BRITISH COLUMBIA | Ministry of Attorney General

FAMILY LAW ACT MODERNIZATION

Dialogue Sessions

'What We Heard'

May 25 – June 28, 2023

Report authored by Mahihkan Management on behalf of the B.C. Ministry of Attorney General.

Mahihkan MANAGEMENT
IN PARTNERSHIP WITH VGN RESOURCES GROUP, INC.

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This report is a collaboration between Mahihkan Management and the Family Policy, Legislation and Transformation Division at B.C.'s Ministry of Attorney General.

In order to respect the feedback from participants, contributions during the discussions have been written as close to verbatim as possible while protecting the speaker's privacy. Due to this, some comments may seem vague, incomplete, or require interpretation by the reader, but this choice ensures that the voice of participants is honoured and truthfully represented.

BRITISH COLUMBIA

EXECUTIVE SUMMARY

Between May and June 2023, B.C.'s Ministry of Attorney General convened a series of dialogue sessions with Indigenous participants as part of their *Family Law Act* Modernization Project. The series was broken down into four regional 2-day sessions and involved legal staff from the Ministry, along with Indigenous People who have had lived experience with family law issues. Design and preparation, as well as the dialogue sessions, were supported by an Indigenous facilitator, engagement manager, and a notetaker for the sessions was provided by Mahihkan Management.

Over the course of the dialogue sessions, feedback was gathered from members of 33 First Nations and Indigenous organizations, with a total of 50 individuals participating, that resulted in 14 collective key themes.

Key Feedback

Indigenous participants emphasized that while amendments to the *Family Law Act (FLA)* were necessary, it was just a small part of a much larger picture. The FLA provides a legal framework for families in BC to resolve disputes between their family members. The Ministry of Attorney General is responsible for maintaining the FLA to ensure it remains up to date with societal and legal developments, as well as making sure it meets the needs of families in the BC. While the FLA provides a legal framework, it is decision-makers and other actors, such as judges, lawyers, police enforcement officials, mediators, family justice counsellors and other dispute resolution professionals, who apply the Act when families move through the family justice system. The FLA is a tool Indigenous families may choose to use, or may need to use in some circumstances, to resolve disputes through the family justice system. However, it is not the only tool as some Indigenous communities may have Indigenous legal orders or processes that could help their members resolve family law disputes as well. If the Ministry of Attorney General hopes to improve the experiences of Indigenous families with the family justice system, it must begin by acknowledging the generational trauma that has been inflicted upon Indigenous communities and families for over a century. Additionally, the Act must reflect the diversity amongst First Nations communities and not apply a one-size-fits-all approach.

Participants agreed that, in considering reforms to the FLA, the Ministry of Attorney General needs to acknowledge and legitimize the complexity and scope of Indigenous family networks and worldviews, which have not been part of the legislative framework that, in most cases, responds to more colonial concepts of the nuclear family with parents as guardians of their children. For example, it was stated that the Ministry of Attorney General should implement a system of documentation for guardians of Indigenous children that both acknowledges and legitimizes their position as guardians.

When amending the FLA, the Ministry should also consider how alternative justice methods used by Indigenous communities to address family disputes could be incorporated into dispute resolution processes and decision-making under the FLA in order to provide alternatives to court.

It is important that people working within the family justice sector and service providers are trained in cultural sensitivity.

The well-being of children must be the top priority, and their voices need to be heard. Indigenous children should be able to have their views considered when a family law decision is being made about them. The people involved in obtaining the child's views should either be connected to or have knowledge of the child's Indigenous community and heritage and follow culturally appropriate processes when speaking with the child.

Beyond suggested changes to the FLA, participants emphasized the need for government to provide wrap-around supports for Indigenous families and those going through the family justice system. In addition to this, the need for more education and awareness of family law practices and services available to Indigenous Peoples was highlighted. In order for Indigenous families to make informed choices, they must understand their options. For example, the government needs to provide more accessible information about legal options and resources for Indigenous people needing protection from family violence, especially to those living in rural and remote communities. There is also a need to provide additional resources for Indigenous men, who have traditionally been overlooked with respect to family law matters under the FLA.

Many participants shared stories that illustrated the reality that many families experience family law and child protection issues that are intertwined. While comments and themes related to child protection raised in the dialogue sessions are beyond the scope of the FLA, they were noted. Ministry of Attorney General staff will be sharing these themes and this What We Heard Report with the Ministry of Children and Family Development which is responsible for child protection under the *Child, Family and Community Services Act*. Though not within scope of the FLA, many participants noted that the Ministry of Children and Family Development must ensure that children are being cared for, and it was suggested that this be achieved by reviewing cases annually.

INTRODUCTION

In 2013, the *Family Law Act* (FLA) became law and British Columbia's primary legislation for families going through separation, and those who need to address the care of and time with a child, including child support. B.C.'s Ministry of Attorney General is responsible for providing policy and justice reform advice to the Attorney General. The FLA provides a legislative framework in which other justice system players such as the police, the judiciary, service providers and lawyers guide their decisions and actions. The Ministry of Attorney General is responsible for maintaining the FLA to ensure it remains up to date with societal and legal developments, as well as making sure it meets the needs of families in the BC. The FLA is a tool Indigenous families may choose to use, or may need to use in some circumstances, to resolve disputes through the family justice system. However, it is not the only tool as some Indigenous communities may have Indigenous legal orders or processes that could help their members resolve family law disputes as well. The Family Policy, Legislation and Transformation Division of the Ministry of Attorney General is leading the FLA modernization project and is responsible for

family justice policy and legislation as well as initiatives to reform and transform the family justice system.

The Ministry is reviewing the *Family Law Act* in three phases to ensure it meets the needs of families in B.C. This includes updating the act to reflect changes in society and court decisions that have been made since it became law. Phase 1 of the modernization project reviewed property division, pension division, and spousal support and resulted in amendments to Parts 5 and 6 of the Act that received Royal Assent on May 11, 2023. The Ministry has now begun Phase 2 of the modernization project to review parts of the Act that deal with who cares for and spends time with children, assessments and reports in family law disputes, and protection from family violence. Early in the Phase 2 review process, the Ministry convened a series of Indigenous dialogue sessions between May and June 2023 to obtain feedback on parts of the Act. The series was broken down into four 2-day engagement sessions in four regions throughout B.C. and involved representatives from the Ministry and Indigenous People who have had lived experience with family law issues. The sessions were supported by an Indigenous facilitator, engagement manager, and notetaker from Mahihkan Management.

The input from these dialogue sessions will inform the development of the Ministry of Attorney General's public engagement and further engagement with Indigenous Peoples on the Phase 2 topics of the *Family Law Act*. This What We Heard Report provides a summary of participant ideas and viewpoints that were shared during the dialogue sessions. All feedback was compiled and analyzed without attribution to protect participants' privacy and to encourage participation. The report does not provide an overall representation of public opinion, institutional policies or positions, nor that of a randomly selected population sample. Rather, this report summarizes the ideas and opinions expressed by the people who participated in these dialogue sessions. The report will be distributed to all participants who attended the dialogue sessions and to the Ministry of Attorney General. This What We Heard Report was independently prepared by the Mahihkan Management. The Ministry of Attorney General did not edit or correct any of the notes or the comments from participants in the dialogue sessions. The report does not necessarily reflect the opinions of Mahihkan Management nor the Government of B.C.

Although child protection does not fall within the scope of the *Family Law Act*, many participants shared stories about families that are dealing with both family law and child protection issues. Recognizing that there may be some overlap in these issues, the Ministry of Attorney General will share the comments and themes in this What We Heard Report with the Ministry of Children and Family Development for their consideration.

OBJECTIVES

The primary objective of these four sessions was to gain input from Indigenous people who have lived experience with family law issues. It is the first phase of engagement on the Phase 2 topics to examine how the FLA can better reflect Indigenous views and experience and not create barriers to Indigenous legal orders, traditions and culture when it comes to resolving family law

issues. The current phase of the FLA modernization project includes a review of the parts relating to:

- Parents' and guardians' responsibilities for making decisions about a child and spending time with a child.
- Protection from family violence
- Parenting assessments and reports on the needs and views of a child

ENGAGEMENT STRUCTURE & OVERVIEW

The dialogue sessions were held on the dates and in the communities below:

May 24 & 25	June 12 & 13	June 15 & 16	June 27 & 28
Nanaimo	New Westminster	Prince George	Kamloops

Table 1 – Dates and Locations of each Regional Session in B.C.

People from over 33 unique Nations and Indigenous organizations participated in the engagement sessions with a total of 50 participants throughout the four sessions.

	Nanaimo	New Westminster	Prince George	Kamloops
Number of Unique Communities	7	9	7	11
Number of Unique Attendees	11	10	13	16

Table 2 - Participant Summary by Regional Session

In order to reach Indigenous people with lived experience, Indigenous communities and service providers were contacted with a request to help raise awareness within their communities. This request, along with supporting information was distributed to 437 contacts representing 204 Nations and 26 Indigenous service providers. The Ministry of Attorney General also held two virtual Information Sessions in February 2023, in which representatives from Nations and Indigenous organizations were introduced to the *Family Law Act* Modernization Project, the proposed engagement path (including the dialogue sessions) and invited to provide input on areas of interest.

Each dialogue session began with a welcome from the facilitator and a land acknowledgement. When an Elder was available, they were given an offering of tobacco and opened each morning of the sessions in a good way.

Ministry of Attorney General Presentations

Every regional session included two presentations from representatives of the Ministry of Attorney General, which covered the following three topics:

Topic 1 – Care of and Time with Children

- Guardianship – who is responsible for a child
- Parenting arrangements – caring for and spending time with a child
- Child-centered decision making
- Changing where a child lives (Relocation)

Topic 2 – Assessments and Reports on the Views and Needs of a Child in Family Law Disputes

- Types of reports
- Qualifications for assessors and report writers
- Accountability (Complaints)

Topic 3 – Protection from Family Violence

- Eligibility for FLA protection orders
- Risk factors courts must consider
- Police enforcement
- Parenting arrangements when there is family violence

Day 1: Overview of the Family Law Modernization Project

In B.C., the *Family Law Act* is the legislation that guides judges making decisions about family law matters. It is an example of private law between individual people to resolve issues when families separate or divorce[1]. In contrast, child protection law, which is governed by the *Child, Family and Community Service Act* in B.C. is an example of public law, because it is between individuals and the Ministry of Children and Family Development unless a First Nation establishes a coordination agreement. The FLA offers a framework for families and the courts to follow when making agreements or decisions about family law issues that arise between family members, including the guardianship of a child, parenting arrangements, child and spousal support, division of family property and debt, and parentage (deciding who are a child's legal parents). The FLA also provides for civil protection orders in situations where there is a risk of family violence.

The FLA is one of many tools that families may use to help resolve family law issues. Indigenous legal orders and laws may also address family law matters. There are many First Nations in B.C., each with unique traditions and history, and they may approach family law matters in different ways. The FLA is a tool Indigenous families may choose or may need to use in certain circumstances,

[1] While the Divorce Act is federal legislation that also makes provision for parenting arrangements and support issues, the FLA applies to married and unmarried spouses and covers property and pension division, parenting arrangements, and support issues.

but it is acknowledged that Indigenous laws and processes for resolving family disputes are also used by Indigenous families.

The FLA was implemented in 2013, and the *Family Law Act* Modernization Project is aiming to amend the law to ensure that it continues to reflect societal changes, and to clarify areas of the law for better interpretation. However, the Ministry is not looking at rewriting the FLA at this time; instead, the focus is on improving and modernizing it. Because there was only limited engagement with Indigenous Peoples when the FLA was initially developed, an important part of the Modernization Project is to reach out to Indigenous communities to identify the current gaps in the legislation so that the Ministry can better meet the needs of all families within the province.

In order to meet these goals, the Ministry has broken down the project into three phases:

- Phase 1: Division of property, pensions, and spousal support.
- Phase 2: Issues related to children and family violence.
- Phase 3: Processes for resolving family law issues outside of court, child support, and enforcing court orders.

The Ministry acknowledges that Indigenous Peoples have distinct experiences, values, views, and perspectives about family and family law. Over the course of the two-day engagements, the stories and perspectives shared by participants helped to give Ministry staff a better understanding of how family law in B.C. works, or does not work, for Indigenous Peoples and their families. The feedback will also help shape the policy and legislative development process to better address the needs and priorities of Indigenous Peoples, and at a broader level will inform the Ministry's ongoing work to fully implement the BC *Declaration on the Rights of Indigenous Peoples Act*. While the engagement sessions were held to inform the Ministry's work on legislation, much of the feedback provided was about other aspects of the family justice system. While the Ministry may not be able to directly respond to that feedback, the report captures all of what we heard regardless of whether it was focused on legislation or not.

The engagement path for *Family Law Act* Modernization, Phase 2 includes the following stages:

- **May/June 2023**
  - Listen and learn from individuals with lived experience.
  - Regional dialogue sessions fall within this phase, which is the very beginning of the engagement path.

- **Summer/Fall 2023**
  - Confirm and validate what we heard.

- **Fall/Winter 2023-2024**
  - Further engagement on specific issues will develop and refine policy. This will include engagement with First Nations, Treaty First Nations and Indigenous organizations including themes raised in these dialogue sessions.
  - Broad public engagement on FLA Modernization Phase 2 topics is being planned.

- **Ongoing**
  - Work together with Indigenous Peoples in developing provincial law and policy.

The focus of day one was on the topics of guardianship, moving with a child (relocation), deciding who can spend time with and care for children, and child-centred decision-making including what is in the best interests of a child in family law disputes.

Day 2: Overview of the Family Law Modernization Project

The focus of day two was on protection from family violence, parenting assessments, and views of child reports. In B.C., the FLA defines family violence as physical, sexual, and emotional abuse, including coercive and controlling behaviour and exposure to violence in the care of a child. A person, including a child, who is at risk of violence from a family member in the same household can apply for a protection order under the FLA. For day two, the Ministry encouraged participants to discuss issues or concerns around eligibility for protection orders, whether the courts are considering all of the risk factors that should be considered, and whether there are any problems with police enforcement of protection orders if an order has been made and not followed.

Discussions on both Day 1 and Day 2 were facilitated with the use of scenarios involving three fictional families dealing with family law issues – “Sam’s Story,” “Noreen & Eric’s Story,” and “Dawn & Jessie’s Story.” The fictional families and scenarios were introduced through the facilitator and the use of poster boards and in PowerPoint slides (see Appendix I).

Sam’s Story

Sam’s story is about a child who is raised by his grandmother on a First Nations reserve. His parents are not in a relationship and do not live on the reserve with Sam. In different scenarios, Sam’s grandmother struggles with being able to make decisions for Sam because she is not considered a guardian under the FLA, and each of Sam’s parents plan to have Sam move into their homes off the reserve and at varying distances from his grandmother.

Noreen & Eric’s Story

Noreen and Eric's story is about a married couple who is in the process of separating. Noreen is Indigenous, Eric is non-Indigenous, and they have two children. In different scenarios, Noreen and Eric struggle to determine what would be in the best interest of their children as they decide who will care for them, and they try different ways of obtaining the children’s views on the family law issues in dispute.

Dawn & Jessie's Story

Dawn and Jessie's story is about two people in a relationship where there is family violence. In different scenarios, Dawn tries to seek protection for herself, her sister, and/or her child from Jessie either on-reserve or off-reserve. Family violence also plays a factor in determining what parenting arrangements Dawn and Jessie will have for their child.

