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RESPONSE BOOKLET

Consultation Paper
on
Modernizing the
Child, Family and
Community Service
Act

Prepared by the
Child Protection
Project Committee

October 2020

supported by:

THE  LAW
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OF BRITISH COLUMBIA

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The British Columbia Law Institute was created in 1997 by incorporation under the provincial *Society Act*. Its purposes are to:

- promote the clarification and simplification of the law and its adaptation to modern social needs,
- promote improvement of the administration of justice and respect for the rule of law, and
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This project was made possible with the sustaining financial support of the Law Foundation of British Columbia and the Ministry of Attorney General for British Columbia. The Institute gratefully acknowledges the support of the Law Foundation and the Ministry for its work.

Child Protection Project Committee

The Child Protection Project Committee was formed in 2019. This volunteer project committee is made up of leaders in the field of child protection in British Columbia. The committee's mandate is to assist BCLI in developing recommendations to reform British Columbia's child protection statute, the *Child, Family and Community Service Act*. These recommendations will be set out in the project's final report, which is planned to be published in 2021.

The members of the committee are:

Corinne P. Feenie—co-chair
(Principal, Feenie MacDonald)

Katrina M. L. Harry—co-chair
*(Managing Lawyer, Parents Legal Centre,
Legal Services Society of British Columbia)*

Holly Anderson
(Guardianship Manager, Vancouver Aboriginal Child and Family Services Society)

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Meghan Felbel
*(Director, Legislation and Legal Support,
Ministry of Children and Family Development for British Columbia)*

Carly Hyman
(Chief Investigator, Critical Injury and Death, Representative for Children and Youth for British Columbia)

Serena Kullar **(May 2019–May 2020)**
(Social Worker, Providence Crosstown Clinic)

Claudia Liddle
(Family Service Child Protection Practice Manager, Vancouver Aboriginal Child and Family Services Society)

Crystal Reeves
(Associate, Mandell Pinder LLP)

Brandi Stocks
(Solicitor, Child and Youth Services, Office of the Public Guardian and Trustee for British Columbia)

Kevin Zakreski (staff lawyer, British Columbia Law Institute) is the project manager.

**For more information, visit us on the World Wide Web at:
<https://www.bcli.org/project/16649>**

Call for Responses

We are interested in your response to this consultation paper. It would be helpful if your response directly addressed the tentative recommendations set out in this consultation paper, but it is not necessary. General comments on reform of the *Child, Family and Community Service Act* are also welcome.

A helpful way to submit a response is to use a response booklet. You may obtain a response booklet by contacting the British Columbia Law Institute or by downloading one at **<https://www.bcli.org/project/16649>**. You do not have to use a response booklet to provide us with your response.

Responses may be sent to us in any one of three ways—

by fax: (604) 822-0144

by email: cfcsa@bcli.org

by online survey: link from <https://www.bcli.org/project/16649>

If you want your response to be considered by us as we prepare our report on modernizing the *Child, Family and Community Service Act*, then we must receive it by **15 January 2021**.

RESPONSE

Name: _____

Organization: _____

Position: _____

You may provide us with your name, the name of any organization you represent, and the title of your position within that organization, if you wish. You do not have to give us any of this information. You may still submit your response even if you leave some or all of the above spaces blank. You may respond to all or some of the tentative recommendations in this response booklet. If you wish to provide a more extensive comment than space permits, then please use the additional pages at the end of this response booklet.

Your response will be used in connection with the Modernizing the *Child, Family and Community Service Act* Project. It may also be used as part of future law-reform work by the British Columbia Law Institute or its internal divisions. All responses will be treated as public documents, unless you expressly state in the body of your response that it is confidential. Respondents may be identified by name, title, and organization in the final report for the project, unless they expressly advise us to keep this information confidential. Any personal information that you send to us as part of your response will be dealt with in accordance with our privacy policy. Copies of our privacy policy may be downloaded from our website at: <https://www.bcli.org/privacy>.

The numbers in parentheses refer to pages in the consultation paper where the tentative recommendation is discussed.

Definitions and terms—custody and access

1. *The Child, Family and Community Service Act should be amended by repealing the definition of “custody.” (19–20)*

Agree

Disagree

Comments:

Response Booklet for Consultation Paper on Modernizing the CFCSA

2. The Child, Family and Community Service Act should be amended to strike out “custody” and replace it with “guardianship,” wherever “custody” is used in connection with a child, that child’s relationship to a parent, a director, or another person who may act as a guardian to the child, or the name of an order or proceeding under the Act. (21-22)

Agree

Disagree

Comments:

3. The Child, Family and Community Service Act should retain its current definition of “guardianship.” (22-23)

Agree

Disagree

Comments:

4. The Child, Family and Community Service Act should retain all its references to “access.” (23-24)

Agree

Disagree

Comments:

Definitions and terms—parent and the parent apparently entitled to custody of the child

