When You Weren't Expecting

A LEGAL GUIDE FOR PEOPLE WITH UNEXPECTED PREGNANCIES

Rise
WOMEN'S LEGAL CENTRE

ANDREA BRYSON AND JT MICHAELIS BECK / APRIL 2024

When You Weren't Expecting:
A Legal Guide for People With Unexpected Pregnancies

April 2024

Andrea Bryson and JT Michaelis Beck

This report is made possible by generous funding from Department of Justice Canada and Health Sciences Association

Ministère de la Justice Canada | Department of Justice Canada

HSA

This document does not contain legal advice. If you or someone you care about requires legal advice, please consult with a lawyer.

Photography by Melody Charlie
Copy-editing by Naomi Pauls
Graphic design by Nadene Rehnby

ACKNOWLEDGEMENTS

We are sincerely grateful to Kaelyn Burns, Jylelle Carpenter-Boesch, Miryam Burns, Brooke Finkelstein, and Katie Fylewich for their work researching this project. We also appreciate the expertise provided by Sarah Callander, Frances DeBeir, Amy FitzGerald, Brittany Goud, Dalya Israel, Kendra Milne, and Frances Rosner, who reviewed various aspects of the research. Rise would also like to thank Kala Bryson for her invaluable help in the final stages of review and finalisation of the report. Finally, this report benefited from the participation of Rise Women's Legal Centre staff, and especially Taruna Agrawal, Elizabeth Cameron, Gabrielle Clark, Kim Hawkins, Haley Hrymak, and Vicky Law, in various aspects of the research and editing.

Rise WOMEN'S LEGAL CENTRE

516 Richards St, Vancouver, BC V6B 3A2
604-451-7447 | education@womenslegalcentre.ca
womenslegalcentre.ca

Contents

Introduction 5

Inclusive language used in this guide 6 / Using this guide 7

SECTION 1 Family Law in BC 8

Legislation or "statutes" 8 / Case law 9 / Court jurisdiction 9

SECTION 2 Informing the Other Person about the Pregnancy 10

Does a pregnant person have to tell the other person? 10 / What are the pros and cons? 10 / What if the other parent finds out? 12 / What if the other parent harasses the pregnant person? 12 / Does the other parent have to pay child support during pregnancy? 13

SECTION 3 Making Choices about Ending or Continuing a Pregnancy 14

Can a pregnant person choose to end a pregnancy? 14 / Is abortion legal? 14 / How does a pregnant person access abortion services? 15 / What if the pregnant person is a minor? 16 / Does the pregnant person need to consult with the other person? 17 / Are there legal repercussions if the person tries to abort the pregnancy themselves? 17

SECTION 4 Pregnancy as a Result of a Sexual Assault 18

Does the pregnant person need to report the sexual assault? 18 / Does a pregnant person need to tell their health care providers they were sexually assaulted? 19 / Are family laws different when the child was conceived during a sexual assault? 21 / Will the court still allow them to parent a baby? 21

SECTION 5 Moving During Pregnancy 22

Does the pregnant person have to stay in BC? 22 / What laws govern the child if the person moves? 22

SECTION 6 Prenatal and Birth Care Decisions 24

Does the other person have to be involved in prenatal care decisions? 24 / Can a person be punished for using alcohol or drugs while pregnant? 24 / Does the other parent have a legal right to be present for the birth? 25 / What can a person do if they experience discrimination by medical staff? 25 / What can a person do if they are not supported in making decisions about their own health? 26

SECTION 7 Registering the Birth of a Child 28

Why should a birth be registered? 28 / What are the terms used? 28 / How does a parent register a birth? 29 / Does the birth parent need to list the other parent? 30 / If not listed, does that guarantee they will not be recognized? 31 / What if they deny being a parent? 31 / Can they be added later? 31

SECTION 8 Naming a Child 32

What are the requirements for choosing a child's name? 32 / Does the child's last name have to include the other parent's last name? 32 / Can the child's last name be changed later? 33

SECTION 9 Applying for a Passport for a Child 34

What is a passport? 34 / Who can apply for a passport? 34 / Who is allowed to travel with a child? 34

SECTION 10 Indigenous Parent(s) — Applying for Status 35
How does an Indigenous parent apply for a status card for the child? 35 / How does a person apply when the Indigenous biological parent is not listed? 37 / What if the registration is denied? 37

SECTION 11 Placing a Child for Adoption 38
Can a birth parent place a child for adoption without advising the other biological parent? 38 / Can a child be placed for adoption if the other parent wants to stop it? 39 / If there is a second parent listed on the birth certificate? 39 / What if the birth parent does not want the other parent to raise the child? 40 / Can a birth parent give the child to the other parent? 40

SECTION 12 Immigration Issues 41
If the other parent is a citizen of another country, can the birth parent apply for the child to have citizenship from that country? 41 / What if a birth parent has precarious immigration status in Canada (that is, they are not a citizen or permanent resident), but the baby is born in Canada? 41

SECTION 13 Parents and Guardians 43
Who can be a "parent"? 43 / What is a guardian? 44 / Who is a child's guardian(s)? 44 / Does the birth parent need an order to prove they are the sole guardian? 45 / How do I prove that I have sole guardianship? 45 / Can a biological parent who has never been involved apply to become a guardian? 46 / Can a person who is not a biological parent be appointed as a guardian? 46

SECTION 14 Parenting Arrangements 47
What are "parenting arrangements"? 47 / What is "best interests of the child" 48 / Who can make decisions? 48 / Who can register the child in school and seek medical care? 49 / Who does the child spend time with? 50 / What if there are safety issues? 50 / Can a parent refuse to let the other parent see the child? 52 / Can they be forced to? 52 / Who can travel with a child? 52

SECTION 15 Child Support 54
What is child support? 54 / Who pays for extra expenses 57 / If the other parent has no contact, do they need to pay child support? 58 / How does a parent collect child support? 59

SECTION 16 Relocation — Moving with a Child 60
What are the laws about a parent moving with a child? 60 / What if a parent does not want the other one to relocate with the child? 61

SECTION 17 Involvement of the Ministry of Children and Family Development 64
What law governs removal of a child? 64 / In what ways could MCFD be involved? 64 / Can a child be removed at birth? 65 / Are other agencies or bodies involved when the parent or child is Indigenous? 65 / Does a parent involved with MCFD need a lawyer? 66 / Does a birth parent have to disclose to social workers who the other parent is? 67 / Can the MCFD place a child for adoption? 67

SECTION 18 Other Legal Issues 69
What if a pregnant person or solo parent is facing discrimination in work, housing, or accessing other services? 69 / Can a pregnant person keep their job if they go on parental leave? 70 / Is nursing an infant in public legal? 70 / What happens if a single parent becomes critically ill or passes away? 71 / If the other parent passes away, does the child have rights to inheritance? 71

Conclusion 72

Notes 73

Introduction

The goal of this guide is to provide legal information for people who are unexpectedly pregnant outside of a long-term relationship. For the purposes of this guide, the term "unexpected pregnancy" refers to a pregnancy that was not planned and where the person became pregnant with someone they are not married to or in a long-term relationship with. They may have become pregnant after a single sexual encounter, a couple of dates, a brief relationship that has not continued, or a sexual assault by someone they may or may not be able to identify. They may have had multiple sexual partners and not be sure of the identity of the other person involved in the pregnancy.

If the person who is pregnant does not know who the other person is, they can make choices on their own and parts of this guide may not be relevant. However, information in the guide may help them to understand their options for ending the pregnancy and, if they continue the pregnancy, for registering the birth of the child.

This guide provides legal information only and is not legal advice.

This guide is *not* intended for people who are unexpectedly pregnant while in a long-term relationship or where the pregnant person expects to continue their relationship with the other person during the pregnancy or after the birth of the child. The term "long-term relationship" is used broadly to describe married couples, common-law relationships (people who live together in a "marriage-like" or "spousal" relationship), and relationships that the partners expect to last beyond the birth of the child.

Pregnancies may still be a surprise for couples in long-term relationships, but this situation is not the focus of this guide. Couples in long-term relationships can use a wide variety of conventional family law materials to help them with decision-making. Clicklaw BC has reference materials on family law for various situations, including ending a relationship or getting divorced, co-parenting children, and organizing child support, spousal support, and division of property.

Inclusive language used in this guide

Throughout this guide, we use gender-neutral language such as “pregnant person” and “birth parent” and the pronoun “they” to describe people who are unexpectedly pregnant. This language recognizes that not all people who get pregnant identify as women or use the pronoun “she.” Pregnant people can include transgender or non-binary individuals who may present as masculine or androgynous, and who may use the pronouns “he” or “they.”

It is important to not assume that all pregnant people identify as women. For professionals using this guide, we recommend that you ask each person how they self-identify, what name they want to be called, and which pronouns they use.

Similarly, not all people who produce sperm and contribute that sperm to the pregnancy identify as men. We refer to them as the “other parent” or “other biological parent” throughout this guide, as opposed to the “father” or “man,” and with the gender-neutral pronoun “they.”

Not all people who produce sperm and contribute that sperm to the pregnancy identify as men. We refer to them as the “other parent” or “other biological parent” throughout this guide, as opposed to the “father” or “man,” and with the gender-neutral pronoun “they.”

Using this guide

This guide provides legal information only and is not intended as a substitute for legal advice. We strongly recommend that a person who finds themselves unexpectedly pregnant get advice from a lawyer that is specific to their situation.

Some organizations that may be able to provide legal advice in BC include:

- **Access Pro Bono** / accessprobono.ca
- **Legal Aid BC** / legalaid.bc.ca
- **Rise Women's Legal Centre** / womenslegalcentre.ca

Blue words are links to outside resources. When you click on them, a website or PDF will open in your web browser with the corresponding resource.

This guide contains information that generally applies to people living in British Columbia (BC). Note that there can be considerable differences in family laws and services between provinces and territories. While it is *sometimes* useful to look at cases outside of the province where you live, you need to remember that the cases from other jurisdictions may not be binding on local courts. This means that a BC judge might choose not to follow the same reasoning as a judge in a different province and might make a different decision when faced with the same situation. We do not recommend that people outside of BC use this guide, because the statutes, case law, and resources in their jurisdiction may be different.

Also note that in BC and Canada generally, many of the laws respecting children only take effect once the child has been born. However, it is still a good idea to review the information in this guide before the birth of the child.

This guide provides legal information only and is not intended as a substitute for legal advice. We strongly recommend that a person who finds themselves unexpectedly pregnant get advice from a lawyer that is specific to their situation.

SECTION 1

Family Law in BC

People who are unexpectedly pregnant may be impacted by a variety of intersecting provincial and federal laws. This section provides an overview of some important laws.

Legislation or "statutes"

The *Family Law Act* (*FLA*) is a BC provincial law that governs relationship breakdowns, including parenting and child support issues after a relationship ends.[1] The federal *Divorce Act* also deals with family law and may overlap with the *FLA* in some circumstances.[2] However, the *Divorce Act* applies only to married couples, so it is not relevant to the pregnancies dealt with in this guide.

Here are some areas covered by the *FLA* that may be relevant to unexpected pregnancies:

- Who is legally a parent of a child (parentage);
- Who has the responsibility to make parenting decisions and have parenting time with a child (guardianship);
- Whom the child lives with or spends time with (parenting time or contact);
- Who makes decisions regarding the child's day-to-day care (parental responsibilities);
- Who may need to pay child support;
- The need to make decisions based on the best interests of the child; and
- How people (including children) can be protected from family violence.

The *Vital Statistics Act* regulates the registration of births, adoptions, marriages, and deaths in BC.[3] The act sets out how to get birth certificates and who can register a birth or name a child.

The *Adoption Act* regulates the adoption of children, including who can consent to adoption and who can adopt a child.[4] This act also applies when the Ministry of Children and Family Development (MCFD) has custody of a child.

Case law

Most of Canada (with the exception of Quebec) follows a "common law" tradition. This means that law has two sources: statutes, which are laws that the government creates (like the *FLA* and the other laws outlined above); and case law, which is the body of decisions made by courts applying the law to individual cases.

Case law creates a system of "precedents." The use and interpretation of case law is complicated and beyond the scope of this guide. But in general terms this means that judges will usually try to follow the same reasoning as other judges to ensure consistent interpretation of laws.

Throughout this guide, we use case law to provide examples of how judges have interpreted statutes such as the *FLA*. These examples can be useful when trying to predict how other judges may interpret the law in the future or when they have to make decisions in similar circumstances. However, both statutes and case law are always changing and being updated, and new decisions may change past precedents. It is important for a person with an unexpected pregnancy to get legal advice on their specific issues before assuming that a case law decision will apply to their case.

Case law creates a system of "precedents." In general terms, this means judges will usually try to follow the same reasoning as other judges to ensure consistent interpretation of laws. Throughout this guide, we use case law to provide examples of how judges have interpreted statutes such as the *Family Law Act.*

Court jurisdiction

In BC, both the Supreme Court and the Provincial Court can hear family law matters under the *FLA* relating to parenting arrangements, child and spousal support, and family violence. However, only the Supreme Court can hear family law matters under the *Divorce Act* or matters relating to the division of family property and family debt, which are not likely to arise for a person who is unexpectedly pregnant. When a person is unexpectedly pregnant and they are not in a long-term relationship with the other person, the Provincial Court and *FLA* are most likely to be used.

Both the BC Supreme Court and the BC Provincial Court have special rules for family law cases that must be followed by parents asking for an order under the *FLA.*

SECTION 2

Informing the Other Person about the Pregnancy

Does a pregnant person have to tell the other person about the pregnancy?

There is no law that requires a pregnant person to tell the other person that they are pregnant. If the pregnant person does not know who the other biological parent is or how to contact them, the pregnant person is not obligated to conduct a search to locate or identify the other person.

What are the pros and cons of telling the other person about the pregnancy?

The questions of when and how to disclose a pregnancy to the other person may seem relatively straightforward. However, disclosing a pregnancy sets in motion a number of practical and legal considerations.

There are potential benefits to disclosing the pregnancy and acknowledging the other person as a parent of the child if the pregnant person chooses to continue the pregnancy. Examples of these benefits are:

- Being able to informally request financial or other support while pregnant; (see page 13)
- Seeking child support after the child is born;
- Potentially involving the other person and/or their family in the child's life; and
- Having access to the family's medical history, which may have important implications for the child.

There are also potential negatives to disclosing the pregnancy, particularly in the case of sexual assault or abuse. For example, during pregnancy the other person may try to insert themselves into health care decisions that belong to the pregnant person alone. After birth, the other biological parent may seek involvement in the child's life, which may not be desired by the birth parent if there are safety concerns.

PHOTO ONUMA INTHAPONG/ISTOCK

There may be consequences to acknowledging or not acknowledging the other parent on the child's birth certificate. If the other biological parent is acknowledged, their consent will generally be required to get a passport for the child, or for the child to be adopted. Their consent may also be requested for education or counselling purposes.

Pregnant persons should seek legal advice if they have specific concerns about whether or not to disclose the pregnancy to the other biological parent.

However, if the other parent is not acknowledged, they may still apply to court for an order declaring that they are a parent of the child. If this order is made, the other parent can usually apply to have the child's birth certificate changed to include them as a parent. They may also seek court orders about guardianship or parenting arrangements for the child. Unless the court finds that the decision not to acknowledge the other parent was made for good reasons,[5] a judge may decide that the decision reflects poorly on the birth parent's ability to act in the child's best interest. If this happens, it could harm the birth parent's chances of success in court on issues involving care for the child.