KEY THEMES – REGIONAL

Nanaimo: May 24 & 25, 2023

General Discussion

- Since dealing with the B.C. Government has always been a difficult process, some Nations are beginning to look into creating their own child welfare systems and laws. However, this has presented its own challenges due to issues around capacity – most Nations are under-staffed and under-funded.
- Many individuals are performing this work off the sides of their desk, in addition to all the other tasks and roles they are responsible for performing.
- One goal is getting to a place where there is no child apprehension within any given Indigenous community, and that families are getting the support and treatment needed to stay together.
- The Ministry of Children and Family Development should be there to help and support Indigenous people. It should be teaching them how to parent and care for their children, instead of tearing families apart.
- There needs to be recognition for the structure of Indigenous families – it is not just mothers and fathers. There are Elders, aunties, uncles, grandparents, and non-related community members that can step into the role of a parent and help raise a child.
    - Sometimes the role of a parent shifts because the mother or father has passed away, or because they are struggling with mental health and addiction issues. In those cases, it becomes a priority to look at the Indigenous network and decide where the child will be safe and supported until their mother or father is well again.
    - Children are part of the whole community; they do not belong to just one singular family.
    - The Ministry of Attorney General needs to recognize these larger familial networks and have that reflected in the law. An Indigenous worldview must be incorporated, rather than applying the concept of the nuclear family and forcing Indigenous People to adhere to that colonial ideal.
- Remote communities face unique challenges in terms of accessibility and getting additional resources and support. Some have access to funding for social workers, but the

remoteness of the Nation and a lack of housing make it difficult to hire anyone. It does not matter how high the wage is when there is a lack of proper housing for workers.

- It is a bigger issue than the Act itself; there are too many different authorities with different responsibilities – it just overcomplicates the process and creates problems. Modernizing the FLA is important, but it is ultimately part of a much bigger picture – traditional laws matter when it comes to addressing these issues.
- The Ministry of Children and Family Development could be more supportive of Indigenous families' making decisions around childcare. It would be helpful to have family advocates in the community that can advocate on a family's behalf or provide guidance on what needs to happen to avoid having their children taken away.
    - This is important because many families do not understand their rights or options, especially when it is presented to them in complicated language.
- Many families do not realize they have a voice, that they can speak up and fight to keep their children. There is a general lack of knowledge around the FLA and what alternatives exist beyond turning to the Government.
    - Some individuals also use the Ministry of Children and Family Development as a scare tactic, without realizing the consequences of involving them. Working through issues within the home and community needs to be the priority.
- The voices of the children themselves must be heard, including where they want to live in the case of parents separating. However, that question and conversation needs to be approached by an objective third-party to ensure the child is not being influenced.
- There must be an acknowledgement of the generational trauma that gets passed down from parent to child, and the new trauma that is impacting Indigenous communities, like COVID and being in isolation for two years.
- The approach taken by non-Indigenous Ministry of Children and Family workers also needs to change if they want to build trust, because when they come into a family home and speak about how broken they are, it simply makes walls go up.
    - There needs to be a greater understanding of the challenges that Indigenous families face that can act as barriers. For example, if they are living in poverty or do not have a vehicle, then it impacts their ability to satisfy certain tasks that family support workers expect them to do.
    - In general, there is not enough compassion from non-Indigenous workers and little effort being made to view things through an Indigenous lens.
- Collaboration with First Nations is vital, because isolation has been a problem up until now, along with the fact there has been so much staff turnover at the Ministry of Children and Family Development because of COVID. Families must start over whenever a new social worker gets assigned. Promises have gone unfulfilled, communication gets broken, and there is no understanding of challenges – such as not having transportation for court appearances, etc.
- The lack of understanding for Indigenous family structures also creates barriers for housing requirements. Since the Ministry of Children and Family Development does not

see multi-family households as a viable living situation, it prevents many parents from getting their kids back because finding a separate home is challenging.
    - The cross-cultural aspect of this is problematic as well, since Indigenous Peoples are not the only ones that traditionally live in multi-family or multi-generational households. East Indian families practice this and it is accepted, yet Indigenous Peoples do not typically receive the same recognition.
- Every First Nation is culturally different, and that must be recognized by the Act too. Overall, there needs to be equitable treatment between each First Nation, along with Indigenous and non-Indigenous parents and the support they receive from the Government.
- The Ministry of Attorney General needs to visit the communities in person to properly hear what people are saying. If they really want to understand what communities need, go visit them and experience it firsthand.

Discussion: Sam's Story

- It is quite common that individuals will not freely disclose that they are a grandparent, rather than the mother or father, because of the complications it creates for caring for the child. It creates a significant barrier when it comes to registering children in school or during medical situations.
- The current process for documenting responsibility of the child involves going to court, which is a substantial commitment of finances and time. It would be helpful to have a recognized written agreement that outlines the responsibilities of caring for the child, without the barriers associated with going to court – both temporary and more long-term.
- In medical situations where the parents are separated and living apart, it would be helpful to have a system in place where the primary guardian could transfer the ability to make medical decisions for the child. This mechanism would be necessary for situations where the non-primary guardian is closer to the child and medical decisions must be made in a timely manner.
    - A virtual system was suggested, but the challenges for remote communities were highlighted again and the fact that some Nations do not have access to Wi-Fi.
- The benefits of circle sentencing, and alternative justice with Elders were discussed in comparison to traditional sentencing, and the potential to incorporate that as an option for addressing family disputes or helping to restore harmony within the community.
    - Indigenous communities need to oversee their own accountability and justice, rather than the jail system being another way that families are separated, and trauma is inflicted.
    - It is important to empower Indigenous communities to practice their traditions, including traditional law, and the Ministry of Attorney General needs to recognize Indigenous power and law.

- One suggestion was to add sub-sections to the Family Law Act that incorporates Indigenous culture, such as a sub-section that allows extended family members or the current guardian to enroll a child in daycare, etc.
- In cases where all parties do not agree with who should care for a child, an objective mediator should be brought in to help figure it out. Sometimes parents are not thinking reasonably, and it requires bringing in a neutral third-party to figure out what is most beneficial for the child.
- Living situations can be quite fluid for children of remote communities, as it is commonplace for some to be sent away to a larger center for schooling, and they will stay with family or friends during the school year and return home during the summer. However, these living situations can fluctuate month-to-month.
- In terms of parents that have shared custody of a child, it is important to keep in mind that summer break is 12 weeks each year, so there would be time for the child to catch up with the side of their family that did not have primary custody while they were in school.
- It is vital for Indigenous children to grow up with their culture, because it is something that starts getting passed down from birth. It is continuous and cannot start being taught later in life; it needs to be a foundational part of their upbringing and it is not right to deprive a child of that.
- It is also important to follow up with children on an ongoing basis and make sure that they are safe. If a child is acting out, it is a message, and it is important to figure out the root of the problem and ensure their safety.
- When asked about what cultural standards show that things are working really well for children and families, which, participants had the following responses:
    - Respect for Elders and participation in traditional community activities, such as food gathering and communal harvests that benefit everyone.
    - Responsibility for what they have, such as cell phones, and taking care of their belongings.
    - Respect for structure and maintaining it in their own lives – made possible by living in a stable environment.
- Any support and funding that First Nation communities and families receive must keep up with rates of inflation, because if those levels do not meet the needs for the current cost of living, then it does not actually help very much.

Discussion: Noreen & Eric's Story

- The child needs to have some input on what will happen to them, but the parents also need to consider the longer-term impacts of their choices. In the case of Noreen and Eric, these choices include where Kai and Lara live, and whether Kai plays soccer competitively.
- The culture of the child is more important than the sport of soccer – that cultural connection is a lifelong, ongoing practice and it must be nurtured from a young age.

    - The issue of cultural survival is also part of this discussion, as culture is passed down from generation to generation and a gap in transmitting those teachings can have serious impacts.
- A trial-and-error approach could also be applied to this issue. It was suggested to sign the child up for competitive soccer and see if they like it – perhaps they would prefer a different activity. Let the child experience a few options and make the decision for themselves.
- The utilization of an Elder's panel would be beneficial for settling family disputes, since they would know the histories of the family and will know how to settle conflict within the community. They would also be able to provide invaluable wisdom about how to care for children and be a parent – because some people have not received those teachings.
- A Council of Elders should have the same authority as a psychologist and be able to have a say in assessing the needs of a child.
- The current system of bringing in an outside psychologist to evaluate a child is very invasive. All the documentation through this method does not actually show how well the child is being taken care of. What exactly is the purpose of these assessments then?
- These assessments need to be performed by someone that is Indigenous and knows the child, that way the child feels safe when being questioned.
- Why does an assessment cost so much to begin with? There should be a fund established that covers those fees for parents. If this is the standard, then it needs to be changed.
- There needs to be stability and order for the sake of the children. Fighting over soccer and culture is just going to negatively impact them.
- Why does the child have to leave? They have not done anything wrong and have no part in the conflict – it should be one of the parents that leaves. The burden of choice should not fall upon the child to make a decision.
- The age of the child makes a significant difference in this scenario. A child at the age of 10 being put in this situation would be very different from one that is 14 or 17 years old.
- The parents are the ones that need to come to an agreement – these assessments enforce this idea that there is something wrong with the children, when it is an issue with the parents. Work on the parents, don't put pressure on the children and label them as broken. Educate the parents, work on the parents, send them for counseling and leave the kids out of it – let them be children.

Discussion: Dawn & Jessie's Story

- Violence is not taken seriously in First Nations communities, especially when it involves women.
    - Cases of violence have also risen due to COVID. How many fathers, mothers, and children are now dealing with trauma from being in lockdown with their abusers?
    - There have been fatalities in First Nations because police have taken so long to respond, as they do not prioritize those calls.

- Remote communities face unique challenges when it comes to violence, as some Nations do not have access to safe houses, resources, or even police protection. These communities can also be hours away from the nearest police station and help – assuming the police answer the call at all.
    - In remote communities that deal with slow response times, considerable damage can be done in the hours it takes police to arrive – people can die, and the abusers would have ample time to flee.
- The emotional toll it takes on victims is also considerable when they choose to go through the court process, as there is never a guarantee that their case will be successful.
- Community social workers are often overworked in their respective communities too, as they are understaffed so they will sometimes have to play the role of police, mediators, and support workers.
- In many cases, trust has been broken between First Nations and the police, as they only come into the community to arrest someone and take them away.
    - That being said, others have seen considerable benefits in building relationships between family care workers and RCMP constables that are stationed within the community. However, during times of staff turnover the community has to restart that trust-building process.
- There needs to be more direct lines of communication established with police forces, as multiple First Nations reported having their calls re-routed through different cities, or even directed through the United States, which just adds to the already long response times.
- A traditional approach to these issues would involve going before the Elders and using restorative justice. The accused would go before the Circle of Elders, and police and a judge would be included in the process. First Nations leadership needs to be at the forefront moving forward.
- Regarding mothers, there is little support from the police. They do not follow up with them and make sure they are okay after an incident has occurred.
- Some Nations take a family-centered approach, rather than just child-centered. They bring the entire family to a safe house and support them as they heal (e.g., Lummi Nation Healthy Relationships for Healthy Families model).
- A wholistic perspective needs to be taken with modernizing the Act, because everything is interconnected, it cannot be addressed in silos.
- The Band Council Resolution (BCR) has been used by some Nations to remove an abusive family member from the community until they have met a list of conditions that would permit their return. This creates protection for the family members who remain in the community. For the BCR to be signed, there needs to be a demonstrated pattern of repeat behaviour by the abuser. The signed BCR is registered in Ottawa as per the Indian Act requirements.
- Other Nations have bylaws that permit an abusive individual to be removed from the home even if they hold a certificate of possession if this is necessary to protect the

children in the home. If the abusive individual does not demonstrate they have worked to improve their behaviour, the certificate of possession may pass to the child.

- The FLA needs to recognize authority that already exists within Indigenous communities, whether that is the BCR, leadership, Elders, council, etc.
- There needs to be wrap-around services available for parents and children that are in need and must leave their homes, such as access to transportation and daycare. There are gaps in programming though, such as minimal programs for children, extensive waitlists for therapists, and inconsistent grief and loss programs for those that need it.
    - More specialized programming around domestic violence is needed too.
- Court orders are enforced with inconsistency, and police will often not act unless they see the people together. Family and friends will often hide information to protect loved ones too. Overall, there is no accountability.
    - It would be helpful if the First Nation could enforce these orders, especially as community members have more respect for Chief and Council.
- There needs to be more education and awareness about domestic violence and what can lead someone to be in an abusive relationship 20 years down the road.
- Most families do not have extensive knowledge of the various laws and legal options available to them. They do not often call the police and will instead call family or friends – whoever will be able to bring them to safety.
    - There are often feelings of hesitation with calling police when children are involved too, because it will bring in the Ministry of Children and Family Development and potentially traumatize the children.
- The language needs to be changed around parenting, and what counts as a parent – recognition for the extended family or non-blood relatives that sometimes adopt the parenting role.
- Since Indigenous Peoples are becoming parents much younger than generations before, there should be life skills taught in schools, in addition to cultural teachings, to better prepare them for life outside of school and as parents. Youth are currently lacking the necessary life skills and need wrap-around services to help bridge gaps in their knowledge, especially those that have been created by intergenerational trauma.
    - Parents also need to be given achievable goals that they can complete by non-Indigenous social workers, rather than being handed a long list and feeling so overwhelmed that they just shut down.
- The wording “best interests of the child” isolates one part of the family unit. It is never just the child, but the family as a whole. A child is one part of a more complex family system, so how can they be isolated from that broader network? This idea of the nuclear family has been problematic.
    - The focus needs to shift from something narrow to a much more wholistic perspective that is actually representative of how First Nations families exist and function.

- The law should state that children must stay connected with both sides of their family and their culture, because they are the ones that suffer the most by being taken away and deprived from those cultural and familial connections.
    - When children lose their sense of belonging, they must turn elsewhere for kinship and family, which can lead them towards trouble. That is why having connections to their culture is crucial in preserving a sense of belonging.

New Westminster: June 12 & 13, 2023

General Discussion

- When it comes to custody decisions, do the courts take toxic living situations into consideration? For example, if one parent is caught in a cycle of on-again/off-again with a partner and it is creating an emotionally toxic environment for the children.
    - The Ministry of Attorney General staff responded that in such a situation, a conduct order may be most appropriate, but the judge must look at all relevant factors when considering custody arrangements because the best interests of the child are the top priority.
- The negative impacts of the Views of the Child report were highlighted, and the fact that they can traumatize the very children they are trying to help.
- The way that social workers currently complete reports is harmful and misses a lot of the important information required to properly inform the court. First Nations are often left out of the process altogether, and the Ministry of Children and Family Development is not being fully informed of what is contributing to any given file. Visits are not happening as often as they should, and key workers on the file are not communicating with each other or the court.
- Assessments should be done by someone else, so that the power is taken away from the Ministry of Children and Family Development while leaving a safety framework intact. This is necessary because the current assessment process is dehumanizing, harmful, and even traumatizing in some cases.
- Indigenous community members need to be delegated as points of contacts in the assessment processes and legitimized by the Ministry of Attorney General through the *Family Law Act*, because there is currently a lack of Indigenous voices.
- Some Nations avoid the *Family Law Act* altogether, because once a decision has been made the supports and involvement from the Ministry of Children and Family Development ends. The family is left to handle everything on their own once a custody decision has been made.
- When it comes to the *Family Law Act*, it is important to document everything that could potentially help strengthen a parent's case, whether for custody, visitation, a protection order, etc.
- There is a critical lack of privacy and supports for victims that must enter family court and talk about their abuse. Regardless of whether the case wins or loses, there is no follow-

up with the victims or wrap-around services to help support them after recounting their traumatic experiences.

