

# Response Booklet

## Consultation Paper on Parentage under Part 3 of the Family Law Act

Prepared by Review of Parentage under Part 3  
of the *Family Law Act* Project Committee

7 February 2024



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## British Columbia Law Institute

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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
  - promote and carry out scholarly legal research.
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The Parentage Law Reform Project Committee contains experts in fertility and family law, medicine, counselling, and academia. The committee's mandate is to assist BCLI in developing recommendations to reform part 3 (parentage) of the *Family Law Act*. These recommendations will be set out in the project's final report, which is planned to be published in 2024.

The members of the committee are:

- **Zara Suleman, KC—chair** (Principal, Suleman Family Law)
- **Jeannette Aucoin** (Associate, Clark Wilson LLP)
- **barbara findlay, KC** (Principal, barbara findlay, KC Law Office)
- **Dr. Ruth M. Habte** (Obstetrics and Gynaecology Resident Physician, University of British Columbia)
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- **Elise Schopper-Brigel** (Lawyer, West Coast Family Law Centre)
- **Dr. Beth Taylor** (Reproductive Endocrinologist and Infertility Specialist, Olive Fertility Centre)
- **Catherine J. Wong** (Partner, Saltwater Law)
- **Prof. Margot Young** (Nov. 2020–Aug. 2021) (Peter A. Allard School of Law, University of British Columbia)
- **Tracey Anderson** (Oct. 2020–Sep. 2021) (Third-Party Coordinator and Medical Management Lead, Pacific Centre for Reproductive Medicine)
- **Lynda J. Cassels** (Partner, Cassels Murray Family & Estates Law)
- **Mathew P. Good** (Sep. 2021–Apr. 2023) (Principal, Good Barrister)
- **Dr. Jon Havelock** (Reproductive Endocrinologist and Infertility Specialist, Pacific Centre for Reproductive Medicine)
- **Dr. A.J. Lowik** (Centre for Gender and Sexual Health Equity, University of British Columbia)
- **Melissa Salfi** (Lawyer, Crossroads Law)
- **Monique N. Shebbeare** (Tax and Estate Planner, TD Wealth Advisory Services)
- **Jasmeet K. Wahid** (Lawyer, Aaron Gordon Daykin Nordlinger LLP)
- **Holly Yager** (Registered Clinical Counsellor, Reproductive Health & Fertility Counselling)

BCLI also wishes to acknowledge:

- **Bruce Klette**- liaison to the committee (Director, Vital Statistics Agency of BC)
- **Dr. Rachel Olson** (President and Director, The Firelight Group)

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

For more information, visit us at:

<https://www.bcli.org/project/review-of-parentage-under-part-3-of-the-family-law-act/>



## Call for Responses

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We are interested in your response to the *Consultation Paper on Parentage under Part 3 of the Family Law Act*. It would be helpful if your response directly addressed the tentative recommendations set out in the consultation paper, but it is not necessary. General comments on parentage under the *Family Law 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/review-of-parentage-under-part-3-of-the-family-lawact/>. 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 two ways—**

**by email:** [consultations@bcli.org](mailto:consultations@bcli.org)

**by online survey:** link from <https://www.bcli.org/project/review-of-parentageunder-part-3-of-the-family-law-act/>

If you want your response to be considered by us as we prepare our report on Parentage under Part 3 of the *Family Law Act*, then we must receive it by **31 March 2024**.



## Response

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**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 issues for reform 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 Parentage under Part 3 of the *Family Law 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 here.



## Parentage if no assisted reproduction

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1. Part 3 of the *Family Law Act* should be amended to create a provision allowing for more than two parents where a child is conceived by sexual intercourse.

**Agree**

**Disagree**

**Comments:**

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2. A provision allowing for more than two parents where a child is conceived by sexual intercourse should require a pre-birth agreement.

**Agree**

**Disagree**

**Comments:**

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**3.** A provision allowing for more than two parents where a child is conceived by sexual intercourse should require, at a minimum, that the following people must be parties to the pre-birth agreement:

- (a) the intended birth parent, who is not a surrogate;
- (b) the spouse of the intended birth parent;
- (c) the person whose sperm is used to conceive the child, if that person is not a donor and is not the same as the party listed at (b);
- (d) any other person who intends to be a parent to the child.