The legal requirements for giving notice that the pregnant person intends to move to another place are also different depending on whether they are moving while pregnant or after the child has been born (see also section 5, "Moving During Pregnancy"). Once the child has been born, there are also different requirements depending on whether or not there has been an agreement or court order about parenting time.

Pregnant persons should seek legal advice if they have specific concerns about whether or not to disclose the pregnancy to the other biological parent. We also recommend that you review section 1 of this guide, which deals with family law in BC, and section 7, on registering a child's birth.

What if, during the pregnancy, the other parent finds out about the pregnancy and suspects they might be a biological parent?

If the other person finds out about a pregnancy and suspects they are a biological parent, they will need to wait until after the birth of the child before they can get a parentage test (also called a paternity test). They generally cannot force any kind of prenatal testing to determine whether they are biologically linked to the fetus.

After the birth of the child, the two people could agree to get a parentage test together. There are businesses that will conduct parentage tests, and you do not need to get a court order to have a test.

If the two people do not agree to a test, either one could apply to the court for an order for a parentage test. The *FLA* gives the court the authority to order a parentage test whenever parentage is at issue.[6] A court may order a parentage test even if you are living with a new or different partner who is acting as a parent to the child at the time the child is born.[7] While ordering a parentage test is discretionary, BC courts have found that the interests of justice, and the interests of the child, are often best served by finding out the truth about parentage.[8]

If the parentage test shows that the other parent is a biological parent, they could ask to be declared a guardian of the child, which could then allow them to have parenting time or parental responsibilities with respect to the child. Even if they are not declared a guardian, the other parent could still ask for a court order to allow them to have contact with the child.

What if the other biological parent harasses the pregnant person?

A person who is being harassed can write, email, or text to tell the other person to stop contacting them. They can also have a third party communicate with the other person on their behalf.

They do not need to communicate with the other person just because they are pregnant. They can also block the other person's phone number or email address.

If the pregnant person wants to provide general information to the other person about the situation, they can choose to say, "I will let you know when the baby is born" or "I had an abortion."

If the other parent does apply for orders about the child, they might argue that the birth parent's refusal to communicate reflects poorly on their ability to act in the child's best interests.

However, especially once a child has been born, it may become necessary to communicate with the other parent. Refusal to communicate about the child will not, on its own, prevent the other parent from going to court to get orders with respect to guardianship or parenting arrangements. Also, if the other parent does apply for orders about the child, they might argue that the birth parent's refusal to communicate reflects poorly on their ability to act in the child's best interests. Unless the court agrees that the birth parent's decision to refuse to communicate was appropriate in the circumstances, this could harm their chances of success in court on issues involving care for the child.

Any information that a birth parent chooses to communicate to the other parent should be true information. Providing false information may later reflect poorly on their ability to act in the best interests of the child. Birth parents should seek legal advice if they have concerns about communicating with the other parent.

If the other person is engaging in harassment, the pregnant person may seek help from the police or, once the child is born, seek a protection order through family court. Anyone who fears for their immediate safety should contact the police or a community-based victim service worker immediately and then seek legal advice. In situations of family violence, a person may be able to seek legal aid for assistance with a family court process.

Does the other biological parent have to pay child support during pregnancy?

Planning for a new baby can be expensive. Depending on the relationship between the two people, the pregnant person can *ask* the other person to help pay for health care expenses, baby care items or money, but there is no way to force the other person to pay before the child is born.

Once the child is born, the birth parent can request child support, and if the other parent refuses to pay, may ask the court to make a child support order. However, child support payments, made either by agreement or by court order, do not start until after the child is born. Therefore, there is no benefit to telling the other person about the pregnancy for the specific purpose of getting child support payments.

For more information, see section 15, "Child Support."

SECTION 3

Making Choices about Ending or Continuing a Pregnancy

Can a pregnant person choose whether to continue or end a pregnancy?

The decision to end a pregnancy is the pregnant person's choice only — it is their body and their choice. This is true for anyone who is pregnant, whether the pregnancy was planned or unplanned. No one can take that choice away.

Abortion providers should not require a pregnant person to disclose the name of the other person and should not consult anyone else about the pregnant person's decision to end the pregnancy. If a pregnant person feels that a healthcare provider is seeking information that may dissuade them from using abortion services, they should seek legal advice or support.

If a pregnant person would like non-judgmental information and support about their choices or how to access other medical information or services for pregnant people, Options for Sexual Health has a phone service called Sex Sense, which is available weekdays from 9 a.m. to 9 p.m. at 1-800-739-7367.

The decision to end a pregnancy is the pregnant person's choice only — it is their body and their choice. This is true for anyone who is pregnant, whether the pregnancy was planned or unplanned. No one can take that choice away.

Is having an abortion legal in Canada?

Abortion is legal in Canada and every pregnant person has the right to choose to have an abortion to terminate a pregnancy. It is not a crime to have an abortion in Canada.

R v Morgentaler

In 1988, the Supreme Court of Canada declared the criminal law that prohibited abortion was unconstitutional.[9] In *R v Morgentaler,* the court decided that banning abortion violated section 7 of the *Canadian Charter of Rights and Freedoms,* which states, "Everyone has the right to life, liberty, and the security of the person, and the right not to be deprived thereof, except in accordance with principles of fundamental justice."[10]

The court stated: "Not only does the removal of decision-making power threaten [pregnant people] in a physical sense; the indecision of knowing whether an abortion will be granted inflicts emotional stress.... Forcing a [pregnant person], by threat of criminal sanction, to carry a foetus to term unless [they meet] certain criteria unrelated to [their] own priorities and aspirations, is a profound interference with a [pregnant person's] body and thus a violation of security of the person."[11]

In BC, the *Access to Abortion Services Act* provides that all people in British Columbia are entitled access to health care, including abortion services.[12] It says that all people who use the BC health care system, and all people who provide services for it, should be treated with courtesy and with respect for their dignity and privacy.

How does a pregnant person access abortion services in BC?

Physicians providing abortion services are available in health care clinics across BC. Their services include both medical abortion (also known as medication abortion, which means taking pills) and surgical options (typically in a specialized clinic or hospital). While there is no point in time that it becomes illegal to have an abortion, there may health and safety reasons that limit some medical procedures to certain time frames, so it is important to seek care early in the pregnancy.

If a person has a BC Services Card with Personal Health Number (previously called a CareCard) and is registered with the BC Medical Services Plan, abortion services are generally covered and provided free of charge. People without medical care coverage can pay abortion providers directly for their services, just like they can pay doctors directly for other medical care.

Abortion access in BC

Abortions are available in BC and, for BC residents who have current coverage, are paid for by the Medical Services Plan. Several clinics, doctors, and hospitals throughout the province offer these services. Counselling about pregnancy options, the procedure itself, birth control, and other topics is available at most of the clinics and through either of these free information lines.

- **Pregnancy Options Line:** 1-888-875-3161 throughout BC or 604-875-3163 from the Lower Mainland. This service provides information, resources, and referral for all abortion services, including counselling, available to BC residents.
- **Sex Sense Line:** 1-800-739-7367 throughout BC. This service offers general sexual and reproductive health information as well as referrals to resources across BC.

People can self-refer to any of the abortion clinics in BC or may call the Pregnancy Options Line for a referral to a doctor in their area.

For more information, visit HealthLinkBC.

What if the pregnant person is a youth or minor (under age 19)?

If the pregnant person is a youth or under the age of 19, section 17 of the *Infants Act*, which confirms the common law doctrine of "mature minor" consent, applies.[13] This includes that a health care provider makes an individual assessment about whether the pregnant minor understands the nature, consequences, benefits, and risks of a treatment and is capable of making their own decisions regarding their health care. In this case, the health care provider can accept the consent (or refusal) of the minor and proceed with a care plan for them.

If the minor is deemed unable to make their own decisions, for example because of age or developmental impairments, the minor's parent or guardian may be consulted to give consent for treatments. However, in none of these cases is the other person involved in the pregnancy consulted about health care decisions for the pregnant person.

Youth should contact the Child and Youth Legal Centre to learn more about their rights and options for ensuring their rights, including the right to life, liberty, and security of their person. The centre can be reached toll-free at 1-877-462-0037 or 778-657-5544.

The Representative for Children and Youth is an independent office that may also be able to advocate on behalf of children, youth, and young adults to improve their understanding of and access to certain services.

Does the pregnant person need to consult with the other person about whether they continue the pregnancy?

The pregnant person does not have to consult with the other person about pregnancy decisions. With *very* limited exceptions, such as for incapacity or an immature minor, nobody can make health care decisions for the pregnant person or force them to either continue the pregnancy or have an abortion. These are the pregnant person's decisions alone.

- **If the pregnant person chooses to have an abortion,** they do not need to advise the other person about the abortion either before or after the procedure. They can wait to tell the other person after the procedure if they choose. They can also choose to never inform the other person of the procedure.
- **If the pregnant person continues the pregnancy,** they do not need to inform the other person that they plan to carry the pregnancy to term. The other person does not have any legal rights over the fetus; only the pregnant person can make prenatal care decisions. However, especially once the child has been born, it may become necessary to communicate with the other biological parent about the child.

Are there any legal repercussions if the person tries to abort the pregnancy themselves?

The laws of Canada do not recognize unborn fetuses as legal persons possessing the full range of legal rights; these rights start when the person is born alive. Abortions are not criminal in Canada, and there is no right to sue a pregnant person on behalf of a fetus.[14] As a result, there will not generally be legal repercussions if a person aborts or tries to abort a fetus themselves.

However, there could be serious health consequences to trying to abort a pregnancy without medical care. Anyone wanting to end a pregnancy should seek medical help through an abortion service provider. The service provider will ensure confidentiality as well as safety.

SECTION 4

Pregnancy as a Result of a Sexual Assault

Does the pregnant person need to report the sexual assault?

There is no legal requirement for a survivor of sexual assault to report the assault to police or anyone else, even if the sexual assault survivor knows who the offender is.

A person who has been sexually assaulted can choose to report the assault to the police, but they do not have to. Having the opportunity to explore all of your options, including how you think about justice and/or how you want the person who caused you harm to be accountable, is important. There may be many reasons why a person chooses to report or not. Reporting the assault may result in a police investigation and possibly criminal charges against the offender. This can be a difficult decision for sexual assault survivors, so it can be helpful to explore all reporting options with the support of victim services or specialized sexual assault services.

Some survivors find the conventional criminal law system challenging and may prefer an opportunity to engage in restorative justice. Restorative justice processes will typically offer survivors an opportunity to tell offenders about the real impact of experiencing assault, ask questions, and resolve issues. In some cases, survivors feel that they have more control over restorative processes than they do over the criminal law system. If you are seeking information on restorative justice programs for sexual assault survivors, the crisis line at Salal Sexual Violence Support Centre (604-255-6344 or 1-877-392-7583) may be able to connect you with local restorative justice programs.

A sexual assault survivor may also choose to sue the offender in civil court for harms caused by the sexual assault. Individual legal advice is strongly recommended for anyone who has been assaulted.

Support for survivors of sexual assault

Many resources exist to support victims of sexual assault. These support services can help a person navigate their feelings and provide information on options. Accessing these services is a good place to start in deciding whether or not to report the assault.

- **Salal Sexual Violence Support Centre** provides support services to survivors of sexualized violence who have shared experiences of gender marginalization (cis and trans women, Two-Spirit, trans, and/or non-binary people). In the Lower Mainland, call 604-255-6344. Their national toll-free number, 1-877-392-7583, is available 24 hours a day, 7 days a week. salalsvsc.ca
- **VictimLinkBC** provides information and support for victims of crime. Call 1-800-563-0808 toll-free or email to VictimLinkBC@bc211.ca for confidential, multilingual service available 24 hours a day, 7 days a week.

Does a pregnant person need to tell their health care providers that they were sexually assaulted?

Nobody is required to disclose sexual assault to anyone, including their health care providers. When a health care provider asks about the other parent, it is sufficient to state that they are "unknown," or that "they are not involved." Health care providers should not force someone to disclose who the potential other parent is, how the fetus was conceived, or what the relationship between the two people was. If this occurs, consult with a victim services or support worker or seek legal advice or information before disclosing.

Some sexual assault survivors have described negative consequences from disclosing sexual assault to health care providers. For example, people have reported that some health care providers have biased opinions about pregnancy, childbirth, and even parenting when a child was conceived during a sexual assault, and this can impact the service relationship.

Sexual assault survivors should consider seeking support from a sexual assault service when deciding whether to disclose the sexual assault to health care providers.

People have reported that some health care providers have biased opinions about pregnancy, childbirth, and even parenting when a child was conceived during a sexual assault, and this can impact the service relationship.

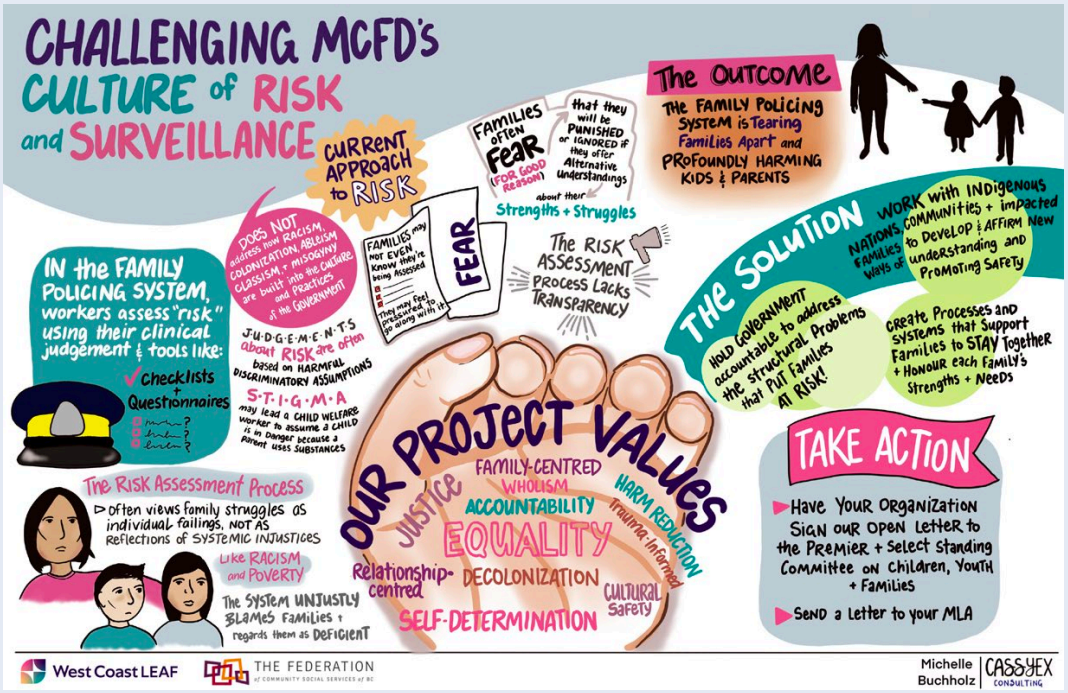
Sexual assault and the Ministry of Children and Family Development

The Ministry of Children and Family Development (MCFD) is a government agency whose role is to ensure that children live free from abuse and neglect. Some survivors may become involved with the ministry either because they access an organization or service that has concerns about their parenting and makes a report, or because they approach the MCFD for services or supports themselves.

Because one of MCFD's roles is to assess a parent's home for abuse and violence, some MCFD child protection workers may misunderstand, and conclude your sexual assault could indicate a cause for being concerned about your child. There are many critiques of MCFD's involvement in families from diverse backgrounds. West Coast LEAF has an infographic about family policing.