- In comparison to what is available for mothers and women, there are very few supports and resources available for fathers and children, which needs to change.
- There is no therapeutic process for Indigenous individuals going through the court system that are being re-traumatized by having to recall painful experiences. Therefore, many people will avoid going to court at all costs because it is such a harmful experience and there are no supports or resources to help.
- The court process needs to become more welcoming and supportive of Indigenous values, because with the current westernized approach, Indigenous Peoples are expected to force themselves to fit a very specific mould – like a square peg in a round hole. At the very least there should be an Indigenous support worker to make the court process less traumatic and more accessible.
- There has been success utilizing a restorative justice model with youth, and it should be looked at as an option for criminal offenses too. Legitimizing a restorative justice committee would be a better option than always going through the traditional court system.
- Issues around cross-provincial cases were raised, especially regarding matters surrounding custody. There is no cross-provincial enforcement with custody matters, which creates complex problems if a parent takes the children into another province to avoid custody terms being enforced.
- Courts are a different experience for an Indigenous Person – they're always going to feel like the odd one out – it's them against the system, and the system always seems to be winning. The government should hire more Indigenous People, devote resources to educate Indigenous People on their rights, and work towards making the system safer for them overall. Increasing feelings of safety can also be facilitated by hiring Indigenous advocates to be present, provide cultural supports and comfort, and explain the court process to families that are overwhelmed by what they are going through.
- There should be funding provided for regional Indigenous representatives that are above band representatives on the hierarchy, and they can be brought into communities to work on cases that would be problematic for the local band representatives. This is a particular issue for smaller communities that cannot afford to bring in that higher level of support, and addresses any matters related to conflicts of interest.
- There is a disconnect between the funding and supports that are available to Indigenous Peoples living on and off reserve. There should be a central hub for resources that Indigenous Peoples can access to try and counteract how often those living off-reserve are overlooked.
- The government must recognize that not all First Nations are the same. There are over 200 Indigenous communities within B.C., each with their own culture and processes. Additionally, the government needs to realize that smaller communities cannot follow the same processes as larger ones, because there are significant differences in capacity. For

example, Boothroyd Indian Band does not have the capacity and resources to look after members that live off reserve.

- Traditional Indigenous systems need to be recognized and legitimized by the court. They have been around since time immemorial and need to be acknowledged.
- Indigenous worldviews and values are vastly different than Western approaches. The current court system was not designed for First Nations or Indigenous men – they are being left behind and must navigate this colonial system alone.
- Give ownership back to the communities and let them incorporate their traditional practices. There are a lot of good intentions from a lot of different agencies, but nothing has been properly supported and there is a chronic lack of resources.
- There are so many contextual issues that are impacting the wellbeing of Indigenous Peoples. Services need to change – it is not enough to just apologize. Indigenous Peoples need to be a priority with this modernization because they have recognized title and rights and their needs have been historically unmet. Any changes must be specific to Indigenous People's needs, otherwise it is pointless.
- The government cannot take an agnostic approach to this kind of work and treat Indigenous Peoples the same as everyone else, because that ignores the systemic oppression and violence that has been brought upon them for centuries. In order for the *Family Law Act* to make meaningful changes, the past and present mistreatment of Indigenous Peoples must be acknowledged, and their needs must be heard and prioritized.
- Any laws need to work in harmony and respect the individuality of the different First Nations communities. There need to be signed agreements that outline Indigenous governance and give ownership to Indigenous leadership. Government needs to demonstrate commitment to work in partnership with Indigenous communities.
- Communities need to be consulted before decisions are made involving Indigenous children. Traditional Indigenous law and the role of the Chief and Knowledge Keepers is important and needs to be acknowledged more in family law proceedings, especially if the matter is in court. This is necessary to bring forward Indigenous values and world views, which are very different from the current colonial system.

Discussion: Sam's Story

- This example is not representative of a functioning arrangement where a grandparent is the caretaker of their grandchild and has the support and cooperation of the parents. In such situations the grandparent could just contact the parent for medical information or to get approval for procedures, etc.
- One Nation ran into this issue on two separate occasions, and their solution was to create a band affidavit that confirmed the grandparent was the primary guardian of the child, which the school accepted.

- British Columbia should copy what other provinces have done, such as Saskatchewan, and make mediation mandatory before taking the matter to court. This could also have a positive effect by dissuading people from using the courts as a threat to get their way or dragging out a voluntary mediation process in order to delay a resolution.
    - If mediation becomes mandatory, then the Province must put safeguards in place for individuals that are facing domestic abuse. Because if a victim is forced to sit down and try to mediate with their abuser, there needs to be mechanisms in place to protect the victim and prevent that abuse from continuing in that space. This is especially true in cases that involve children, as they can be used as pawns and exploited by the abuser.
    - Mediation needs to include both sides of the child's family, not just the mother and father. The aunts, uncles, and grandparents all need to be included because this is more representative of Indigenous family structures. Both cultural backgrounds (paternal and maternal) of the child need to be represented and considered during a mediation process.
- In terms of relocation, it is all about the best interests of the child. Is uprooting the child from the environment they know is actually beneficial, or would it do more harm than good? Cultural considerations are very important in such a situation, along with making sure that a viable guardian has supports in place and can offer the child a stable environment to grow up in.
- Why have the parents not had custody of Sam since he was six-years old? Is there any underlying issue with their health or addiction that prevents them from being fit parents? Is there any history of domestic abuse?
- If the father has made contact with Sam during that period of separation from his mother, then he still has rights as the father, and he deserves a chance to prove himself. Mothers are always given preferential treatment by the courts, even when they may not be the best caretaker for a child. Men need extra supports and to be given a chance – there needs to be equity in how the law looks at men and women.
- If Sam moves to the city, you need to look at whether Dad can actually afford to maintain those connections with him since he'll be much further away. Mom has an obligation to maintain that connection for Sam if he lives with her.
- Socio-economic status is an important factor when looking at family matters because differences in finances just create another power imbalance.
- The Province and court should be looking at taking a more preventative approach, instead of just being reactionary when things have become a problem. This is where collaboration with First Nations would be beneficial and bridging the gap instead of waiting for a lawyer to get involved. Additionally, there needs to be more communication between different sectors, instead of justice, education, healthcare, etc., working within their established silos and not communicating.

- Any Indigenous child can still be connected to their culture when they live off-reserve, just like there can be children living on-reserve that are not connected to their culture. It has more to do with the willingness and ability of the parents and extended family to pass this knowledge on, than it does with where a child is located. If a parent is connected to their community and driven to encourage that connection in their children, then they will make it happen regardless of whether they are on or off-reserve.
    - In the case of Sam, it would be traumatic to remove him from the culture and community of his maternal grandma, since that is what he has known for his whole life. It is vital to maintain that connection to the home community.
    - One participant spoke about keeping this connection alive through music, powwow dancing, and learning the language.
- It is important to respect the culture and ethnicity of both parents, even if one is not Indigenous, because they will each have grown up in their own unique ways and view raising their children with that special lens.
- Not every child will benefit from having their parents involved in their lives. In some cases, it is healthier for the child to not have a relationship with their mother and/or father, rather than being forced to have that connection and mentally or physically suffering because of it.
- Indigenous People need to be supported where they are at, and have safe spaces that they can utilize if they want to practice religion, culture, etc.
- What will happen when Grandma Lois's health begins failing? Children should be children and not given the burden of growing up too fast because they need to care for their guardians – the extended family needs to step in.
- Why is so much power being given to the mom, when it sounds like the dad is the one making the effort to visit every weekend and has been actively involved in Sam's life?
- Everyone, including the extended family, should have a say in who cares for the child. It should not be up to just the mother and father. In this case, the mother should not have more say than the father, just because it is the maternal grandmother raising Sam.
- When asked whether the FLA should be prescriptive about DRIPPA and UNDRIP, there were some comments about the fact that any changes to family law – in order to recognize the historical violence that has been imposed on Indigenous Peoples in Canada through colonization – needs to look at the entire underlying system, rather than just making small shifts here and there.
- Maintaining connections with an Indigenous community is a two-way street. Parents, especially non-Indigenous parents, need to reach out to the community on behalf of their children, but the community also needs to reach out to the family as well. This could be the responsibility of the designated representative, especially if there has been a break in the relationship with the other parent/family.

Discussion: Noreen & Eric's Story

- It is possible to stay connected to the culture and still play soccer competitively, it does not need to be one or the other.
- What do the kids think? Kai is 10, which is old enough to have an opinion about what happens to him, and Lara needs to be a consideration too. However, it is important to figure out how to talk to Kai and Lara about what they want, without any pressure to please either parent.
- The dad should be given a chance to prove that he can handle additional responsibilities and parent the children every other weekend – that is what joint parenting should be.
- Children have every right to learn about their maternal and paternal heritage – Eric's Scandinavian background is just as important as Noreen's Indigenous background.
- A factor that could complicate matters is if either child has additional needs that would make changing locations difficult, such as therapy or consistent medical appointments.
- This matter should be solved using mediation with a neutral third party, ideally someone that has received training and understands Indigenous culture. They should be brought in after finding out what each child wants, and then they can help divide the responsibilities between both parents.
    - Overall, having multiple people involved could act as a safeguard, but ultimately the needs of the children must be the top priority.
- In terms of individuals that have connections to Chief and Council, there was agreement amongst participants that it was something that should not count in their favour or be used to get the upper hand. It would be similar to someone with more money getting preferential treatment. Some participants said that Chief and Council should not be involved on any level – partly due to concern around Chief and Council being involved in personal family disputes.
    - Additionally, Chief and Council do not have any training regarding social work, family law, etc., which is an important qualification for any mediator. There needs to be professional standards and a wholistic understanding of how to address families in conflict.
- There should be a checklist provided by the court system of what the judge wants to see done, rather than leaving families in the dark without any understanding of how they are being evaluated.
    - Additionally, families should be told how each item on the list is being weighted by the judge, so that they can understand the level of importance. This would be especially helpful for things that are not culturally relevant for Indigenous People.
- In terms of the needs of the child, there was agreement among participants that social media posts should be admissible in custody cases or when concerns are raised about a child's welfare, because these posts are public.
- There should be legislation created that makes documentation necessary for reaching out on behalf of the child. For example, showing that they have tried to contact the mother or father and connected with community supports. There should be evidence to show

that every avenue is being explored to find support for the child – it is about complete transparency.

- Noreen likely would have been more comfortable if a woman interviewed her, especially a woman of colour. Due to the situation, it would be easier to confide in another woman about what she was going through. However, it is crucial that anyone doing these interviews is trauma-informed and has some cultural or sensitivity training. This training should be mandated, and a roster of capable people should be kept and offered to the family, giving them the ultimate choice of who they work with.
    - There should be a process in place that gives Noreen the ability to choose who she is comfortable talking to, rather than just being forced to accept whomever the court sends.
    - Participants questioned whether professionals like psychologists are needed to write these reports, as most have very little understanding of Indigenous people. Individuals and families should be allowed to request Indigenous workers to perform these assessments, and it needs to be enforced and followed through by the courts.
    - The comfort of the children that are being interviewed also needs to be prioritized. They cannot just be isolated in a small room, removed from their support system and everything that is familiar, and asked questions by an intimidating stranger. There must be a way to conduct interviews without traumatizing the child in the process.
- It is important to recognize culture first and that there is a responsibility to consider reconciliation around health and justice, plus the TRC calls to action. It is up to the agencies and those in charge to utilize culture as a cornerstone, while prioritizing cultural safety and competence – especially related to Indigenous worldview and culture.
- One Nation has a protocol in place where MCFD must inform designated staff members before they are allowed to come into the community. They must also explain why they want to apprehend a child, if they are doing mediation, etc., because keeping the child within the community is always a top priority.
    - This level of consultation with the community should be a standard between the Ministry of Attorney General and every Indigenous Nation because it is their children involved so they deserve to be consulted.
- It is the responsibility of the courts, schools, healthcare systems, etc., to be informed of the TRC recommendations, UNDRIP, DRIPA, and realize that it will never be a one-size-fits-all solution. A lot of work has gone into strengthening the presence of Indigenous Peoples at the table. Jurisdiction is also important, but there's the issue of financial capacity. There is a lack of services, but also a lack of staff for those services.
- In terms of the cost, there should be upfront honesty about the cost of something like this – rather than being blindsided at the end. The financial burden is a barrier for a lot of families in proceeding with legal help. It can be a barrier for effective resolution.

- The best interests of the child are the cornerstone to child and family welfare, and they are outlined within Bill C-92. It is a statement of Indigenous Rights on the federal level, and there is a broader responsibility to be aware of this.
    - Consultation is also very important too. There needs to be proper consultation, longer than just a few minutes, to establish proper jurisdiction – especially since each community is different. The Ministry of Children and Family Development should really be consulting the community where the child is from and trying to establish a connection with the community before ever trying to apprehend a child.
- Communities and families should be given the assessment tools ahead of time to see what is being done. It is helpful to be fully informed of the tools, how the interview is being conducted, and being able to see how harmful it might be.
- There is knowledge about cultural safety within communities that should be utilized by the Ministry of Attorney General. For Noreen and Eric, the Ministry of Attorney General should require those who do assessments to go to the family and ask what they are comfortable with, if they're comfortable doing the assessment, and if not, then what do they suggest? We need to minimize the trauma that is being inflicted and address all the gaps in services.
- It is important to connect with the families on a case-by-case basis and ask questions related to culture and protocol. Knowledge Keepers should also be involved in the process, on behalf of the community and the children.
- Families should be asked who they want there to support them, and then ensuring that they have that support there as they go through the court process.

Discussion: Dawn & Jessie's Story

- Protection orders are important in such cases, but there also needs to be support given for Jessie to help assess what his needs are and what is going on that is leading to this behavior.
- Both Dawn and Jessie should meet with a third party that can provide support and assess what is going on. In terms of safety, the possibility of a transition home should be considered.
    - Having a neutral third-party come in to support the family is especially necessary in smaller First Nations, where it would be difficult to find someone unbiased to come in and report on what has happened.
- Although the RCMP may be able to help in this situation, it is also necessary to recognize that not all experiences with the police are positive and it can make people very hesitant to reach out to them for help.
- Someone must want to change in order to genuinely change their ways. There should be a system implemented that weighs the value of what someone is doing – are they doing this to say that they did it, or are they doing this because they genuinely want to be a better person?

- Privacy must be a top priority when victims are talking about their experiences. They are being asked to relive traumatic experiences and should not be asked to do that in a room full of people. It is important that they have the privacy of a smaller, more intimate setting, and that there is aftercare offered to help them recover from the experience.
- There also needs to be supports developed specifically for men that have witnessed or been victims of abuse. They do not have adequate resources on or off reserve, and there is also a lot of shame about coming forward.
- Some Indigenous Peoples do not even realize they are being violent – it is just what they learned as children, and it stems from intergenerational abuse and violence because of residential schools and colonialism.
    - There needs to be more support for people, which might include transition houses and programming for men, co-dependency programs, and more safe houses in remote communities where neutral staff are able to document further abusive behaviour, especially if there is delayed police response.
- It is important to acknowledge the trauma that is at play in this scenario. Dawn grew up witnessing abuse, and now her daughter Rose is going through the same thing.
    - But did Jessie witness abuse as a child, too? Maybe that is part of the reason he is showcasing abusive behaviours. It could just be the cycle repeating itself.
- There needs to be more work put into educating Nations about which supports and resources are available for individuals and families, because a lot of people (especially men) don't know where to turn or what is available to them.
- There should be a list or manual that is specific to each community, which lists all the contacts that are available for support, and the various resources that individuals and families in that community can utilize.
- Band Council Resolutions are useful for on-reserve disputes because they can remove someone from the community to ensure the safety of others. In some communities RCMP have an agreement with the band that RCMP will enforce a band council resolution, e.g., by removing the restrained person from the community.
- In this situation, Dawn could alert the band office and work with someone to create a safety plan or sit down with a third-party and go through a family mediation process.
- Why is Dawn's family not involved? Because sometimes abusers will try to isolate their victims and keep them separated from their family or any sort of support system. This is one reason why it is so important to document everything and have a paper trail to show in court.
- Where is Rose's input in all of this?
- Family treatment should be utilized, and Jessie should have an intervention related to his drinking, ideally by someone he knows and trusts, because he needs to salvage his relationship with the mother and daughter. If he does not do something to change, then he will lose access to his child. One Nation has started developing genealogy trees that include information about family history and trauma, which helps the community to identify what services the family may benefit from.

