Family Law Act Modernization Project

Phase 2: Care of and Time with Children and Protection from Family Violence

Policy Intentions Paper

August 2025

Message from the Attorney General

I am committed to ensuring B.C.'s laws are updated to reflect our current values and context, and that family law meets the needs of families throughout the province. That's why we're suggesting changes to the *Family Law Act* to give more support to families and people experiencing family violence and to offer more parenting arrangements that put the needs of children first. These steps are part of our broader efforts to ensure that the legal and justice systems in B.C. keep up with changes in society and are responsive, supportive and accessible for everyone.

This Policy Intentions Paper (the Paper) addresses several important topics that support parents and guardians in resolving family law matters outside of court, increase flexibility for Indigenous perspectives, customs, practices and traditions, and reduce financial burdens for families. The Paper also includes a chapter on improving protection for survivors of family violence.

While the current phase of the *Family Law Act* Modernization project was underway, I appointed Dr. Kim Stanton to conduct a review of the province's treatment of sexual and intimate partner violence. One of the important elements of the review was to look not only at the criminal justice response, but also to look at how the family justice system addresses these types of violence. While conducting her review, Dr. Stanton had the opportunity to review the family violence chapter of the Paper.

Dr. Stanton released her Final Report in June 2025. That Report speaks about the *Family Law Act* Modernization project and acknowledges that many of the changes proposed in the family violence chapter of the Paper are responsive to the concerns she heard throughout the review. The Final Report also includes recommendations that align with proposals in the Paper even when the specific solutions take a different form. Additional changes recommended by Dr. Stanton for future consideration to further improve the experiences of survivors of violence as they access the family justice system, along with all the recommendations and findings from the Final Report, have been referred to a cross-

ministry committee of assistant deputy ministers. This committee is reviewing Dr. Stanton's Final Report and identifying future actions to improve the experiences of survivors of violence as they access the justice system, including family justice processes.

The *Family Law Act* Modernization project and Dr. Stanton's review are two separate and complementary projects that are part of our broader effort to build a legal system that is easier to navigate, more inclusive, trauma-informed and supportive for people in vulnerable situations.

The Ministry of Attorney General remains committed to continuous improvement and a holistic approach to addressing complex challenges throughout the legal and justice systems that respond to gender-based violence. As work progresses on improvements in these areas we will maintain a strong emphasis on improved responses to violence within the family justice system, just as we will maintain our strong focus on all families who continue to be impacted by these challenges.

For more details on the intersections between this project and the work of Dr. Stanton see Appendix B.

Overview

This Policy Intentions Paper (the Paper) is part of the Ministry of Attorney General's ongoing project to review and modernize the *Family Law Act* (FLA). The FLA Modernization project is not an overhaul of the Act but rather is intended to respond to case law and issues that have emerged since the Act was introduced. The Ministry's engagement with interested individuals and organizations as well as persons with lived experience have helped inform the intended policy changes summarized in the Paper.

The Paper highlights policy shifts that the Ministry intends to propose through legislative amendments to the FLA, developed in response to user feedback and research including cross-jurisdictional research on jurisdictions with recent legislative reform. The Paper is divided into seven chapters with each chapter addressing a different family law topic, as well as Appendix A that sets out the full list of changes. The Paper may be downloaded as a single document or by individual chapter. The Paper allows the Ministry to share its intentions for policy change before the legislative amendments are drafted and introduced to Cabinet.

The engagement process for this phase of the FLA Modernization project has concluded and the Ministry is not actively seeking feedback. However, comments about the FLA are always welcome and may be directed to the Family Policy, Legislation and Transformation Division by regular mail or email using the contact information below.

By regular mail:
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Policy Intentions Paper

Introduction

The purpose of this Policy Intentions Paper (the Paper) is to set out policy changes the Ministry of Attorney General (the Ministry) intends to recommend in Phase 2 of the *Family Law Act* Modernization project. The changes relate to the following broad categories of family law topics:

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

The policy reforms presented in the Paper represent policy shifts that the Ministry intends to propose through legislative amendments to the *Family Law* Act (FLA). Explanations for the key policy changes are explained in each of the chapters, and a full list of the changes highlighted in this paper can be found in Appendix A.

The Paper does not set out all the specific changes the Ministry is contemplating for the FLA. Changes that are technical or administrative in nature, that merely add clarity to the Act, or that are relatively small policy adjustments have not been included.

The following common themes emerge in the changes highlighted throughout the Paper:

Modernizing the Act to Reflect Modern Family Structures – There are policy areas where the case law or feedback demonstrated that existing FLA provisions no longer match social views. For instance, the parentage provisions in the Act that determine who is a child's parents, do not currently reflect all modern family structures. Another example is that provisions about protection orders, which keep people safe from family violence, exclude

some individuals because the definition of "family member" is focused on individuals living in the same household.

Improving protection for survivors of family violence – Family violence is accompanied by trauma - for the survivors, for children exposed to the violence and for other family members. A number of proposed policy reforms are intended to improve how family violence is recognized and addressed under the FLA and to minimize further trauma. This includes updating the definition of family violence to reflect the current understanding of how violence is perpetrated in family relationships, extending the default duration of protection orders, making it less onerous for survivors to apply for subsequent protection orders, and emphasizing that parenting arrangements must promote safety for the children, the parties and other family members.

Increasing flexibility for Indigenous perspectives, customs, practices and traditions – Intended reforms propose additional flexibility to allow guardianship and parenting arrangements to better reflect Indigenous family structures, including the development of best interests of an Indigenous child factors. The intended changes also recognize the important role that members of an Indigenous community can play in helping Indigenous children share their views and Indigenous families resolve disputes. The reforms related to Indigenous cultural property also more clearly recognize property division issues unique to separations involving at least one Indigenous spouse.

Supporting parents and guardians to resolve family law matters outside of court through agreements – A key objective of the FLA is to encourage families to deal with family law matters outside of court where appropriate. Some of the policy reforms recognize that parents and guardians may be best positioned to make important choices and decisions for their families, whether that means using an agreement to set out who is intended to be a child's parents regardless of how the child is conceived, using an agreement to designate a guardian for a child, or using an agreement to obtain a parenting assessment or views of the child report.

Reducing financial burden for families – Some of the policy shifts have an additional outcome of reducing costs for families. For example, a new framework for parenting assessments and views of the child reports will introduce criteria the court must consider for ordering different types of reports. Less intrusive and less costly reports may be ordered to obtain the views of a child in more cases, whereas more intrusive and more costly reports may only be ordered if certain criteria are met. Other changes will increase the flexibility in who may bring forward information about a child's best interests to the court, which will allow for less costly options. Also, when it comes to forming families, a change in policy will allow people to be recognized as parents when sexual intercourse is used as a

means of assisted reproduction, rather than using more costly assisted reproductive technologies.

Improving children's opportunities to share their views – It is internationally recognized that children have a right to express their views in matters that affect them, giving due weight to their age and maturity. Proposed policy reforms are intended to provide children with better opportunities to share their views when decisions, such as parenting arrangements, are made that impact them. Offering a child opportunities to share their views in a way that is culturally appropriate and considers their comfort and needs, is not only good for the child's well-being, but can also lead to better informed decisions made in the child's best interests. Better informed decisions may also help avoid rising conflict and can help parties address future issues that arise without having to go to court.

Project History

The FLA came into force in 2013. It made fundamental changes to the way that family law disputes are handled in BC. These changes included introducing new language for how parenting arrangements are conceptualized, a clear requirement for the best interests of a child to be at the centre of decisions relating to the child, an expanded understanding of what is family violence and a new regime to protect from this type of violence, a new regime for how relocation is handled, and many more.

The Ministry is now conducting the FLA Modernization project to determine whether amendments are needed to reflect legal and societal changes that have happened since the FLA came into force and to ensure that it continues to meet the needs of families.

The project is happening in phases. In Phase 1, the Ministry reviewed provisions and resulted in changes to the FLA relating to division of property, pensions and spousal support, as summarized in the January 15, 2024 BC Government news release: *New changes will make family law work better for families*.

In Phase 2, the Ministry is reviewing topics within the FLA that make up the core of what family law in BC is all about - considering who are a child's parents, decisions about caring for and spending time with a child, and protection from family violence. Phase 2 began with early engagement with subject matter experts, the anti-violence sector, and Indigenous peoples with lived experience, as well as with young people, persons with disabilities and neurodiversity, and newcomers, immigrants and refugees. Dialogue with these groups helped identify current issues that families in BC are facing with respect to Phase 2 topics and contributed to the development of a technical Discussion Paper and surveys for broader public engagement.

The analysis and engagement feedback considered in the development of the Paper is summarized in materials and related reports published on the govTogetherBC *Making*

Family Law Better for Families webpage. The Phase 2 engagement materials and reports, including hyperlinks to each, are listed in Table 1. The intended policy changes reflect the consultation feedback received and documented in the reports as well as the Ministry's research and analysis.

Table 1: FLA Modernization Engagement Phase 2 Materials and Reports

Materials and Reports	Title and Links
Discussion Paper	Family Law Act Modernization Project: Care of and Time with Children & Protection from Family Violence – Discussion Paper (published in January 2024)
What We Heard report (Public Engagement)	Family Law Act Modernization Project Phase 2: Care of and Time with Children & Protection from Family Violence – What We Heard report (published in September 2024)
What We Heard report (Indigenous Dialogue Sessions)	Family Law Act Modernization Dialogue Sessions – What We Heard report (published in 2024)
What We Heard report (Métis Nation British Columbia Dialogue Session)	Family Law Act Modernization Métis Nation British Columbia (MNBC) Dialogue Sessions – What We Heard report (published in 2024)

The Ministry would like to thank the British Columbia Law Institute (BCLI) for leading a project to review the parentage provisions under Part 3 of the FLA, which culminated in a final report with recommendations published in June 2024. The parentage provisions establish who a child's parents are for all purposes of the law in BC, including when a child is born as a result of surrogacy or another form of assisted reproduction.

Navigating the Paper

This Policy Intentions Paper (the Paper) is divided into seven chapters based on the broad categories of family law issues the Ministry reviewed and is now intending to recommend corresponding policy changes. The first five chapters cover the same topics that are discussed in the same five chapters of the Discussion Paper (linked in the table above) and the What We Heard report (linked in the table above). Readers may wish to refer to these documents for more background information, including specific engagement questions and feedback related to the intended policy reforms highlighted in this paper.

The last two chapters of the Paper – Parentage and Indigenous Cultural Property – are not included in the previous Discussion Paper or What We Heard report but are also based on the Ministry's ongoing engagements and analysis on these topics. The Ministry intends to recommend policy reforms for these two topics along the same timeline as the other Phase 2 work.

Throughout the Paper, coloured boxes are used to draw attention to key information. Gold, orange, blue, and green boxes specifically highlight the following information:

Gold boxes indicate the proposed changes and how they help families.

Orange boxes indicate where Indigenous perspectives are particularly engaged.