If you are a survivor contemplating contacting the MCFD or are required to engage with the MCFD, please consider contacting services for parents and families (call BC211 for resources in your community). If the MCFD is involved with your family, you should contact Legal Aid BC to get legal advice and help to navigate those processes.

Some MCFD child protection workers may misunderstand, and conclude your sexual assault could indicate a cause for being concerned about your child. West Coast LEAF has an infographic about family policing that you can download at westcoastleaf.org



Are family laws different when the child was conceived during a sexual assault?

Family law is not different if a child was conceived during a sexual assault. However, because most family law decisions require a judge to consider the child's best interests, the fact of the sexual assault may be relevant to issues like guardianship, parental responsibilities, and parenting time.

In family court, any information that the parent who is the sexual assault survivor provides to the court about the sexual assault will also be available to the perpetrator. In some cases, this may lead to the perpetrator or their lawyer being entitled to question the sexual assault survivor about the sexual assault.

The legal system can be difficult to navigate for sexual assault survivors, which is why we recommend that sexual assault survivors get individual legal advice *and* support from a sexual assault service.

The legal system can be difficult to navigate for sexual assault survivors, which is why we recommend that sexual assault survivors get individual legal advice *and* support from a sexual assault service.

The other person sexually assaulted me. Will the court still allow them to parent a baby?

The *Family Law Act* does not specifically prohibit a person who caused a pregnancy by sexual assault from being involved in the care of the child.

Family violence, including violence against the birth parent, must be taken into account when determining the best interests of the child. However, many survivors of family violence have found that the legal system's responses to violence are inadequate and fail to protect their safety.[15]

Where violence is established, a court must look at the "best interests of the child" test, set out in section 37 of the *FLA*, to determine what parenting arrangements are best for the child, including whether a parent should have time with the child. Even in cases of sexual assault or violence, the court could make a variety of orders that allow the offending parent to have a relationship with the child.

SECTION 5

Moving During Pregnancy

Does the pregnant person have to stay in BC?

A pregnant person does not have to stay in BC and can move to another region, province, territory, or even country. They may choose to move for safety reasons, or to be closer to family and friends in other places. Regardless of the reason, they can move and live wherever they choose, because the laws set out in the *Family Law Act* regarding relocating a child do not apply to an unborn fetus.

However, moving away from BC does not mean that the other person will not be involved in parenting after the birth of the child. The birth parent may still be required to help foster a relationship between the child and the other biological parent, even if they are living in different places.

After the birth of the child, the birth parent may find it more difficult to move as there may be additional legal requirements they have to satisfy before moving. For information, read section 16, "Relocation — Moving with a Child."

What laws govern the child if the person moves during pregnancy and gives birth somewhere else?

In general, the laws of the province or country where the child is born will govern decisions about the care of the child. However, there may be requirements that the birth parent show that that they and the child habitually or ordinarily live in the new location or intend to live there long-term, or that they have a "real and substantial connection" to the new location, for those laws to apply. Also, if court proceedings have already started in the original location, it may be difficult to move the proceedings to a new place, even if the pregnant person or birth parent no longer lives in the original location.

The laws and rules relating to which court is allowed to make decisions about a particular family or child are referred to as "jurisdiction." Jurisdiction is a very complicated legal concept, and a

thorough discussion is beyond the scope of this guide. It is extremely important for the pregnant person to get individualized legal advice if they have moved or intend to move, either while pregnant or after the birth of the child.

Note that if you do not have permanent residency or citizenship in Canada and you leave Canada to give birth, you will need valid immigration status to re-enter Canada. You cannot simply enter and stay in Canada because your child's other biological parent is Canadian. If your child is born outside of Canada, they may or may not have Canadian citizenship, regardless of the immigration status of the child's other biological parent. If this applies to you, please consult an immigration lawyer before you leave Canada.

SECTION 6

Prenatal and Birth Care Decisions

Does the other person have to be involved in prenatal care decisions?

The other person does not have to be involved in prenatal care decisions. The pregnant person is allowed to make their own choices about their own bodies, and since fetuses do not have legal rights, another person cannot sue the pregnant person on behalf of the fetus.[16]

This means that the only decision-maker in a pregnancy is the pregnant person themselves. There are exceptions in unusual circumstances, such as in cases of incapacity or an immature minor, where the pregnant person's parent or guardian may make decisions for them.

While the pregnant person may choose to involve the other person in the pregnancy, they are not required to do so. They do not need to inform the other person of the progress of the pregnancy or invite them to medical appointments or involve the other person at all.

Can a person be punished for using alcohol or drugs while pregnant?

A pregnant person cannot be punished for using alcohol or drugs while pregnant (unless substance use leads to activities that would be normally covered under Canada's *Criminal Code*).[17]

However, it is wise to disclose substance use in pregnancy to supportive health care providers. Sheway is a holistic prenatal service in the Downtown Eastside of Vancouver for pregnant people and may be able to provide assistance or referrals to people who may be actively using substances. A newborn whose birth parent used drugs or alcohol may need special care. Outside the Lower Mainland, please call BC211 (dial or text 2-1-1) to find resources in your area.

As well, the Ministry of Children and Family Development may be alerted to a person using drugs or alcohol, or who is in another risky situation, such as engaging in criminalized drug-related activities, while pregnant. It is possible, depending on the circumstances, that the MCFD may

remove a newborn from the birth parent. Please read section 17 for more information about what to expect from this process. If MCFD becomes involved the pregnant person should contact Legal Aid BC to request a lawyer.

Does the other biological parent have a legal right to be present for the birth?

The other biological parent does not have a legal right to be present for the birth. Nobody has a right to demand access to a delivery room. This includes the other biological parent and any family or friends who want to attend. If the hospital policy allows others to be present, then only those people invited by the birth parent can be present during the birth.

The birth parent does not have to inform the other biological parent that they are in labour or communicate with them during the birth.

If a pregnant person feels pressure from someone who wants to be present during the birth, the pregnant person can tell the hospital staff, who can arrange security to be present if needed.

Nobody has a right to demand access to a delivery room.

What can a person do if they experience discrimination by hospital or medical staff?

BC's *Human Rights Code* prohibits discrimination based on Indigenous identity, race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity or expression, or age of that person or class of persons.[18]

If a person experiences discrimination while in the hospital, they can speak to a patient care coordinator or unit manager. They may benefit from having a support person or an advocate present to support them.

After discharge, anyone who experienced discrimination in a hospital can report their experience to the health region's Patient Care Quality Office or make a complaint to the health professional's regulatory body, such as the College of Physicians and Surgeons of British Columbia or the British Columbia College of Nurses and Midwives. Be sure to provide a comprehensive summary of what happened, the dates and times of the incidents, where the discriminatory treatment occurred, and by whom. Legal advice is recommended if someone is looking to file a complaint.

You can also file a human rights complaint to the CLAS BC Human Rights Clinic can offer advice before you file your human rights complaint through their Short Service Clinic. Note that a complaint to the human rights tribunal must be made within one year of the last incident of discrimination. However, there may be circumstances where you can seek an exception to this time limit, so it is important to get legal advice if more than a year has passed since the discrimination happened.

A right to gender-affirming support

You have a right to be supported and cared for during your pregnancy, and in all facets of your life, with dignity and respect. This includes speaking to you, and about you, by your real name (which may be different from your legal name or dead name) and using your real pronouns.

- **Trans Care BC** has a health navigation team that can help connect you with gender-affirming resources as close to home as possible. phsa.ca/transcarebc
- For people who are looking for resources for 2SLGBTQIA+ folks, the **Midwives Association of British Columbia** has a helpful list of online resources that may assist you to access gender-affirming midwifery care. bcmidwives.com

No matter how you plan to proceed, we encourage you to get health care treatment that will support you with dignity and respect.

What can a person — particularly one with mental health issues, disabilities, or who is neurodiverse — do if they are not supported in making decisions about their own health or if they are treated unfairly by health professionals?

Everyone has a right to medical self-determination, which is a right protected through the *Canadian Charter of Rights and Freedoms*, under section 7, rights to life, liberty, and security of the person.[19] Adults are generally presumed capable of giving, refusing, or revoking consent to health care and care facility admission.[20] Health care providers must communicate in a way that is suited to the adult's skills and abilities when seeking an adult's consent to health care or assessing their capacity to make the decision. The health care provider may also allow personal supports from the adult's family and community to assist with communication and understanding.[21]

Some people may benefit from having a support person or an advocate to assist them in finding health care providers and service professionals who will respect their right to make their own health care decisions. People who need help with decision-making should have support to ensure their participation in decision-making.[22]

To guarantee a person's understanding, informed discussions about choices should be provided in a way that aligns with the person's needs and abilities. People who have the capacity to make informed decisions should be supported in their decisions. If a person's capacity to make their own decisions is at issue, legal advice is recommended.

The pregnant person may have a representation agreement, a document that adults can make to give legal authority to the people they trust to provide support in decision-making or make a decision on their behalf when they are considered incapable of making decisions. Naming a representative may be a way for the pregnant person to make sure a family member or friend has legal authority to accompany them and advocate for them within the health care system, to help protect the pregnant person's rights.

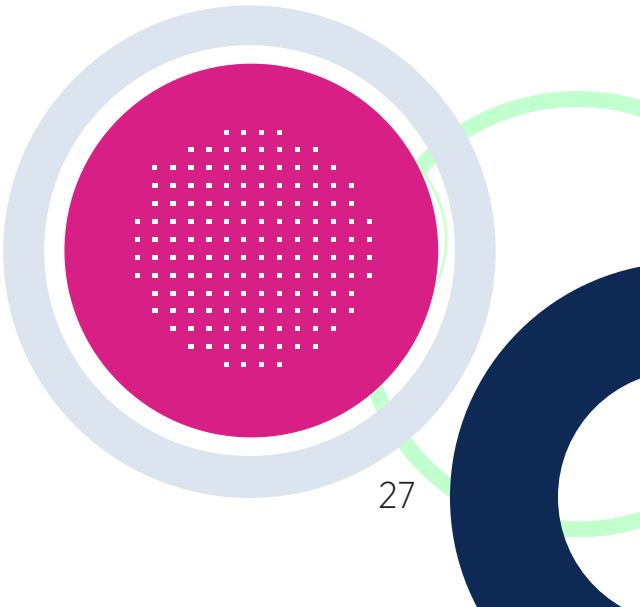
However, there are some circumstances where pregnant people may not have the rights outlined above. People who are receiving involuntary psychiatric treatment under the *Mental Health Act* have no right to participate in decisions, request a capacity assessment, or rely on representation agreements. If a pregnant person has a guardian appointed under the *Adult Guardianship Act* or is subject to its emergency powers, this may also impact a person's ability to make decisions about their own health care.

Health care providers must not discriminate against people accessing health care on the basis of physical or mental disability.[23] People with physical or mental disabilities who experience discrimination while receiving health care may contact the CLAS BC Human Rights Clinic or submit a human rights complaint directly to the BC Human Rights Tribunal.

The non-profit group Health Justice does not provide legal services to individuals but does provide resources about the *Mental Health Act*. It also provides up-to-date information on its website about how to find legal support if you are affected by the act.

Complaints may be filed with the BC Ombudsperson or with Patient Care Quality Offices within each health authority if someone believes they have been treated unfairly by a health care provider. Complaints may also be filed with professional colleges, including the College of Physicians and Surgeons of British Columbia, the British Columbia College of Nurses and Midwives, and the British Columbia College of Social Workers. Legal advice is recommended if someone is looking to file a complaint.

Naming a representative may be a way for the pregnant person to make sure a family member or friend has legal authority to accompany them and advocate for them within the health care system, to help protect the pregnant person's rights.



SECTION 7

Registering the Birth of a Child

Why should a birth be registered?

Every birth in BC *must* be registered with the Vital Statistics Agency, and this should occur within 30 days of a child's birth. Birth registration is the only way to legally record a child's birth in BC and get a birth certificate. Birth certificates are important documents that are required before the child can get access to many important services. Without a birth certificate, a child will usually not be able to attend school, get a Personal Health Number to access health care, acquire a social insurance number to enter the workforce, or acquire a passport to travel outside of Canada.

Even if the birth parent does not have Canadian citizenship or permanent resident status, their child's birth must still be registered. Being born in Canada entitles a child to Canadian citizenship upon birth. The child's birth certificate will be proof of the child's citizenship.

What are the terms Vital Statistics uses to describe parents?

The Vital Statistics Agency uses certain words and phrases for birth registration and other services. Below are some of the terms the agency uses and what they mean:

- **Maiden surname:** The last name on the birth parent's birth certificate *at the time of their own birth*.
- **Birth certificate:** The official, paper birth certificate that is required to prove the identity of a person. This is often used for applying to schools, applying for passports, accessing government services, etc. In BC, there are two kinds of birth certificates:
  - **Individual information certificate:** Includes the child's name, date of birth, place of birth, and assigned sex.
  - **Parental information certificate:** Includes the same information as the individual birth certificate, plus the name(s) of the parent(s) and their birthplaces. (Sometimes referred to as a "long form birth certificate," and required to issue a passport.)
- **Parent:** A birth certificate usually names one or two parents. Both people are referred to as "parent," as opposed to "mother and father." This is to recognize that gender is not relevant to legal parentage.

One or more individuals who intend to be the parent of a child can be recognized as a parent, regardless of whether they have a biological connection with the child. (The requirements for being recognized as a parent vary based on whether a child is conceived with or without the use of assisted reproduction, whether the child is born through a surrogacy arrangement, or whether the child is adopted. While outside the scope of this guide, in the case of conception using assisted reproduction or birth of a child through a surrogacy arrangement, all parties involved should seek legal advice before the conception of the child. In the case of adoption, all parties involved should seek legal advice before the adoption.)

How does a parent register a child's birth?

You can register a birth online or by paper through BC's Vital Statistics Agency. It takes an average of three to four weeks to register a birth and get a birth certificate if you apply online. Most parents use the online birth registration forms. People who do not have access to a computer can request a paper copy of the birth registration form by calling Vital Statistics at 1-888-876-1633. Birth registration is free if completed within 30 days of a child's birth. There is a fee after 30 days. Registration can be completed up to one year after the child's birth.

When the birth is registered, the child will also be registered in the Medical Services Plan (to get a Personal Health Number) and for a social insurance number. The parent will be registered for the Canada child benefit, which provides a tax-free monthly payment to assist with the costs of raising children.

It is optional, but recommended, to order a copy of the birth certificate at the time of birth registration. There is a small fee for the certificate that is payable online by credit card. There is no waiver available for the birth certificate fee, but income assistance or legal aid programs (if a legal aid lawyer is involved) may reimburse a parent for the expense.

Two kinds of birth certificates are available: an individual information certificate, which includes only a child's information, and a parental information or "long form birth certificate," which provides extra information about the parents. Passport Canada requires the parental information certificate to issue a passport for the child.

You need the following information to register a child's birth:

- Date of the child's birth;
- First, middle, and last names chosen for the child;
- Name of the hospital or other place in bc where the birth took place;
- Parent(s)' surnames as they appear on current birth certificates or change of name certificates;
- Parent(s)' dates and places of birth, and current ages; and
- Personal Health Numbers of parent(s).

Does the birth parent need to list the other biological parent's name on the birth certificate if they know who the other biological parent is?