    - Perhaps Jessie's access to his daughter should happen with Jessie's parents there to supervise, and without Dawn present, so that there are still protections in place for Rose.
- There is a duty to report when evidence of abuse is uncovered, even though in a lot of cases victims won't come forward because they think that the problem won't be fixed, and they'll just end up getting it worse.
- Just because you're not physically abusing your child, that doesn't mean that you're not doing mental or emotional damage to them. Kids can also be used as pawns for abusers to get control or intimidate their victims. In this case, the child's best interests trump the father's rights.
- There needs to be some supports that children can be directed to, or a network of programs and a list of resources for parents that can help the youth and children, such as trauma counsellors.
- There should also be practical supports for youth, such as education around finances, or other resources to help prepare them to grow up well. These could include teaching youth how to cook healthy meals, or how to access pools and gyms – things to help them incorporate structure into their lives. In scenarios like this, family mediation with an Indigenous mediator may help to create safe parenting arrangements, which could include supervised visits to keep the children safe. Arrangements also need to be flexible enough to accommodate change as circumstances evolve.

Prince George: June 15 & 16, 2023

General Discussion

- There is a gap in support from the Ministry of Children and Family Development because they do not get involved in custody disputes (under the FLA). This triggers issues with financial capacity because Indigenous families will have to try and access legal services to resolve these disputes – it is especially challenging for Indigenous women.
- There needs to be standards included in the legislation which preserve the language, culture, and heritage of Indigenous children that are going through the family law system.
- When it comes to Indigenous languages, one word can have a multitude of different meanings, which can then vary between Nations. The Ministry of Attorney General does not realize the can of worms that they are opening by trying to modernize these laws – the task is much broader than they think.
- The Indigenous worldview must be taken into consideration and incorporated into the *Family Law Act* moving forward.
- Cowessess First Nation has successfully implemented their own law which legitimizes their jurisdiction over their families and children, and that model should be looked at more closely.
- There are power imbalances that exist within the family court system and solving matters of custody. Currently, if one parent has a lot more money than the other, they are much more likely to be granted custody of the children.
- Historical laws and traditional ways of being should be recognized by the colonial court system, because right now Indigenous women are looked down upon for staying home with their children while the father goes out and works to provide for their family.
- There are gaps in communication between the legal teams working on family law cases, and the support workers helping Indigenous clients that are trying to navigate the court system. Because Nations do not receive notice of FLA applications and members often don't know about the services available to support families (e.g., fund for legal advice, wrap-around services), families struggle on their own. There is also a distinct lack of supports for these individuals, and there should be legislation in place that mandates certain questions are asked during assessments – such as do you have a support system in place? Are you connected to your community, or would you like to be? The assessments should also be renamed to something like 'welcome packages' so that they are less intimidating.
- When partners are going through a separation and custody battle, there must be a way for both parties to remain connected and able to communicate with their children. It is not healthy, or fair, for one parent to take the children away and continually move, leaving the other parent wondering where their children are and how they are doing. This can sometimes last for years at a time while applications, the custody case, etc., goes through

the court system and it is damaging for a parent's mental health and further traumatizes any child involved.

- In order to modernize the *Family Law Act*, the Ministry of Attorney General needs to look at United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and how they can implement the tenants of this legislation moving forward. However, it is not enough to just incorporate UNDRIP. The entire court system needs to be educated on it and how to implement the framework of UNDRIP in family law matters.
- There should be something in place to cap the power that the Ministry of Children and Family Development has, and any decisions they make should be reviewed by an ethical board before they are implemented. It needs to actually focus on the best interests of the child.
- Some Nations have begun using peace teas to resolve family disputes; individuals are invited to speak their minds without fear of retribution and Ministry of Children and Family Development staff has been invited to observe these mediations, but they are not allowed to have a say in the results. The healing circle was also mentioned as a form of alternative justice that could be integrated into family law as well.
- For one Nation, 85% of their population lives away from the reserve. This can result in a delay of information, sometimes years in length – such as learning that a band member is going to court shortly before their court date. Basic information sharing is just not happening.
- The court intake process needs to improve, along with increasing the resources being offered to Indigenous Peoples going through the system. Instead of immediately asking whether someone is Indigenous, ask if they have a community that they would like to be connected with for support.
- The creation of an oversight committee would be beneficial for ensuring that promises and services are being fulfilled and that people are held accountable, because the current system is not working.
- The federal law (*An Act Respecting First Nations, Métis and Inuit Children, Youth and Families*) needs to be embedded into the provincial *Family Law Act*, because Indigenous Peoples helped to design the federal law. There needs to be continuity between the provincial and federal frameworks, so that jurisdiction is more fluid and will not stop just because a child crosses, or is brought over, a border.
- There should be a notification system in place that notifies family when a child in care is moved. This not only gives parents the peace of mind of knowing where their children are, especially for cases that get drawn out for years, but it would also be helpful during emergencies.
    - This would be especially useful for connecting family members and potentially keeping children out of foster care. Examples were given of children found in foster care in another province – when family existed within British Columbia –

but nobody bothered to look or reach out on behalf of the child. This is another situation that could be avoided if people put in the effort to ensure that families remained together.

  - Sometimes communication about children's whereabouts is between Nations. Some Nations are working to build/rebuild relationships, especially with neighbouring communities and share information about members including children that may have moved into the community. This helps to ensure children maintain connections with their communities and is important for safety protocols in case of fire or another emergency.

- Maintaining contact between families and communities is extremely important. There are different ways that Nations are working to improve or re-establish connections. One Nation has created weekly virtual circles where matriarchs tell stories from the past (Wet'suwet'en Wednesdays). The Return to the Home Fires program happens every other year, bringing children home that have been removed from the community. Another participant developed a program for permanency planning that MCFD called Roots, creating family finders that look for missing family members.
- The language around guardianship should be empowering, rather than oppressive – you have the *right* as a guardian, rather than you have the *responsibility*. For example, you have the right as a guardian to get this child into school and arrange medical care. It is not a responsibility that is being forced upon them.

Discussion: Sam's Story

- Some Nations will honour situations like this, but they will also seek guidance from support workers. They work with families and their unique situations, with a focus on providing wrap-around supports. This is not breaking the law, nor should it be – the law should be flexible enough to recognize different forms of guardianship and parenting.
  - However, this situation would be different with an Indigenous family living off-reserve in an urban center. In a larger community where it is impossible to know everyone and their familial ties, it becomes more complicated – especially if someone has claimed to be the parent or guardian of a child, so anyone to say otherwise (such as a biological parent) must prove their connection. There must be a way for the court system to recognize Indigenous knowledge systems and Indigenous ways of being – a way to walk in both worlds.
- Where is Sam's voice in this scenario? What does he want? He is old enough to have a say.
- When it comes to bringing children into medical facilities off-reserve, it is important to follow the federal and provincial laws, as it is much harder to work within that system and exploit grey areas.
- There is a disconnect with the Government when it comes to guardianships. People are considered guardians of a child when it is most convenient, but then seen as the aunt,

uncle, grandmother or grandfather when it stops being convenient. In those moments they have no rights and are often getting the law thrown at them – yet the Ministry of Children and Family Development was happy to let them raise the child for years and years beforehand.

  - If the moments involving the law result in a child being removed from the home, there is no consideration for the trauma that is being inflicted either. The Ministry of Children and Family Development does not seem to care that they are doing substantial damage to the child and guardians by ripping the family apart, even if the child is returned later on. The legislation should force the Ministry of Children and Family Development and decision-makers in the family justice system to consider the trauma experienced by the parents and family and the risk of the children being traumatized by being removed from their homes, with the goal of preventing those traumatic experiences from happening again.
  - Why spend all the time, money, and effort to take the children away, when the Ministry of Children and Family Development could have invested it in helping the parents keep their children? These parents need resources and someone that believes in them, not someone that just wants to scare or shame them for not being a good enough parent. They also need legal supports so that they fully understand any papers they are asked to sign.

- It is important to return to Indigenous customs and traditions. For those that have lost their customs and traditions and have a gap in that knowledge, whether it was lost over time because of colonialism or another reason, people should be supported enough that they can reconnect with their culture, because it is never truly gone or too late.
- If grandparents are going to become guardians and take care of children, then there must be financial and social supports for them too, because many of them are living on fixed incomes, in old homes, and are struggling with health issues.
- The term 'guardianship' should be more fluid and treated as a living document, rather than something static and more permanent. It must have the ability to change as needed, and files should be updated once or twice a year to make sure that all guardianship situations are still meeting the best interests of the child.
  - Alternatively, if the term 'guardianship' is not working, then why not get rid of it?
  - The language around guardianship also needs to change. It should be empowering, rather than oppressive – you have the *right* as a guardian, rather than you have the *responsibility*. For example, you have the right as a guardian to get this child into school and arrange medical care. It is not a responsibility that is being forced upon them by the Government.
- Why is there a limit on how many guardians a child can have? With traditional Indigenous family structures, the larger family network is involved in raising children, so the number of guardians that a child can have should be more than one or two people.
- The vetting process for becoming a guardian needs to be reviewed, because qualified Indigenous Peoples are being rejected due to their past history, rather than how they are

currently. People should not be disqualified because of mistakes made in their past – especially for minor things like not paying a fine. Too much weight is given to the past and there is not enough focus on what the person is like at present and the work they have put into changing for the better.

- When considering guardianship and the best interests of an *Indigenous child*, equal or more weight should be given to the child's cultural background, rather than prioritizing a guardian's income, the quality of the house and furnishings, etc.
- Family Law needs to incorporate the Truth and Reconciliation Call to Action #5, and Indigenous parents need to have culturally relevant supports available to them. It needs to be about equity and equality, and Canadians in general need to learn about Indigenous laws and cultures, because Indigenous Peoples know all about the Christian history and colonial laws.
    - Wrap-around services and supports are crucial in general, and they should also be available to the children themselves. For example, providing funding to cover the cost of airfare so that the children can stay connected with both parents – even if one is living far away.
- In this situation, the parents should sit down with the grandmother and a mediator to help work through these issues and reach an understanding. It is beneficial to have a neutral third-party come in that can analyze the situation without their emotions clouding their judgement.
- Since Sam's mother has a new relationship, it is important to look at the boyfriend and see whether he even wants Sam around, because he will become a surrogate father if Sam were to move in with them.
- When it comes to what is in the best interests of the child, Sam should stay where he is and then everyone can have access and come visit him at his grandmothers. That way Sam is not traumatized by being removed from the only home he has ever known, and he maintains connections with his parents and their cultures.
- Grandma Lois should have a say in what happens with Sam too, since the mother and father ultimately entrusted him to her, and she has been caring for him since he was a baby.

Discussion: Noreen & Eric's Story

- In this instance, both children should have a say in what happens because it impacts both of their lives. Kai especially deserves to have his voice heard, because he is old enough to know what he wants in terms of soccer and where he lives.
    - There is also soccer on reserves, so it matters whether Kai even wants to play competitively.
- If the parents cannot decide on their own, then a mediator should be brought in to help sort out the situation. Sometimes parents need that neutral third-party to prioritize the best interests of the child.

- The income of one parent should never be used to give them the upper hand in a custody battle. There needs to be a way to ensure that both parents receive equal representation – whether that is by mandating they go through mediation, or each parent receives a court-appointed lawyer that are both paid the same and similarly educated.
    - When it comes to mediation though, the cultural identity of the mediator matters. It should be done by an Indigenous person that understands the importance of culture, or at the very least someone that has appropriate cultural training to do mediation with Indigenous families in a sensitive and respectful way – not just a certificate from a cultural sensitivity course. In cases where one parent is non-Indigenous, then maybe two mediators should be brought in to help – one Indigenous and one non-Indigenous.
- The parents simply need to put their differences aside and work together so that Kai can have soccer and his culture, rather than one or the other. It is possible if the parents make it a priority.
- These assessments need to be done equitably between both parents. If Noreen has a psychologist interviewing her at home, then Eric should be subjected to the same thing.
- Again, it is problematic that professionals are being brought in on such cases, yet they have no cultural awareness or sensitivity training. This is crucial, especially when working with Indigenous families, because Indigenous culture, traditions, and familial structures play such a vital role.
    - It should be mandated that the onboarding process includes training in trauma-informed practices and cultural sensitivity.
- The financial cost should have been discussed upfront, and it is disrespectful to surprise someone with a bill – especially one that high. The family should have been given some options for how the assessments were performed or given the option to choose which professional to work with. The psychologist should have asked questions before arriving and shown up with some understanding of Indigenous culture and approached the situation with an open mind and a willingness to help.
    - It is not only disrespectful, but wholly unethical for families to be blindsided by these reports, visits, or costs.
- While it is helpful that family justice reports are free, the problem is that both parents have to agree to participate – and these issues need to be handled in a timely manner. When they get drawn out it only compounds the trauma that the parents and children are going through. There is clearly a lack of trained Indigenous staff to do the work, so the Government should provide funding to cover this training and create Indigenous workers that can write reports using a proper Indigenous lens. This would also address the problem that Indigenous families don't feel comfortable talking to non-Indigenous professionals out of fear of children being removed.
    - Parents should be able to continue seeing their children and maintaining that support-system and relationship while issues are being worked out. Children do

not understand how slow cases go through the courts, and they deserve access to their parents and do not deserve to suffer by being kept apart and in the dark.
    - When these assessments are done using a colonial lens, behaviour is interpreted wrongly, because there is no understanding of the intergenerational trauma and the traditionally adversarial relationship with the Government that is playing into everything. The psychologists see displeased parents and children and write it off as simply being disruptive.
    - It would be beneficial to bring in healthy matriarchs, Elders, and Knowledge Keepers into these situations.
- Forms/questions need to be reviewed to ensure they are Indigenized. Appropriate people from Indigenous communities and the parties should be provided with the questions in advance of the interviews. The support persons should be able to support the family members through the report process and be given access to these reports in order to help support families and individuals that are going through the court system and making sure that they are properly prepared.
- It should be mandated that these assessments are reviewed on an annual basis, to ensure that children are being supported in the best possible way and any shifting needs are accounted for.
- Why does there even need to be a visit from a psychologist? Children should be assessed more organically so that people can properly observe and see how happy they are. Talk to them outside and over multiple visits, rather than putting them in a room with a complete stranger that they never see again. It is crucial to build trust with the child and get to know them first.
- More focus needs to be placed on the rights of Indigenous men too. The father's also have rights, but they are often overlooked. This needs to be reflected in the regulation – it cannot just be the mother's getting supports and having their rights recognized.
- There should be a free consultation that comes before the assessment. The worker should meet with the parents beforehand and get to know them before going into their homes and speaking with the children. It could also act as a screening process that allows parents to vet an assessor before choosing to work with them.
- Indigenous-Focused Orientation Therapy (IFOT) should be included as part of the required training that people must take in order to be added to the list of assessors that families can choose from.
- Comments were made that this scenario is not representative of the challenges that smaller, more rural First Nation families are facing, such as with the current welfare and law systems, which are still being used to oppress Indigenous Peoples.
    - This scenario is more representative of scenarios that Indigenous families are facing in more urban centers, such as Vancouver.
        - Due to this, there should be an amendment made to the *Family Law Act* that is representative of smaller Indigenous communities and the challenges that are more common there.