5. The definition of “parent” in the Child, Family and Community Service Act should be amended by adding the following as a new paragraph (c): “a parent as defined in the Family Law Act.” (31–33)

Agree

Disagree

Comments:

6. The Child, Family and Community Service Act should be amended to strike out “the parent apparently entitled to custody” wherever it appears and replace it with “a parent or guardian.” (36–37)

Agree

Disagree

Comments:

7. *Section 55 of the Child, Family and Community Service Act should be amended*

(a) *in subsection (4) by striking out “the parent who had custody when the child was removed” and substituting “a parent or guardian” and*

(b) *in subsection (5) by striking out “the parent who had custody when the child was removed” and substituting “a parent or guardian.” (37–38)*

Agree

Disagree

Comments:

8. *A new section 55.1 should be added to the Child, Family and Community Service Act, which should provide that, upon the making of an order pursuant to section 55 (4) or (5), any existing orders made pursuant to family-law legislation in relation to parenting time, contact, or access are suspended during the period a child remains in the guardianship of the director, subject only to other orders subsequently made under section 55. (38–39)*

Agree

Disagree

Comments:

Definitions and terms—domestic violence

9. *The Child, Family and Community Service Act should be amended to add the following definition: “ ‘violence’ means*

- (a) physical abuse, 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,*
- (c) attempts to commit physical or sexual abuse,*
- (d) psychological or emotional abuse, including
 - (i) intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property, and*
 - (ii) stalking or following, and**
- (e) in the case of a child, direct or indirect exposure to violence.” (44–48)*

Agree

Disagree

Comments:

10. *The Child, Family and Community Service Act should be amended to add the following definition: “ ‘violence in the home’ means violence.” (44–48)*

Agree

Disagree

Comments:

11. *The Child, Family and Community Service Act should be amended by striking out “domestic violence” wherever it appears and substituting*

(a) *“violence in the home, or”*

(b) *“violence by or towards a person with whom the child resides in the presence of a child.” (44–48)*

Agree

Disagree

Comments:

Disclosure

12. *Form 2 (Application for an Order) of the Provincial Court (Child, Family and Community Service Act) Rules should be amended to add a narrative box, which will be used to specify the reasons, in compliance with the Child, Family and Community Service Act, for which the extension is being sought. (56–58)*

Agree

Disagree

Comments:

Response Booklet for Consultation Paper on Modernizing the CFCSA

13. Section 64 of the Child, Family and Community Service Act should be amended by striking out the words “If requested” and substituting “Prior to a case conference under rule 2 of the Provincial Court (Child, Family and Community Service Act) Rules, or at least 30 days prior to a contested hearing, except when a hearing is scheduled within these 30 days, then as soon as practicable.” (58–60)

Agree

Disagree

Comments:

14. Section 64 (1) (c) of the Child, Family and Community Service Act should be repealed and the following substituted: “all documents to which the party intends to refer to at trial.” (58–60)

Agree

Disagree

Comments:

15. *Section 64 of the Child, Family and Community Service Act should be amended to add a new subsection (1.1), which should read as follows: “The director must disclose to the other parties all documents that are or have been in the director’s possession or control and that could be used by any party at trial to prove or disprove a material fact.” (58–60)*

Agree

Disagree

Comments:

16. *Section 64 (2) of the Child, Family and Community Service Act should be amended by adding “or subsection (1.1)” between “under subsection (1)” and “is subject to any claim of privilege.” (58–60)*

Agree

Disagree

Comments:

Independent legal advice

17. Section 6 of the Child, Family and Community Service Act should be amended to provide that each parent and child (if 12 years of age or over) must be advised of their rights to independent legal advice before signing a voluntary care agreement under section 6. (68-69)

Agree

Disagree

Comments:

18. Section 7 of the Child, Family and Community Service Act should be amended to provide that each parent and child (if 12 years of age or over) must be advised of their rights to independent legal advice before signing a special needs agreement under section 7. (68-69)

Agree

Disagree

Comments:

19. *Section 8 of the Child, Family and Community Service Act should be amended to provide that each parent, child (if 12 years of age or over), proposed caregiver under the agreement, and (if the child is an Indigenous child) the child's Indigenous community (if it is going to be a signatory to the agreement) must be advised of their rights to independent legal advice before signing an agreement with child's kin and others under section 8. (68-69)*

Agree

Disagree

Comments:

20. *The British Columbia government should develop resources to expand the availability of independent legal advice and legal information for individuals and organizations entering into agreements under sections 6, 7, or 8 of the Child, Family and Community Service Act or safety plans, by programs such as online independent legal advice, independent legal advice by telephone, information about available resources (such as the family law line), a website setting out legal information on sections 6, 7, and 8 of the Act, and a roster of lawyers who provide independent legal advice. (70-71)*

Agree

Disagree

Comments:

21. The Child, Family and Community Service Act should be amended to provide that a child (if 12 years of age or over) must be offered independent legal advice whenever the child is served with an application for an order under the Act. (71-72)