The *Vital Statistics Act,* as a starting point, states that births must be registered by the parents of the child. There are exceptions that allow for one parent alone to register the birth of a child in certain circumstances. In cases that do not involve assisted reproduction, the *Vital Statistics Act* refers to the parents of a child as the "mother" and "father" specifically. These terms are referred to below where necessary for consistency with the birth registration process. However, we recognize that masculine-identified people can produce eggs, become pregnant, and birth children, and that feminine-identified people can produce sperm, so the term "parents" is preferred as a gender-neutral term.

If a birth parent chooses to apply online for the birth certificate, Vital Statistics states, "To be registered as a parent of this child, the parent must be present during the completion of this online birth registration. Each parent will be required to individually certify that he/she was present and agree to the name chosen for this child."[24] Options are provided in the online application form for registered parents as "Mother and Father," "Mother Only," and "Mother and Parent."

The "Mother Only" option allows for a birth parent to register the birth alone. For example, if the birth parent does not know who the other biological parent is, or chooses not to acknowledge the other parent, then they can list only their own name on the parental birth certificate.

Naming the other parent on the birth certificate means that the birth parent may need to communicate with them regularly to get consent and signatures for various aspects of the child's care. If the other parent is listed on the birth certificate, the birth parent will usually need their consent to apply for a passport. They may also need their consent to access other services for the child that require both parents' signatures, like registration for school or certain health care services. If the other parent does not consent to a passport application or access to another service for the child, the birth parent may then need to apply for a court order to change how parental responsibilities are allocated between the two parents or to waive the need for the other parent's consent or signature.

The "Mother Only" option allows for a birth parent to register the birth alone. For example, if the birth parent does not know who the other biological parent is, or chooses not to acknowledge the other parent, then they can list only their own name on the parental birth certificate.

If the birth parent does not name the other parent on the birth certificate and the other parent finds out, they can apply to the court for a declaration of parentage and can have their name added, unless the court orders otherwise.[25]

It is important to be aware that if the birth parent chooses not to name the other biological parent on the birth certificate, and the other parent later applies for a court order, the court may take a negative view of the birth parent's decision to unilaterally exclude a biological parent from the child's life, unless there is a good reason to do so.

If the other biological parent is not listed, does that guarantee that they will not be recognized as a legal parent?

Not listing the other biological parent on the birth certificate does not mean they can never be recognized as a parent of the child. The other biological parent can apply to the court for parentage testing and a declaration of parentage under the *FLA* and seek orders regarding parenting arrangements or guardianship of the child. They can also apply to have their name added to the birth certificate if it has been left off.

If a court finds that a person is a biological parent to a child, the court can order the other person to pay child support, whether or not that person is listed on the birth certificate.

What if the birth parent wants to recognize the other person as a biological parent, but the other person denies bring a parent?

If a second parent is being named on the birth certificate, Vital Statistics requires that both parents complete the birth registration. This means that if the other person denies they are the child's parent, the birth parent will not be able to include them in the birth registration. If the birth parent does not list another parent on the birth registration, but later needs to prove the other person is a biological parent (for example, for the purposes of collecting child support), they can apply to the court for a parentage test. In BC, you are not required to list the other parent on the birth certificate to apply for or get child support.

Can the other person be added to the birth certificate later?

The other person can be added to the birth certificate later by asking the registrar to amend the birth certificate, either in cooperation with the birth parent, in the event the birth parent is incapable or deceased, or accompanied by a court order declaring the other person to be a parent of the child. A parent who is not listed on the birth certificate can also apply to the court to be added to the birth certificate.[26]

Alternatively, both parents can apply to Vital Statistics together to correct the omission of the other person's name. In this case, the parents should contact Vital Statistics directly at 1-888-876-1633 for instructions on how to do so.

SECTION 8

Naming a Child

What are the requirements for choosing a child's name?

Every child must have a first name and a last name (also called a surname). Middle names are optional; if middle names are chosen, a child can have one or more.

Government guidelines for naming a child can be found on the birth registration web page.

At the time of writing, Vital Statics has indicated that as well as French and English characters and accents, the BC government will also accept Indigenous names with diacritical markers for name registration. However, since not all systems accept these markers, parents registering Indigenous names may be asked to sign a waiver acknowledging the challenges these names may create for registering for different services.

Does the child's last name have to include the other parent's last name?

A child's last name does not need to be the other parent's last name or include the other parent's last name. If only the birth parent is registering the birth, without adding the other biological parent's name, the birth parent can choose any last name for the child. It can be one of the parents' last names, a combination of the parents' last names, or be different from any of the parents' last names. If the child has a hyphenated or combination last name, it cannot be more than two surnames combined together. If both parents are registering the birth of the child and they cannot agree on the child's last name, the last name will be the parents' last names either hyphenated or combined in alphabetical order.[27]

If only the birth parent is registering the birth, without adding the other biological parent's name, the birth parent can choose any last name for the child.

Can the child's last name be changed later, after the initial name registration?

A child's last name can be changed after the initial name registration. However, there are different rules regarding name change, and the process may vary depending on the child's age. It is worth consulting Vital Statistics for more information. If a second parent is listed on the birth certificate, their consent will be needed to change the name, unless it can be shown that their consent is being unreasonably withheld.

You can order a Parental Birth Certificate or an Individual Birth Certificate, or both. A Parental Birth Certificate is required to obtain a passport.

Parental Birth Certificate

Individual Birth Certificate

SECTION 9

Applying for a Passport for a Child

What is a passport?

Passports are important identity documents that can be used for international travel. To remain current, a child's passport must be reapplied for every five years until they reach the age of 16.

Who can apply for a passport?

A legal guardian or parent can apply for a child's passport. All legal parents and guardians must sign the application form. The Government of Canada provides guidelines on how to apply for a child's passport.

If another parent is listed on the birth certificate, Passport Canada will require their consent on the passport application.[28] Alternatively, the court may order that the other parent's consent is not required.[29]

Who is allowed to travel with a child?

Having a passport for the child will not automatically mean a parent is allowed grant a parent permission to travel with the child. If both parents are listed on the passport but only one is travelling with the child, many jurisdictions will require a notarized letter from the other parent authorizing their travel with the child. If the parents cannot agree about travel, the court may need to make an order authorizing the travel.

If only the birth parent is listed on the passport, the travelling single parent should travel with the child's passport and a parental information certificate for the child (also called a "long form birth certificate") to show that they are the only legal parent of the child. For more information on travelling with a child, see the last question in section 14, "Parenting Arrangements."

SECTION 10

Indigenous Parent(s) — Applying for Status

How does an Indigenous parent apply for a status card for the child?

An individual's registration for "Indian status" under the *Indian Act* is determined based on lineage from Indigenous people registered as "Indians," or their entitlement to be registered.[30] A child's status is dependent on the status of their parent(s) as Indians or the entitlement of their parent(s) to be registered as Indians. For a child that is adopted, entitlement to registration will be dependent on either the biological parents or the adoptive parents.

The law about eligibility for Indian status changed significantly between 1985 and 2019 in response to *Indian Act* amendments that remedied gender discrimination against women, many of whom lost their Indian status, otherwise known as *enfranchisement,* for marrying non-Indian men—commonly referred to as "marrying-out" provisions. The discrimination impacted thousands of women and their descendants. As a result of amendments to the *Indian Act*, if a child's grandmother or great-grandmother on either side of their lineage lost Indian status due to marrying-out, changes to the *Indian Act* may now entitle both the parent and child to be registered. It is important to make inquiries about whether the child's parent(s) may have been impacted by marrying-out provisions as the child may now be entitled to Indian status even if their parent(s) were previously found ineligible or denied registration.

Birth certificates that list the names of both of the child's biological parents are the main document used as evidence for determining whether the child can register for status. It is also helpful to include information about members of the child's family that have already been registered, or any other available information about the ancestry of the parent(s) listed on the birth certificate to aid in tracing the child's Indigenous lineage during the application process.

Birth certificates that list the names of both of the child's biological parents are the main document used as evidence for determining whether the child can register for status.

As a result of amendments to the *Indian Act,* if a child's grandmother or great-grandmother on either side of their lineage lost Indian status due to marrying-out, changes to the *Indian Act* may now entitle both the parent and child to be registered.

Information about eligibility for Indian status, sex-based inequities under the *Indian Act*, and how to apply for a status card can be found through Indigenous Services Canada. The Registrar is the official in charge of the Indian Register.

When registering a child for status, the birth parent will need to provide a copy of any recent legal documents, such as guardianship or parenting orders.

If the child's name has changed, the birth parent will need to provide a legal document, sometimes called a "name-linking" document, such as a certificate of name change. If the child is age 16 or older, they must apply themselves.

How does a person apply for status when the Indigenous biological parent is not listed on the birth certificate, or the name is listed incorrectly?

If the birth parent is not Indigenous, but the other biological parent of the child was either registered or entitled to be registered under the *Indian Act*, the Registrar may request that the birth certificate be amended such that both names are on the birth certificate.

If there are known errors or omissions on the birth certificate regarding parentage, some changes can be made to the birth certificate through a statutory declaration in the provincial vital statics branch, by providing information about the error. If corrections need to be made, it is best to contact the local vital statistics branch where the child was born to determine how the change(s) can be made.

A birth certificate with both biological parents' names listed is not always necessary for a child to obtain status. If the Indigenous parent is not listed on the birth certificate, other documents can be used to show Indigenous parentage. These include census records; court documents; letters from band councils, or band council resolutions; church, school, or hospital records; and statutory declarations. A statutory declaration can be signed by one parent or both parents, by members of the unlisted parent's family, or by close relatives or Elders who can affirm the identity of the unlisted parent.

What if the registration for status is denied?

If the Registrar denies a child Indian status, the decision can be protested within three years of the denial. A decision can also be protested if an application was accepted but the parent believes the child is entitled to registration in a different category of the *Indian Act* or was not registered with a particular band. If a protest is unsuccessful, a court can hear an appeal of the Registrar's decision.

SECTION 11

Placing a Child for Adoption

Can a birth parent place a child for adoption without advising the other biological parent?

Adoption generally requires the consent of both of the child's biological parents and anyone who is a guardian of the child.

The birth parent may be able to place a child for adoption on their own, without the consent of the other biological parent, if the following terms apply:

- The other biological parent is not presumed to be a parent under section 26 of the *FLA* (that is, if the other biological parent was not married to or living with the birth parent within 300 days before the child's birth, and there has been no other acknowledgement under the *Vital Statistics Act* or *Child Paternity and Support Act*); and
- The other biological parent has not acknowledged that they are a parent; and
- The birth parent has not named the other biological parent as a parent.

However, even in these circumstances, in practice, the provincial government has tried to ensure that the other biological parent knows and consents to the adoption by adopting *Practice Standards and Guidelines for Adoption* (the "*Guidelines*").[31] Practice standards describe the required level of performance for ministry workers, and the guidelines set out recommended practices for ministry workers to help them meet those standards.

The *Guidelines* state that when a birth parent does not name the other parent, the ministry worker must try to get this information and involve that person in the adoption plan.[32] When informing the birth parent of the implications of naming or not naming the other parent, the ministry worker should tell the birth parent that they are not legally required to name the other parent, and of their right to seek independent legal advice. The *Guidelines* also say that the ministry worker should tell the birth parent that it is usually in the child's best interests for the other parent to be involved, and that the court will require reasons why the other parent was not named at the time of the adoption completion.[33]

In practice, the provincial government has tried to ensure that the other biological parent knows and consents to the adoption.

Under the *Guidelines*, the ministry worker must tell the birth parent that when the birth parent identifies the other parent, the *Adoption Act* requires that the other parent be notified about the adoption and that their consent to the adoption will be required. If the pregnancy is the result of a sexual assault, the *Guidelines* set out that the ministry worker must tell the birth parent that the court *may* choose to dispense with notice regarding the adoption to the other parent.[34]

If the birth parent refuses to name the other person, the ministry worker must consult with their own legal services branch before accepting the birth parent's consent to adoption.[35] For more information on identifying the other parent, see section 2, "Informing the Other Person about the Pregnancy," and section 7, "Registering the Birth of a Child."

Can a child be placed for adoption if the other biological parent finds out and wants to stop the adoption?

If the other biological parent has been identified, their consent will be required for the adoption to take place. The other parent may register for notice of any proposed adoption, or, if they are not already listed on the birth certificate, may take steps to be added or to get a court order recognizing their parentage. The court has also noted that there is a high threshold to dispense with a parent's consent to adoption, and that there must be serious and important reasons to do so.[36]

For more information on registering a birth, see section 7, "Registering the Birth of a Child." If the other parent is added to the birth certificate before the adoption, then the other parent must also consent to the adoption.

Can a birth parent place a child for adoption if there is a second biological parent listed on the birth certificate?

A birth parent can place a child for adoption if there is a second parent listed on the birth certificate, but only with the consent of the other parent. The *Adoption Act* requires that a director or adoption agency must give notice of the proposed adoption to "anyone who is named by the birth mother as the child's biological father [parent]."[37] They must also seek the consent of a biological other parent who is acknowledged by the birth parent and "named by [them] as the child's father."[38]

What if the birth parent has told the other biological parent of the adoption but does not want that person to raise the child?

In this situation, the birth parent would need to apply to the court to place the child for adoption and show the court why it was in the child's best interests that the child be placed with an adoptive parent. The other parent would then be able to apply to the court to have the child in their care.

If the birth parent is worried about the safety of the child in the other parent's care, they need to give evidence of this to the court. A history of criminality, mental health issues, or being abusive may not be determinative of whether the other parent is able to parent the child. The court will consider the importance of a child having ties to a willing parent along with other evidence. The birth parent should seek legal advice in this situation.

Can a birth parent give the child to the other biological parent, if that parent wants to raise the child?

The birth parent and the other biological parent can agree that the other parent will raise the child. These arrangements could be made in a variety of ways. It is critical that the birth parent seek legal advice in these circumstances, for such an agreement may be difficult to change later. Also note that if the other parent is the primary caregiver, they could choose to seek child support from the birth parent either immediately or at a later date.

PHOTO: RUSHAY BOOYSEN

If you would like information or support with adoption, the **Adoption Centre of British Columbia** may be able to help.
adoption-bc.com

SECTION 12

Immigration Issues

If the other parent is a citizen of another country, can the birth parent apply for the child to have citizenship from that country?

Each country decides who is granted citizenship. Some countries may require two biological parents to be named on the birth certificate. Some countries may not accept the child for citizenship without the parent who is a citizen applying. Others may not allow for the child to become a citizen without the biological parents being married. Some countries do not allow for dual citizenship at all. It may be worthwhile to contact a country's embassy or consulate to learn more about citizenship rights for biological children of their citizens, to determine whether a child can get dual citizenship.

What if a birth parent has precarious immigration status in Canada (that is, they are not a citizen or permanent resident), but the baby is born in Canada?

A child born in Canada will automatically be a Canadian citizen. However, having a Canadian-born child will not grant the parent citizenship rights or improve a person's likelihood of being allowed to remain in Canada. A child under 18 years of age cannot sponsor their family to come to or remain in Canada.

A parent who is not a Canadian citizen could be required to leave the country due to their own immigration issues, even if their child is Canadian. If the parents are co-parenting, one may be able to stop the other from leaving the country with the child by refusing to consent to the child's travel or relocation. For more details, see the last question in section 14, "Parenting Arrangements," and section 16, "Relocation — Moving with a Child."

A parent who is not a Canadian citizen could be required to leave the country due to their own immigration issues, even if their child is Canadian.

Immigration resources

A person in a situation of precarious immigration status who has a child should speak to an immigration lawyer to understand their options. Here are some additional resources:

- **Immigration & Refugee Legal Clinic** / irlc.ca
- **Migrant Workers Centre** / mwcbc.ca
- The YWCA has written a guide, published in 2017, about mothers without legal status.