- Parents should be given the opportunity to explain their cultural background to assessors, to help them understand the context around their family. However, if they do not have strong knowledge or connections to their cultural identity or Nation, they should be given the opportunity to be connected and learn about their heritage. They deserve the chance to share or to learn.
    - Parents should also be asked about the support systems that they have, if any, and fill out the forms separately.
- Why do children have to be assessed through a questionnaire? Assessors should be approaching children on their level, such a through mediums like art therapy, play therapy, or by encouraging them to speak through stories. Assessments do not need to be conducted through intimidating interviews. The process should be wholistic and focused on wellness, meeting with families in a play environment, on the land or another safe environment.
    - More funding should be made available through the Ministry of Attorney General to increase access to such services though, as the current wait times for children to be assessed is substantial.

Discussion: Dawn & Jessie's Story

- In cases like this, substance abuse is often an underlying cause of the situation worsening, because it allows the abuser to act upon feelings of anger and violence that were already there.
- This scenario is also a perfect example of why there needs to be more funding and supports created for people struggling with their mental health.
- When the Ministry of Attorney General makes amendments to the *Family Law Act*, they need to set aside resources for education and enforcing these changes. It won't work if people are not informed about what has changed, or if communities are expected to bear the burden of paying for additional enforcement. However, the Ministry of Attorney General also needs to ensure the FLA allows communities to handle the situation internally first.
    - There is a distrust between Indigenous communities, the government, and law enforcement, because enough people have shown that they just do not care. There is an attitude in law enforcement that when someone from a reserve calls for help, they will just let the situation work itself out, and then go in after to pick up the pieces. In remote communities, even if police take a call seriously by the time they arrive, everything is over.
- In some communities, police are confused about what they can do on reserve; they take an overly cautious approach because they don't want to overstep.
- One community has "community safeguard" funding to do drive-arounds and can transport victims of violence to a safe place.
- There needs to be substantial changes made to the notification system with protection orders. Currently, a person with a protection order against them will be notified when it

expires, but the victim that filed for that order will have no idea. There is no follow-up on the victims or communication with them ahead of the order expiring, to see if it needs to be extended or if they consent to it being lifted.
    - Protection orders should stay in effect until they are lifted by the victim or the community.
- There should be an option to allow communities to have their own police force, which can work hand-in-hand with the RCMP. They can go through the proper training and be Indigenous police officers living and working within community, which is legitimized by the Ministry. However, these police officers – and Indigenous workers as a whole – need equitable income because they deserve to be paid as much as their non-Indigenous counterparts.
- Some Nations are using Band Council Resolutions to remove an abusive member, but these are not always effective, for example when the resolution is not made due to family politics. Also, BCRs can be revoked at any time, unlike a Certificate of Possession which cannot be revoked.
- It is crucial for families to know all of their options in situations such as these, which means that the Ministry must put more resources into educating communities. Because Indigenous women and men cannot make informed decisions about themselves and their children if they do not know what their options are.
    - This information should be introduced at a much younger age too, ideally in middle or high school, so that it is part of every child's upbringing, and they have that information before it is needed.
- It is important to bring in traditions and culture, along with involving the community. When abusers are anonymous, they will continue to hurt people in secret, but if the community knows what is going on then they have nowhere to hide. That community-centered approach to raising and protecting children is powerful. Without community involvement, a protection order, a parenting arrangement order or agreement is just a piece of paper.
    - However, it does depend on where a community is at in terms of discovering their identity and embracing that culture, traditional knowledge, and laws. Some communities are just not as far along in that process.

Kamloops: June 27 & 28, 2023

General Discussion

- Everything is interconnected and a wholistic approach should be taken, because right now there is a disconnect between the *Family Law Act* and the *Child, Family and Community Service Act*. They clash, they do not communicate, and families are paying the price. The band representatives and social workers have no power and can only educate Indigenous families on what the laws are. The communication between the two governing groups needs to change, because right now everyone feels powerless.

    - Yet everybody (the police, the courts, the Ministry) is saying that they cannot do anything and to go to someone else for help. How can no one have the power?
- Currently, there is no consideration for how social determinants are impacting Indigenous families when it comes to court – which happens a lot since court orders are upheld so inconsistently. There are no supports that make accessing court possible, it is just assumed that every family will have access to a vehicle, have the money to pay for gas or the ability to take a day off work to be in court and fight for an order to be enforced.
- One Nation always requests that the Ministry of Children and Family Development involve as many family members as possible in the case management meeting, because they know the child better than anyone else.
- The reality is that Nations that are struggling with funding and staffing must have a good working relationship with the Ministry of Children and Family Development, because they lack the capacity to fully deal with situations in community.
    - Some communities work well with the Ministry, but others do not trust them because they have been so mistreated. In terms of the courts, the bias of the judge also plays a significant role in how cases are handled – it feels like an uneven judicial system.
    - The issue of capacity must be addressed because it is a widespread challenge. The Ministry also needs to acknowledge this and make the effort to go into First Nations and meet with them at home, rather than expecting communities to always come to them.
- The Ministry of Children and Family Development seems to have two separate sets of laws for women and men. Women are given preferential treatment in custody cases because they are the ones that give birth, even though they might not be the best guardian for the child in question. They seem to have more rights than the fathers, and are given the benefit of the doubt, which is not fair and equitable treatment under the law.
- There must be a nationwide law that is enforceable and recognized interprovincially, because right now all a parent has to do is take their child to another province to avoid fulfilling the terms of their custody arrangement. This could be accomplished by implementing a proof of guardianship system that can function across the country.
    - It is not just Indigenous Peoples anymore, Canada has a multicultural society, which is why there needs to be one national law.
- The problem was raised that if a child is not registered by the time they turn 18 months old, they lose all the benefits that come with being a registered, status Indigenous person. They may eventually be registered on a general band list, but they lose that cultural connection that is so important.
- The issue of trust needs to be considered, especially in processes like the *Family Law Act* modernization. First Nations want reassurance that their contributions will actually lead to meaningful changes, because so often their voices have been traditionally excluded. They want more consistent involvement and to have Indigenous voices included.

- In court cases, it is important that the judge hears from both sides of the family and a representative of the community so that they get a more fulsome picture of the situation.
- It is the responsibility of those in government to educate themselves, the burden cannot solely be on Indigenous Peoples. There is a wealth of information out there that people can learn from without putting the entire burden on those already being oppressed. The attitude needs to change too – people need to want to work in a good way and want to be informed.
- The law should recognize and validate existing Indigenous social structures, whether it is clan-based, matriarchal, etc. There should also be an administrative link between judges and the Nations, so that they can communicate more efficiently about court decisions.
- There was support voiced over the implementation of an Indigenous tribunal system.
- Children must be the number one priority, and they deserve to have a voice – even if it is through an advocate when they are too young. There should also be an option for a child to change their mind when they get older.
- Some Nations uses a circular system with the child at the center, and the parents, grandparents, Elders, elected Chief and Council all have a place. Each family also has a member that acts as a family representative.
- According to the tenants of UNDRIP, First Nations have the right to assert and define their way of governing.
- When it comes to family law decisions, Chief and Council should not have any involvement because they are paid by the government and have to follow certain protocols because of that. Rather, it is the role of the family to wrap-around those family members who are dealing with family law issues.
- In terms of band council resolutions, they are unevenly enforced by the RCMP because not every detachment recognizes these resolutions as legitimate laws made by a First Nation.
- The *Family Law Act* almost treats children like property, which is a very colonial way of thinking. It is not representative of an Indigenous worldview – no one owns one another – so this mindset needs to change.
- Government needs to ensure that grandparents will receive funding and support when they are the guardians for their grandchildren. They need to start being treated as equal to parents and offered the same resources, even if they choose to decline the help. Out of respect, it needs to be given as an option because raising children is expensive.
- There should be more focus put on the prevention piece and providing the necessary resources and supports, so that going to the courts are not needed.
- The discrepancy in funding between on and off-reserve caretakers needs to be addressed. An off-reserve caretaker can receive $1800 a month, whereas a caretaker on-reserve receives as little as $250 – there must be parity between caretakers.
    - The income earned by caretakers of special needs children must also be looked at, because there are too many foster homes using it as an opportunity to earn a lucrative income.

- Children in care need to have supports and resources set aside for their education, along with when they age out so that they can have a proper start as adults.
    - When there are no resources available for children as they age out, they often become homeless because there are no supports, and the majority of foster parents have no interest in caring for them when the youth are no longer a source of income.
- Why aren't Indigenous Peoples given consideration or prioritized as foster homes for Indigenous children? There seems to be a bias when it comes to assessing the suitability of foster homes.
- If someone gave First Nations all their rights tomorrow, they would fail, because they do not have the capacity or a system in place that could handle it, and there is so much trauma in community to deal with.

Discussion: Sam's Story

- It is very common for the grandparents to take on the child and become their primary caregiver. In many Nations, it would not be questioned.
- Since the maternal grandmother is taking care of Sam, she should be the one that is making the decisions for him. However, any agreement must be specific about which grandparent is the guardian, because if it just refers to a grandmother then it could be paternal or maternal. It is important that it matches where the child lives and who is taking care of him.
- Who is it that decides what a family unit looks like? There is much more variation than just the Westernized definition of a nuclear family. The Ministry needs to account for this diversity, especially where Indigenous families are concerned – the family unit is much more complex.
    - As a result of this more complex family structure, when a child is removed it impacts the entire family, not just the parents. The Ministry needs to understand the broadness and interconnectedness of Indigenous families.
- Guardians should have broader responsibilities that go beyond just medical choices, they should also be able to have input in terms of spirituality or religion.
- Due to the modern age, it is important to have documentation. It is what everyone expects.
    - From the doctor's perspective, they are at risk of malpractice and are liable if they treat a patient whose guardian does not have proper documentation.
- The process of filling out forms and paperwork can be very intimidating and complicated, so having legal supports available to help families through various legal processes would be helpful. Additionally, the guardian should be able to sign these documents, not just the birth parents.
- If a child must be removed, then they need to stay within their Nation. They need to be given the opportunity to be out on the land and learn traditional protocols and have that

cultural support. It's not just family, Indigenous Peoples are part of the land, water, and Nation – everything is interconnected and a vital part of their identity.
    - The priority should be to keep families together, instead of tearing them apart. However, in cases where parents are from different Nations, the wellbeing of that child must be the top priority.
- The environment that Sam would be living in makes a significant difference – city life versus rural, on or off reserve.
- They should hold a family group conference to help figure out the situation, because multiple perspectives from people that know the family would be helpful. It would also be an effective way of informing people of the mom's wishes to move Sam.
    - There should be a band representative included in this meeting that can act as the voice of the child, while ensuring that the child does not have to be present and potentially be traumatized.
    - A facilitator could help with managing the conversation, and also help with finding out the wishes of the children beforehand in a non-threatening way.
- Grandma Lois needs support and representation as well since she has been the primary caretaker of Sam so far.
- The new partner of Angela should be interviewed too, and asked whether he wants Sam to move in and would accept the child in his home. He will essentially become a surrogate father in this case, so his willingness to accept Sam matters.
- What plans are in place by Angela, since she works full-time? Does she have daycare or after school care arranged for Sam?
- Both sides of the family deserve to have a say in what happens to a child, not just the maternal or paternal. Grandfathers are often left out of the conversation, even when they are the primary caretakers – the family unit must be consulted and the caretakers, even if they are the fathers or grandfathers, need to be legitimized and consulted.
    - The court should consider what the family unit looks like on a case-by-case basis, and the judge should look at who the child is living with, who they are being raised by, and take the voice of the child and guardian into consideration.
- The Ministry should mandate reviewing and revisiting cases after decisions are made, in order to check how the situation has progressed and if the child is still getting the care they need.
- Sam should be given the opportunity to visit his mother with his grandma, see what her setup is like, and Grandma Lois can say whether or not she feels it is appropriate for Sam.
- Choice matters for a child, and they deserve a say in where they live, especially if moving away would remove them from their community, culture, and part of their family.
    - The distance of the mother is important in this case, because it would be harder to keep Sam connected to the reserve that he grew up in, along with his father.
    - There would also be an emotional cost from the culture shock of Sam being moved to the city, especially without his usual familial support system and access to his community and culture. That should be taken into consideration.

    - If the child must move away, then there should be supports in place to maintain those connections.
- It is important to not paint reserves and cities in black and white. There are opportunities that arise when leaving the reserve, and it would be limiting a person's opportunities to hold everyone back – we need to respect their goals and dreams.
- Regardless of the age of the Indigenous person, there is an innate need to connect with their culture and community, and everyone deserves that opportunity.
- There should be a variety of approaches available, because a one-size-fits all solution does not work with all the diversity amongst First Nations.
- Family meetings should be built into the *Family Law Act*, with the possibility of report writers sitting in and reporting back to the judge on what they heard. This would give the judges greater context of the family and the situation, which would better inform how they handle each case.
- This scenario does not state whether the father is working and if he has a stable home environment, which are factors that must be considered as well because they are important.

Discussion: Noreen & Eric's Story

- What do the children want? Where are their voices?
- It isn't fair to base a decision on what you think the other parent can't do. It would be more constructive to have a conversation with a partner about how to divide responsibilities and also talk about limitations.
- The fact that the father isn't Indigenous is irrelevant – he is still a parent – and every parent has the right to teach their children about their culture and share that with them.
- The best interests of the child need to recognize the child's connection to religion, culture, community and the land.
- It would be helpful to bring in a third party to act as a mediator or use a family circle process and help the mother and father sort through their issues and reach a common ground. The child's voice should be included in the process, although the facilitator should meet with the child separately and have a discussion using language the child understands in a safe environment rather than having the child participate directly.
- A wellness plan should be put in place regarding the children and how much time they will spend with either parent, the activities they will be doing, and a way to ensure that the children involved will be able to still experience all aspects of their culture – so nothing is being taken away from them. The plan should take the child's choices into account. Other family members voices also need to be included; unlike the colonial views reflected in the FLA, Indigenous people do not consider children the property of the parents.
- The parents should go through a trial period before they make a decision – try it out and see how it goes, then make a choice based on that experience.

- Soccer should not be a deciding factor in this situation, because it can be played everywhere and there will be options to join teams, regardless of where Kai lives.
- There should be someone involved in this case that has at least some knowledge of Indigenous culture and worldview.
- When the assessment was ordered by the judge, there were no parameters given around the cost or criteria, which should have been laid out at the beginning so there were no surprises.
- It should be mandated that lawyers take some cultural competency training as part of them passing the bar in British Columbia, so that every single one has some awareness of Indigenous culture and worldview.
- If the assessment has been ordered by the judge, then the court should be footing the bill, rather than the family being blindsided by it.
    - It is important to be strategic with lawyers in order to keep the cost as low as possible, because they will charge for every single interaction.
- There is a need for transparency and better information-sharing from MCFD – they do not share anything but will keep records until you die.
- It just feels like the government is spoon-feeding Indigenous Peoples a treaty process, bite by bite, and they continue to accept it every time. They are entering a treaty process without even realizing it.
- There should be more comprehensive reports done, such as a psychosocial emotional test, to help establish benchmarks and ensure that the child benefits the most from the process.
- Psychologists should not be brought in to write these reports, there should be Indigenous Peoples trained that can do these assessments, because no one understands Indigenous culture, worldview, and challenges better than they do.
- These assessments should include the positive things that are working within that family unit – not just the negatives. The assessments should also show the bonds and connections between family members, rather than just focusing on what is not working.
- The Ministry should get an assessment template created by Indigenous lawyers and social workers and mandate that everyone use it, because they have a deeper understanding of the industry and can ensure that Indigenous knowledge is incorporated. These professionals are a great resource to utilize.
- Words like “assessment” and “modernization” are colonial concepts that are not easily translated or understood in Indigenous languages.