Agree

Disagree

Comments:

22. A form, to be signed by the child, should be developed that the social worker must complete for children 12 and older confirming whether the child has requested or declined independent legal advice. (71-73)

Agree

Disagree

Comments:

Court procedures and orders

23. *Section 60 (3) of the Child, Family and Community Service Act should be amended by adding “, including the requirement that consent be in writing,” after “dispense with any consent under subsections (1) and (6).” (78-80)*

Agree

Disagree

Comments:

24. *Section 54.01 (9) of the Child, Family and Community Service Act should be amended to add a new paragraph (d) that provides that a child be placed in the continuing custody of the director, provided that the test under section 49 (5) is met. (82-83)*

Agree

Disagree

Comments:

25. *Section 54.2 (1) (a) of the Child, Family and Community Service Act should be amended by adding “sole” between “child’s” and “guardian.” (85–87)*

Agree

Disagree

Comments:

26. *The Child, Family and Community Service Act should not be amended to provide that an order under a section (other than section 54.2 (1) (a)) transferring guardianship of a child to a person who is not the child’s parent or the director has the effect of transferring sole guardianship of the child. (87–88)*

Agree

Disagree

Comments:

27. *The Child, Family and Community Service Act should not be amended to adopt provisions modelled on the sections of the Family Law Act dealing with misuse of court process and orders respecting conduct. (92-94)*

Agree

Disagree

Comments:

28. *Section 39 of the Child, Family and Community Service Act should be amended to add a new subsection (2.1) that reads as follows: "A child, if 12 years of age or older, who appears at the commencement of a hearing is entitled to be a party, subject to the court's discretion." (97-99)*

Agree

Disagree

Comments:

29. *A form should be developed for use by lawyers who give independent legal advice, which requires the lawyer to confirm whether or not the child wishes to be a party to a hearing. (97-99)*

Agree

Disagree

Comments:

30. *The lawyer who gives independent legal advice to a child should provide to the social worker the new form that records whether or not a child wants to be a party, to be maintained on the child's file, and made available to be filed with the court at the request of the child or any other party. (97-99)*

Agree

Disagree

Comments:

Selected protection issues

31. Section 13 (1) (e) of the Child, Family and Community Service Act should be amended by

(a) striking out “is” and replacing it with “has been, or is likely to be,” and

(b) striking out subparagraph (ii). **(104–106)**

Agree

Disagree

Comments:

32. Section 13 (1) of the Child, Family and Community Service Act should be amended by adding the following as new paragraph (m): “if the child is living in a situation where there is (i) violence in the home or (ii) violence by or towards a person with whom the child resides in the presence of the child,” and removing section 13 (1) (e) (ii). **(106–108)**

Agree

Disagree

Comments:

33. *Section 13 of the Child, Family and Community Service Act should be amended to make it clear that, whether dealing with past harm or likelihood of future harm, the same test on a balance of probabilities applies. (108-109)*

Agree

Disagree

Comments:

34. *The Child, Family and Community Service Act should be amended by adding a new section that provides "In the context of providing child and family services in relation to a child, there must be a reassessment, conducted on a regular basis, and prior to any subsequent custody application before the court, of whether it would be appropriate to place the child with (a) one of the child's parents, if the child does not reside with such a person; or (b) another adult member of the child's family, if the child does not reside with such a person." (111-113)*

Agree

Disagree

Comments:

Response Booklet for Consultation Paper on Modernizing the CFCSA

35. Section 32 of the Child, Family and Community Service Act should be amended by adding a new subsection that provides “A director must use best efforts to arrange access between the parents, siblings, and other extended family with the child prior to an order being made under section 55 for access.” (114–117)

Agree

Disagree

Comments:

36. Section 70 (1) of the Child, Family and Community Service Act should be amended by adding a new paragraph that provides “to contact with parents, siblings, and other extended family, except where such contact could compromise the child’s safety and wellbeing, and subject to any order of the court under this Act. (114–117)

Agree

Disagree

Comments:

Incorporating children’s views in child protection proceedings

37. The Child, Family and Community Service Act should be amended by adding a new section providing that if a child who is the subject of a proceeding under this Act requests that his or her views be known at the proceeding, the court must, after a consideration of the child’s best interests, the safety and wellbeing of the child, and the preferences of the child,

- (a) meet with the child with or without the other parties and their legal counsel,*
- (b) permit the child to testify at the proceeding,*
- (c) consider written material submitted by the child,*
- (d) appoint a family justice counsellor, a social worker, a psychologist, a lawyer or another person approved by the court to assess and report on the views of the child in relation to the application before the court, or*
- (e) allow the child to express his or her views in some other way. (129–132)*

Agree

Disagree

Comments:

Legal representation for children in child protection proceedings

38. The Child, Family and Community Service Act should be amended by adding a provision that enables a court to appoint a lawyer for a child in a child protection proceeding and to make that child a party to that proceeding. (142–147)

Agree

Disagree

Comments:

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