PHOTO: PIGPROX/ISTOCK

A child born in Canada will automatically be a Canadian citizen. However, having a Canadian-born child will not grant the parent citizenship rights or improve a person's likelihood of being allowed to remain in Canada.

SECTION 13

Parents and Guardians

The *Family Law Act* currently uses the terms "birth mother" and "biological father" to define parents. For consistency, throughout this section these same terms will be used when referencing the *FLA*. However, it is recognized that masculine-identified people can produce eggs, become pregnant, and birth children, and that feminine-identified people can produce sperm, so the term "parents" is preferred as a gender-neutral term.

All explanations below are based on the *FLA*, which is the legislation most likely to be used in the case of unexpected pregnancy in BC. Please note that definitions and terms used in the *FLA* (BC provincial legislation) are different from those in the *Divorce Act* (federal legislation).

Who can be a "parent" of a child?

A person can be a parent by either:

- Providing human reproductive material such as sperm or an egg that creates a child;
- Making an agreement to be a parent (for example, in the case of same-sex couples where one partner does not contribute genetic material, become pregnant, or birth the child); or
- Using assisted reproduction, where the genetic material of others and/or a surrogate may be used.

Because this guide is intended for people experiencing unplanned pregnancies, it focuses only on parents in the first scenario.

Because this guide is intended for people experiencing unplanned pregnancies, it focuses only on parents who provide human reproductive material such as sperm or an egg that creates a child.

What is a guardian?

A guardian is a person who can legally care for a child. A guardian has "parenting time" with a child and exercises "parental responsibilities." A person who is not a guardian may still be allowed to have "contact" with a child but will not have parenting time or be able to make important decisions about the child's care. A child can have one or more guardians.

Not all parents are guardians, and not all guardians are parents. A biological parent is not automatically a child's guardian, and people who are not parents can still be made guardians of the child.

It is important that the pregnant person understands the difference between these terms. The birth parent, should they decide to keep and raise the child, will be both a parent and a guardian. The other parent who contributed genetic material is a parent but may or may not be a guardian.

A biological parent is not automatically a child's guardian.

Who is a child's guardian(s)?

Generally, a child's parents are their guardians if the parents lived together when the child was born or lived together with the child after the child's birth, even if they separate.[39]

Section 39 of the *FLA* states that a parent who has never lived with the child is not automatically a guardian unless the parent regularly cares for the child, there is an agreement between the parents that the other person is also a guardian, or there was an agreement to conceive the child through assisted reproduction and that both parents were the intended parents of the child.[40]

In the case of unexpected pregnancies, where the parties have never lived together, the other parent has not regularly cared for the child, and there is no agreement between the two parents that they are both guardians, the other biological parent is not automatically considered a guardian.

In these circumstances, the birth parent will be the sole guardian of the child, unless an agreement or order is made that says otherwise.

However, if the other parent is interested in being regularly involved in the child's life, they may still be able to get a court order for guardianship. If the other parent provides evidence that they have been unilaterally and unreasonably prevented from having a relationship with the child by the birth parent, the court may determine that this circumstance should not be allowed to defeat the other parent's application for guardianship. The court may look at whether the other parent continued to care for and about the child and has worked towards securing guardianship.[41]

If the other parent has never been involved with the child and is not a guardian, does the birth parent need an order to prove that they are the sole guardian?

If the birth parent is the only parent named on the birth certificate, they are unlikely to have a problem showing that they are the sole guardian when accessing services.

However, if a birth certificate has both parents' names but the birth parent is the only guardian, a court order may be required in certain situations, such as applying for the child's passport or travelling internationally with the child. The birth parent may seek an order from the court that declares the birth parent is the only guardian and that they are the only person with the right to exercise parental responsibilities. For more information on parental responsibilities, see section 14, "Parenting Arrangements."

How do I prove that I have sole guardianship if I do not have a court order or written agreement that says so?

Many professionals, such as health care and school professionals, do not fully understand the *Family Law Act* and may not know that under section 39, a birth parent may be the only guardian of a child (in the circumstance that the other parent has never lived with or provided regular care for the child). They also may not know that when there is only one guardian for a child, that guardian is able to exercise parental responsibilities without the consultation or consent of another parent.

You may need to explain sole guardianship to the professional or engage a lawyer or legal clinic to provide a short letter explaining that you are a sole guardian under section 39 of the *FLA*. Rise and other student legal clinics as well as some pro bono organizations may be able to help you access such a letter if your funds are limited. Some professionals or organizations may not accept such a letter. Instead, they may have their own internal requirements that you provide a written agreement or court order to support your ability, as a sole guardian, to make decisions in the absence of another parent.

Example of a sole guardian

Xu and Jacob are dating and decide it would be cheaper to move in together. Xu realizes quickly that this is not a good situation; she does not like living with Jacob and is afraid of some of his risky behaviours, but she is finding it hard to find a place to rent on her own.

Xu realizes that she is now pregnant. She does not want this child to be exposed to Jacob's risky behaviours and moves out to live with a friend when she is a few months pregnant.

At the time the baby is born, only Xu is a guardian because Jacob never lived with or regularly cared for the baby.

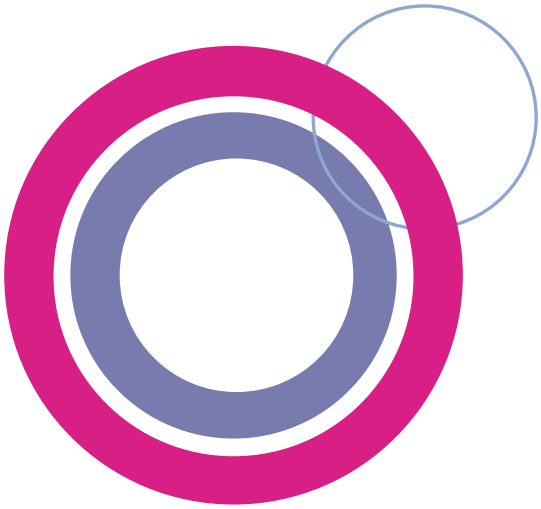
Can a biological parent who has never been involved with a child or cared for the child apply to become a guardian?

If a biological parent who has never lived with the child or cared for the child wants to become a guardian, and the other guardian or guardians of the child do not agree that the parent should be a guardian, they would need to bring a court application. In this case, the other guardian or guardians should seek legal advice.

Can a person who is not a biological parent be appointed as a guardian?

People who are not biological parents can be appointed as guardians. In the case of an adoption, the adoptive parent will be made the child's guardian. In some cases, close family members like grandparents, who have cared for children when the biological parents were unable to, have been appointed guardians. It is also possible for a child to have more than two guardians, through an agreement between all the child's guardians, when the person to be added as a guardian is a parent of the child, or otherwise through a court order.

Guardianship can also be taken away from a person. For example, when a child is adopted, or if a child is permanently removed from the biological parent's care as a result of child protection services intervening, the biological parent's guardianship of the child is terminated. A person's guardianship may also be terminated in the course of a family law matter before the court, if the court determines that this would be in the child's best interests.



If a biological parent who has never lived with the child or cared for the child wants to become a guardian, and the other guardian or guardians of the child do not agree that the parent should be a guardian, they would need to bring a court application.

SECTION 14

Parenting Arrangements

What are "parenting arrangements"?

The term "parenting arrangements" is used in the *FLA* to describe parental responsibilities and parenting time with a child. Parental responsibilities are the decision-making powers that a guardian can use to care for a child. Parenting time means the time a guardian spends caring for the child.

Only guardians can have parental responsibilities and parenting time with a child.[42] Parents who are not guardians may still spend time with a child, but this is called "contact" instead of parenting time.[43] Parents who are not guardians are not entitled to make decisions about the child's care. If you are the birth parent of a child and the other parent did not live with the child at birth, does not regularly care for the child, and there is no agreement or court order regarding the child, you are likely the only guardian and would be entitled to solely make decisions about the care of the child.

If you and the other parent decide to both be guardians, or if they regularly care for the child, you would both be guardians. Guardians can make agreements about parenting arrangements that state how parental responsibilities and parenting time are allocated between the guardians. Alternatively, parenting arrangements can be set by court order.

Often, parenting arrangements are shared between guardians. Parenting arrangements are based on the best interests of the child and should be tailored to the family's specific needs. There is no presumption that any particular arrangement, for example 50-50 parenting time, is in the best interests of the child.[44]

Note that the terms "custody" and "access" are no longer used in family law in BC, but these words may still appear in older written agreements or court orders made under earlier family law legislation applicable in BC. These terms are also still in use in some other provinces and countries. If you have a written agreement or court order that includes these terms, you should seek legal advice about their meaning and effect in your circumstances.

More information on parenting arrangements can be found in the *JP Boyd on Family Law* wikibook.

What does the "best interests of the child" mean?

In making decisions about guardianship or parenting arrangements, the court must consider the best interests of the child only.[45]

In BC family law, the factors that a court must consider when determining the "best interests of the child" are set out in section 37 of the *FLA.* There factors are intended to help the court decide what is best for the child's physical, emotional, and psychological well-being and safety. Some of these factors are:

- The child's health and emotional well-being;
- The child's views;
- Relationships the child has with significant people in their life;
- The history of the child's care;
- The child's need for stability;
- A guardian's ability to act in the child's best interests; and
- The impact of family violence.

A court must also consider the appropriateness of parenting arrangements that would require guardians to cooperate, and whether that requirement would put the safety, security, or well-being of the child or other family members at risk.

If you are addressing issues relating to the care of children in court, it is important to remember that the judge may not be familiar with your child's particular circumstances, community, or culture. It may be helpful to provide details about your child's circumstances, such as describing to the judge the nature of any significant relationships the child has with people who are not the child's biological parents and the importance of these relationships to the child.

Who can make decisions about the child (parental responsibilities)?

The *FLA* uses the term "parental responsibilities" to describe the decisions that a guardian can make for a child. Parental responsibilities include making decisions about things such as:

- The day-to-day care, control, and supervision of the child;
- Where the child will live and whom they will live and associate with;
- Where the child will go to school;
- What extracurricular activities the child will participate in;

- The child's cultural, linguistic, religious, and spiritual upbringing and heritage, including, if the child is an indigenous child, the child's indigenous identity;
- Medical, dental, and other health-related treatments for the child; and
- Applying for a passport, licence, permit, or benefits for the child.[46]

Parental responsibilities can be shared among guardians or can be exercised by only one or some guardians. If a parent is the only person living with and caring for the child from birth, they are generally going to be the only guardian and will have all the parental responsibilities.

Parental responsibilities must be exercised in the best interests of the child, meaning what is best for their emotional and physical well-being. The factors that must be considered when determining what is in the best interests of a child are set out at section 37 of the *FLA*.

If a parent is the only person living with and caring for the child from birth, they are generally going to be the only guardian and will have all the parental responsibilities.

If there is more than one guardian, decisions must be made in consultation with the child's other guardians unless an order or agreement allows otherwise.[47]

If guardians are making agreements about sharing parental responsibilities, they should consider the practicality of sharing different responsibilities and how decisions will be made if they disagree. In extreme cases, a parent may need to ask the court for exclusive decision-making powers on particular issues, or an order allowing them to make a final decision on significant issues affecting the child if, after consultation with the child's other guardians, the guardians are unable to agree. For example, if one parent has unreasonably refused to give consent for medical treatment, then the other parent may seek to be solely responsible for the child's health care.

Who can register the child in school and seek medical care for the child?

Some schools and medical providers will want to have the consent of both parents before a child is registered for school or provided with certain types of treatment, especially if more than one parent is named on the child's birth certificate.

If the other parent listed on the birth certificate is not involved with the child, or has lost contact, the parent providing care to the child may need to explain this to professionals. They may also be required to show further documentation, such as a written agreement or court order that deals with parental responsibilities, before they are able to register the child in school or make medical care decisions for the child without the other parent's consent.

Who does the child spend time with (parenting time or contact time)?

The *FLA* uses the term "parenting time" to describe the time that a child spends with a guardian. The amount of time a child spends with each parent can be determined by an agreement or court order. When the other person is not a legal guardian, then the term "contact" is used instead.

The *FLA* does not presume that equal parenting time for both parents is in the best interests of the child.

Instead, the questions of whether a parent has parenting time or contact, and the amount of time, are determined based on the best interests of the child. The best interests of the child criteria are set out in section 37 of the *FLA*. Parents can create a proposal for how parenting time should be divided and provide the reasons why they believe that arrangement is best for the child, taking into account the criteria set out at section 37 of the *FLA*.

What if there are safety issues with one of the parents?

If the birth parent is afraid for their safety or the safety of their child, they can contact VictimLinkBC to be connected with a community-based victim services worker, or contact the police for immediate help. If they do not want to contact the police, they may be able to apply to family court for a protection order; a family law advocate or duty counsel at your local court may be able to help.

A protection order will usually prohibit the violent person from having any communication or contact with the person being protected and can be enforced by the police.

Even if the circumstances do not require a protection order, family court orders can be written in a way to help protect the birth parent's safety by including terms that limit the ability of the other parent to harm them or the child. Some examples include:

- Limiting, or setting out specific rules about communications between the birth parent and the other parent;
- Requiring that the child only be exchanged in a public, neutral location instead of at the parent's homes; and
- Having visits between the violent parent and the child supervised by a family member or friend or by a professional supervisor.

To explore the full range of safety options available, the birth parent should seek legal advice.

Can a parent refuse to let the other parent see the child despite a court order?

In general, the court expects parents to follow court orders, including orders for parenting time or contact. A court will usually not look favourably on a parent who is denying parenting time or contact without a good reason. If a parent denies parenting time or contact without a good reason, the court may determine there was a wrongful denial of parenting time or contact.

However, circumstances may exist that make a parent concerned about safety or make them believe it is not in the best interests of the child for the other parent to have parenting time or contact. The *FLA* sets out specific reasons why parenting time can be denied.[48] These include if the parent believes the child might be harmed by the other parent, the other parent is impaired by drugs or alcohol, the child is ill and unable to attend a visit, or the other parent repeatedly fails to show up for visits or parenting time.

If a parent does not want to allow the other parent to see the child for any reason, they should seek legal advice immediately. If they have a good reason why it is not in the best interests of the child to continue having visits with the other parent, they can apply to the court to vary the existing parenting time or contact order. If the parenting time has already been denied, and the parent plans to continue to deny parenting or contact time (for instance, due to fear of family violence by the other parent), they may need to apply to the court soon after the denial of parenting time to change the parenting arrangements.