Discussion: Dawn & Jessie’s Story

- It is critical for woman to have a safe place to go, and every small community needs to have a safehouse for this reason.
- It is important to have a good network and support system in place for peacekeeping that can do what is necessary to keep individuals protected and the family safe.

- One Nation has a critical response team that goes out for incidents (suicide, death, murder, family violence, shootings, bad car accidents, etc.). There are two members per community that are on the team. People get picked, based on their strengths, to go out and deal with the situation, to de-escalate and support.
- There needs to be help and supports in place for those going through the court system, especially the children, so that they can properly process what is happening to them.
    - There also must be resources dedicated to men, because they traditionally feel too much shame to speak up and say that they are being abused.
    - It is also vital to spread awareness of the supports that are available, because people need to know what options they have.
    - Many communities don't have transition houses, and sometimes even if there is one, people are not aware of it. It is difficult for victims to make the decision to leave an abusive home – if there are no shelters in the community where their family and support networks are, the victim is less likely to be successful in leaving the relationship.
- The residential school process has taught Indigenous Peoples that violence is normal and to be accepted, which can make it more difficult to speak up and leave toxic situations.
- It is vital to create a safety plan, or the emergency 'get out' plan that can be put into place if the situation reaches a breaking point.
- While there needs to be more information shared and education around de-escalating during disputes, a person should do whatever they need to do to survive and keep themselves safe in that moment.
    - Publicly advertising family violence resources, including hotlines for victims of abuse, could act as a deterrent for abusers because they will know that the information is out there, and awareness is being spread for resources that victims can utilize.
- Connecting with other people who have a shared experience of family violence can help you to recognize that you are not alone, and to name the violence. It can give you the power to deal with it.

KEY THEMES – OVERALL

This section summarizes some of the key themes that were heard throughout the dialogue sessions with no response or clarification added by the Ministry to what was said. The themes do not represent the Ministry of Attorney General's position, but will inform its policy development process. As noted in the Introduction, some themes also relate to Indigenous Peoples' experiences with the child protection system and the *Child, Family and Community Service Act*, as opposed to the family justice system and the *Family Law Act*. The Ministry of Attorney General will share child protection-related themes with the Ministry of Children and Family Development.

1. Acknowledge Pre-Existing Trauma

Due to the inter-generational impacts of colonization and the residential school system, trauma has been passed down throughout Indigenous families and it has a ripple effect on various parts of a person's life. The Ministry of Attorney General must recognize how this pre-existing trauma feeds into mental health challenges and substance abuse, which have been wreaking havoc on Indigenous families for generations.

The Government cannot take an agnostic approach to this kind of work and treat Indigenous Peoples the same as everyone else, because that ignores the systemic oppression and violence that has been brought upon them for centuries. In order for the *Family Law Act* to make meaningful changes, the past and present mistreatment of Indigenous Peoples must be acknowledged, and their needs must be heard and prioritized.

2. Recognition of Indigenous Family Networks

The Ministry of Attorney General needs to acknowledge the traditional structure of Indigenous families. Unlike the colonial concept of the nuclear family, Indigenous cultures extend the concept of family to include to aunts, uncles, grandparents, and even non-related community members that step in and act as a guardian. There are much larger familial networks that exist, and the Ministry must incorporate this into a modernized Act.

The lack of understanding for Indigenous family structures also creates barriers when it comes to housing requirements. Since the Ministry of Children and Family Development does not recognize multi-family households as viable living situations for children, it prevents many parents from getting their children back because finding separate housing is challenging.

Due to this broader and more complex family network, when a child is removed from a family it impacts more than just the parents. The Ministry of Children and Family Development needs to legitimize the interconnectedness of Indigenous families. The Ministry of Attorney General should also simplify the process for extended family members to become a child's guardian, instead of creating barriers with unnecessary requirements (e.g., obtaining a court order). Furthermore, the Ministry of Attorney General should work alongside partner agencies, to better inform the public that this process exists.

Recognition should also be given to Indigenous families' interconnectedness with their community and their Nations. We heard that Nations need to know what is happening with their families so they can offer supports. Many Indigenous peoples may not know that their Nation can sometimes assist them with legal, financial, emotional, and protective supports when they are dealing with a family law dispute. If a Nation is notified when one of its members is going to court over a family law dispute, then the Nation may offer to assist the person through the process.

3. Documentation for Guardians

Since the current *Family Law Act* narrowly defines who a child's guardians automatically are, there needs to be a mechanism that allows guardianship responsibilities to be given to other people using a written agreement rather than having to apply for a court order. While it is possible to transfer guardianship responsibilities under Section 50 of the *Family Law Act,* it is currently only available for very limited situations. These circumstances should be expanded, and it should also be possible for the primary guardian to temporarily give another person the ability to make important decisions for a child, for example, in cases where another family member lives closer and can make such decisions in a timely manner. Additionally, the Ministry should recognize documentation, such as band affidavits, that confirm the primary guardian of a child.

Also, the term 'guardianship' should be more fluid and treated as a living document, rather than something static and permanent. In some cases, guardianship arrangements may need to change and should be reconsidered from time to time to make sure that guardianship decisions and parenting arrangements are still meeting the best interests of the child.

4. Child Must be Heard

The voices of the children themselves must be heard, including where they want to live in the case of parents separating. They deserve to have a say if moving would remove them from their community, culture, and part of their family. However, these questions need to be approached by an objective third-party to ensure the child is not being influenced. Third parties could include individuals from the child's Indigenous community, including Elders, matriarchs, and knowledge keepers. If a professional from outside the Indigenous community interviews an Indigenous child and family, the professional needs to have knowledge of the child's community, culture, and traditions before the interview and before writing a report.

In some instances, a child should have an advocate that can speak on their behalf. There should also be an option to change their mind when they get older.

The priority must be making sure the child feels safe enough to say what they want, without fear of repercussions. As such, there should be alternate ways of assessing children rather than interviewing them alone in a room. Children should be assessed more organically and over multiple visits, so that trust can be built. The Ministry should also provide funding for different assessment mediums, such as art therapy, play therapy, or speaking through stories. The process should be more wholistic and incorporate Indigenous values by meeting families in a safe environment, such as out on the land.

5. Maintaining Cultural Connection

It is vital for every Indigenous child to grow up with their culture because it is something that begins at birth and is continuously nurtured throughout their life. It is an ongoing practice that is passed from generation to generation, so disrupting this cultural flow can have serious

consequences. As such, the Ministry of Attorney General should provide a legal framework that will emphasize the importance of Indigenous children staying connected with both sides of their family and their cultures when family law decisions are being made in relation to a child. Children are the ones who suffer the most from being deprived of those family and cultural connections. When children lose their sense of belonging, they must turn elsewhere for kinship and culture, which can lead them to trouble.

Although maintaining cultural connection is an important factor when making decisions in the best interest of a child, there were mixed views on whether it is any more important than other factors, such as the child's health and emotional well-being, the child's views, and the impact of any family violence on the child. There were also different opinions on whether in the case of a child connected to both Indigenous and non-Indigenous cultures, the importance of building connections to their Indigenous culture, traditions and community is greater given the historic oppression of Indigenous peoples.

Ideally, if a decision is made that an Indigenous child will live primarily with one guardian, they should live within their Indigenous community. If this is not possible, then keeping the child connected to their Indigenous community and culture must be a priority. This includes if a child is a member of multiple Indigenous communities, then the child should maintain their connection to all of their Indigenous communities. The Ministry should mandate that for cases involving Indigenous children, more weight should be given to the child's cultural background, rather than prioritizing a guardian's income or the quality of their house and furnishings.

6. Mandated Case Review

The Ministry of Attorney General should mandate that a child's family situation is reviewed after a decision is made about a child under the *Family Law Act* by the court, in order to check how the situation has progressed and if the child is still getting the care that they need.

7. Expanded Mediation

In cases where all parties do not agree on who should care for a child, an objective mediator should be brought in to help. Sometimes parents are not thinking reasonably, and it requires bringing in a neutral third-party to figure out what is most beneficial for the child. Mediation should also include both sides of the children's family, not just the parents. This will better represent the traditional Indigenous family structure and allow for everyone to have their say in who should care for the child.

If the Ministry of Attorney General was to make mediation mandatory before going to any court in the province about a family law matter, as other provinces have done, then they must put safeguards in place for victims of family violence that are being mandated to sit down with their abusers. There must be supports in place for those that are at risk of being re-traumatized by the mediation or court process.

It was agreed that any mediator must either be an Indigenous person, or at the very least have knowledge of Indigenous culture and taken meaningful cultural sensitivity training – not just a certificate from a one-day seminar. The Ministry of Attorney General should mandate that every mediator and dispute resolution professional take cultural sensitivity and trauma-informed practices training as part of the onboarding process. This cultural training should also be part of the criteria for lawyers passing the bar within B.C.

8. Education and Awareness

When the Ministry of Attorney General makes amendments to the *Family Law Act*, they need to set aside resources to educate people on these changes and ensure enforcement measures are understood and are followed. For example, the majority of participants had not previously heard about protection orders under the *Family Law Act*, including what they were, how to apply for one, or how they are enforced.

It will not work if people are not informed about what has changed, or if communities are expected to bear the burden of paying for additional enforcement. It is also vital to spread awareness of the supports that are available, because Indigenous women and men cannot make informed decisions about themselves and their children if they do not know what their options are.

There needs to be more work put into educating Nations about which supports and resources are available, because a lot of people (especially men) do not know where to turn or what resources they can use. There should be a list or manual that is specific to each community, which lists all the contacts that are available for support, and the various resources that individuals and families in that community can utilize.

Since Indigenous Peoples are becoming parents much younger than generations before, there should be life skills taught in schools, in addition to cultural teachings, to better prepare them for life outside of school and as parents. Youth are currently lacking the necessary life skills and need wrap-around services to help bridge gaps in their knowledge, especially those that have been created by intergenerational trauma.

9. Diversity of First Nations

There are over 200 Indigenous communities within B.C., each with their own culture and processes. Additionally, the government needs to recognize that smaller communities cannot follow the same processes as larger ones, because there are significant differences in capacity.

Remote communities also face unique challenges when it comes to family violence, as some Nations do not have access to safe houses, resources, or even police protection. These

communities can also be hours away from the nearest police station and help – assuming the police answer the call at all. In remote communities that deal with slow response times, considerable damage can be done in the hours it takes police to arrive – people can die, and the abusers would have ample time to flee.

There needs to be recognition of decisions that are being made by Nations themselves to address family law disputes. For example, we heard that some Nations may issue a band council resolution to ban a person who has committed family violence from entering the reserve. However, there seems to be inconsistency throughout the province as to whether police are aware of band council resolutions and whether or not they will enforce band council resolutions.

Any laws need to work in harmony and respect the individuality of the different First Nations communities. There need to be signed agreements that outline Indigenous governance and give ownership to Indigenous leadership. Government needs to demonstrate commitment to work in partnership with Indigenous communities.

10. Equity for All

The *Family Law Act* seems to provide two separate sets of laws for women and men. Women are given preferential treatment in custody cases because they are the ones that give birth, even though they might not be the best guardian for the child in question. They seem to have more rights than the fathers, and are given the benefit of the doubt, which is not fair and equitable treatment under the law.

There is a substantial lack of supports and resources available for Indigenous men, specifically those that have witnessed or been victims of abuse. They do not have adequate resources on or off reserve, and there is also a lot of shame about coming forward. Overall, there needs to be equitable treatment between each First Nation, along with Indigenous and non-Indigenous parents and the support they receive.

11. Potential of Alternative Justice

The Ministry of Attorney General needs to consider the benefits of using alternative models of justice when it comes to Indigenous communities and families. For example, the use of circles in family disputes was raised, and the ability of these practices to help restore harmony within the community. However, First Nations need to oversee their own accountability and justice and be empowered by the Ministry to practice their traditional laws.

Additionally, the creation of an Elders Panel would be useful in settling family conflicts within community, and they could help with assessing the needs of a child. Legitimizing an Elders Panel, or a restorative justice committee would be a better option than always going through the traditional court system. The creation of an oversight committee would be also beneficial for ensuring that promises and services are being fulfilled and that people are held accountable.

Lastly, there needs to be a nationwide law that is enforceable interprovincially, so that a parent cannot simply bring their children across a border to avoid having a custody arrangement enforced. Overall, the *Family Law Act* needs to recognize authority that already exists within Indigenous communities, whether that is a band council resolution, Indigenous leadership, Elders, council, etc.

12. Issues Beyond the Act Itself

While there was agreement that the *Family Law Act* has flaws and should work better for Indigenous families, it was also emphasized that it is just one small piece of a much larger broken system. When Indigenous families need to resolve issues, especially issues related to their children, there are often too many authorities (for example, different pieces of legislation and government actors) involved with differing responsibilities, which just overcomplicates the resolution processes and creates extra problems. In addition to this, the Act itself has been built upon a foundation that was created to systemically oppress Indigenous Peoples. As such, a wholistic approach needs to be taken with modernizing the Act because everything is interconnected – it cannot be addressed in silos.

13. More Wrap-Around Supports

Government must dedicate more resources and funding to wrap-around services for Indigenous families that are in need or are going through the court process. Parents and children that must leave their homes may need services like access to transportation and daycare. Those that are going through the court process also need wrap-around supports to help with the emotional toll it can take, since they are being re-traumatized by having to recall painful experiences.

14. Resources for Guardians

If grandparents, family members, or community members are going to become guardians and take care of children, then Government must provide financial and social supports for them too, because many of them are living on fixed incomes, in old homes, and are struggling with health issues. They need to start being treated as equal to parents and offered the same resources, even if they choose to decline the help. Out of respect, it needs to be given as an option. The discrepancy in Ministry of Children and Family Development funding between on and off-reserve caretakers also needs to be addressed. An off-reserve caretaker can receive substantially more funding a month than a caretaker on-reserve – there must be parity between caretakers.

There is also a disconnect between the funding and supports that are available to Indigenous Peoples living on and off reserve. There should be a central hub for resources that they can access to try and counteract how often those living off-reserve are overlooked.

ASSESSMENT OF INITIATIVE

This assessment has been provided in collaboration by Mahihkan Management and the Indigenous facilitator and is based on cumulative engagement experience.

Given the personal nature of the subject matter, engagements were delivered with steps taken to create a safe and respectful environment. Sessions were facilitated by an Indigenous Facilitator and were limited to small groups of individuals. Each session was opened and closed by an Elder when available, a separate quiet space was provided, and trauma support was offered to those in attendance when available. Furthermore, the cultural practice of Talking Circle Principles was adopted in the facilitation of the sessions providing guiding principles to those in attendance.

The regional in-person sessions captured a varied geographical representation of participants from across the province joining in Nanaimo, Vancouver, Prince George and Kamloops.

Informational resources were provided electronically to participants in advance of the session, in addition to each participant receiving an information package onsite. The Ministry of Attorney General commenced each session with a presentation that provided further context on the Act and the areas that pertained to the engagements. Fictional family scenarios were utilized throughout the 2-day engagements to again provide further context around each area of the Act and to ensure relevancy to those in attendance (see Appendix I).

As the conclusion of each session, Mahihkan Management and Ministry of Attorney General representatives would meet to evaluate the progress of the sessions and make changes to ensure heightened value for those involved.

The depth of the subject matter necessitated 2 day-engagement sessions which provided an opportunity to get to know those in attendance better, resulting in participants feeling more comfortable coming forward with their experiences, and questions for the Ministry of Attorney General.

The attendance of a notetaker was intended to provide neutral representation of session discussions and to ensure that the varying viewpoints expressed have been captured.