Blue boxes indicate some current legal terms and realities that helped inform our intended policy reforms.

Green boxes indicate examples to illustrate the rationale for particular intended policy changes or how amendments may result in better outcomes for families.

Appendix A provides a list of the key intended policy changes discussed in the Paper. As mentioned above, the policy reforms presented here are not exhaustive, but are intended to highlight the key policy shifts the Ministry intends to put forward through legislative amendments to the FLA. As noted above, smaller policy adjustments or technical or administrative changes that may lead to amendments are not included in the Paper.

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CHAPTER 1: Guardianship, Parenting Arrangements and Contact

Introduction

Part 4 of the *Family Law Act* (FLA), titled *Care of and Time with a Child*, is about establishing who has responsibility for making decisions in the best interests of a child and how much time parents and others will spend with a child when parents or other caregivers live apart. Under the FLA, a "guardian" has responsibilities towards a child as set out in "parenting arrangements" which includes both "parental responsibilities" as well as "parenting time". These key concepts are explained in the blue boxes below.

Guardian
A guardian of a child is the only person who may have parental responsibilities for and parenting time with the child. A child's parents are usually their guardians, but not always. People other than parents may also become a child's guardian in limited circumstances, if they are appointed by the child's existing guardian or by court order.
Parental Responsibilities
Parental responsibilities are the day-to-day care, control and supervision of a child as well as responsibility for a list of different types of important decisions concerning the child, which may be made together or allocated amongst the guardians.
Parenting Time
Parenting time is the time each guardian spends with the child.
Contact
Contact is the time or interaction a non-guardian has with a child, as set out in a court order or agreement.

Feedback and analysis indicate that the following changes would benefit families dealing with guardianship and parenting arrangements issues:

- adding consistency in how guardians are appointed and making it easier for families to establish who will have responsibility for their children could help people better understand how to create parenting arrangements for their children.
- creating additional guardianship options would allow people to better tailor guardianship to the circumstances of their family.
- clarifying who a child's guardians are at birth will reduce confusion for people about who has responsibility for a child and who may need to be granted that responsibility through a parenting arrangements agreement or order.

No policy changes are anticipated to the parental responsibilities currently listed in the Act and no policy changes are anticipated to how the Act addresses parenting time or contact with a child.

Key Changes and How They Help Families

Appointing guardians through agreement:

Proposed change: Allow a child's existing guardians, where they agree, to appoint a non-parent to also be a guardian of the child by written agreement.

How this helps families: Eliminates the stress, financial expense and delay associated with having to apply to court for a guardianship order.

Currently under the FLA, most parents become the guardians of their child when the child is born (see blue box below). When a parent is not a guardian, the Act allows that parent to become a guardian through an agreement with the child's other guardian or guardians, which is usually the child's other parent or parents. However, non-parents cannot become a guardian of a child in the same way even if all existing guardians of the child agree that making them a guardian is in the best interests of that child. Instead, non-parents are required to apply for a court order appointing them as guardian.

"Default" guardianship of a child under section 39 of the *Family Law Act*

Under section 39 of the *Family Law Act*, parents of a child who reside together with the child are each a guardian of the child whether they continue to live together or not, but a parent who has never lived with the child is not the child's guardian unless one of the following three things apply:

- **the parent is a parent of a child born using assisted reproduction and there is an agreement signed before the conception of the child which indicates that the person will be the child's parent when the child is born.**
- **the parent signs an agreement after the child is born with the child's other guardian(s) which indicates that the parent is also a guardian of the child.**
- **the parent "regularly cares for the child" after the child is born.**

Allowing a non-parent to become a guardian by written agreement aligns with a primary objective of the FLA: to encourage the use of agreements over court process where appropriate. Court applications can require significant effort and expense. This is particularly true of guardianship applications which involve filing an affidavit that includes the applicant's criminal record check, a check of the protection order registry to disclose whether any protective orders have been made against the applicant and a check of the Ministry of Children and Family Development records to identify whether the applicant has been involved in any child protection proceedings. Obtaining these records checks includes additional expense and takes a significant amount of time. The effort and expense associated with gathering this information can be prohibitive for some people and lead them to decide not to apply for a guardianship order. The necessity of a court order has been questioned when the existing guardians know the person seeking guardianship and all agree that it is in the child's best interests.

Also, the intended change reflects the Act's general policy of entrusting a child's guardians with responsibility for making important decisions about the child. Trusting guardians to make decisions in the best interests of a child regarding the extensive list of parental responsibilities in section 41 yet preventing guardians from deciding that it is in a child's best interests to have another person share some or all of those responsibilities with them would appear to be inconsistent.

The change is more consistent policy within Part 4 of the Act by better aligning the appointment of a non-parent as a child's guardian with how a testamentary or standby guardian can be created under the Act. In both cases, any person can be appointed to become a child's guardian in a document without prior court approval.

The proposed change would not apply when the existing guardians are not in agreement. In that case, the more formal process including checks and court order is important.

Indigenous perspectives:

Feedback received from Indigenous communities emphasized the need to recognize non-parents within their communities who exercise guardianship responsibilities in some cases. Feedback received also suggests that the extra costs associated with court applications were particularly prohibitive. Guardianship agreements may be an effective way to structure parenting arrangements that recognize and facilitate the important role of non-parents in making decisions associated with parental responsibilities.

Temporary guardianship:

Proposed change: Authorize a person to be appointed as the guardian of a child on a temporary basis by either court order or through the agreement of all the existing guardians of the child.

How this helps families: Families will be able to avoid the financial expense and time required when making an application for a court order. Families will be able to appoint someone as a guardian of a child for a defined period of time where there is a need for someone other than a current guardian to exercise some or all of the parental responsibilities for a child.

Currently, the authority of a guardian to allow someone else to temporarily make decisions for their child is limited to authorizing another person to temporarily exercise one or more specified parental responsibilities while that guardian is unable to do so. Guardianship always remains with the authorizing guardian who resumes exercising those responsibilities when they are able. The Act does not give the authorized person any parental responsibility of their own. The provision simply provides a way for a guardian to ensure their child is cared for if they are temporarily unable to exercise their responsibilities. A common example that illustrates the rationale for the current section is a military parent who is posted into a situation in which they cannot practically make decisions for their child.

The changes would allow guardianship and the parental responsibilities for a child to be granted to another person temporarily. This could be the “full” suite of parental responsibilities in section 41 of the Act or only some of those responsibilities. Through agreement, guardians of a child will be able to grant this responsibility to someone (as discussed above) by appointing guardians through an agreement with the consent of all existing guardians. The result is that parental responsibilities will be treated the same regardless of whether guardianship is temporary or not.

The example below highlights a situation where this change will be useful. Currently, these situations require a court order and would result in the person becoming a permanent guardian until a further order revoking their guardianship was obtained. This is costly and is unnecessary where the person is known and trusted by the child's existing guardians.

Example

Barb has agreed to care for her grandchild, Shay, for the next two years while Shay's mother finishes a college program at a school several hours away. Shay's other parent left the province before Shay was born and only sees Shay a few days each year. Barb would like to have documentation showing she has authority to take Shay to appointments, communicate with the school, and enrol Shay in extracurricular activities. Barb was told she could apply for a court order appointing her as one of Shay's guardians, but even though Shay's mother was in agreement, the process was complicated and she couldn't afford a lawyer. Barb and Shay's mother wish they could just use a written agreement to document that Barb will be one of Shay's guardians until Shay's mother finishes college and describe the responsibilities they agree Barb will have.

Indigenous perspectives:

These changes to appointing a temporary guardian may also add flexibility for creating appropriate parenting arrangements within Indigenous communities. Together with the use of agreements to appoint permanent guardians discussed above, these changes may allow indigenous communities to fashion parental responsibilities that approximate some kinship care or customary adoption arrangements.

A corresponding change would be made to section 43(2) of the FLA which is the section that authorizes the temporary exercise of a guardian's parental responsibilities referred to above. Clarity will be added to the section to reduce confusion between this type of authorization and the newly created grant of temporary guardianship.

Although courts may already have sufficient authority to grant temporary guardianship under the current provision, the intended changes will make that authority explicit to avoid confusion over whether they can make an order.

Verifying existing guardianship:

<u>Proposed change</u>: Add authority for the issuing of a document that will verify that a person is a guardian of a child.

<u>How this helps families</u>: Families will not have to incur the financial expense and delay inherent in obtaining a court order verifying that they are the guardian of a child in order to satisfy a third party without knowledge of the family's circumstances that the guardian can exercise a particular parental responsibility.

These changes are intended to give the court explicit authority to issue a document that verifies existing guardianship of a child. This authority would create a practical way for existing guardians to establish their responsibility to make decisions on behalf of a child to others. It is not about granting guardianship.

Currently, the only way for a child's guardian to obtain a document stating that they are the child's guardian is to apply for a court order that reflects their existing guardianship. As mentioned, the process of obtaining a court order can be time-consuming and costly and, in these circumstances, results in an order they do not need.

Institutions like schools or hospitals often require direction or permission from a child's legal guardian before they can take an action in relation to a child. If a guardian has received their guardianship through a court order, they are able to show that document to the institution. However, many people become the guardian of a child because they are the child's parent at birth and therefore have no document proving this since the child's birth certificate only lists parents and not guardians. Others might become a guardian when the child's original guardian dies and appoints them through a will. Others might become a guardian when a child's original guardian has appointed them in a standby guardian document and the conditions of the document have been met (for example, if the original guardian has been diagnosed with a terminal illness and they are no longer able to care for the child). There are therefore inconsistencies with the type of documentation a person might have or be able to use to demonstrate that they are a child's guardian.

Although it appears that courts do make this type of "declaration" in some instances, amendments would explicitly authorize a court to issue this type of document based on satisfactory proof of existing guardianship without a need to consider anything else.

Guardianship at birth ("default" guardianship):

Proposed change: Clarify that parents who do not live with their child's other parent(s) or are unable to live with their child immediately after their birth are nonetheless guardians of their child.

How this helps families: Eliminates confusion regarding whether a single parent of a child is that child's guardian at the birth. The change would prevent the Act from being interpreted as meaning that a parent whose child cannot come home to live with them immediately after their birth is not the child's guardian.

The intended changes would clarify the Act's current provisions which describe who a child's guardians are when the child is born.

Current wording of section 39 indicates that a parent of a child is their guardian if they reside with the child or have provided "regular care" for that child. However, the wording also allows for an interpretation that a parent's guardianship of their child is dependent on the parent living with child's other parent. That was never the intent as it could mean that some children are born without anyone having parental responsibilities for them.

This change ensures that single parents are recognized as the guardians of their child at birth and that the original intent of the provision to make guardianship dependent on the relationship between the child and parent is better represented. This change brings the Act in line with the original intent as well as case law.