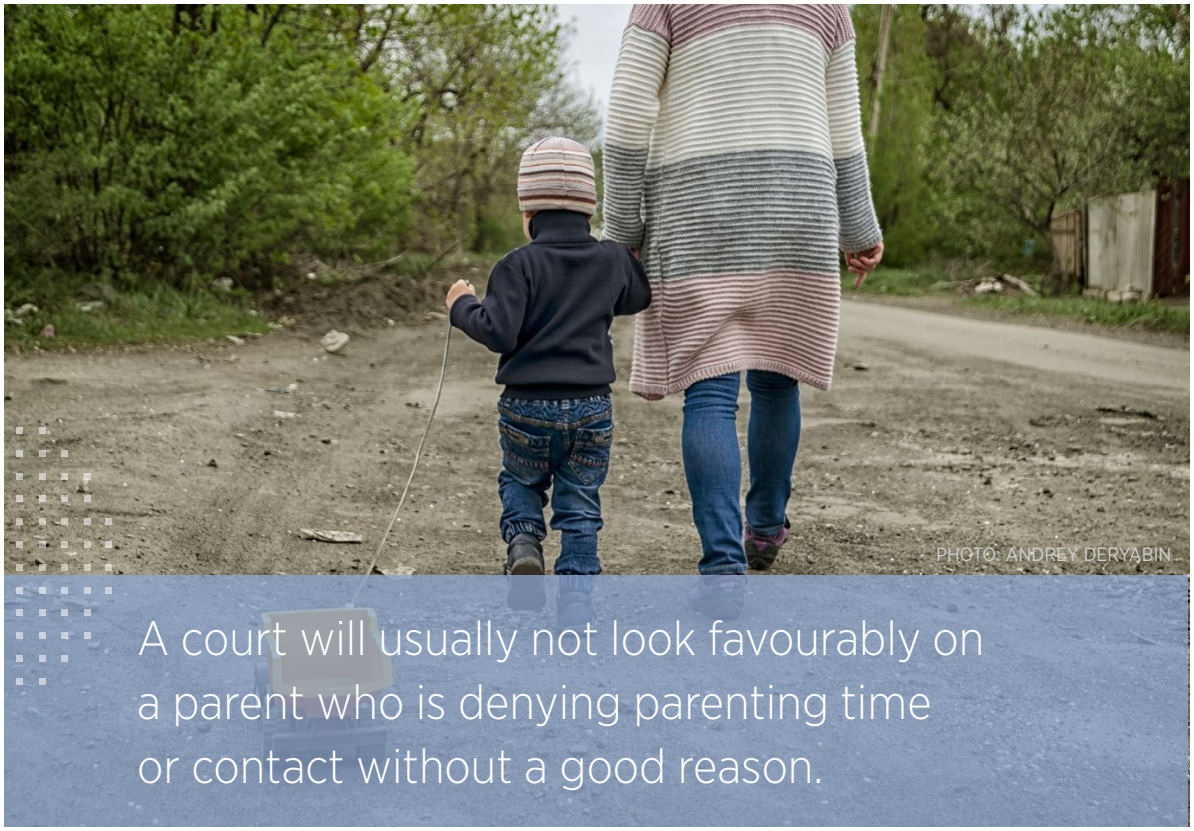


PHOTO: ANDREY DERYABIN

A court will usually not look favourably on a parent who is denying parenting time or contact without a good reason.

The other parent can also apply to the court to allege that the denial of parenting time or contact is wrongful. If the court finds that the parenting time or contact was wrongfully denied, it may impose penalties. These could be makeup parenting time or contact, counselling, or a fine against the parent who is found to have wrongfully denied parenting time.[49]

If the other parent does not want to be involved with the child, can they be forced to?

The other parent generally will not be forced to be involved with the child if they do not want to be involved. The courts cannot make someone care for, have a relationship with, or provide a loving home for a child. Even if a court did order someone to have contact with a child against their will, the order would be extremely difficult to enforce.

However, the court can order that a parent pay child support or contribute to the special expenses for a child, such as education, medical and dental care, and extracurricular activities, even if the parent does not spend any time with the child. These orders can be enforced through the British Columbia Family Maintenance Agency. For more information, see the next section, "Child Support."

If a child has no parents or guardians that want and are able to care for them, then the Ministry of Children and Family Development would become involved. For more information, see section 17, "Involvement of the Ministry of Children and Family Development."

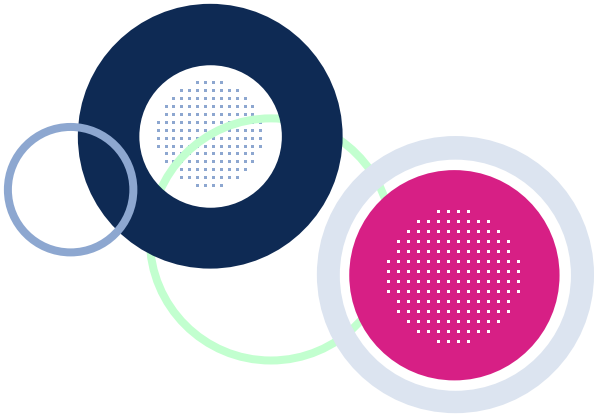
Who can travel with a child?

A parent named on a birth certificate or a legal guardian can usually travel with a child. However, if there is more than one legal parent or guardian, both parents need to consent to the travel. This is usually done through a notarized letter from the other parent or guardian giving consent to the parent travelling with the child and specifying the dates and location of travel. Without the consent of the other parent or guardian, a charge of abduction or kidnapping could be made. Also, the travelling parent may be turned back at international borders if they do not have the documentation that the destination country requires.

- **Travel within BC:** Not generally restricted. Identification not usually required.
- **Travel within Canada:** Not generally restricted. However, a child's birth certificate or passport will usually have to be shown for identification if travelling by plane. A notarized letter proving the other parent's consent to travel may be required.
- **International travel:** Most countries require written consent of both parents named on the birth certificate or a court order allowing a parent to travel with the child. However, experiences at borders can vary a great deal. Some sole guardians under section 39 of the *FLA* have found it helpful to have a legal memo outlining that they are the only guardian of the child and no other parent is entitled to decision-making regarding travel.

Note that some court orders, often called "non-removal orders,"[50] create added restrictions on travel. For example, they may prevent someone from removing a child from BC. A parent who is concerned about the other parent travelling with a child, and possibly not returning the child, should seek legal advice about applying for this type of order.

If there is more than one legal parent or guardian, both parents need to consent to the travel. This is usually done through a notarized letter



SECTION 15

Child Support

What is child support?

Child support is money paid by one parent or guardian to another as a contribution towards the child's daily living expenses. These expenses include but are not limited to paying a portion of food, clothing, housing, and transportation. The amount of child support is determined under the *Federal Child Support Guidelines* based on the paying parent's gross annual income and the number of children entitled to child support.[51]

Both parents and guardians have a duty to support the child;[52] this means that the other biological parent has a legal responsibility to support the child, even if they are not a guardian. In the rest of this section, we use the term "parents" for ease of reference.

Child support is the right of the child, meaning that child support cannot be bargained away between the parents.[53] However, a parent may choose not to ask for child support. If a parent does not ask for child support, or delays asking for child support, this may have important consequences, especially for any potential back payments, so it is a good idea to seek advice on this issue at an early stage.

In general, child support is paid by a parent who has less than 40 per cent of the parenting time. When parenting time is shared equally or close to equally (both parents have between 40 and 60 per cent of the parenting time), then child support may be paid in a "set off" model. This means that both parents are assessed for what they would be obligated to pay under the child support guidelines, and the parent who earns more pays the difference to the other parent. Note that "setting off" is a common way to pay child support when parenting is shared, but it is not a mandatory arrangement. For more information about what child support might be in a particular situation, please seek legal advice.

The table on the following page shows how different parenting arrangements affect child support. In this example, the birth parent Alix earns $20,000 a year, and the other parent, DJ, earns $50,000 a year. These figures are based on the child support guidelines in effect in 2023.

Child Support Example — Alix and DJ

In this example, birth parent Alix earns $20,000 a year, and the other parent, DJ, earns $50,000.

PARENTING ARRANGEMENT 1: **Child lives with Alix and has short, frequent visits with DJ**

Because the child lives more than 60% of the time with Alix,
DJ pays support to Alix based on their income of $50,000.

PARENTING ARRANGEMENT 2: **Child lives with DJ and has short, frequent visits with Alix**

Because the child lives more than 60% of the time with DJ,
Alix pays support to DJ based on their income of $20,000

PARENTING ARRANGEMENT 3: **Child lives with Alix and DJ on a week on/week off schedule**

Because the child spends equal time with both parents, child support is "set off."
DJ pays Alix $305 per month (the difference between Alix paying DJ $165 and DJ paying Alix $470).

PARENTING ARRANGEMENT 4: **Child lives with Alix and sees DJ from Friday 1 pm to Monday 8 am**

Because the child is living with DJ 40% of the time, child support is "set off"
in the same way as parenting arrangement 3.

These figures are based on the child support guidelines in effect in 2023.

The Canada child benefit and shared parenting

If parents share the child on an about equal basis (40 to 60 per cent of the time with the child), both parents are entitled to the Canada child benefit (CCB). You cannot bargain away CCB, and a family court judge cannot order the Canada Revenue Agency to pay the CCB to one parent instead of another parent who is entitled to receive it. If the Canada Revenue Agency becomes aware that one parent has been collecting all of the CCB when the child was actually spending half their time with each parent, they will demand repayment of the second parent's half.

Parents can make an agreement about child support or apply to the court for an order. A parent with whom a child lives at least 60 per cent of the time who is claiming basic child support will not need to fill out a financial statement. However, if they are claiming special expenses, if they are being asked to pay child support, or if the other parent is filing an undue hardship claim, they will likely have to file a financial statement with the court. (If the proceeding is in Provincial Court, the financial statement form is Form 4; if the proceeding is in Supreme Court, the financial statement is Form F8.)

This form sets out the income, expenses, assets, and debts of the person and attaches supporting documents, including their T1 income tax returns and notices of assessment, recent pay statements, and any corporate financial statements. The information is used to determine the relevant people's gross annual incomes and calculate the amount of child support payable. There is an online tool to assist people in determining the approximate amount of child support that is payable based on the number of children, the income of the paying parent, and the province of residence.

For more information on child support and related matters, please see the *JP Boyd on Family Law* wikibook.

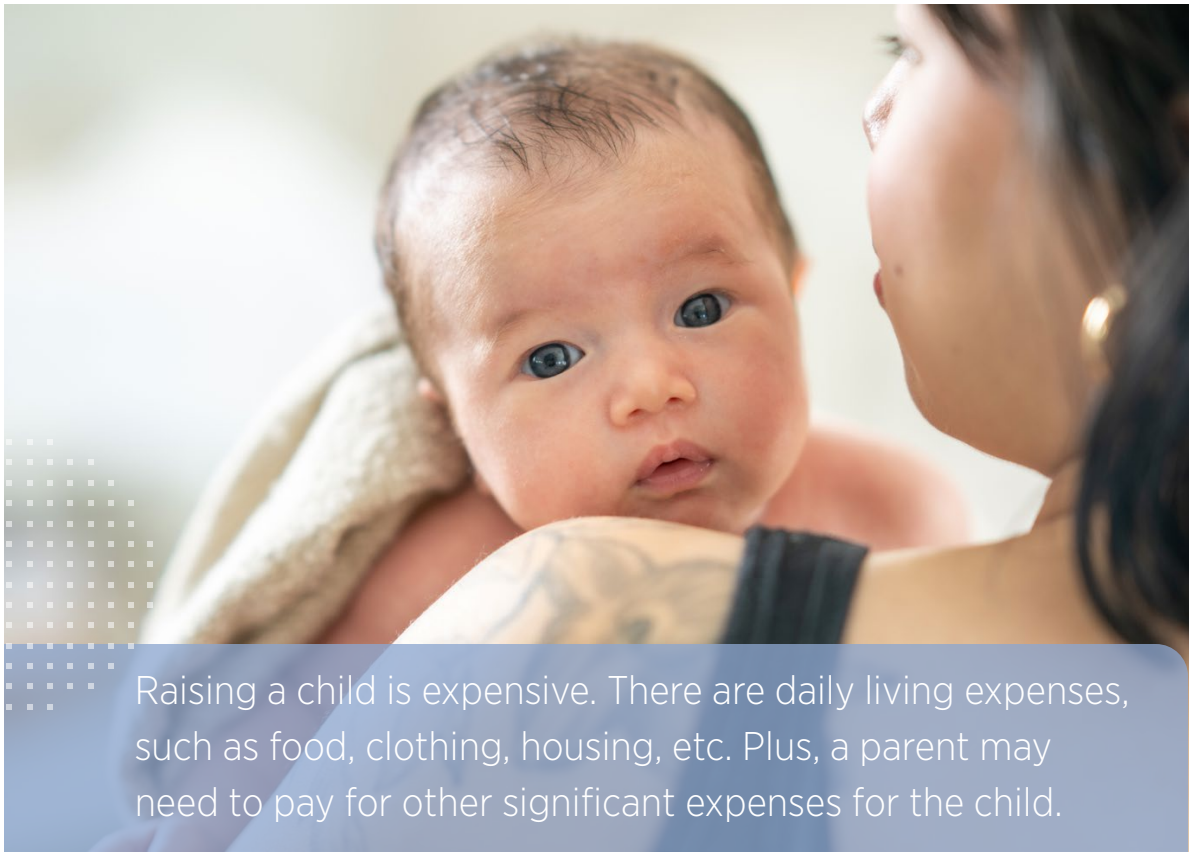
There is an online tool to assist people in determining the approximate amount of child support that is payable based on the number of children, the income of the paying parent, and the province of residence.

Who pays for the extra expenses of the children?

Raising a child is expensive. There are daily living expenses, such as food, clothing, housing, etc. Plus, a parent may need to pay for other significant expenses for the child. These are called "special or extraordinary expenses" or "section 7 expenses," in reference to the section of the *Federal Child Support Guidelines* that provides for them.

Special expenses may include:

- Child care expenses such as daycare, preschool, or nanny wages if these costs resulted from the need for the parent with majority parenting time to attend work or school, or to recover from illness;
- Medical and dental expenses above $100 not covered by extended health benefits, if any;
- Post-secondary expenses such as tuition for university or college;
- Extracurricular activities such as sport or recreation fees and equipment, if they are found to be "extraordinary"; and
- Education expenses such as school fees, field trip fees, and school materials, if they are found to be "extraordinary."[54]



Raising a child is expensive. There are daily living expenses, such as food, clothing, housing, etc. Plus, a parent may need to pay for other significant expenses for the child.

Example of applying for retroactive child support

Linda became pregnant after a single encounter with Xavier. She decided to continue the pregnancy and gave birth to a healthy baby. Linda told Xavier about the baby, but he chose not to apply to the court to become a guardian or get parenting time or parental responsibilities assigned to him. The child is now two years old. Xavier has stated he will not pay child support. Linda can apply to the court for child support both prospectively (ongoing payments) and retroactively (back payments).

Linda is encouraged by her lawyer to apply for retroactive child support and section 7 expenses as soon as possible. This is because the court may be reluctant to order retroactive support backdated to more than three years before Linda makes her application, based on the facts in her case.

These expenses are usually shared between the parents, in proportion to each parent's income. For instance, if Parent A has a gross annual income of $60,000 and Parent B has a gross annual income of $40,000, Parent A will pay 60 per cent of the child's special expenses and Parent B will pay 40 per cent.

This can be a complex area of law and we recommend that parents get individual legal advice.

If the other parent has no parenting time or contact, do they need to pay child support or special expenses?

Each parent or guardian has a duty to support the child, and this does not depend on them having a relationship with the child. Even if the other parent does not have any parenting time or contact with the child, a court may order that they pay ongoing and/or retroactive child support.

The term "retroactive child support" refers to payments for child support relating to a period of time before an order or agreement about the child support being made. When a parent applies for retroactive support, the court will consider whether the recipient parent's delay in seeking child support was reasonable. The court will also consider the paying parent's conduct, the circumstances of the child, and whether the paying parent would suffer undue hardship if retroactive child support was granted.[55]

Judges exercise a lot of discretion when making orders for retroactive child support, and there are more factors to consider than an order for regular "prospective" or future-oriented child support. As well, courts have established a rough guideline that retroactive awards will generally go back no further than three years, although this is not an absolute rule.[56]

It is important to get legal advice in a timely way if a parent is looking for retroactive payments of child support.