**Agree**

**Disagree**

**Comments:**

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**4.** A provision allowing for more than two parents where a child is conceived by sexual intercourse should provide that the child's parents are:

- (a) the intended birth parent, who is not a surrogate;
- (b) the person whose sperm is used to conceive the child, unless the parties made a pre-conception agreement under the section for sperm donation by sexual intercourse,
- (c) the other parties to the pre-birth agreement who agree to be parents of the child.

**Agree**

**Disagree**

**Comments:**



5. A provision allowing for more than two parents where a child is conceived by sexual intercourse should not limit the number of potential parents.

**Agree**

**Disagree**

**Comments:**



6. Part 3 of the *Family Law Act* should not be amended to deny a perpetrator of sexual assault parentage to a child conceived through that sexual assault.

**Agree**

**Disagree**

**Comments:**



## Donors and parentage

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7. Part 3 of the *Family Law Act* should be amended by adding a provision that permits sperm donation by sexual intercourse where a written pre-conception agreement is in place.

**Agree**

**Disagree**

**Comments:**

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8. Part 3 of the *Family Law Act* should not be amended to align the definition of “donor” with the *Assisted Human Reproduction Act*.

**Agree**

**Disagree**

**Comments:**

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9. The definition of “donor” in section 20 of the *Family Law Act* should be amended to eliminate the requirement that an embryo donor must have a genetic connection to the donated embryo by striking out “created through the use of his or her human reproductive material.”

**Agree**

**Disagree**

**Comments:**

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10. The *Family Law Act* should not be amended to allow for parents and a donor to draft an agreement for contact with a child.

**Agree**

**Disagree**

**Comments:**

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**11.** Part 3 of the *Family Law Act* should not be amended to require a pre-conception agreement as part of the donor process for children conceived through assisted reproduction.

**Agree**

**Disagree**

**Comments:**

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**12.** Part 3 of the *Family Law Act* should be amended to add an optional form which could be used for spouses of birth parents to demonstrate non-consent to parentage of a child conceived through assisted reproduction.

**Agree**

**Disagree**

**Comments:**

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**13.** British Columbia should enact legislation enabling donor-conceived people to have access to identifying information about their donors.

**Agree**

**Disagree**

**Comments:**

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## Parentage if surrogacy arrangement

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**14.** Part 3 of the *Family Law Act* should not be amended to allow for conception by sexual intercourse for traditional surrogacy.

**Agree**

**Disagree**

**Comments:**

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**15.** Part 3 of the *Family Law Act* should be amended to create a provision assigning full decision-making power for the child to the intended parents for the period between birth and the granting of consent by the surrogate to relinquish the child, unless otherwise provided for in the surrogacy agreement.

**Agree**

**Disagree**

**Comments:**

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## Parentage if assisted reproduction after death

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**16.** Section 28 of the *Family Law Act* should be amended to provide that, in order for a deceased person to be a parent of a child conceived after that person's death,

1. The human reproductive material or embryo used in the child's conception must be either
  - a. the deceased person's own human reproductive material, which they provided for their own reproductive use either before their death or posthumously, or
  - b. human reproductive material or an embryo which was obtained by the deceased for their own reproductive use prior to their death (e.g., donor sperm, eggs or embryo which had been obtained by the deceased during their lifetime for their own reproductive use); and
2. all other conditions of s. 28 must be met.

**Agree**

**Disagree**

**Comments:**

  

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**17.** Section 28 of the *Family Law Act* should be amended, removing the requirement that, for a posthumously conceived child, the parents be in a spousal relationship.

**Agree**

**Disagree**

**Comments:**

  

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**18.** Part 3 of the *Family Law Act* should be amended, allowing more than two people to be named as parents for a posthumously conceived child, provided the deceased person consents to be parent to a child conceived through assisted reproduction and lists the other intended parents.

