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REVIEW OF PARENTAGE UNDER PART 3 OF THE FLA PROJECT

Backgrounder

Introduction to the Parentage Law Reform Project

Date: 24 June 2021

BCLI is carrying out a project to review the law of parentage as set out in part 3 of the *Family Law Act*. The project is slated to run until December 2022. Its goal is to produce a final report, with recommendations for legislative reform. BCLI has funding for this project from the Justice Services Branch, Ministry of Attorney General for British Columbia.

Overview of the Project

What is parentage and why is part 3 of the Family Law Act being reviewed?

Conclusively determining who a child's parents are is an important part of family law. It is the foundation of many aspects of a child's identity, such as family name and relationships, nationality, and cultural heritage. Parentage can also determine important legal rights and obligations, such as a child's inheritance rights.

When the *Family Law Act* came into force in March 2013 it gave British Columbia its first comprehensive legislative framework for the law of parentage. The goals of this legislative framework were to provide a complete scheme that addresses children equally, no matter whether the child was born through natural or assisted reproduction, to protect children's best interests, and to promote family stability.

This project will examine whether part 3 is meeting these goals, in light of developments that have taken place in the law, society, and reproductive technology since the *Family Law Act* came into force.

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Parental status and parental rights and responsibilities

Parentage is concerned with parental status, which is distinct from parental rights and responsibilities. This is why parentage has its own part of the *Family Law Act* (part 3) and laws concerning parental rights and responsibilities, such as parenting arrangements (part 4) and support obligations (part 7), appear elsewhere in the act.

Parental rights and responsibilities have a higher profile than parental status. They are often the subject of litigation, whereas parentage rarely crops up in court cases. But this fact doesn't lessen the importance of establishing a child's parentage from birth. This is because parentage is the foundation upon which parental rights and responsibilities are built.

Parentage and birth registration

British Columbia law treats parentage (part 3 of the *Family Law Act*) and birth registration under vital-statistics legislation as distinct. In the eyes of the law, there are two separate questions: Who are a child's parents from the moment of birth? Who is entitled to be registered as the child's parents? While the law of parentage does have implications for birth registration, and this project will maintain an awareness of those implications, the project's focus is on part 3 and it won't make recommendations to reform birth registration under the *Vital Statistics Act*.

Goals of the Project

The overall goal of the project examine part 3 of the *Family Law Act* and publish a report recommending changes needed to reform the law of parentage.

In support of this overall goal, the project will pursue a series of subsidiary goals:

- carrying out legal research into the current state of the law on parentage and law-reform proposals;
- raising awareness among professionals working in family law and among the general public about the current state of the law;
- publishing the results of the project's legal research, creating a resource for legal researchers and other professionals interested in parentage law; and
- conducting a wide-ranging public consultation aimed at eliciting comment on specific law-reform proposals.

Parentage Law Reform Project Committee

BCLI is carrying out this project with the assistance of an expert project committee. The members of the committee are:

Zara Suleman—Chair <i>Suleman Family Law</i>	Tracey Anderson <i>Pacific Centre for Reproductive Medicine</i>
Jeannette Aucoin <i>Clark Wilson LLP</i>	Lynda J. Cassels <i>Cassels Murray</i>
barbara findlay, QC <i>The Law Office of barbara findlay QC</i>	Dr. Ruth M. Habte <i>Postgraduate (Resident), UBC</i>
Dr. Jon Havelock <i>Pacific Centre for Reproductive Medicine</i>	Bruce Klette <i>Vital Statistics Agency of BC</i>
Shannan Knutson <i>Ministry of Attorney General for BC</i>	A.J. Lowik <i>PhD Candidate, Institute for Gender, Race, Sexuality and Social Justice, UBC</i>
Lindsay C. Morphy <i>Morphy Law Corporation</i>	Dr. Rachel Olson <i>The Firelight Group</i>
Melissa Salfi <i>Crossroads Law</i>	Elise Schopper-Brigel <i>West Coast Family Law Centre</i>
Monique N. Shebbeare <i>Monique Shebbeare Law Corporation</i>	Dr. Beth Taylor <i>Olive Fertility Centre</i>
Jasmeet K. Wahid <i>Kahn Zack Ehrlich Lithwick LLP</i>	Catherine J. Wong <i>Catherine J. Wong Law Corporation (dba Saltwater Law)</i>
Holly Yager <i>Reproductive Health & Fertility Counseling</i>	Prof. Margot Young <i>Peter A. Allard School of Law, UBC</i>

Our Supporter

The project was made possible by funding from the Justice Services Branch, Ministry of Attorney General for British Columbia.

Legal Issues to Be Examined in this Project

The committee has developed a work plan for the project, which includes the following issues:

- Does part 3 of the *Family Law Act* need to be clearer on the maximum number of people who may be considered parents when assisted-reproduction technologies are used?

- Should part 3 give the court a clearer ability to make a declaration of parentage?
- Part 3 requires that assisted reproduction occur through means other than sexual intercourse. Is this requirement necessary?
- Posthumous conception—are the time limits for giving notice of an intention to use the deceased’s genetic material and for a resulting birth to occur still considered reasonable?
- Polyamorous families—does part 3 need to reflect that polyamorous partners may intend for each of them to have a parenting role?
- Does the language used in part 3 require modernization? For example, is there an alternative to “birth mother”?
- Are there any concerns with section 8.1 of the *Wills, Estates and Succession Act* in connection with posthumous births? Is there an argument against denying a posthumously born child the ability to bring a claim for maintenance from a deceased parent’s estate, in contrast to a child born before the parent’s death?

Project Timeline

The project is planned to unfold in five phases. The focus of its first phase is on initial research and issue identification. The main goal of this phase is the formation of an expert project committee, to assist BCLI in making its recommendations for the project. Once the project committee is formed, one of its first tasks will be the creation of a work plan that identifies the specific issues for reform to be tackled in this project.

After a work plan has been created, the project will shift into phase two. This phase will be taken up with regular project-committee meetings, to consider the issues for reform, the options that may address them, and the tentative recommendations that the committee wishes to make. This will be the longest phase of the project; it will likely cover most of 2021.

Phase three of the project will involve a public consultation. The centerpiece of this consultation will be a consultation paper, one of this project’s major publications which will gather together research into the law and reform options and the committee’s tentative recommendations for reform. Upon publication of the consultation paper, which is projected for winter or early spring of 2022, all members of the public will be able to comment on the committee’s proposed reforms before the committee decides whether they should be made final recommendations.

When the public consultation is complete, the project will move into phase four. In this phase, the committee will consider the responses it receives in the public consultation and will decide on its final recommendations. These final recommendations will be set out in another of project’s major publications, its final report. This report is projected for publication in fall 2022.

Since BCLI is independent from government, it can't guarantee implementation of the report's recommendations. They will require government action to be implemented. The fifth phase of the project is designed to recognize this fact. In this phase, BCLI will offer to assist the government in any activities needed to implement the report's recommendations. BCLI may also take some time, at the end of the project, to evaluate lessons learned over the course of the project.

About the British Columbia Law Institute

The British Columbia Law Institute has been undertaking independent law reform projects in British Columbia to develop just and innovative solutions and increase access to justice since 1997. We work 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 promote and carry out scholarly legal research.

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