How does a parent collect child support from the other parent?

Once an order or agreement about child support is in place, the paying parent must provide the payments as set out in the order or agreement. Some paying parents will follow the court order or agreement, without the receiving parent having to take any further steps to collect child support. However, in some cases, the paying parent may still refuse to make payments as required.

The British Columbia Family Maintenance Agency (BCFMA) is a free service provided in connection with the BC government. Anyone with an agreement or order showing child support and special expenses payments can register with BCFMA, even if the paying parent is making regular payments. If the paying parent does not pay, BCFMA can go to court to garnishee wages or use other methods to ensure payments are made. No deductions are taken from the payments to pay for BCFMA's services.

BCFMA can only enforce orders with specified payments or percentages for specified costs. In the case of percentages, receipts must be attached. Ensure that your order for child support and extraordinary expenses is detailed, and refer to the BCFMA website for their updated rules.

In some cases, the paying parent may still refuse to make payments as required. The BC Family Maintenance Agency is a free service provided in connection with the BC government that can take steps to enforce child support.

Example of enforcement of child support

Example: Jash was ordered to pay child support to Prisha in the amount of $250 per month and to pay $100 per month for his share of the child's braces. Initially, Jash made payments to Prisha on time, but lately he has stopped paying the full amount and often is late in paying. This is very stressful for Prisha.

Prisha can register with the British Columbia Family Maintenance Agency to collect the child support and special expenses payments from Jash for her. BCFMA will calculate the amounts paid and the balance owing, contact Jash to arrange payment, and then send Prisha the payments it collects. When Jash filed his taxes, his income tax return was intercepted by BCFMA and his outstanding child support was taken from it and passed along to Prisha.

SECTION 16

Relocation — Moving with a Child

What are the laws about a parent moving with a child?

In the case of only one legally recognized parent or guardian, and where there are no other people who have contact with the child, there is no restriction on where or when a person can move or live with their child. However, if parentage, guardianship, or parenting arrangements for the child may be in dispute, the person should seek legal advice before moving with the child.

The *FLA* sets out specific criteria that must be met before a parent can move with the child if that move will impact the child's relationship with another guardian or other person with a significant role in the child's life.[57] This is called "relocation." Local moves, for example to a new home in the same city, that do not significantly impact the child's relationships with other guardians or significant persons are not relocations, and no notice of these moves is required under the *FLA*.[58] However, in practice, determining when a move is far enough to be considered a relocation can be tricky, and legal advice is recommended before a move, particularly if the other parent may be opposed to it.

The *Family Law Act* sets out specific criteria that must be met before a parent can move with the child if that move will impact the child's relationship with another guardian or other person with a significant role in the child's life.

Under the *FLA*, where there is an existing order or agreement about parenting arrangements for a child, if a parent wants to relocate with a child, they must provide 60 days' written notice, stating where and when they want to move, to all other guardians and persons who have contact with the child. The court may grant an exemption to the notice requirement if there is a risk of family violence or if there is no ongoing relationship between the child and the other guardian or person having contact with the child. Once notice is given, the other guardian has 30 days to file in court to oppose the relocation (see next section).

Where there is no existing order or agreement about parenting arrangements for a child, the *FLA* specifically addresses relocation only if a court application about parenting arrangements has been made. In this case, the issue of relocation will be dealt with alongside the application about parenting arrangements, and the court must consider specific factors relating to relocation as well as the best interests of the child factors under section 37 of the *FLA*.

What if a parent does not want the other one to relocate with the child?

Only a guardian can object to a proposed relocation of the child. If the other parent is not a guardian of the child but they have contact with the child, they cannot object to the relocation. However, they could apply to the court for orders for maintaining the relationship with the child if the relocation does occur.

Applications to prohibit or permit a relocation are determined after considering the best interests of the child. There are three frameworks for determining relocation cases in court.

The first is where there has been no written agreement or court order made about parenting arrangements or contact before a guardian gives notice of the relocation to the other parent. In this case, the court must consider the best interests of the child factors under section 37 of the *FLA*, as well as the reasons for a change in the child's residence. The court must not consider whether the guardian who is planning to move would move without the child.

What is the meaning of "good faith"?

In the context of relocation cases, "good faith" means that the relocating parent is conducting themselves honestly and fairly and is not moving in order to cause harm to the other parent, or to prevent the other parent from having a relationship with the child(ren).

Relocation example

Anya has primary care of a 13-year-old child. The child's father, Frank, sees the child every second weekend, which is set out in a court order. They have never lived together as a family unit. Anya has strong family ties in Ontario and has been offered work there. She provided 60 days' notice to Frank explaining that she wanted to move. He does not want her to move away with the child and applied within 30 days of receiving notice for an order to prohibit the relocation.

After listening to both sides, and considering a report on the child's views, the judge determined that even though Anya has a job offer in Ontario, she can find similar work in BC. The child expressed concern about moving to Ontario as he did not want to lose his friends in BC. The judge determined that it was not in the child's best interests to allow Anya to take him to Ontario. Anya decided to stay in BC with the child and thinks she may move after the child is grown up.

The second framework is where the child's guardians have an existing written agreement or court order about parenting arrangements, and do not have close to equal parenting time. In those cases, the relocating guardian must prove that:

(i) the proposed relocation is made in good faith. In assessing whether a proposed relocation is made in good faith, the court must consider the reasons for the proposed relocation, whether it is likely to enhance the general quality of life of the child and the relocating guardian, whether notice of the proposed relocation was given pursuant to section 66 of the *FLA*, and any restrictions on relocation in a written agreement or court order; and

(ii) they have proposed reasonable and workable arrangements to preserve the relationships between the child and the child's other guardians and other persons who have a significant role in the child's life.

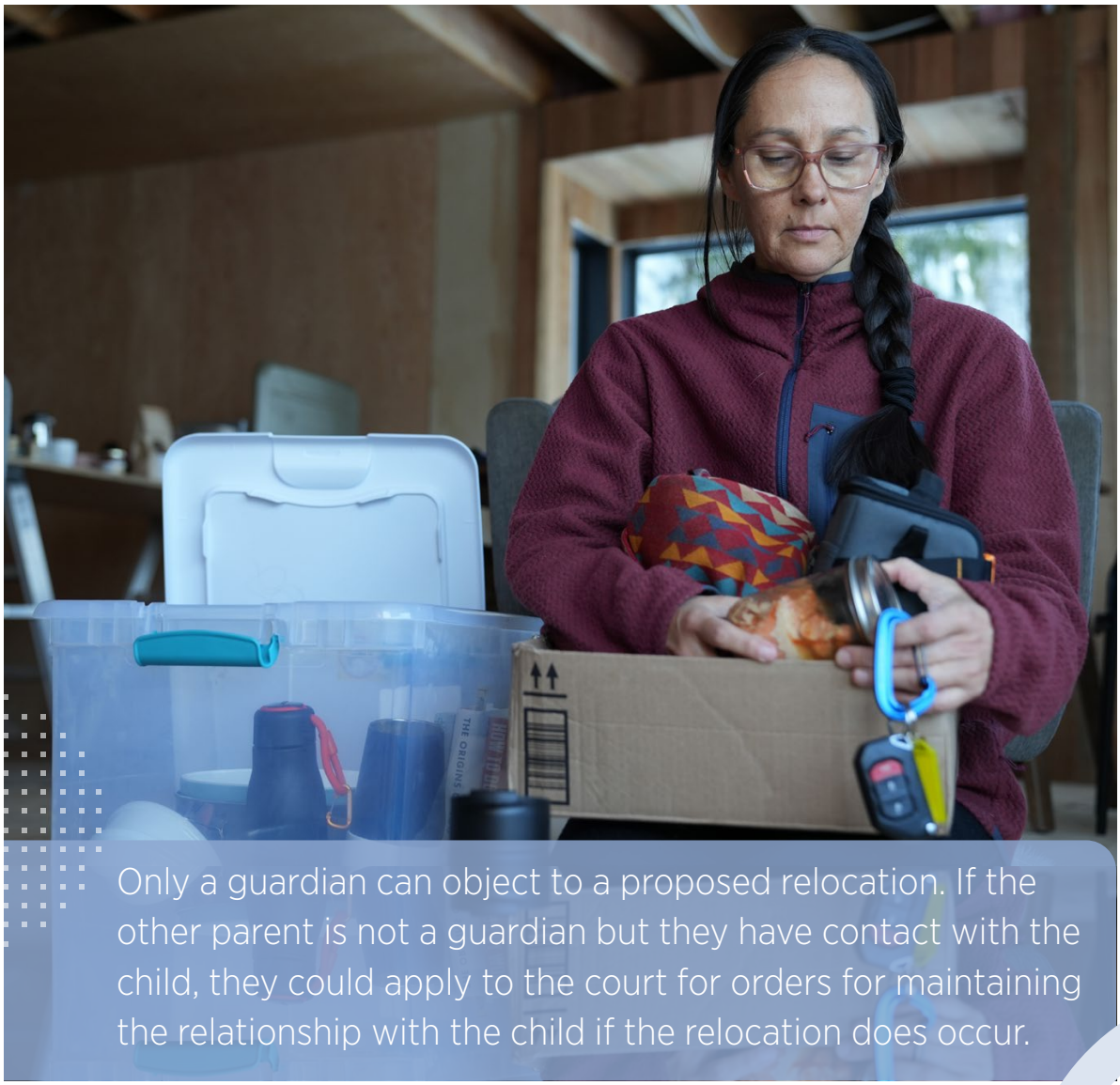
If the relocating guardian can prove the above, the relocation is presumed to be in the best interests of the child unless the other guardian can convince the court otherwise.

The third framework is where the child's guardians share close to equal parenting time. In this scenario, as well as proving that the relocation is in good faith and that they have proposed reasonable and workable arrangements, the relocating parent must also prove that the move is in the best interests of the child.

If the child is mature enough, the court may consider the views of the child, meaning what the child's preference is, before making a decision. If the court does not agree that the proposed relocation is in the best interests of the child, the court could make an order that prevents the relocation of the child. In this case, a parent would need to make a hard decision about whether or not to move without the child.

International moves may present even more challenges, especially if they affect immigration and residency status. In these cases, a court order from BC granting the right to move with a child may not be sufficient for the parent to move with the child.

A person wishing to relocate should seek legal advice as far in advance as possible. To learn more about moving a child under the law, please see the *JP Boyd on Family Law* wikibook section on relocation.



Only a guardian can object to a proposed relocation. If the other parent is not a guardian but they have contact with the child, they could apply to the court for orders for maintaining the relationship with the child if the relocation does occur.

SECTION 17

Involvement of the Ministry of Children and Family Development

What law governs the removal of a child from a parent's custody?

The *Child, Family and Community Service Act* (*CFCSA*) is the BC law that provides powers to the Ministry of Children and Family Development (MCFD) to become involved in families where there are concerns about the safety or care of a child.[59] This involvement can include removing a child from the parent(s) or guardian(s) they live with. (In the past this process was referred to as "apprehending" a child, but this terminology is no longer used.) In the *CFCSA*, the powers of the MCFD are granted to the "Director" and are delegated to the social workers assigned to a file.

For Indigenous families, there are enhanced protections under *An Act respecting First Nations, Inuit, and Métis children, youth and families (the Federal Act)*,[60] that prioritize prevention services, and preserving connections between the child and families, communities, and culture.

In what ways could the MCFD be involved with a family?

The *CFCSA* allows for the MCFD to be involved with a family on a voluntary or involuntary basis. Some families need support services that can be provided by the MCFD with the parents' consent. These services can include support for children or parental counselling for support in difficult times. In these cases, the care of the child is not interfered with by the MCFD.

When the MCFD has concerns about a parent or guardian's ability to safely care for and protect a child, they may engage with the family through safety planning, creating a mediated family plan agreement, or by removing the child from the parent or guardian's care. This removal can be on a short- or long-term basis and requires court orders within set amounts of time after the removal as well as on an ongoing basis.

The MCFD does not always remove a child when there are protection concerns; they may instead seek an order for supervision while the child remains with the parent or guardian. The MCFD may also become involved when a child has run away, is left unattended, or is in immediate danger.

Legal advice is highly recommended if the MCFD is involved with a family or if a child is removed from a parent. Legal Aid BC may provide lawyers for low-income parents when they are faced with child protection matters.

Can a child be removed from a parent's care as soon as it is born?

A child can be removed from the care of the birth parent and/or the other parent as soon as the child is born. There is no minimum age for child protection authorities to be involved under the *CFCSA*. If the MCFD receives a report that a child under the age of 19 needs protection, they can use their powers under the *CFCSA* to take actions (including removal) to reduce protection concerns.

Before 2019, if the MCFD knew someone was pregnant and they were concerned about the child, they would ask the hospital to inform them when the baby was born. This was called a "birth alert." Birth alerts are a controversial and discriminatory practice that has been disproportionately

used against Indigenous people and people with disabilities. In 2019, BC banned the use of the birth alert system. The MCFD has stated it intends to focus on providing support to expecting parents to keep newborns safe and families together.[61]

Although BC has stopped formal birth alerts, hospital staff can and still do call the MCFD directly when they have concerns about a parent, which can result in the removal of a newborn.

Are other agencies or bodies involved when the parent or child is Indigenous?

When the MCFD is involved with an Indigenous family and a parent is a member of a First Nation, the child's band or First Nation(s) should be notified. The First Nation is entitled to be involved in court proceedings and in planning for the child's care. For *Métis* and Indigenous families that are not members of a First Nation, their Indigenous community is similarly entitled to be notified and involved in planning for the child both inside and outside of the court system.

The social workers involved with Indigenous families may work with a First Nations agency known as a Delegated Aboriginal Agency (DAA), as opposed to the MCFD. Also, the First Nation, the Nisg–a'a Lisims Government, a Treaty First Nation, or another Indigenous community can assign a "designated representative" to be involved in planning for Indigenous children and ensuring that the child's cultural and kinship ties are considered and maintained. The designated representative may be a DAA or a representative from a First Nation or Indigenous community. Maintaining cultural, community, and kinship ties is a guiding principle of both the *CFCSA* and the *Federal Act*.

Does a parent involved with MCFD need a lawyer?

While parents are not required to have lawyers, it is strongly recommended that a pregnant person or birth parent facing involvement with the MCFD have a lawyer to ensure their legal rights are advocated for. This is even more important when people are facing multiple forms of systemic oppression.

Legal Aid BC generally provides funded lawyers to represent parents who are engaged with the MCFD in a child protection matter. Parents should apply for legal aid as soon as they know that the MCFD may be involved by calling a Parents Legal Centre. If a parent who is very poor (indigent), is faced with a complicated child protection case, and does not qualify for legal aid, they may be able to make a "JG application" to ask the court to order the government to pay for a lawyer.

In *New Brunswick (Minister of Health and Community Services) v G (J)* ("*JG*"), the Supreme Court of Canada considered a situation where the government had applied to extend an order in a child protection case and the parent did not qualify for legal aid. The Supreme Court ruled that in the particular circumstances of the case, trial fairness required that the parent have a government-funded lawyer.[62]

The Supreme Court stated that the government's application to extend their child protection order infringed on the parent's right to liberty and security of a person enshrined in the *Canadian Charter of Rights and Freedoms*:

> *When government action triggers a hearing in which the interests protected by s. 7 of the Canadian Charter of Rights and Freedoms are engaged, it is under an obligation to do whatever is required to ensure that the hearing be fair. In some circumstances, depending on the seriousness of the interests at stake, the complexity of the proceedings, and the capacities of the parent, the government may be required to provide an indigent parent with state-funded counsel.*[63]

As a result of this case, applications for court-appointed lawyers in child protection cases where parents have been refused legal aid are commonly called "JG applications." While the decision in *JG* will not be applicable to every child protection case, a parent who is extremely poor but does not qualify for legal aid, or in cases where legal aid will not cover all aspects of their case, may still wish to seek legal advice on whether the government could be compelled to pay for a lawyer.