**Agree**

**Disagree**

**Comments:**

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**19.** Section 8.1 of the *Wills, Estates and Succession Act* should be amended to remove the requirement that there be a genetic connection between the deceased person and the posthumously conceived child.

**Agree**

**Disagree**

**Comments:**

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**20.** Section 8.1 of the *Wills, Estates and Succession Act* should be amended to remove the requirement that there be a spousal relationship between the intended parents.

**Agree**

**Disagree**

**Comments:**

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## Declarations of parentage by the court and parentage agreements

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**21.** A simplified desk-order process should be available for an order declaring parentage if all the parties consent to the order and have complied with the legislation.

**Agree**

**Disagree**

**Comments:**

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**22.** Part 3 of the *Family Law Act* should be amended by adding a provision that declares that nothing in this part limits or restricts the inherent jurisdiction of the supreme court to make an order declaring parentage in its *parens patriae* capacity.

**Agree**

**Disagree**

**Comments:**

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**23.** For cases that don't come within the scope of the proposed simplified process to obtain an order declaring parentage, section 31 of the *Family Law Act* should be amended as follows:

(a) by striking out the conditions that provide that an order declaring parentage is only available if there is a dispute or any uncertainty as to whether a person is or is not a parent; and

(b) by adding a provision that any person having, in the court's opinion, an interest may apply to the court for an order declaring parentage.

**Agree**

**Disagree**

**Comments:**

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**24.** Section 31 (2) of the *Family Law Act*, which lists the people who must be served with notice of an application to court for an order declaring parentage, should be amended by adding a new paragraph, which reads as follows: "the vital statistics agency, if the order will result in a change of the registration of parentage."

**Agree**

**Disagree**

**Comments:**

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**25.** Part 3 of the *Family Law Act* should not be amended to directly address how the best interests of the child is to be addressed by the court in making an order under the part.

**Agree**

**Disagree**

**Comments:**

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**26.** Section 31 of the *Family Law Act* should be amended to address the territorial jurisdiction of the court to make an order declaring parentage by providing that the court has jurisdiction, in addition to any other basis of jurisdiction under the Court Jurisdiction and *Proceedings Transfer Act*

(a) if the child is born in British Columbia or

(b) an alleged parent resides in British Columbia.

**Agree**

**Disagree**

**Comments:**

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**27.** Section 29 of the *Family Law Act*, which deals with surrogacy arrangements, should not be amended to address unwritten surrogacy agreements.

**Agree**

**Disagree**

**Comments:**

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**28.** If independent legal advice is required for agreements under Sections 29 and 30 of the *Family Law Act*, which deal with parentage in cases of surrogacy arrangements and other arrangements, these provisions should not be amended to add a requirement that the signatures to the written agreements referred to in those sections must be witnessed by at least one other person.

**Agree**

**Disagree**

**Comments:**

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## Independent legal advice and counselling

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**29.** Part 3 of the *Family Law Act* should be amended to require independent legal advice for all parties to legal agreements required under part 3.

**Agree**

**Disagree**

**Comments:**

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**30.** Part 3 of the *Family Law Act* should not be amended to require counselling.

**Agree**

**Disagree**

**Comments:**

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## Language, definitions, and interpretation

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**31.** Part 3 of the *Family Law Act* should be amended to use gender-neutral terminology.

**Agree**

**Disagree**

**Comments:**

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**32.** Terms should be used which clearly describe a person's role in the conception and birth, such as "the person who gave birth to the child" and "the person whose sperm resulted in the conception."

**Agree**

**Disagree**

**Comments:**

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**33.** The term “parent” should only be used where a parent-child relationship is intended.

**Agree**

**Disagree**

**Comments:**

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**34.** Part 3 of the *Family Law Act* should not be amended by adding a new section that lists the part’s purposes.

**Agree**

**Disagree**

**Comments:**

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## Notes

Save your comments in the document. Email a copy to: [consultations@bcli.org](mailto:consultations@bcli.org) or press submit button below.



## **PRINCIPAL FUNDERS IN 2023**

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- Real Estate Foundation of British Columbia
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- Vancouver Foundation
- McLachlin Fund

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