The engagement level of participants was commendable with individuals coming forward with their lived and living experience, in addition to professional experience, on the different areas of the Act. Certain areas of the Act are of a personal nature and re-visiting one's lived and living experience was at times difficult for participants. With this in mind, individuals were still forthcoming with their experiences and brought a level of vulnerability and trust when sharing their stories. Participants appreciated the opportunity to engage at an early stage of the law-making process and were optimistic that their input could help inform practical aspects of updated law, regulations and policy.

Mahihkan Management and the Ministry of Attorney General would like to thank all the participants who attended for sharing their stories and contributing to the development of family law in B.C.

APPENDIX I: DISCUSSION SCENARIOS

Over both engagement days, three fictional stories were outlined as optional tools to help guide the discussion and encourage stories from participants.

Day 1: Sam's Story

- Sam is 5 years old and has been living on Reserve A with his maternal Grandma Lois since he was a baby.
- Sam's parents – Mom Angela and Dad Tom – separated when Sam was 6 months old. Sam and Angela then moved in with Grandma Lois.
- When Sam was 2 years old, Mom Angela moved 7 hours away to the city to find work and take classes.
- Dad Tom lives 2 hours away on Reserve B. On weekends, Tom likes to bring Sam to visit his family on Reserve B and take him fishing.
- Mom Angela and Dad Tom both like that Grandma Lois takes care of Sam.
- Sam's great Auntie Irene also lives next door and takes care of her three grandchildren who are Sam's cousins.

<u>Guardianship Scenario</u>

- Grandma Lois tries to register Sam for kindergarten at the local school, but school says she can't because she is not a parent or a guardian.
- Grandma Lois also tries to make medical decisions when Sam falls and breaks his arm, but the doctor doesn't think she can.

<u>Moving a Child (Relocation) Scenario</u>

- Mom Angela now has a stable job, and she shares an apartment with her new boyfriend in the city, 7 hours away from Reserve A.
- Mom Angela wants Sam to move to the city with her and start school there.
- If Sam moves to the city, he will be 9 hours away from his Dad Tom and won't see him on weekends anymore.
- Grandma Lois is worried that Mom Angela is not thinking about Sam's best interests.

Moving a Child (Relocation) Scenario

- Dad Tom wants Sam to move in with him and his paternal grandparents on Reserve B
- Tom wants Sam to go to school where they teach First Nation B's language and have Indigenous cultural and sports programs.
- Reserve B is 2 hours away from Reserve A where Sam currently lives with Grandma Lois.
- Reserve B is 9 hours away from the city where Mom Angela lives.
- Grandma Lois does not get along with Sam's paternal grandparents and worries she will not see Sam again if he moves to Reserve B.

Moving a Child (Relocation) Scenario

- Imagine Sam's Dad Tom is not Indigenous, and lives in a rural community 2-hours away from Reserve A.
- Tom still visits Sam on weekends and likes to take him on fishing trips and to visit his paternal grandparents.
- Tom wants Sam to go to school in his rural community where they have good music, art and sports programs, though they are not Indigenous.
- The rural community is 9 hours away from the city where Mom Angela lives.
- Grandma Lois is having health problems.
- Mom Angela does not want Sam to move to a non-Indigenous community.

Day 1 & 2: Noreen & Eric's Story

- Noreen and Eric met 15 years ago and recently separated.
- Noreen grew up on a reserve and left to attend university in Vancouver.
- Eric is non-Indigenous and owns a contracting business.
- They have a 10-year-old son, Kai, and a 5-year-old daughter, Lara.
- Noreen is becoming increasingly well-known as an Indigenous artist and wants the children to be connected to their Indigenous culture.
- Eric moved out a few months ago and he and Noreen argue about the kids, disagreeing about everything.

Parenting Arrangement Scenario

- Eric wants Kai and Lara to live with him every other week and ½ the school holidays.

- Eric wants to have the same decision-making responsibilities as Noreen and thinks it's more important for Kai to play competitive soccer.
- Noreen thinks Eric works too much and it's more important for Kai to participate in his Indigenous heritage.

Child-Centred Decision-Making Scenario

- Kai and Lara's maternal grandparents are highly respected in their community on reserve.
- The grandparents are concerned about the effect of the dispute on the children and want to hear what is important to Kai and Lara.
- They ask Elders and knowledge keepers in their community, as well as their son, a Chief, if there is someone who could talk to the children.
- The grandparents worry that if the parents end up in court, the grandchildren's voices won't be heard.

Assessments and Reports on the Views of a Child Scenario

- Issues between Noreen and Eric worsen and Eric files in court.
- The judge orders an assessment be conducted and a report prepared on the needs and views of the children.
- A few months later, a psychologist called to say he was going to come to Noreen's house to interview her and the children.
- The psychologist was non-Indigenous and did not ask any questions about Noreen's Indigenous culture, language or art.
- Noreen was very nervous and felt like she was being tested.
- At the end of the interview, the psychologist said that he would write a report and send her a bill for about $10,000.

Assessments and Reports on the Views of a Child Scenario

- Issues between Noreen and Eric worsen and Eric files in court.
- The judge orders an assessment be conducted and a report prepared on the needs and views of the children.
- A few months later, a family justice counsellor interviews Noreen, Eric and the children.
- When Noreen receives a copy of the report, she is upset that it focuses more on soccer than Kai's Indigenous heritage.
- Noreen doesn't think the interviewer has the right experience to know what is in the best interest of an Indigenous child.
- Noreen also doesn't think Kai is old enough to have a say.

Day 2: Dawn & Jessie's Story

- Dawn and Jessie have been in a relationship, off and on, for 10 years.
- They live together in an apartment in town, where they both have jobs.
- Jessie has always been quick to lose his temper and gets jealous when other guys talk to Dawn.
- Things are getting worse. Jessie shouts at Dawn, calls her names, and pushes her.
- Growing up, Dawn watched her dad abuse her mom. She promised herself that would never happen to her.

<u>Family Violence and Protection Order Scenario</u>

- Dawn and Jessie having been living together in an apartment in town.
- Dawn's sister Crystal lives on the reserve. Dawn leaves Jessie and moves in with Crystal on the reserve.
- Jessie is furious when Dawn moves out and threatens her.
- Jessie is angry at Crystal, and he threatens her too.
- Dawn and Crystal are scared of what Jessie will do next.

<u>Protection from Family Violence and Parenting Arrangement Scenario</u>

- Dawn and Jessie have an 8-year-old daughter, Rose.
- They live in a house on the reserve where Jessie grew up. Jessie has a certificate of title for the house. Rose spends a lot of time with Jessie's parents down the street.
- When Jessie gets mad, he focuses his anger on Dawn and Rose sees it. Dawn is afraid for herself and Rose.
- Dawn wants Jessie to move out and stay away from them, at least until he gets help.
- Dawn doesn't want Jessie spending time with Rose or making decisions about her.
- Jessie says Rose is his daughter and Dawn can't keep Rose away from him.

APPENDIX II: AGENDAS

Nanaimo: May 24 & 25, 2023

BRITISH COLUMBIA | Ministry of Attorney General

Family Law Act Modernization
In-Person Dialogue Sessions – Nanaimo

Wednesday, May 24 & Thursday, May 25, 2023
9:00am - 4:00pm Daily

Day 1
Agenda

8:30 am	**Breakfast and Registration**
9:00 am	**Welcome** Welcome and Introduction by Patrick Kelly Welcome and Opening by Elder Geraldine Manson, Snuneymuxw First Nation Roundtable Introductions
9:30 am	**Overview Presentation on Family Law Act Modernization Project** In this presentation Aurora Beraldin and Shannan Knutson will give an overview of the Family Law Act Modernization Project and provide information on the focus areas of the day.
10:00 am	**Discussion Block 1** Facilitator, Patrick Kelly, will lead group discussion on the care of and time with children, including guardianship – who is responsible for a child, parenting arrangements – caring for and spending time with a child, child-centered decision making, and changing where a child lives.
10:30 am	**Nourishment Break**
10:45 am	**Discussion Continued** Facilitator, Patrick Kelly, will lead group discussion on the care of and time with children, including guardianship – who is responsible for a child, parenting arrangements – caring for and spending time with a child, child-centered decision making, and changing where a child lives.

Figure 1 - Nanaimo Agenda (Page 1)

12:00 pm	**Lunch**
1:00 pm	**Discussion Continued** Facilitator, Patrick Kelly, will lead group discussion on the care of and time with children, including guardianship – who is responsible for a child, parenting arrangements – caring for and spending time with a child, child-centered decision making, and changing where a child lives.
2:30 pm	**Nourishment Break**
2:45 pm	**Discussion Continued** Facilitator, Patrick Kelly, will lead group discussion on the care of and time with children, including guardianship – who is responsible for a child, parenting arrangements – caring for and spending time with a child, child-centered decision making, and changing where a child lives.
3:45 pm	**Daily Wrap Up**
4:00pm	**Session concludes**

Day 2
Agenda

8:30 am	**Breakfast and Registration**
9:00 am	**Welcome** Day 2 Welcome and Introduction by Patrick Kelly Day 1 What We Heard Day 2 Agenda
9:15 am	**Overview Presentation on Family Law Act Modernization Project** In this presentation Aurora Beraldin and Shannan Knutson will provide a refresher of the Family Law Act and the areas of the Act that will be covered on day 2.
9:30 am	**Discussion Block 1** Facilitator, Patrick Kelly, will lead group discussion on assessments and reports on the views and needs of a child, and protection from family violence.

Figure 2 -Nanaimo Agenda (Page 2)

10:30 am	**Nourishment Break**
10:45 am	**Discussion Continued** Facilitator, Patrick Kelly, will lead group discussion on assessments and reports on the views and needs of a child, and protection from family violence.
12:00 pm	**Lunch**
1:00 pm	**Discussion Continued** Facilitator, Patrick Kelly, will lead group discussion on assessments and reports on the views and needs of a child, and protection from family violence.
2:30 pm	**Nourishment Break**
2:45 pm	**Discussion Continued** Facilitator, Patrick Kelly, will lead group discussion on assessments and reports on the views and needs of a child, and protection from family violence.
3:30 pm	**Engagement Summary & Next Steps**
4:00 pm	**Sessions conclude**

Figure 3 - Nanaimo Agenda (Page 3)

New Westminster: June 12 & 13, 2023

BRITISH COLUMBIA | Ministry of Attorney General

Family Law Act Modernization
In-Person Dialogue Sessions – New Westminster

Monday, June 12 & Tuesday, June 13, 2023
9:00am - 4:00pm Daily

Day 1 Agenda

8:15 am	**Breakfast and Registration**
9:00 am	**Welcome** Welcome and Introduction by Patrick Kelly Roundtable Introductions
9:30 am	**Overview Presentation on Family Law Act Modernization Project** In this presentation Aurora Beraldin and Shannan Knutson will give an overview of the Family Law Act Modernization Project and provide information on the focus areas of the day.
10:00 am	**Discussion Block 1** Facilitator, Patrick Kelly, will lead group discussion on the care of and time with children, including guardianship – who is responsible for a child, parenting arrangements – caring for and spending time with a child, child-centered decision making, and changing where a child lives.
10:30 am	**Nourishment Break**
10:45 am	**Discussion Continued** Facilitator, Patrick Kelly, will lead group discussion on the care of and time with children, including guardianship – who is responsible for a child, parenting arrangements – caring for and spending time with a child, child-centered decision making, and changing where a child lives.
12:00 pm	**Lunch**

Figure 4 - New Westminster Agenda (Page 1)

1:00 pm	**Discussion Continued** Facilitator, Patrick Kelly, will lead group discussion on the care of and time with children, including guardianship – who is responsible for a child, parenting arrangements – caring for and spending time with a child, child-centered decision making, and changing where a child lives.
2:30 pm	**Nourishment Break**
2:45 pm	**Discussion Continued** Facilitator, Patrick Kelly, will lead group discussion on the care of and time with children, including guardianship – who is responsible for a child, parenting arrangements – caring for and spending time with a child, child-centered decision making, and changing where a child lives.
3:45 pm	**Daily Wrap Up**
4:00pm	**Session concludes**

Day 2
Agenda

8:30 am	**Breakfast and Registration**
9:00 am	**Welcome** Day 2 Welcome and Introduction by Patrick Kelly Day 1 What We Heard Day 2 Agenda
9:15 am	**Overview Presentation on Family Law Act Modernization Project** In this presentation Aurora Beraldin and Shannan Knutson will provide a refresher of the Family Law Act and the areas of the Act that will be covered on day 2.
9:30 am	**Discussion Block 1** Facilitator, Patrick Kelly, will lead group discussion on assessments and reports on the views and needs of a child, and protection from family violence.
10:30 am	**Nourishment Break**

Figure 5 - New Westminster Agenda (Page 2)

10:45 am	**Discussion Continued** Facilitator, Patrick Kelly, will lead group discussion on assessments and reports on the views and needs of a child, and protection from family violence.
12:00 pm	**Lunch**
1:00 pm	**Discussion Continued** Facilitator, Patrick Kelly, will lead group discussion on assessments and reports on the views and needs of a child, and protection from family violence.
2:30 pm	**Nourishment Break**
2:45 pm	**Discussion Continued** Facilitator, Patrick Kelly, will lead group discussion on assessments and reports on the views and needs of a child, and protection from family violence.
3:30 pm	**Engagement Summary & Next Steps**
4:00 pm	**Sessions conclude**

Figure 6 - New Westminster Agenda (Page 3)

Prince George: June 15 & 16, 2023

BRITISH COLUMBIA | Ministry of Attorney General

Family Law Act Modernization
In-Person Dialogue Sessions – Prince George

Thursday, June 15 & Friday, June 16, 2023
9:00am - 4:00pm Daily

Day 1 Agenda

8:00 am	**Breakfast and Registration**
9:00 am	**Welcome** Welcome and Introduction by Patrick Kelly Welcome and Opening by Elder Darlene McIntosh, Lheidli T'enneh First Nation Roundtable Introductions
9:30 am	**Overview Presentation on Family Law Act Modernization Project** In this presentation Aurora Beraldin and Shannan Knutson will give an overview of the Family Law Act Modernization Project and provide information on the focus areas of the day.
10:00 am	**Discussion Block 1** Facilitator, Patrick Kelly, will lead group discussion on the care of and time with children, including guardianship – who is responsible for a child, parenting arrangements – caring for and spending time with a child, child-centered decision making, and changing where a child lives.
10:30 am	**Nourishment Break**
10:45 am	**Discussion Continued** Facilitator, Patrick Kelly, will lead group discussion on the care of and time with children, including guardianship – who is responsible for a child, parenting arrangements – caring for and spending time with a child, child-centered decision making, and changing where a child lives.
12:00 pm	**Lunch**

Figure 7 - Prince George Agenda (Page 1)

1:00 pm	**Discussion Continued** Facilitator, Patrick Kelly, will lead group discussion on the care of and time with children, including guardianship – who is responsible for a child, parenting arrangements – caring for and spending time with a child, child-centered decision making, and changing where a child lives.
2:30 pm	**Nourishment Break**
2:45 pm	**Discussion Continued** Facilitator, Patrick Kelly, will lead group discussion on the care of and time with children, including guardianship – who is responsible for a child, parenting arrangements – caring for and spending time with a child, child-centered decision making, and changing where a child lives.
3:45 pm	**Daily Wrap Up**
4:00pm	**Session concludes**