For more information about JG applications, please refer to the guide from Legal Aid BC called "If You Can't Get Legal Aid for Your Child Protection Case."

Does a birth parent have to disclose to social workers from the MCFD who the other biological parent is?

The *CFCSA* requires that the MCFD make all reasonable efforts to notify each parent about a child's removal.[64] The court will require the MCFD to show how it attempted to notify the other parent and the results of its attempts.

If another biological parent is known, the birth parent may advise the MCFD who they are. However, there is no specific obligation in legislation to disclose who a possible biological parent is, especially if the birth parent does not know them and/or has not told them they are possibly a parent. Legal advice is recommended in this situation before disclosing, especially if the birth parent has specific concerns about their safety related to the possible other biological parent.

If another biological parent is known, the birth parent may advise the MCFD who they are. However, there is no specific obligation in legislation to disclose who a possible biological parent is, especially if the birth parent does not know them and/or has not told them they are possibly a parent.

If a child is removed, where would they be placed?

If a child is removed from a single parent, the MCFD can contact anyone that they believe to be a family member to try to place the child with family. This person may include the other biological parent, regardless of whether they have a relationship with the child, and even if they are not listed on the birth certificate. The MCFD can also place a child with extended family members or step-parents.

Indigenous children can be placed with their kin, meaning a person who has an established relationship with the child and who has a cultural or traditional responsibility towards a child, by agreement of the MCFD and the birth parent.[65] Sometimes First Nations family workers will trace family trees to find kin who could possibly care for the child.

If a child is removed and there is no immediate family or kin available to care for the child, the MCFD may place the child in foster care until a longer-term plan can be made for the care of a child.

Indigenous children can be placed with their kin, meaning a person who has an established relationship with the child and who has a cultural or traditional responsibility towards a child, by agreement of the MCFD and the birth parent.

Can the MCFD place a child for adoption? If so, who would the child be adopted by?

In some circumstances, the MCFD can place a child for adoption. However, to do this without the parent's consent, the MCFD must get a court order to become the permanent guardian of the child. The *CFCSA* court process is complex, and many steps in the legal process have to happen before this can take place.

The MCFD generally places a child with family members according to the circumstances of the family. Extended family or kin are the first choices in most adoption cases. Children are usually only placed for adoption after being placed with the potential adoptive parent(s) for a lengthy period of time.

To counter the harmful history of Indigenous children losing vital connections to their families, communities, and culture through widespread adoptions into non-Indigenous families, there are special considerations and protections under the *CFCSA* and *Adoption Act* where Indigenous children are concerned. Every effort must be made to permanently place an Indigenous child in the care of a family member, member of the child's Indigenous community, or another Indigenous person belonging to a different community before placing an Indigenous child for adoption into a non-Indigenous family.

SECTION 18

Other Legal Issues

What if a pregnant person or solo parent is facing discrimination in work, housing, or when accessing other services that are available to the public?

Under BC's *Human Rights Code*, employers, businesses, and service providers cannot discriminate against someone based on their family status. This means they cannot treat someone differently in a way that negatively affects them because they have children or because they are a single parent.

For example, a person cannot generally be refused housing because they are pregnant or have a baby, although there may be some exceptions, such as when housing providers have rules on how many people can live in a unit.

Resources for people experiencing discrimination

- BC Human Rights Tribunal — file a human rights complaint
- BC's Office of the Human Rights Commissioner — information and research
- CLAS BC Human Rights Clinic — all issues with human rights discrimination
- Employment Standards BC — file an employment standards complaint
- Tenant Resource & Advisory Centre — legal education and advocacy for tenants
- WorkBC — workplace rights

Can a pregnant person keep their job if they go on parental leave?

A pregnant person can keep their job if they go on parental leave. An employer is not allowed to fire or permanently replace someone who is on parental leave simply because they had to go on leave to give birth or because they have a baby.

Being fired for pregnancy is against the law because it discriminates based on a person's sex (this is the term used by the applicable legislation). Being fired for having children is discrimination based on family status.

Employers are legally required to provide the same position after a parental leave and to assist a person in performing their duties while pregnant by making changes necessary to suit their ability during pregnancy. For example, if a person cannot lift heavy items or stand for long periods of time while pregnant, the employer must find a way for the employee do their job safely. The employer is required to accommodate the employee up to the point of undue hardship. For more information on the obligations of employers, visit BC's Office of the Human Rights Commissioner.

Further, an employer may be required to alter a work schedule to suit the new parent's child care needs. In the case of *Health Sciences Assoc. of B.C. v. Campbell River and North Island Transition Society*, the BC Court of Appeal ruled that "a prima facie case of [family status] discrimination is made out when a change in a term or condition of employment imposed by an employer results in a serious interference with a substantial parental or other family duty or obligation of the employee."[66] In that case, the employer had changed the birth parent's work hours and refused to accommodate her need to be available after school for her son with severe behavioural problems.

Is nursing an infant in public legal?

Nursing an infant in public is legal. People have a right to nurse their baby in public. This is not considered "indecent exposure" under the *Criminal Code*. Failing to allow breastfeeding/chestfeeding is generally considered to be a form of sex discrimination under the *Human Rights Code* and the *Canadian Charter of Rights and Freedoms.*

People do not have to hide while nursing or nurse the child in private settings, although some may prefer to do this. Workplaces are generally expected to provide a suitable space for pumping milk while at work. Anyone who is harassed should get legal advice about possible remedies, including possibly filing a human rights complaint.

What happens if a single parent becomes critically ill or passes away?

Every parent should have an alternative person selected to be the guardian of a child in case they become too ill to continue caring for the child or they pass away.

A single parent can appoint a person to be the child's guardian after their death in a will,[67] made in accordance with the *Wills, Estates and Succession Act*.[68] You may be able to get assistance with a basic will through your nearest law student clinic (LSLAP at UBC, the Law Centre at UVic, and the Community Legal Clinic through TRU). This appointment can also be made using the Appointment of Standby or Testamentary Guardian form, which you can find on the Legal Aid BC website.

A single parent can also appoint a "standby" guardian for the child if they are facing terminal illness or permanent mental incapacity by completing and signing the same Appointment of Standby or Testamentary Guardian form.[69]

In either case, the new guardian will have the same responsibilities as the ill or deceased parent and must act in the best interests of the child.

If no will or appointment exists, the child will normally be placed in the care of another surviving guardian if there is one, or a court-appointed guardian. If the other biological parent is not a legal guardian, then they will not automatically become a guardian upon the death of the primary parent and would need to apply to the court to become a guardian.[70] If a single parent passes away and there are no other guardians, and no will stipulating who a guardian would be, then the MCFD would become involved to either place the child(ren) with extended family or in foster care.

Every parent should have an alternative person selected to be the guardian of a child in case they become too ill to continue caring for the child or they pass away.

If the other parent passes away, does the child have rights to inheritance?

A child can inherit money that is left to them in a will. In some circumstances, a child *may* be able to make a claim if a parent passes away even if that parent did not have a will. Wills and estate law can be very complex, and many factors may come into play. We recommend speaking to a wills and estates lawyer, for example through Access Pro Bono, if you have questions about a specific entitlement or concern about the other parent passing away.

Conclusion

Choosing to have a child after becoming unexpectedly pregnant is a decision that is the pregnant person's alone, but they need not be alone in making it. Many resources and supports are available to ensure that the pregnant person has the support they need, no matter their choice.

- If the pregnant person is considering ending their pregnancy, the Pregnancy Options Line can provide information, resources, and support. This service can be contacted at 1-888-875-3163 throughout BC or 604-875-3163 from the Lower Mainland.
- If the pregnant person is planning to continue with their pregnancy and would like support or resources around adoption, the Adoption Centre of British Columbia may be able to provide information and support.
- If the pregnant person is planning to continue with their pregnancy and become a parent, they can contact BC211 (dial or text 2-1-1) to be connected with resources for single parents in their community, as it does take a village to raise a child.
- If the pregnant person needs legal help, contact us at Rise Women's Legal Centre by completing our online appointment request form. We will be happy to provide legal information, resources, and support.

Notes

1 *Family Law Act*, SBC 2011, c 25 [*FLA*].

2 *Divorce Act*, RSC 1985, c 3 (2nd Supp).

3 *Vital Statistics Act*, RSBC 1996, c 479.

4 *Adoption Act*, RSBC 1996, c 5.

5 *Trociuk v British Columbia (Attorney General)*, 2003 SCC 34 at para 25.

6 *FLA, supra* note 1, s 33.

7 *KMS v AH,* 2021 BCPC 116 at paras 20, 37 and 51*; RJP v NLW,* 2013 BCCA 242 at para 20.

8 *IM v KM et al.*, 2003 BCSC 678 at para 23.

9 *R v Morgentaler*, 1988 CanLII 90 (SCC) [*Morgentaler*].

10 *Canadian Charter of Rights and Freedoms*, s 7, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

11 *Morgentaler*, *supra* note 9 at 56–57.

12 *Access to Abortion Services Act*, RSBC 1996, c 1.

13 *Infants Act*, RSBC 1996, c 223.

14 *Winnipeg Child and Family Services (Northwest Area) v G (DF),* 1997 CanLII 336 at paras 11–17 and 27–29 (SCC) [*Winnipeg Child and Family Services*].

15 Haley Hrymak & Kim Hawkins, *Why Can't Everyone Just Get Along? How BC's Family Law System Puts Survivors in Danger* (Vancouver: Rise Women's Legal Centre, 2021), womenslegalcentre.ca [https://web.archive.org/web/20240116012946/https://womenslegalcentre.ca/wp-content/uploads/2021/01/Why-Cant-Everyone-Just-Get-Along-Rise-Womens-Legal-January2021.pdf] at 24.

16 *Winnipeg Child and Family Services, supra* note 14 at paras 27–29.

17 *Criminal Code,* RSC 1985, c C-46.

18 *Human Rights Code*, RSBC 1996, c 210.

19 *Supra* note 10.

20 *Health Care (Consent) and Care Facility (Admission) Act*, RSBC 1996, c 181, s 3.

21 *Ibid*, s 8.

22 *Convention on the Rights of Persons with Disabilities*, 12 December 2006, 2515 UNTS 3 art 12 (entered into force 3 May 2008).

23 *Human Rights Code*, *supra* note 18, s 8.

24 Vital Statistics Agency, "Online Birth Registration," ebr.vs.gov.bc.ca [https://web.archive.org/web/20240116020033/https://ebr.vs.gov.bc.ca/].

25 *Vital Statistics Act*, *supra* note 3, ss 3(6)(b) and 4.1.

26 *Ibid*, s 3(6)(b).

27 *Ibid*, s 4.

28 See *Canadian Passport Order*, SI/81-86, s 7(2).

29 See, for example, *Slater v Slater*, 2002 BCSC 552 at paras 23–25; *Roshankar v Yazdanpanah*, 2011 ONSC 6055 at para 54.

30 *Indian Act*, RSC 1985, c I-5.

31 Ministry for Children and Family Development, Adoption & Permanency Branch/Strategic Initiatives Branch, *Practice Standards and Guidelines for Adoption* (November 2022), gov.bc.ca [https://web.archive.org/web/20240116020404/https://www2.gov.bc.ca/assets/gov/birth-adoption-death-marriage-and-divorce/births-and-adoptions/adoption/adoption_practice_standards_abbreviated.pdf] at 4-13 (Practice Standard 32).

32 *Ibid* at 4-13.

33 *Ibid* at 4-16.

34 *Ibid*.

35 *Ibid* at 5-9.

36 *British Columbia Birth Registry No 2006-59-039985 (Re)*, 2010 BCCA 137 at para 23.

37 *Adoption Act*, *supra* note 4, s 6(1)(g).

38 *Ibid* s 13(2).

39 *FLA*, *supra* note 1, s 39.

40 *Ibid*.

41 See *AAAM v BC (Children and Family Development)*, 2015 BCCA 220 at para 66. See also *FS v CO*, 2015 BCPC 416 at para 19.

42 *FLA*, *supra* note 1, s 40(1).

43 *Ibid*, s 1 (see "contact with a child" or "contact with the child").

44 *Ibid*, ss 37 and 40.

45 *Ibid*, s 37.

46 *Ibid*, s 41.

47 *Ibid*, s 40(2).

48 *Ibid*, s 62.

49 *Ibid*, s 61.

50 *Ibid*, s 64.

51 *Federal Child Support Guidelines*, SOR/97-175 [*FCSG*].

52 *FLA*, *supra* note 1, s 147.

53 *DBS v SRG*, 2006 SCC 37 at para 172 [*DBS*], citing *S(L) v P(E)*, 1999 BCCA 393 at para 58.

54 *FCSG, supra* note 51, s 7.

55 *DBS*, *supra* note 53 at paras 99–135.

56 *Michel v Graydon*, 2020 SCC 24 at paras 30 and 127.

57 *FLA*, *supra* note 1, ss 46 and 65–71 (section 46 deals with moves where there is no court order or agreement about parenting, while sections 65–71 cover situations where there is an agreement and/or order in place about parenting).

58 *Chin v Hegarty*, 2017 BCSC 1321 at para 33.

59 *Child, Family and Community Service Act*, RSBC 1996, c 46 [*CFCSA*].

60 *An Act respecting First Nations, Inuit and Métis children, youth and families,* SC 2019, c 24 [the *Federal Act*].

61 Alex Migdal, "BC Ends 'Birth Alerts' in Child Welfare Cases, but Advocates Say It's Only the First Step," *CBC News* (16 September 2019), cbc.ca [https://web.archive.org/web/20240116224236/https://www.cbc.ca/news/canada/british-columbia/bc-ending-birth-alerts-1.5285929].

62 *New Brunswick (Minister of Health and Community Services) v G (J),* 1999 CanLII 653 (SCC) at para 55.

63 *Ibid* at para 2.

64 *CFCSA*, *supra* note 59, s 31.

65 *Ibid*, s 8.

66 *Health Sciences Assoc of BC v Campbell River and North Island Transition Society*, 2004 BCCA 260 at para 39.

67 *FLA, supra* note 1, s 53.

68 *Wills, Estates and Succession Act,* SBC 2009, c 13.

69 *FLA*, *supra* note 1, ss 53 and 55.

70 *Ibid*, s 54.

ON THE COVER: Photographer Melody Charlie, born and raised in Ahousat and proudly calls Nuu-chah-nulth home, has been capturing light beams and beings since the days of film and remembers often spending her last $10 on rolls of film. Her work reflects the love and respect she holds for her culture and ways of life as an Indigenous being. melodycharlie.com

Rise
WOMEN'S LEGAL CENTRE

womenslegalcentre.ca

We are grateful to Indigenous Peoples for their enduring stewardship over their lands since time immemorial. We recognize Indigenous communities for their resistance, resilience and resurgence and their enduring care of the land against colonial legal systems and practices. We acknowledge that as a predominantly settler organization, we share an obligation to work in solidarity with Indigenous peoples and that we have a responsibility to learn and implement decolonizing legal practices.