Wording will be clarified to ensure a parent who cannot immediately reside with their child after their birth due to medical or other reasons are also recognized as the child's guardian. For example, sometimes a child needs to remain in hospital following their birth and cannot go home with their parents until some time has passed. In that case, the parents may need to make some important medical decisions regarding the child even if they technically might not be the child's guardian because they have not lived together. The intention of this change is to remove any doubt about the parents' authority to make decisions about the child in those cases.

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CHAPTER 2: Relocation

Introduction

Disagreements over whether one parent or guardian can move with a child to a new community are some of the most difficult to resolve. As one person providing feedback on this issue described it, "*Relocation is a zero-sum game. There is a winner and a loser and it is very hard to find a compromise*."[1]

Part 4 of the *Family Law Act* (FLA) includes *Division 6 – Relocation* which is about how proposed changes to the residence of a child are handled when the child's guardians cannot agree and the parenting arrangements exist in a written agreement or court order. This is contrasted with section 46 of the FLA which addresses proposed moves where there is no existing agreement or order.

A significant feature of the FLA is the presumption that a move proposed by the guardian who has the majority of time with the child under existing parenting arrangements is in the best interests of the child. This is only a presumption and is rebutted if the other guardian can establish that the move is not in the best interests of the child.

BC was the first Canadian jurisdiction to have specific relocation provisions. Since then, others have enacted similar provisions including the federal government which added relocation provisions into the *Divorce Act* in 2021. The table below compares aspects of the relocation provisions in the FLA and the *Divorce Act*.

Issue	*Family Law Act*	*Divorce Act*
Unequal parenting time:	If guardians "do not have substantially equal parenting time" a relocation must be considered to be in the best interests of a child unless another guardian proves otherwise, if the relocating guardian proves: • move is in "good faith"; and • "reasonable and workable arrangements" to preserve the child's existing relationships are proposed.	If parties "substantially comply" with existing parenting arrangements that provide that the child spends "the vast majority of their time in the care" of the relocating party, the party opposing relocation "has the burden of proving that the relocation would not be in the best interests of the child."

[1] Ministry of Attorney General. (2024). *Family Law Act Modernization Project: Care of and Time with Children & Protection from Family Violence Discussion Paper*. (Chapter 2, p.2). https://engage.gov.bc.ca/app/uploads/sites/121/2024/09/FINAL-Chapter-2-Relocation.pdf

Equal parenting time:	If guardians have "substantially equal parenting time" the relocating guardian must prove: • move is in "good faith"; • "reasonable and workable arrangements" to preserve the child's existing relationships are proposed; and • move is in the best interests of the child.	If parties "substantially comply" with existing parenting arrangements that provides that the child spends "substantially equal time in the care of each party", the relocating party "has the burden of proving that the relocation would be in the best interests of the child."
"Any other case":	None	If parties cannot establish that they "substantially comply" with existing parenting arrangements, or the relocating party cannot establish that they have the "vast majority" of time with the child, "the parties each have the burden of proving whether the relocation is in the best interests of the child."

Feedback and analysis suggest that the process could be improved by:

- ensuring the FLA and *Divorce Act* use similar language when addressing a presumption in favour of relocation. This will increase the likelihood that families in similar situations will receive similar judicial decisions, regardless of whether their relocation application is made under the FLA or the *Divorce Act*.
- eliminating the FLA requirement that a guardian who wishes to relocate with their child must establish that the proposed move is being made "in good faith" before being entitled to a presumption in favour of a relocation. This would remove an unnecessary burden of proof that does not exist in any other context within the FLA.
- creating a new template that parties can use to give relocation notice similar to the form required by the *Divorce Act*. This will reduce confusion about how to notify other people about a proposed relocation.

Key Changes and How They Help Families

Mirror the Divorce Act's relocation presumption:

<u>Proposed change</u>: As provided for in the *Divorce Act*,

- **require parties to establish that there has been "substantial compliance" with an existing parenting time agreement or order that grants them the majority of parenting time in order to obtain the benefit of a presumption in favour of relocation; and**
- **change the phrase "do not have substantially equal parenting time" to having the "vast majority" of parenting time as the standard for whether a guardian becomes entitled to a presumption in favor of relocation.**

<u>How this helps families</u>: By ensuring both the FLA and the *Divorce Act* provisions use similar language in addressing a presumption in favour of relocation, cases with similar facts should have similar outcomes under either statute, which will increase certainty and improve the likelihood of settlement.

The differences between the FLA and *Divorce Act* can lead to confusion and strategic maneuvering by parties to rely on one or the other statute depending on the desired outcome.

Although both acts currently grant a presumption in favour of relocation in situations where the relocating guardian has the majority of time with the child, they are worded differently. The difference has created a perception that a guardian wishing to relocate may obtain a different outcome depending on which act they make their application under. Amending the FLA provisions to align with wording used in the *Divorce Act* provisions will reduce confusion and may avoid unnecessary litigation.

Currently, the FLA says that if guardians have "substantially equal parenting time" with their child, the person who wants to move with the child must prove that the move is in the best interests of the child. If the parties do not have "substantially equal parenting time" – meaning that one of them has significantly more time than the other – and the person wanting to move is the one with more time, the move is presumed to be in the best interests of the child unless another guardian establishes that it is not.

The *Divorce Act* differs in that it explicitly requires parties to offer evidence about whether they are following an existing parenting arrangements order or agreement. If they have <u>not</u> been following the order or agreement, then the presumption in favour of the relocation may not apply. Although the FLA could be interpreted as also requiring evidence of

compliance, it does not explicitly say so and this may be interpreted to mean the evidence is not required. In cases where the written parenting arrangements do not match the actual time spent with the child, a party could be granted a presumption that they may not deserve.

Also, the *Divorce Act* differs from the FLA in how each describes the amount of parenting time a guardian has with the child. As noted, the FLA uses the phrase "substantially equal" to qualify how much time a guardian has with the child. The *Divorce Act* instead uses the phrase "vast majority" to describe the amount of time that triggers a presumption in favour of a relocation. Although the intention of both statutes appears to be similar, the different phrases could be interpreted to mean different things. This difference could lead to cases with similar facts resulting in different orders based only on the statute chosen. Using the *Divorce Act*'s phrase in the FLA improves consistent outcomes for families.

Eliminate the "good faith" factor:

Proposed change: Remove the requirement that an applicant seeking to relocate a child must establish that the relocation application is made in "good faith".

How this helps families: Removing the requirement that a guardian who wishes to relocate with their child must establish that the proposed move is being made "in good faith" eliminates an unnecessary evidentiary burden that does not exist in any other context within the FLA.

Currently the FLA requires someone who wants to relocate a child to establish that they are making the application in "good faith" before a presumption in favour of the move will apply. Section 69(6) of the Act contains a list of factors that a court must consider when determining "good faith". The reason for this is to ensure the move is not being proposed only as a way to negatively affect the child's relationship with their other guardians.

Most applications for relocation are made by women. As a consequence, it is usually the women's motives that are being questioned by making them prove the application is being made "in good faith". There is no other issue in the FLA that requires this type of motive analysis to determine whether an application is appropriate.

Although understanding the reasons for a proposed move is relevant, the factors listed in subsection (6) can be retained as considerations in granting the relocation as opposed to the very action of bringing the application. Retaining these factors is consistent with provisions with the *Divorce Act* because they are similar to factors used to assess whether a relocation should be allowed under that Act.

Notice of relocation:

<u>Proposed change</u>: Create a template to assist people in giving notice of a relocation under the FLA that requires including information similar to the information required in the *Divorce Act* form, such as:

- **the expected date of relocation**
- **the name of the proposed relocation location;**
- **the proposed location's address if available or known;**
- **new contact information of the person or child relocating, if available;**
- **a proposal regarding parenting arrangements including how proposed parenting time or contact may be exercised;**
- **the name of the relocating person and any other relocating child of the parties; and**
- **the relocating person's current address and contact information.**

<u>How this helps families</u>: Providing a template with required information adds further alignment with the *Divorce Act* and will make it easier and therefore more likely that guardians intending to move will give notice to the child's other guardians.

Currently, although the FLA requires a person wanting to relocate a child to give written notice including the date of the relocation and the "name of the proposed location" to "all guardians and persons having contact with the child" it does not require that notice to be in a particular written format. This allows flexibility and makes it easy for some parties to provide notice. However feedback indicated others would appreciate more direction.

Creating a template that a party intending to relocate can choose to use to give notice of relocation will make it easier for some parties to understand and comply with the notice requirements, while retaining flexibility and convenience.

The information proposed for inclusion in the notice of relocation mirrors the information required by the prescribed *Divorce Act* form.

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CHAPTER 3: Child-Centred Decision Making

Introduction

When making agreements and orders about who will care for and spend time with a child, such as guardianship, parenting arrangement, contact or relocation decisions, section 37 (1) of the *Family Law Act* (FLA) requires the parties and the court to consider the best interests of the child only.

The FLA provides a non-exhaustive list of factors that must be considered when determining the best interests of the child in these decisions (section 37 (2) and 38). Included in the list are "the child's views, unless it would be inappropriate to consider them." Examples of how to obtain a child's views in BC include children sharing their views in mediation, as well as through letters, affidavits, judicial interviews, and appointing a lawyer for a child in family law court proceedings. Additionally, children's views can be obtained through various types of reports. Proposed changes related to reports are discussed separately in Chapter 4 - *Children's Views and Parenting Assessments and Reports*.

Based on analysis and feedback, the Ministry of Attorney General (the Ministry) intends to propose policy changes that will better reflect the diversity of children and families in BC, as well as emphasize the importance of children having a voice in family law matters that affect them in the following ways:

- adding best interests of the child factors that require the court and parties to consider:
    - a child's cultural, linguistic, religious and spiritual background; and
    - the needs of a child with disabilities.
- adding a list of factors the court must consider when determining the best interests of an Indigenous child;
- clarifying that a child must be given an opportunity to share their views in the decision-making process of issues that affect them;
- authorizing a court to appoint a children's lawyer in more cases when it would be in the child's best interests; and
- facilitating an Indigenous child having a person from their community advocate for them in matters under the Act, such as an Elder, Matriarch, or other respected person chosen by the community.

Key Changes and How They Help Families

Best interests of the child factors:

<u>Proposed change</u>: Add the following two new factors that must be considered when determining the best interests of a child in family law decisions:

- **the child's cultural, linguistic, religious and spiritual upbringing and heritage; and**
- **the needs of a child with disabilities.**

<u>How this helps families</u>: The unique needs of children from diverse backgrounds and children with disabilities will be considered in family law decisions that affect them.

