from the existing provisions that apply to recognize parentage if the child is conceived before the intended parent’s death. That is, when a child is conceived using assisted reproduction during the intended parent’s lifetime, the child may be conceived using donated genetic materials rather than requiring that genetic material from the intended parent be used. Requiring a genetic connection between the child and the intended parent in one situation and not the other can lead to circumstances that may not have been intended and feel inequitable. For example, a family may have conceived a child using donated genetic materials and intended to conceive more children using stored materials from the same donor. If one of the parents dies before the sibling is conceived, the legislation does not currently permit the deceased to be a parent of a subsequent child, even though they intended to. The amendments will remove the requirement for a genetic link between the deceased and a child they intended to be a parent to, as long as there is written consent to posthumous conception.

In addition to making the assisted reproduction provisions more consistent, recognizing an intended parent who does not have a genetic connection to the child is important to the child and the family. When a child is not recognized as the child of the deceased because they were conceived after the intended parent died, they may be unable to access inheritances, death-related benefits, citizenship status and other rights and benefits. They may also not have been recognized as having the same parents as siblings conceived before them. Allowing all parents to be recognized, regardless of whether they contributed genetic material is also in the interests of the deceased and the other intended parents as it respects their reproductive choices. If the intended parents wished to have a child together, and agreed in writing they would be the parents of the child even if the child was conceived after one of the intended parents died, those wishes should be respected.

Increasing reproductive choice:

Proposed change: Allow sperm donation by sexual intercourse as long as there is a pre-conception agreement that says the parties do not intend the donor to be a parent.

How this helps families: Families conceiving using assisted reproduction will have more reproductive choice.

BC currently requires assisted reproduction to be achieved using a procedure such as invitro fertilization or artificial insemination. The FLA does not permit sperm donation to be completed using sexual intercourse. The BCLI report describes that there are some people who wish to have this option and legislation in other Canadian jurisdictions allows for this.¹⁵ Completing the donation using sexual intercourse reduces some financial and logistical barriers. There are fees to use a fertility clinic, which are not accessible in all regions of the province and do not all offer known donor insemination. There are home insemination kits, which are less costly than a clinic, however some people would prefer to use sexual intercourse as they believe it increases the likelihood of conception, or they desire autonomy over the process.

The proposed change would only allow sperm donation by sexual intercourse where there is a pre-conception agreement that says the donor is not a parent. Requiring the pre-conception agreement ensures the parties' intentions are clearly documented before a child is conceived, which protects everyone involved. The reform would increase people's reproductive choices and create more autonomy over decisions about conception, as well as removing potential barriers/costs associated with other insemination procedures. The proposed amendments would be limited to sperm donation, as conceiving a child using a donated egg or embryo can only be achieved with medical assistance.

Modernizing language:

Proposed change: Gendered language will be replaced with inclusive terms that accurately describe particular roles in conception, birth and parenting.

How this helps families: Ensure all families are reflected in the language used in Part 3, regardless of family members' gender, gender identity, sex or sexual orientation.

The government of BC is committed to using language that is accessible, up-to-date and reflective of all people in the province, which includes introducing gender-neutral language as it is more accurate, respectful and inclusive. In alignment with this commitment, gendered language will be changed, with care being taken to ensure that the new terms used accurately describe the particular roles in conception, birth and parenting. For example, the definition of surrogate currently says a surrogate means a birth mother; a better way to describe that role may be to say a surrogate means a person who has agreed to give birth to a child as set out in a surrogacy agreement.

¹⁵ Both Ontario and Saskatchewan allow for sperm donation by sexual intercourse. British Columbia Law Institute. (2024, July 25). *Report on parentage: A review of Part 3 of the Family Law Act* (BCLI Report No. 97). https://www.bcli.org/wp-content/uploads/2024-07-25_BCLI-Report-on-Parentage_FINAL-FORMATTED.pdf