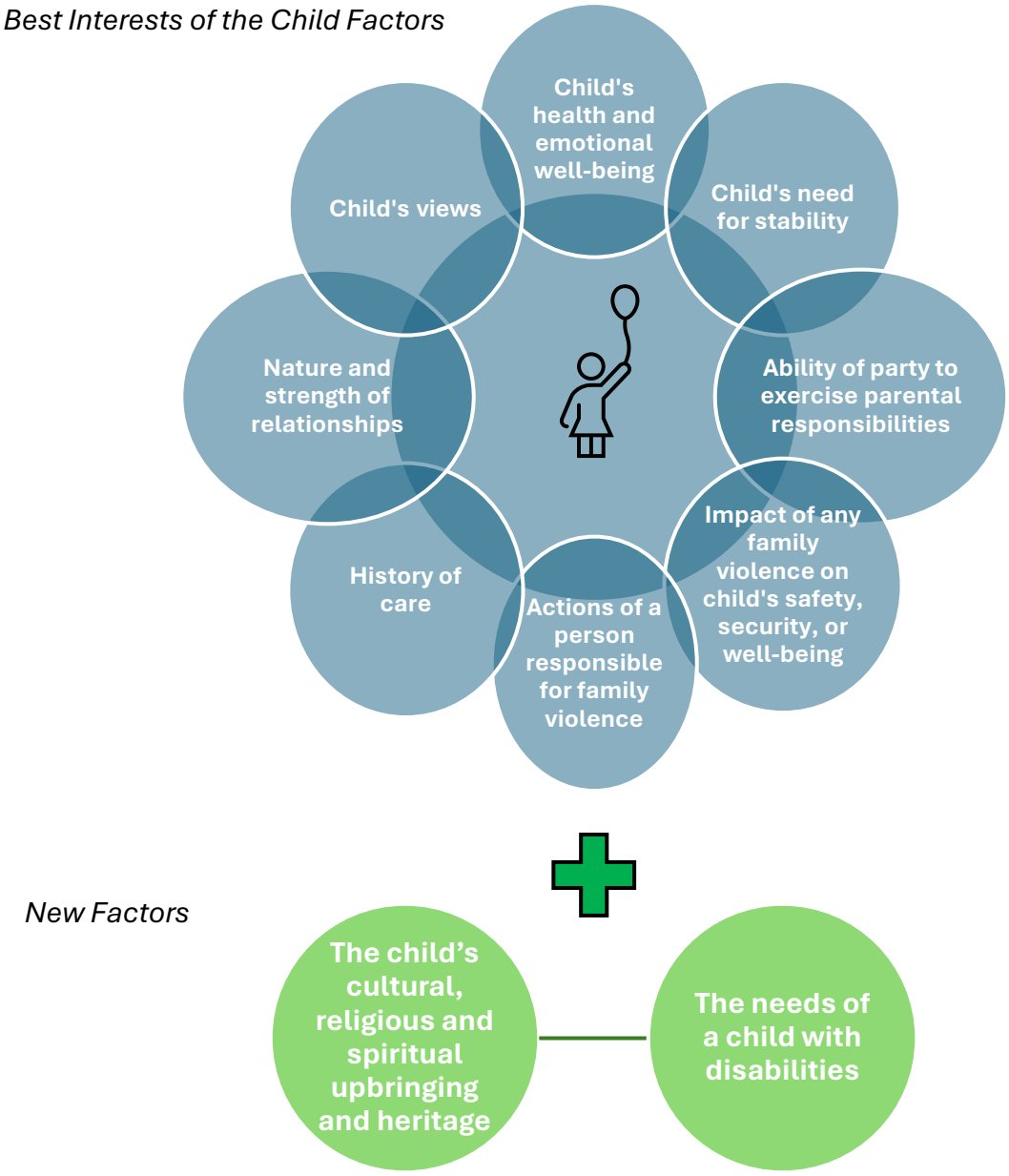
The intended changes ensure the unique needs of children from diverse backgrounds are considered when making family law decisions that affect them (see Figure 3.1).

Currently, while the FLA does not include these factors, a child's culture, language and religion are captured in other legislation where the best interests of the child must also be considered, such as in making child protection and adoption decisions, as well as family law decisions under the federal *Divorce Act*.

Engagement suggested that the FLA should also explicitly require consideration of the unique needs of a child with disabilities when determining what is in their best interests. The needs of a child with disabilities are complex and decisions can have more profound effects on the child and the family. For example, medical decisions or the child's living environment can have more serious impacts on a child with disabilities than on other children.

Although there was engagement feedback supporting the addition of family violence-related best interests of the child factors, the current factors for assessing family violence remain consistent with current understandings of family violence and the impact it has on children.

Figure 3.1 – New Best Interests of the Child Factors



Proposed changes do not include explicitly addressing parental alienation in the best interests of the child analysis nor are there proposed changes that would prohibit an allegation of parental alienation. As discussed further in Chapter 5 - Family Violence and Protection Orders, a focus on education and training on alienating behaviours and the misuse of these allegations in cases involving family violence is considered more effective than a legislative ban. Underlying violence related to parental alienation is already captured in the best interests of the child factors that must be considered. The court is in

the best position to consider how to address evidence of family violence related to claims of parental alienation in each individual case.

Best interests of the Indigenous child factors:

Proposed change: Add a separate list of factors the court must consider when determining the best interests of an Indigenous child in making family law decisions under Part 4, in addition to the factors already set out in the FLA.

How this helps families: The unique needs of Indigenous children will be considered in family law decisions that affect them.

Indigenous perspectives:

Engagement made clear that Indigenous family networks, values and priorities in raising children are unique from colonial concepts and are not currently reflected in the FLA. For example, the importance of culture, language, traditions, spirituality, and connections to the Indigenous relatives, community and land, was specifically highlighted in engagement feedback as being crucial to raising Indigenous children. However, these Indigenous family priorities and values are not currently included in the FLA's best interests of the child factors.

Engagement feedback strongly encouraged the development of unique factors to be considered when making decisions related to Indigenous children under Part 4 of the FLA, in addition to the current best interests of the child factors. Ensuring that best interests factors specifically reflect the needs and priorities of Indigenous children will help lead to family law decisions that align with the Indigenous child's family and community values and that they can support as the family navigates new issues that may arise.

Some of these concepts may be captured if, as recommended above, the Act requires consideration of: "The child's cultural, linguistic, religious and spiritual upbringing and heritage." However, adding a separate list will allow for more tailored factors to be considered for Indigenous children, acknowledging unique aspects of Indigenous families as well as the effects of colonialism and intergenerational trauma.

Engagement feedback emphasized that a child's Indigenous cultural connection is important and can be developed and fostered whether or not the child lives within their Indigenous community. For example, a child can still connect with their Indigenous community and learn and participate in their culture, language, practices, customs, and traditions in urban centres where there may be groups or programs, as well as through the use of technology.

Feedback also emphasized that consideration should be given to an Indigenous child's views and preferences as to how they connect with their community, culture, and language. The weight given to the child's views may vary based on the child's age.

Furthermore, decision-makers need to be aware of distinctions between Indigenous communities and their culture, language, traditions, practices and customs when making decisions about what is best for an Indigenous child. For example, while one Nation may practice Potlatch, another may practice Powwow. Caution should be exercised to ensure that evidence considered about the ways in which an Indigenous child may connect with their community and culture is indeed the ways of their community and culture, and not those of other Nations or Indigenous communities.

Feedback and analysis suggest that a consideration of the best interests of an Indigenous child with respect to decisions made under Part 4 of the FLA should include the following:

a. cultural continuity, including the transmission of languages, cultures, practices, customs, traditions, ceremonies and knowledge of the child's Indigenous community;

b. the development of the child's Indigenous cultural identity, including the child being able to practise the child's Indigenous traditions, customs and language;

c. the preservation of the child's connections to the child's Indigenous community and the region where the child's family and Indigenous community is located;

d. the child being connected to family, including people who are considered to be relatives by the child or by the child's Indigenous community in accordance with that community's customs, traditions or practices.

The Ministry intends to recommend that the court be allowed to consider the child's views, preferences and interests, in connecting with their culture, community and family, and may consider the age of the child in doing so.

Views of a child:

Proposed change: Emphasize the importance of considering a child's views in family law decisions that affect them by:

- **requiring the views of a child to be considered in all family law decisions in which the best interests of the child are determinative under Part 4 of the FLA.**
- **explicitly allowing the views of a child to be obtained and considered not only in court proceedings but in any family dispute resolution process including during mediation or other consensual dispute resolution.**
- **allowing the court to consider a child's preferences for how they share their views, as well as whatever support they need to share their views.**

How this helps families: Ensuring that a child must be given an opportunity to share their views on issues that affect them will lead to better informed decisions in family law matters.

Currently, the views of a child are a factor in determining what is in the best interests of a child when making family law decisions, unless it would be inappropriate to do so. Engagement feedback, including from youth who had lived experience with family law matters, indicated that youth are often not given an opportunity to share their views or to share them in an appropriate way.

These changes will require that the views of a child will be considered in all family law decisions that rely on the best interests of the child.

The proposed changes will direct families and the court to consider a child's views, taking into account the child's age and maturity, rather than asking whether it is inappropriate to obtain the child's views.

This change aligns with the *Divorce Act*. The best interests of the child factors set out in section 16 (3) of the *Divorce Act* implies that a child's views must always be considered, although the court may give "due weight to the child's age and maturity, unless they cannot be ascertained." This is also consistent with Article 12 of the *UN Convention on the Rights of the Child*, which states that a child has a right and must be given the opportunity to express their views in all matters that affect them, giving due weight to the child's age and maturity.[2]

Obtaining the views of a child in a way that is culturally and developmentally appropriate and comfortable for the child can help:

[2] Noel, Jean-Francois, *The Convention on the Rights of the Child:* Overview - The Convention on the Rights of the Child - Topics in Family Law: A Collection of Articles, modified December 21, 2022.

- families resolve outstanding issues and avoid the escalation of conflict,
- lead to informed decisions that will have lasting effects and can better endure changing family situations without needing to return to court, and
- the child feel more engaged in the process of making decisions that affect them.

Research has shown that child participation is important to good decision-making in family law and contributes to the child's well-being,

While a court order might sometimes be necessary to ensure the child has a meaningful opportunity to share their views, clarifying in the Act that the views of a child can also be obtained through agreement of the parties will help reduce the cost and delay to parties by avoiding the need for a court order and encourage including the views of the child earlier.

The FLA currently does not suggest or list any particular or preferred method for obtaining the views of a child. This has been identified as a strength of the legislation. The court has broadly interpreted the Act to allow children to share their views in a variety of ways, such as through letters to the court, affidavits, and judicial interviews,[3] art or play therapy, or even an interview with a family justice counsellor earlier in the dispute resolution process, before the matter goes to court.

Many factors may go into determining how a child's views will be obtained on a family law matter. However, it is important that proportionality and ensuring the views of a child are obtained in a safe and minimally intrusive way are considered. The current flexibility of the FLA may continue to encourage parties and decision-makers to seek new ways to obtain the views of a child in family law disputes.

Proposed changes do not include adjusting the ways by which the views of a child may be obtained. However, Chapter 4 will highlight proposed changes related to obtaining a child's views through parenting assessments and reports.

It is important for any professional who interviews a child to be trained on how to conduct the interview, particularly if the child has also suffered trauma. This includes judges. The Ministry will explore ways that it can support the courts in developing guidelines and training for those who conduct judicial interviews.

[3] Feedback regarding judicial interviews has been mixed. Some people have raised concerns that judges are not best positioned to conduct interviews with children and youth, and others have commented positively on their experience with judicial interviews. It is beyond the scope of this paper to make recommendations about judicial interviews other than to emphasize that any professional who conducts interviews with children and youth needs to be properly trained.

Children's lawyer:

Proposed change: Remove restrictions on the test to appoint a children's lawyer under the FLA to allow for them to be appointed in more cases when it is in the child's best interests.

How this helps families: Allowing more children to participate in family law proceedings by having their own lawyer who can help advocate for children's best interests and ensure the children's views are considered when making family law decisions.

Currently 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 best interests of the child."

Feedback suggests that the current test for the court to appoint a children's lawyer in the FLA is too restrictive. The FLA is currently the only provincial or territorial legislation that requires such a severe degree of conflict between the parties to meet the threshold for the court to order a children's lawyer. Engagement feedback strongly suggested that a children's lawyer can be beneficial to a child and to the parties in resolving family law disputes, but it is too difficult to appoint a children's lawyer under the current FLA test.

The proposed changes will allow for children's lawyers to be ordered in situations where the conflict is not so extreme and will align with other provinces and territories.

Indigenous children's advocate:

Proposed change: Add a provision allowing an Indigenous child to have a person from their community advocate for them in family law matters, such as an Elder, Matriarch, or other respected person chosen by the community.

How this helps families: Allowing an Indigenous child to have a person from their Indigenous community advocate for them in family law matters will help the child share their views and ensure their best interests are considered in a way that aligns with their culture, laws, customs and traditions.

Indigenous perspectives:

In addition to allowing a children's lawyer to be appointed in more family law cases where it is in the child's best interests, the best interests of an Indigenous child need to be considered. The FLA should be consistent with and incorporate elements of the United Nations Convention on the Rights of the Child and the *Declaration on the Rights of Indigenous Peoples Act*. Amending the FLA to focus more on the best interests of a child and the best interests of an Indigenous child when determining how a child can participate in family law proceedings will better align the FLA with these commitments.

During engagements, Indigenous peoples with lived experience criticized the FLA for only allowing a lawyer to advocate for an Indigenous child. As Indigenous family networks, values, and priorities are unique from colonial concepts, it is important for Indigenous children to be supported by a person who understands these differences in family law matters, when needed. When it comes to an Indigenous child in a family law proceeding, Indigenous participants said that a more appropriate person to advocate for the child would be someone from their own community, such as an Elder, a Matriarch, or another respected person chosen by the community. Such people are in a better position to share the child's views and advocate for them in a way that aligns with their Indigenous culture, laws, customs, and traditions.

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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 211Reports, 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:

<u>Proposed change</u>: 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**

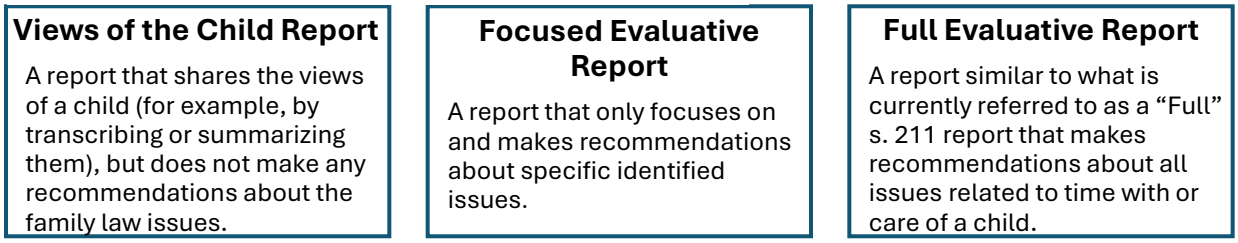
<u>How this helps families</u>: Families will be able to obtain the type of report that will help resolve the family law issues in their specific case balancing the type of report is needed, the impacts of costs, delay and intrusiveness of the assessment process on the family with the need to obtain 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*



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.

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CHAPTER 5: Family Violence and Protection Orders

Introduction

In the *Family Law Act* (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 ownership of companion animals when spouses separate.

Although the FLA pays more attention to family violence than earlier legislation[5], violence continues to raise serious issues in the family justice system. Many of the concerns voiced in this engagement focused on issues that are outside the scope of legislative reform, such as insufficient resources, access to legal services and supports for survivors, inadequate family violence training for people working in the family justice system, as well as failure to comply with or enforce protection orders. However, there were also concerns about issues that legislative reform could improve. The following reforms are proposed to better reflect the modern understanding of family violence and improve the response to family violence in parenting decisions as well as protective orders:

- updating the definition of "family violence"
- expanding who is eligible for protection orders
- adding to the list of risk factors that must be considered in a protection order application
- adding detail about the terms and conditions that may be included in a protection order
- extending the default duration of protection orders from 1 to 2 years
- creating a presumption in favour of making a subsequent protection order
- emphasizing that orders concerning care and time with children need to consider the safety of the child, parents and guardians and other family members when family violence is an issue
- exploring opportunities to improve responses to Indigenous families experiencing family violence

[5] When the *Family Law Act* replaced the former *Family Relations Act*, it introduced a definition of family violence, introduced detailed family violence factors in the best interests of the child analysis, and set out a comprehensive protection order scheme.

Key Changes and How They Help Families

Promoting a modern understanding of family violence:

<u>Proposed changes</u>: Update the definition of family violence to directly reference coercive and controlling behaviour, technology-facilitated violence, financial abuse and litigation abuse.

<u>How this helps families</u>: Helping to ensure all forms of family violence are recognized.

As seen in the blue box below, the current definition of family violence in the FLA includes physical and sexual abuse as well as psychological and emotional abuse, along with a list of behaviours that may constitute psychological and emotional abuse.

"family violence" as defined in section 1 of the *Family Law Act*

"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.

Although the definition is broad and flexible enough to capture the many ways that we now understand violence to be perpetrated against an intimate partner or family member, there was considerable feedback that certain forms of abusive behaviour are not always recognized as family violence. These are usually forms of abusive behavior linked to psychological and emotional abuse. Some people still believe family violence is limited to physical and sexual expressions of violence. This is reason for

concern because failing to acknowledge certain expressions of family violence can lead to a protection order not being granted or parenting arrangements being ordered that put family members, including children, at risk.

The intended reforms to the definition of "family violence" will more explicitly reference the following forms of abusive behaviours prevalent in violent family relationships. Although some of the proposed changes to the definition of family violence in the FLA will create further differences between the FLA definition and the definition of family violence that was introduced in the federal *Divorce Act* in 2021, these changes are important because, unlike the *Divorce Act*, the FLA definition is used as a basis for the Act's protective order regime.

Coercive and controlling behaviour – A description of what constitutes coercive and controlling behaviour and the challenges that prevent it from being readily recognized are found in Chapter 5 - *Family Violence and Protection Orders* of the Discussion Paper. Stated simply, it is a pattern of abusive behaviours used to control or dominate a family member or intimate partner. Although the FLA definition already describes psychological and emotional abuse as including "coercion and threats", coercive and controlling behaviour is pervasive yet often difficult to recognize or prove. Coercive and controlling behaviour can have profound impacts on adult victims and children exposed to this form of violence, compromising their independence, self-esteem and safety. Referencing coercive and controlling behaviour in a more direct way in the FLA definition may help parties and the court to fully consider this form of violence. This amendment would align with the definition of family violence in the federal *Divorce Act* as well as proposed amendments that would introduce section 264.01 in the *Criminal Code*. Although not yet in force, section 264.01 would establish an offence for engaging in a pattern of conduct that is intended to or could cause an intimate partner to believe their safety is threatened.[6] The language in both acts will be considered when drafting this amendment to the FLA.

Technology-facilitated violence – There are many forms of technology and digital platforms that can be weaponized and used to abuse an intimate partner or family members (e.g. social networking platforms, websites, smart home devices, multiplayer online games, online forums). Online threats, stalking using GPS or social media, hacking into accounts, surveillance, sharing images or personal information

[6] Bill C-332 proposes amending section 264 of the *Criminal Code* to add proposed section 264.01(1), which states that a person commits an offence if they engage in a pattern of conduct with the intent to make their intimate partner believe their safety is in danger or without regard to whether their actions may cause their intimate partner to believe their safety is in danger. As of April 30, 2025, the Bill was at Consideration in Committee stage within the Senate.

without consent and "revenge porn" are just some examples of technology-facilitated violence. Referencing this form of violence in the FLA definition will bring it to people's attention and help to ensure it is considered when decisions about protection orders and safe parenting arrangements are being made. This change will also align with the objectives underlying government's introduction of the *Intimate Images Protection Act*, which also seeks to address harm created from technology-facilitated violence.

Financial abuse – Although the FLA definition includes "restrictions on financial autonomy", feedback suggests that this language does not resonate with survivors. Changing this language to better reflect survivors' experience will help ensure that people experiencing this type of violence recognize they can seek protection under the FLA.

Litigation abuse – Litigation abuse and financial abuse may be linked, for example when litigation is dragged out to drain the other party of their financial resources or the abusive party refuses to comply with disclosure requirements, follow support orders or uses court orders to freeze access to assets. However, there are other ways court and dispute resolution processes can be used against the other party. For instance, applications may be made repeatedly to force a survivor to face the abusive party in court or to frustrate resolution. Where a survivor has a history of mental health or other issues, these may be used against them in court, or the court process may be used to trigger anxiety and other mental health conditions. Specifically referencing litigation abuse within the definition will improve the likelihood that this form of family violence is recognized and taken into account.

Making protection orders a more effective tool:

Proposed change: **Extend FLA protection orders to relationships that have been excluded from eligibility.**

How this helps families: **Help people who currently face barriers obtaining protection from family violence.**

FLA protection orders are only one tool to address family violence. Survivors may seek other protective orders through the criminal justice system, including a peace bond or criminal charges. Amendments to the *Criminal Code of Canada* came into force April 8, 2025 that create a peace bond for circumstances of "domestic violence" which applies to spouses, common law partners and dating partners.[7] Peace bonds are also

[7] The provisions introduced in s.810.03 of the *Criminal Code of Canada* are described at https://lois-laws.justice.gc.ca/eng/AnnualStatutes/2024_22/FullText.html.

available in other categories of relationship as long as the victim fears on reasonable grounds that another person will cause property damage or personal injury to themselves, their intimate partner or their child. Peace bonds and FLA protection orders are both valuable tools to respond to family violence, and one may be preferable to the other in certain circumstances. However, feedback and engagement indicated that people at risk of family violence do not always wish to deal with the police and the criminal justice system. The criminal justice system requires a different, higher evidentiary threshold, and it may be more difficult to prove family violence in a criminal process.

Currently, FLA protection orders are limited to people who are or have been in a spousal relationship and their children, as well as other family members living in the same household. This creates gaps in protection. FLA protections orders are not available under the Act at any time for:

- people who are in a dating or intimate relationship but do not live together;
- people living together in the same household who consider themselves family but are not linked by biology or marriage; and
- people who would be considered family members because they are related by biology or marriage BUT do not live in the same household.

Another gap is evident in cases where a family member may have been eligible to obtain a protection order against a family member living in the same household, but as soon as they no longer live together the eligibility to change or deal with the order is lost.

Example

Anna lives in the same household as her sister and her brother-in-law, Dion. Anna obtains a protection order because she is at risk of violence from Dion. If Anna moves to a safer residence, Dion is no longer considered her family member under the FLA's protection order provisions because they no longer live in the same household. This means neither Anna nor Dion can apply to change the terms of the existing order or apply for another protection order after the initial order expires. Expanding the meaning of family member to include relatives who live in another household would address this problem.

The intended changes to Part 9 of the FLA would extend eligibility for protection orders to the three types of relationships described above and ensure that parties do not lose the ability to deal with a protection order that has been granted just because they no longer live in the same household (see Figure 5.1). The proposed changes would align

with the inclusion of dating partners in the domestic violence peace bonds, reflect the way that Indigenous and other cultures view family as being broader than the current definition of family member in the FLA and give the court authority to deal with an issue they are already facing. There is anecdotal information that people in these types of relationships are already being referred to the FLA protection order process, because there is some confusion over who meets the current definition of at-risk family member. The amendments would enable the courts to deal with those applications. It would remain the role of the court to determine in every application whether the family member is at risk of violence and a protection order is warranted.

Figure 5.1 – Persons who may seek protection from under the FLA

I am at risk of violence – can I apply for a protection order under the FLA? The proposed policy reforms would allow a person at risk of family violence to apply for a protection order if the person responsible for the violence is related in one of the following ways (underlined purple text shows the changes from the existing legislation and they are described in the following examples):

Example

Kate lived with her aunt and uncle while she was going to college. She was happy to get a job and move out, because her uncle made her uncomfortable. Now he keeps dropping by her apartment, pretending he's there to help or fix something, refusing to leave. He's touched her "accidentally". Kate tried to say something to her aunt, but she refused to listen. Even though Kate doesn't live with her uncle anymore, she can apply for a protection order to prevent him from being near her apartment.

Example

Leigh met AJ through an online dating site and they soon started meeting in person. It was great at first, but when Leigh tried to end the relationship AJ wouldn't leave Leigh alone. Even though Leigh didn't respond, AJ would send dozens of texts every day and always seemed to know where Leigh was. Leigh found a tracking device under the bumper of their car. Even though Leigh and AJ never lived together, they had been dating. Leigh could apply for a protection order preventing AJ from communicating with Leigh or being within a certain distance of Leigh's home and workplace.

Example

Charity is a single parent with a toddler, Dex. Charity doesn't have any family and very few friends to support or help out. She was having a hard time until she met Matt. Matt's been like an older brother. He moved in with Charity and had her add his name to her bank account because he said she needed help managing her money. He set up routines and schedules for her and Dex and made sure they followed them. He looked after Dex while Charity was at work because he said it wasn't good for Dex to be with strangers. Charity was grateful for the help, but she's starting to feel trapped. She's realized Matt has stopped her from seeing the few friends she has. When she suggested she and Dex would be fine on their own now, Matt got really angry and said she wasn't fit to care for Dex. He threatened to empty the joint account and take Dex for his own good, since he was basically Dex's uncle. Charity is afraid for herself and Dex but doesn't know how to get Matt out of their lives. Even though Charity and Matt aren't in a romantic relationship and aren't siblings by blood, they've considered themselves family, so Charity can apply for a protection order to restrict Matt from communicating with her or being in her home or at her workplace or Dex's daycare.

Proposed change: Add additional risk factors that the court must consider when determining whether a protection order is needed.

How this helps families: Promote more comprehensive risk analysis in protection order applications.

A judge deciding an application about a protection order must consider a list of risk factors currently set out in section 184 of the FLA. It is a non-exhaustive list, allowing the judge to 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.

Explicitly identifying additional circumstances that increase survivors' vulnerability and therefore risk of violence in the Act may help a court better understand an at-risk family member's unique circumstances and ensure protection orders are made in appropriate cases. The proposed amendments would add the following risk factors:

Living with a disability, neurodiversity, language barrier, legal status to be in Canada or another vulnerability that makes it difficult to access services – Personal circumstances that limit the ability to communicate may have the effect of isolating the at-risk family member or prevent them from accessing services increase their vulnerability and risk of family violence. Explicitly including these factors in the FLA would promote a more comprehensive risk analysis.

Living in a rural or remote location – Many at-risk family members living in rural or remote locations are isolated from other people as well as services. This increases risk of violence and decreases opportunity to report violence and seek help. It also increases the time police or RCMP need to respond to a call for assistance, with some survivors living hours away from the nearest detachment or being separated by water or poor roads. This risk factor disproportionately affects Indigenous families as many Indigenous communities are located in rural and remote regions of BC.

Non-compliance with court orders – The FLA lists circumstances of the family member that the order is to be made against (i.e. the restrained family member) which may increase the risk of violence (e.g. access to weapons, substance abuse). Non-compliance with previous court orders is linked to issues with authority, increased risk of violence and recidivism. This is an important risk factor to explicitly name in the FLA as it can impact whether a protection order is needed and what terms should be included to reduce risk.

Adding language to the FLA to directly point to these risk factors will help survivors better explain the circumstances that increase their risk of violence. It may also assist the court by providing a more fulsome list of factors to consider when analyzing risk of violence.

Proposed change: Expand the list of terms and conditions that may be included in a protection order.

How this helps families: Promote including terms in protection orders that prevent technology-based violence and protect survivors with companion animals.

Section 183(3) of the FLA sets out terms that a court may include in a protection order. The list is broad and includes a catch-all provision that allows a court to include any term necessary to protect the safety of the at-risk family member or implement the protection order. Although this could be used by a court to include a provision related to preventing technology-based violence, feedback and analysis suggests that protection orders often do not adequately respond to abuse perpetrated using technology. Many people are unaware of how technology can be used against another person. More clearly identifying technology-based violence in the protection order provisions, including the terms and conditions suggested in section 183, will bring this form of violence and the need to address it in protection orders to the attention of judges, lawyers and advocates, and survivors.

Additional language to consider including in protection orders that address technology-based violence might be:

- expanding "following the at-risk family member" beyond physically following to include using technology to surveil, track, monitor, harass or similarly interfere;
- clarifying that "directly or indirectly communicate" includes electronic communication including text, email, social media; and
- preventing interference with the at-risk family member's personal, professional and online reputation.

Currently section 183 suggests that a protection order may direct police to accompany a person to the family residence to supervise the removal of personal belongings. The proposed change would clarify this may include the retrieval of a companion animal and their accessories.

Making protection orders more responsive to survivors' needs:

Proposed change: **Extend default length of protection orders from 1 to 2 years from the date the order is made.**

How this helps families: **Protecting survivors longer, while risk still exists.**

Protection orders made under the FLA are in effect for one year from the date the order is made, unless the court specifies another time period. This "default" time period ensures that protection orders do not linger indefinitely, past the time when there is no longer a risk of violence, without constraining the court from ordering a longer or shorter duration based on what is most appropriate in an individual case. Those who have experienced family violence or supported survivors point out that many families are still experiencing high levels of conflict and are embroiled in family law proceedings more than a year after a protection order is made. Extending the default period would provide additional time for issues to be resolved and conflict to ease, reducing risk.

The proposed amendments would extend the default period from one to two years from the date the protection order is made. This aligns with the duration recently established for domestic violence peace bonds under the Criminal Code[8] as well as recommendations in recent reports on protection orders from advocacy organizations in BC.[9,10] A court will continue to have discretion to order an FLA protection order remain in effect for another period of time (i.e. longer or shorter than two years).

Proposed change: **Introduce a presumption in favour of making a subsequent protection order upon application, unless there is evidence no risk exists.**

How this helps families: **Make it easier for survivors to stay safe after an initial protection order ends.**

Research and feedback from survivors of family violence report the re-traumatizing experience of seeking protection in an adversarial court system. While it may be inevitable that the applicant must prove they are at risk of violence before an initial

[8] On April 8, 2025, section 810.03 of the *Criminal Code of Canada* came into force, introducing peace bonds specifically for situations where there is a "fear of domestic violence". A recognizance ordered under this provision will be in force for up to 2 years if there is a previous conviction for violence against an intimate partner or child. https://laws.justice.gc.ca/eng/AnnualStatutes/2024_22/FullText.html

[9] Battered Women's Support Services. (2024). *Justice or 'Just' a Piece of Paper? Protection Orders in British Columbia*. https://www.bwss.org/wp-content/uploads/BWSS_Justice-or-Just-a-Piece-of-Paper.pdf.

[10] Hrymak, H. (2024). *Protection Orders in BC and the Urgent Need for a Specialized Process and Coordinated Reform*. Rise Women's Legal Centre. https://www.womenslegalcentre.ca/s/Protection-Order-Report.pdf.

protection order can be granted, it is a burden to make their case each time a protection order expires, and a new order is needed. This is exacerbated in cases where an initial protection order functioned to suppress or prevent violence, but the survivor believes violence is likely to recur once the consequences imposed by the order no longer apply. On the other hand, protection orders restrict respondents and have criminal consequences if they do not comply with the terms. Legislation needs to balance recognizing the impacts of trauma and protecting vulnerable parties against unreasonable ongoing restrictions on respondents who were initially determined to be a risk.

The intended change would introduce a presumption in favour of making a subsequent protection order if the survivor or someone on their behalf applies for one. This would shift the burden to the person responsible for the violence to demonstrate the risk is gone. This may be achieved by submitting evidence showing, for example, that the source of the conflict has been resolved, counselling or anger management programs have been completed, or the parties no longer live in the same region. It would be the role of the court to determine whether, based on the evidence, the respondent had demonstrated there was no longer a risk to the protected person and therefore no need for another protection order.

Under the proposed change, the presumption would also apply to protection orders that are made in response to “without notice” applications. Without notice applications are generally applied for on an urgent basis and the court must be satisfied that giving the other party notice of the application would create a real risk of danger or serious consequences before making a without notice protection order. When a protection order is made without notice, it may be a short-term order (e.g. a few weeks or months) with the expectation that the order will be served on the restrained party and both parties will return to court to determine whether a longer-term order should be made. The proposed change may address some of the concerns with shorter-term orders by reducing some of the trauma associated with having to repeat the story of violence and prove risk, from the beginning. Upon hearing the initial application and based on the evidence presented, the court would have found a risk of violence and sufficient danger to warrant making the initial protection order on a without notice basis. The presumption would not restrict the respondent’s opportunity to present their own evidence or refute the applicant’s evidence. Nor would it prevent the court or the respondent from asking questions of the applicant. The presumption would simply shift the starting point of the inquiry from asking “How are you at risk?” to asking “How are they not at risk, considering the evidence demonstrating risk that the court has already heard?”

Considering family violence when determining parenting arrangements:

Proposed change: Emphasize in the parenting arrangements provisions that the court must consider what arrangements are needed to ensure their safety if a party, the child or another family member is at risk of family violence.

How this helps families: Promoting safer parenting arrangements for the child, the parties, and other family members when there is a risk of violence.

Section 40 of the FLA sets out the legislative parameters for parenting arrangements. The proposed change would add language to section 40 to state that where the child, their parent or another family member is at risk of family violence, the parties or the court must consider what is needed within the parenting arrangements to ensure everyone's safety. The proposed change would not specify particular arrangements that may improve safety in the FLA, as the specific arrangements that will be needed to address the risk of violence will depend on the circumstances of each family and the resources that are available to them. The objective is not to punish the abusive parent or prevent them having a relationship with the child, it is ensuring the relationship and the time spent together is in the child's I (not the abusive parent's) best interests.

Although there is a proposal to emphasize safe parenting arrangements, no changes are that would direct when and how claims of parental alienation syndrome might be made under the FLA. The issue of parental alienation/alienating behaviours is divisive. The suggestion that such allegations should be banned in legislation is based on concern 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. This issue has received attention outside Canada as well, including by the United Nations Committee on the Elimination of Discrimination Against Women. Right now, very few jurisdictions ban parental alienation arguments in court. There are even fewer examples of legislative bans being effective.[11] At this point in time, a focus on education and training, not only on alienating behaviours but on their use and misuse in the context of family violence, is more likely to achieve the objectives than a legislative ban. Parental alienation is also discussed in Chapter 3 - *Child Centred Decision Making*, in the context of the best

[11] For example, Spain passed the Rhodes Law in 2021, banning parental alienation arguments being made in court, however parental alienation has been subsequently used to justify judicial decisions despite the legislation and the advice of the General Council of the Judiciary.

interests of the child analysis. There was feedback both for and against including parental alienation within the best interests of the child analysis; at this time there is no intention to introduce changes that would specifically require or disallow considering this.

Indigenous perspectives:

Indigenous women, girls and two-spirit people are disproportionately impacted by family violence; however it was often described as being ignored or not dealt with. There is a lack of information about the options that are available to deal with family violence and insufficient resources to support those in need of protection and safe housing. Feedback from those who had experience with protective orders often described negative experiences when the order was not followed and they tried to have it enforced. This feedback points to the need for more resources to support Indigenous families dealing with violence, including the survivor, the children, and the family member responsible for the violence. There is also a real need for information, including information about protective orders and how to obtain them. Training and education for all players in the family justice system that considers family violence through a trauma-informed, culturally sensitive lens is also needed, including a focus on police and enforcement. These responses are important, however they are outside the scope of legislative amendments to the FLA.

Dialogue with Indigenous people suggests that there are some legislative amendments that will have meaningful impacts for Indigenous families dealing with violence. Many Indigenous people, particularly those living on reserve lands, live in rural and remote regions of BC. As discussed above, this increases risk for family violence as the isolation increases vulnerability and affects the time it takes for help to respond. People in these regions also have less access to legal resources and supports for survivors. Specifying in the FLA that living in a rural or remote community is a risk factor that must be considered when making decisions about protection orders will help paint a more accurate picture of risk for Indigenous survivors who apply for FLA protection orders.

We received feedback that some First Nations communities are using Band Council Resolutions (BCRs) to address safety concerns. While BCRs are more commonly used to deal with risks to the community such as drug and gang activity, they have also been used to deal with family violence. In these situations, the only way to keep the victims of family violence safe may be to require the family member responsible for the violence to leave the community. The Chief and Council will usually issue a BCR that bans the violent family member from the community until certain conditions have

been met, e.g. completing counselling, anger management or recovery treatment programs. When used appropriately, a BCR can reduce risk to the victims while at the same time encouraging the perpetrator to deal with underlying issues and history of trauma that contributed to the violence. BCR are limited, however, as they only prevent the violent family member from entering the Indigenous community and will not protect the survivor if they leave the community, for example, to go to work or to attend an event in another community. However, if the perpetrator is banned from their community without being connected to wellness resources, the violent behaviour is unlikely to stop and more issues may arise. Things that may promote the effective use of BCRs to deal with family violence include:

- including a history of BCRs being made to address family violence as a risk factor the court should consider when deciding whether to make a protection order under the FLA.
- exploring whether it is possible to register BCRs in the provincial Protection Order Registry while they are in effect so police are aware of the terms when responding to an incident and courts do not make protective orders that conflict with the terms of the BCR.
- providing Indigenous families dealing with family violence with information about options to address the violence and reduce risk, including BCRs, FLA protective orders and criminal justice system responses such as peace bonds and other criminal orders.

Ensuring parenting arrangements are safe for Indigenous children and their family members is another important issue. We heard that Indigenous survivors are often reluctant to disclose family violence given the long history Indigenous people have of their children being taken from them by child welfare agencies. Many families are looking for resources and supports that wrap around the family and facilitate healing rather than breaking the family apart. Where possible, parenting arrangements should build in supports that are available in the community, including support from extended family. For example, there are communities that have supervised parenting facilities that provide a safe place for family members to spend time together with support from community members (i.e. aunties). Amendments to the FLA that emphasize the need to consider what arrangements ensure the safety of the child and their family members, in a culturally appropriate way that acknowledges the unique circumstances of the family and the traditional practices and protocols of their Indigenous heritage will help to address the family's safety needs, including cultural safety.

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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]

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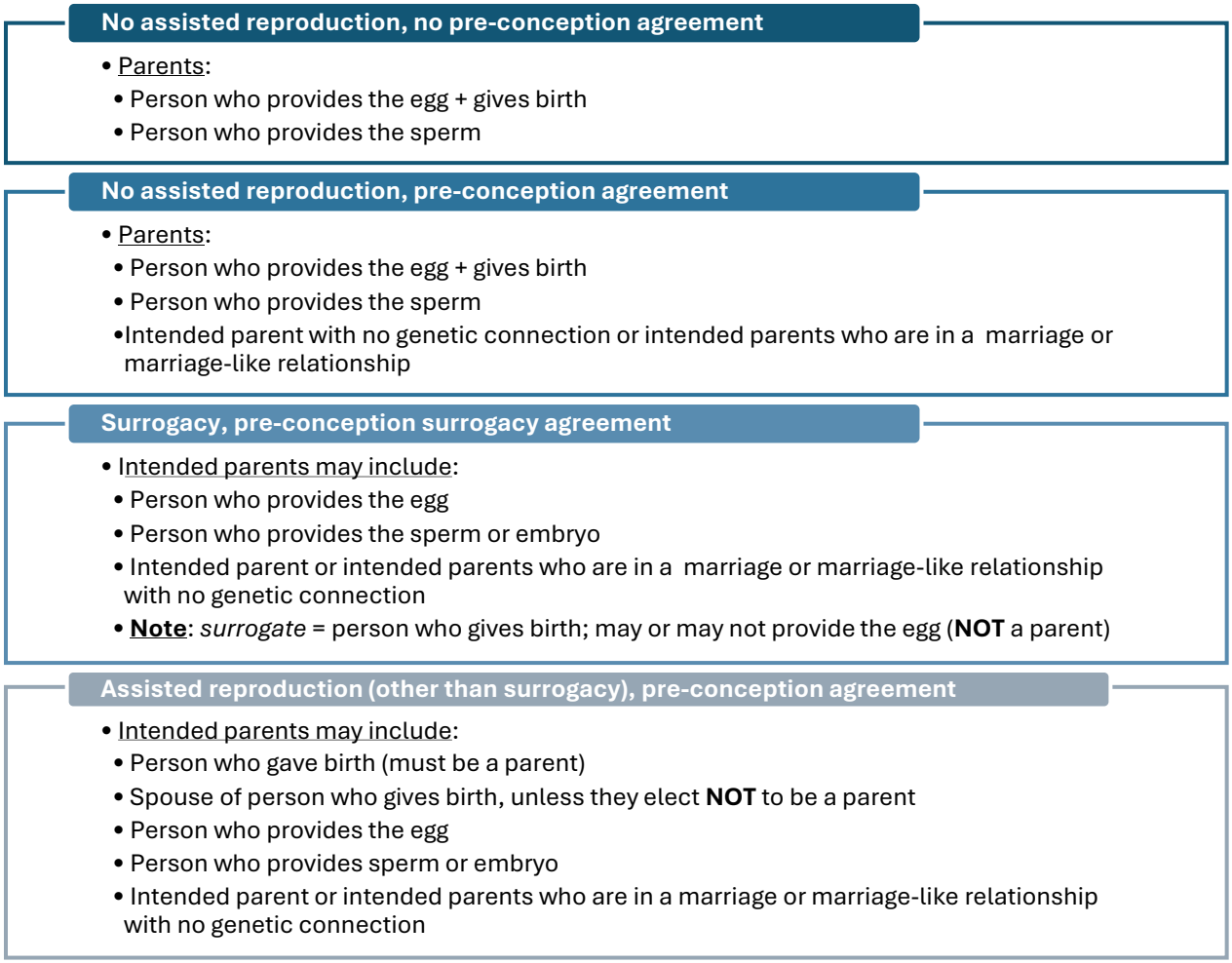
[12] Section 26 of the FLA sets out who a child's parents are when the child is conceived and born without using assisted reproduction. The parents are the birth mother and the biological father, with a list of presumptions that can be used to establish the biological father. It is acknowledged that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

<u>Proposed change</u>: 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.

<u>How this helps families</u>: 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

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Chapter 7: Indigenous Cultural Property

Introduction

The issue of Indigenous cultural property was raised in Phase 1 of the *Family Law Act* Modernization project, and the Ministry of Attorney General's (the Ministry) research and analysis work continues into Phase 2. Phase 1 included a review of the property division provisions in Part 5 of the *Family Law Act* (FLA), titled Property Division. Part 5 addresses how spouses divide family property between them when the separate. During Phase 1, feedback was received from an Indigenous organization that suggested the FLA needed to address the issue of how property is divided between spouses if the property has an Indigenous cultural value or significance.

The Ministry intends to propose changes concerning Indigenous cultural property as part of the Phase 2 amendments. The feedback, engagement and analysis has suggested that the following changes could recognize the importance of certain Indigenous property and ensure it is appropriately addressed, particularly if spouses cannot agree and courts are required to assist:

- explicitly adding Indigenous cultural property to the list of property that is "excluded property" under the Act, which is generally not divided between spouses, ensuring an appropriate starting point for consideration of the property;
- further identifying a sub-set of excluded Indigenous cultural property which is never to be divided between spouses under any circumstances;
- adding money paid to an Indigenous spouse as part of a financial settlement that is related to them as an Indigenous person to the list of excluded property under the Act would assure that the recipient continues to receive the intended personal benefit of those funds.

Key Changes and How They Help Families

Proposed change: Add Indigenous cultural property to the list of "excluded property" under the Act and identify a further sub-set of Indigenous cultural property that is never divided.

How this helps families: The Act will recognize that the starting point for property that has an Indigenous cultural importance or significance for at least one of the spouses is that it will not be divided between them when they separate.

The division of property regime in the FLA creates two types of property – “excluded property” and “family property”. Excluded property is defined by a list of categories is generally not divided between spouses when they separate except as provided for in the Act, which is only intended to be in limited and defined circumstances. Family property, on the other hand, is generally divided between separating spouses.

There is certain property that may be possessed or owned by an Indigenous spouse that has significant importance for them and their Indigenous community. Feedback suggests that it would be culturally inappropriate for this type of property to be divided or transferred to the other spouse upon separation, regardless of whether it is currently considered excluded property or family property under the FLA. Although this type of property may fit within existing categories of excluded property such as property that was acquired by a spouse before the start of their relationship or property that was inherited or gifted to the spouse by a third party, these categories are unlikely to capture all of the property it should. Therefore, creating an explicit category for Indigenous cultural property will ensure that all of the property that should be captured, is captured.

Currently, the FLA allows for excluded property to be divided in certain restricted circumstances. However, engagement suggests that there are some types of culturally significant property that should never be put at risk of becoming the property of a non-Indigenous. Ceremonial regalia may make up a large proportion of this type of property but also suggests that room needs to be made within the definition of the term for similar personal property associated with an Indigenous community’s governance, ceremonies and customs that may not be considered as “regalia” to that community.

The proposed changes will also ensure that if the property is to be subject to division in restricted circumstances that a court must consider the extent of the significance of the property to the Indigenous spouse as part of their decision.

The proposed changes will include ways for the unique legal orders, customs and traditions of the relevant Indigenous First Nation or community to always be considered. Engagement has emphasized that, while there may be common aspects relevant to many Indigenous communities, there are also many unique characteristics that have relevance to determining whether certain property should be considered as being part of this category. This may include mandatory room for Indigenous communities to convey their knowledge with a court that must decide a contested matter in whatever way the knowledge is best shared.

<u>Proposed change</u>: Add any Indigenous financial settlement as a separate category of excluded property under the Act.

<u>How this helps families</u>: Specifying that money paid to an Indigenous spouse as part of a financial settlement they are entitled to as an Indigenous person is excluded property adds certainty that the recipient continues to experience the intended personal benefit of those funds.

Although initial feedback highlighted the need to examine whether certain type of property should be excluded from division between spouses based on its connection to Indigenous customs and tradition, further feedback highlighted another type of property that also could benefit from clarifying amendments within the Act. In discussing the type of property which may have ties to the Indigeneity of a person, the issue of payments made to individual Indigenous people based on settlement or awards including ones tied to Residential Schools abuses was brought up.

Currently, the FLA's excluded property list includes "a settlement or an award of damages to a spouse as compensation for injury or loss". However, clarifying whether these types of payments fit within the existing section would remove any doubt and align with the intention to add clarity in relation to Indigenous cultural property.

Care will be taken to ensure the category includes all of the various type of existing settlement payments and future settlements. Other provincial statutes identify these funds for other purposes and consideration of those provisions will inform drafting of these intended amendments.

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Appendix A: List of Key Proposed Changes

Chapter 1: Guardianship, Parenting Arrangements and Contact

- Allow the existing guardians of a child to appoint a non-parent to also be a guardian of the child by written agreement.
- Authorize a person to be appointed as the guardian of a child on a temporary basis by either court order or through the agreement of all the existing guardians of the child.
- Add authority for the issuing of a document that will verify that a person is a guardian of a child.
- Clarify that parents who do not live with their child's other parents or are unable to live with their child immediately after their birth are nonetheless guardians of their child.

Chapter 2: Relocation

- Require parties to establish that there has been "substantial compliance" with an existing parenting time agreement or order that grants them the majority of parenting time in order to obtain the benefit of a presumption in favour of relocation.
- Change the phrase "do not have substantially equal parenting time" to having the "vast majority" of parenting time as the standard for whether a guardian becomes entitled to a presumption in favor of relocation.
- Remove the requirement that an applicant seeking to relocate a child must establish that the relocation application is made in "good faith".
- Create a template to assist people in giving notice of a relocation under the FLA that requires including information similar to the information required in the *Divorce Act* form, such as:
    - the expected date of relocation
    - the name of the proposed relocation location;
    - the proposed location's address if available or known;
    - new contact information of the person or child relocating, if available;
    - a proposal regarding parenting arrangements including how proposed parenting time or contact may be exercised;
    - the name of the relocating person and any other relocating child of the parties; and
    - the relocating person's current address and contact information.

Chapter 3: Child-Centred Decision Making

- Add the following two new factors that must be considered when determining the best interests of a child in family law decisions:
    - the child's cultural, linguistic, religious and spiritual upbringing and heritage; and
    - the needs of a child with disabilities.
- Add a separate list of factors the court must consider when determining the best interests of an Indigenous child in making family law decisions under Part 4, in addition to the factors already set out in the FLA.
- Make the following amendments to emphasize the importance of considering a child's views in family law decisions that affect them:
    - require the views of a child to be considered in all family law decisions in which the best interests of the child are determinative under Part 4 of the FLA.
    - explicitly allow the views of a child to be obtained and considered not only in court proceedings but in any family dispute resolution process including during mediation or other consensual dispute resolution.
    - allow the court to consider a child's preferences for how they share their views, as well as whatever support they need to share their views.
- Remove restrictions on the test to appoint a children's lawyer under the FLA to allow for them to be appointed in more cases when it is in the child's best interests.
- Add a provision allowing an Indigenous child to have a person from their community advocate for them in family law matters, such as an Elder, Matriarch, or other respected person chosen by the community.

Chapter 4: Assessments and Reports

- Specify the following three different 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
- Clarify that a report may be obtained either by court order, or by agreement between the parties.
- Authorize the creation of regulations that establish mandatory qualifications for report writers, including training and experience requirements.

- 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.
- Establish a requirement for a report writer 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, if requested by the family.

Chapter 5: Protection from Family Violence

- Update the definition of family violence to directly reference coercive and controlling behaviour, technology-facilitated violence, financial abuse and litigation abuse.
- Extend FLA protection orders to relationships that have been excluded from eligibility.
- Add additional risk factors that the court must consider when determining whether a protection order is needed.
- Expand the list of terms and conditions that may be included in a protection order.
- Extend default length of protection orders from 1 to 2 years from the date the order is made.
- Introduce a presumption in favour of making a subsequent protection order upon application, unless there is evidence no risk exists.
- Emphasize in the parenting arrangements provisions that the court must consider what arrangements are needed to ensure their safety if a party, the child or another family member is at risk of family violence.

Chapter 6: Parentage

- Align parentage provisions for children conceived using sexual intercourse with provisions for children conceived using assisted reproduction (other than surrogacy).
- 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.
- 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.
- Gendered language will be replaced with inclusive terms that accurately describe particular roles in conception, birth and parenting.

Chapter 7: Indigenous Cultural Property

- Add Indigenous cultural property to the list of “excluded property” under the Act and identify a further sub-set of Indigenous cultural property that is never divided.
- Add any Indigenous financial settlement as a separate category of excluded property under the Act.

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Appendix B: Intersections between *Family Law Act* Modernization and Dr. Stanton's Final Report

The table below shows alignment between recommendations from Dr. Stanton's Final Report and the Policy Intentions Paper's proposed policy improvements.

Dr. Stanton's Final Report makes additional recommendations and findings relating to family justice that are beyond the scope of this phase of the *Family Law Act* Modernization project, including with respect to increasing education and awareness, increasing access to victim support workers in family law matters, addressing myths and stereotypes, and increasing access to testimonial aids or courtroom supports. A cross-ministry committee of assistant deputy ministers will review these additional matters and identify next steps.

Dr. Stanton's Final Report	Family Law Act Modernization Policy Intentions Paper
1. update the definition of "family violence" to more explicitly reference types of violence that are prevalent but not always recognized	Included in the changes proposed in the Policy Intentions Paper.
2. expand who is eligible for protection orders by broadening the meaning of "family member" and including dating relationships within the protection order provisions	Included in the changes proposed in the Policy Intentions Paper.
3. adding additional examples of vulnerabilities that increase the risk of family violence and must be considered in a protection order application.	Included in the changes proposed in the Policy Intentions Paper.
4. adding detail to the terms and conditions that may be included in a protection order	Included in the changes proposed in the Policy Intentions Paper.
5. extending the default duration of protection orders from 1 to 2 years.	Included in the changes proposed in the Policy Intentions Paper.
6. creating a presumption that upon application a subsequent protection order will be made unless there is evidence there is no continued risk of violence	Included in the changes proposed in the Policy Intentions Paper.

7. emphasizing that orders concerning care and time with children are to promote the safety of the child, parents and guardians and other family members when family violence is an issue	Included in the changes proposed in the Policy Intentions Paper.
8. amending the *Family Law Act* so that if it has been proven that family violence has already occurred and that the survivor fears it will reoccur, that should be enough for a court to make a protection order	The Policy Intentions Paper also recognizes this concern, and proposes a presumption in favour of making a subsequent protection order upon application, unless there is evidence no risk exists.
9. considering amendments to the best interests of the child test to align with the *Divorce Act* to specifically include: "the ability and willingness of each person in respect of whom the order would apply to care for and meet the needs of the child" (s. 16(3)(h))	The Policy Intentions Paper also recognizes this concern. A number of changes are being proposed to the best interests of the child. Although language and structure in the *Family Law Act* and the *Divorce Act* vary, the *Family Law Act* does require that the court must consider, when assessing the impact of family violence on a child's safety, circumstances of security or well-being, and whether a person responsible for family violence is able to care for and meet a child's needs.
10. preparing to amend the *Family Law Act* in accordance with future changes to the *Divorce Act* in relation to parental alienation	The Policy Intentions Paper also recognizes this concern, and addresses parental alienation and ways the *Family Law Act* aims to address the underlying behaviors and impacts (see Chapter 3: Child-Centred Decision Making, and Chapter 5: Family Violence and Protection Orders). The province will continue to work with federal, provincial, and territorial partners to stay engaged on future amendments.
11. restrict time-limited protection orders (i.e., time limited to next available court date to allow service and response of respondent) and make full-length protection orders the default on without-notice applications in order to prioritize survivor safety and affordability	The Policy Intentions Paper also recognizes the concern regarding protection order time periods, and proposes extending the default period for protection orders and other changes to address the underlying concerns or short-term and without-notice applications. Any required additional changes are required will be included in future work.