Day 2
Agenda

8:30 am	**Breakfast and Registration**
9:00 am	**Welcome** Day 2 Welcome and Introduction by Patrick Kelly Welcome and Opening by Elder Darlene McIntosh, Lheidli T'enneh First Nation Day 1 What We Heard Day 2 Agenda
9:15 am	**Overview Presentation on Family Law Act Modernization Project** In this presentation Aurora Beraldin and Shannan Knutson will provide a refresher of the Family Law Act and the areas of the Act that will be covered on day 2.
9:30 am	**Discussion Block 1** Facilitator, Patrick Kelly, will lead group discussion on assessments and reports on the views and needs of a child, and protection from family violence.
10:30 am	**Nourishment Break**

Figure 8 - Prince George Agenda (Page 2)

10:45 am	**Discussion Continued** Facilitator, Patrick Kelly, will lead group discussion on assessments and reports on the views and needs of a child, and protection from family violence.
12:00 pm	**Lunch**
1:00 pm	**Discussion Continued** Facilitator, Patrick Kelly, will lead group discussion on assessments and reports on the views and needs of a child, and protection from family violence.
2:30 pm	**Nourishment Break**
2:45 pm	**Discussion Continued** Facilitator, Patrick Kelly, will lead group discussion on assessments and reports on the views and needs of a child, and protection from family violence.
3:30 pm	**Engagement Summary & Next Steps** Closing by Elder Darlene McIntosh, Lheidli T'enneh First Nation
4:00 pm	**Sessions conclude**

Figure 9 - Prince George Agenda (Page 3)

Kamloops: June 27 & 28, 2023

BRITISH COLUMBIA | Ministry of Attorney General

Family Law Act Modernization
In-Person Dialogue Sessions – Kamloops

Tuesday, June 27 & Wednesday, June 28, 2023
9:00am - 4:00pm Daily

Day 1 Agenda

8:30 am	**Breakfast and Registration**
9:00 am	**Welcome** Welcome and Introduction by Patrick Kelly Welcome and Opening by Elder Hank Gott, Tk̓emlúps te Secwépemc Roundtable Introductions
9:30 am	**Overview Presentation on Family Law Act Modernization Project** In this presentation Aurora Beraldin and Shannan Knutson will give an overview of the Family Law Act Modernization Project and provide information on the focus areas of the day.
10:00 am	**Discussion Block 1** Facilitator, Patrick Kelly, will lead group discussion on the care of and time with children, including guardianship – who is responsible for a child, parenting arrangements – caring for and spending time with a child, child-centered decision making, and changing where a child lives.
10:30 am	**Nourishment Break**
10:45 am	**Discussion Continued** Facilitator, Patrick Kelly, will lead group discussion on the care of and time with children, including guardianship – who is responsible for a child, parenting arrangements – caring for and spending time with a child, child-centered decision making, and changing where a child lives.
12:00 pm	**Lunch**

Figure 10 - Kamloops Agenda (Page 1)

1:00 pm	**Discussion Continued** Facilitator, Patrick Kelly, will lead group discussion on the care of and time with children, including guardianship – who is responsible for a child, parenting arrangements – caring for and spending time with a child, child-centered decision making, and changing where a child lives.
2:30 pm	**Nourishment Break**
2:45 pm	**Discussion Continued** Facilitator, Patrick Kelly, will lead group discussion on the care of and time with children, including guardianship – who is responsible for a child, parenting arrangements – caring for and spending time with a child, child-centered decision making, and changing where a child lives.
3:45 pm	**Daily Wrap Up**
4:00pm	**Session concludes**

Day 2
Agenda

8:30 am	**Breakfast and Registration**
9:00 am	**Welcome** Day 2 Welcome and Introduction by Patrick Kelly Welcome and Opening by Elder Hank Gott, Tk̓emlúps te Secwépemc Day 1 What We Heard Day 2 Agenda
9:15 am	**Overview Presentation on Family Law Act Modernization Project** In this presentation Aurora Beraldin and Shannan Knutson will provide a refresher of the Family Law Act and the areas of the Act that will be covered on day 2.
9:30 am	**Discussion Block 1** Facilitator, Patrick Kelly, will lead group discussion on assessments and reports on the views and needs of a child, and protection from family violence.
10:30 am	**Nourishment Break**

Figure 11 - Kamloops Agenda (Page 2)

10:45 am	**Discussion Continued** Facilitator, Patrick Kelly, will lead group discussion on assessments and reports on the views and needs of a child, and protection from family violence.
12:00 pm	**Lunch**
1:00 pm	**Discussion Continued** Facilitator, Patrick Kelly, will lead group discussion on assessments and reports on the views and needs of a child, and protection from family violence.
2:30 pm	**Nourishment Break**
2:45 pm	**Discussion Continued** Facilitator, Patrick Kelly, will lead group discussion on assessments and reports on the views and needs of a child, and protection from family violence.
3:30 pm	**Engagement Summary & Next Steps** Closing by Elder Hank Gott, Tkemlúps te Secwépemc
4:00 pm	**Sessions conclude**

Figure 12 - Kamloops Agenda (Page 3)

APPENDIX III: BACKGROUNDERS

WHAT THE *FAMILY LAW ACT* SAYS:

The *Family Law Act* (FLA) uses the term "guardian" to describe a person who is responsible for the care of a child. Under the Act, only a guardian has parental responsibilities and parenting time (for more information see **Backgrounder: Parenting Arrangements**). Parents who have lived with or regularly cared for their child are the child's guardians, including if the parents separate and no longer live with each other. A parent who has never lived with or regularly cared for their child may become a guardian by agreement with the child's other guardian(s). Someone who is not the child's parent may also become a guardian by applying for a court order appointing them as a guardian. The person will need to show it is in the child's best interests for them to be a guardian, and the court requires a criminal record check, a protection order registry check and a child protection records check. The Act requires that if the child is 12 years or older, they need to give written approval. In addition to making guardianship orders, the court can also terminate a person's guardianship if that is in the child's best interests, however this does not happen often.

If a parent/guardian has a serious illness that may cause death or expects to become mentally incapable and therefore unable to care for a child, they can appoint a "stand-by guardian" using a specific form. They must describe on the form when the stand-by guardianship will start. The stand-by guardian will continue as the child's guardian after the person who appointed them has died. The FLA also allows a guardian to use a will or specific form to appoint another person to be a child's guardian when the parent/guardian dies.

INDIGENOUS PERSPECTIVES:

- How do Indigenous families decide who will care for and make decisions about a child when the child's parents may be unable to do so, or may need extra help caring for the child for a period of time?
- Do Indigenous communities have any role in deciding how a child will be cared for, or a role in supporting arrangements for the care of a child?
- How are plans made to care for a child if a parent/guardian becomes ill or dies?
- How would your family or Indigenous community resolve a dispute between parents, grandparents, or other family and friends about who should take care of a child and make decisions about the child?
- Are there specific considerations with regard to decisions about the care of an Indigenous child that should be included in the FLA?

SOME ISSUES WE KNOW ABOUT:

A non-parent (for example, a grandparent or family friend) can only become a child's guardian through a court order, even if the child's parents/guardians agree it is in the child's best interests for them to become a guardian. In this way, the Act means to protect the child's safety and well-being, however some people feel a child's parents/guardians should be able to make this decision without going to court if they agree.

A parent who has never lived with or regularly cared for their child is not automatically the child's guardian and does not have responsibility for making decisions about the child. If they wish to become a guardian, they need to reach an agreement with the child's other parents/guardians or apply for a court order. Some people agree with this, but others feel a child's parent should always be their guardian.

Sometimes families need someone who is able to care for and make some decisions about a child for a temporary period of time. The FLA does have a provision that allows parents/guardians to authorize another person to take over some of their parental responsibilities for a child for a temporary period of time, but many people don't know about this process, and it may not be recognized by schools or health care providers who require proof of guardianship.

A person who has responsibility for a child under the Adoption Act or under certain sections of the Child, Family and Community Service Act (CFCSA) is recognized as a guardian under the FLA. As the CFCSA is amended to respect the inherent rights of Indigenous communities to provide their own child and family services, the FLA needs to also recognize people given guardianship responsibilities by an Indigenous community.

Figure 13 - Backgrounder on Guardianship

WHAT THE *FAMILY LAW ACT* SAYS:

The *Family Law Act* (FLA) includes provisions that guide decisions about parenting arrangements when the child's parents have never lived together or have separated. Parenting arrangements include the responsibility of caring for and making decisions about a child ("parental responsibilities") as well as the time spent caring for a child ("parenting time"). Under the FLA only a guardian has parental responsibilities and parenting time (for more information see **Backgrounder: Guardianship**). The FLA lists the different types of decisions that are included in parental responsibilities:

- Day-to-day decisions and day-to-day care and supervision of the child
- Where the child will live
- Who the child will live with and spend time with
- Education and participation in extracurricular activities
- Culture, language, religion 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, subject to the child's right to make these decisions for themselves
- Applying for a passport, license, permit, benefit or something else for the child
- Giving, refusing or withdrawing consent for the child
- Receiving and responding to notices
- Requesting and receiving health, education or other information about the child from third parties
- Protecting the child's legal and financial interests and managing any proceedings related to the child
- Any other responsibility that supports the child's development

If a child has more than one guardian, each guardian may be responsible for making different types of decisions for the child, or the guardians may share responsibility for some or all the different types of decisions. The parenting arrangements that are decided on must be in the child's best interests. This will be different in every case and may change over time. For example, how much time a child spends with each parent/guardian may change as the child gets older depending on their needs and interests and activities, as well as how far apart the child's homes are.

Parenting arrangements can be documented in a written agreement or a court order. If there is no agreement or court order, but informal arrangements have been in place long enough to create a routine for the child, a parent/guardian cannot decide to change those arrangements without discussing the change with the other parents/guardians. Similarly, they cannot decide on their own to change where the child lives if the move would affect the child's relationship with the other parents/guardians (for more information see **Backgrounder: Relocation**).

A parent/guardian can authorize another person to make certain decisions for their child if they are temporarily unable to do so, for example, while the parent is working somewhere else, or the child is going to school or being cared for in another community.

SOME ISSUES WE KNOW ABOUT:

The list of parental responsibilities combines culture, language, religion and spiritual upbringing and heritage, including Indigenous identity, in a single category. These are important decisions and it may be helpful to describe these in more detail.

The ability to temporarily authorize another person to make decisions for your child when you cannot is not well understood. This provision might need to be updated and made clearer.

INDIGENOUS PERSPECTIVES:

- Are there certain types of decisions that Indigenous families make about their children that should be included or described differently in the FLA?
- Do Indigenous families follow particular customs or practices around having other relatives or members of the community care for their children on a temporary or longer-term basis?

Figure 14 - Backgrounder on Parenting Arrangements

WHAT THE *FAMILY LAW ACT* SAYS:

The *Family Law Act (FLA)* promotes child-centred decision-making by emphasizing the need to consider the best interests of a child and their views in family law disputes. The best interests of a child are at the centre of all decisions about who can spend time with and care for a child. In fact, the best interests of the child must be the only consideration when the court makes orders or when people make agreements about guardianship, parenting arrangements, or contact with a child.

The FLA has a list of the things that must be considered when deciding what is in a child's best interests, which includes the following:

- the child's health and emotional well-being;
- the child's views, unless it would be inappropriate to consider them;
- the nature and strength of the relationships between the child and significant persons in the child's life;
- the history of the child's care;
- the child's need for stability, given the child's age and stage of development;
- the ability of a person to exercise their responsibilities in caring for or spending time with the child;
- the impact of any family violence on the child and the ability of the person responsible for the family violence to care for the child (for more information see **Backgrounder: Family Violence**)
- the appropriateness of an arrangement that would require the child's guardians to cooperate; and
- any civil or criminal proceeding relevant to the child's safety, security or well-being.

There are different ways that a child's views can be made known to the family and the court. For example, a child might write a letter to the judge or prepare an affidavit with their views. The judge can also informally interview a child outside of the courtroom to talk about the child's views. Other professionals can also interview a child and write a report for the court to consider the child's views about a family law dispute (for more information see **Backgrounder: Assessments and Reports**). The court is also able to appoint a lawyer to represent a child in a family law dispute if the best interests of the child are not being adequately protected.

SOME ISSUES WE KNOW ABOUT:

The FLA's list of best interests of the child factors may need updating. For example, the current list of factors does not include considerations related to a child's Indigenous and other cultural, linguistic, religious and spiritual upbringing and heritage, the importance of preserving cultural connections and relationships with groups and communities, the needs of a child with disabilities, or a child's ability to exercise their rights without discrimination, including discrimination based on sex or gender identity or expression.

The FLA could also provide more detail about how a child could provide their views about a family law matter. For example, more guidance in the Act could help the court decide when a letter or affidavit from a child could be appropriate, or when and how judges can interview a child. It has also been suggested that it should be easier for the court to appoint a children's lawyer and it should not be limited to cases of severe conflict between the parties. And, there may be other ways to hear from a child that are not included in the FLA right now.

INDIGENOUS PERSPECTIVES:

- How do you think the *Family Law Act's* best interests of the child factors could be updated to consider the best interests of Indigenous children?
- Are there specific considerations or processes the court should follow when obtaining the views of an Indigenous child through a letter, an affidavit, a judge's interview, or by appointing a children's lawyer?
- Are there other ways the views of an Indigenous child can or should be obtained or considered in family law disputes under the *Family Law Act*?

Figure 15 - Backgrounder on Child-Centred Decision-Making

WHAT THE *FAMILY LAW ACT* SAYS:

The *Family Law Act* (FLA) sets out what a child's guardian has to do if they want to move to another location with or without the child (for more information see **Backgrounder: Guardianship**). If the move will significantly affect the child's relationship with another guardian or important person in the child's life, then the move is called a "relocation." If there is a written agreement or court order about parenting arrangements or contact with the child already in place, then the FLA has specific notice requirements and processes for resolving disputes about relocation. For example, a guardian who plans to relocate with or without the child, must tell other guardians and important people in the child's life when and where they intend to move at least 60 days before moving. There is no need to give notice if there is a risk of family violence or if there is no ongoing relationship between the child and the other people who are guardians or have contact with the child. Only a child's guardian can object to the proposed relocation after they receive the notice.

If the other guardian disagrees with a proposed move with the child, the FLA says the guardians must do their best to cooperate and try to reach agreement. If they cannot agree, they can go to court for an order to allow or prohibit the relocation. In making the decision, the court must consider the child's best interests, and other factors depending on how parenting time is shared between the guardians. These other factors include whether the guardian has good reasons for wanting to move with the child and whether they have suggested ways that the child can continue to have strong relationships with the important people in their life.

INDIGENOUS PERSPECTIVES:

- Are there any unique elements to cases where Indigenous families deal with relocation?
- How do Indigenous families and communities resolve disputes when a child's care giver or parent wants to move with the child to another community?
- Should specific consideration be given to a child being relocated from one Indigenous community to another? Or from one Indigenous community to a non-Indigenous community? Or from an on-reserve community to an off-reserve community, or vice versa?
- In your experience, do women and mothers try to move to different communities more often than men and fathers? Should the law reflect differences in women's, men's and 2SLGBTQ+ individuals' experiences trying to move with their child?
- Should other important people in an Indigenous child's life have more input into whether a guardian can relocate with the child or not?

SOME ISSUES WE KNOW ABOUT:

Relocation is often an issue that is difficult for people to resolve without help. It can be hard to find a middle ground, and often one party gets what they want, and another party has give up time with the child or an opportunity like a new job, a new relationship, or the chance to return home to their family and community supports. Because of this, many relocation cases end up in court where a judge makes the final decision.

It is difficult to predict how a court will decide a relocation case, partly because there is some confusion about what laws should apply to relocation cases. In addition to the FLA's relocation laws, in 2021 the federal Divorce Act also created relocation laws that could apply to people getting a divorce in BC. For example, the Divorce Act creates different presumptions and factors that the court must consider in relocation cases. The Supreme Court of Canada also made a recent decision about relocation laws that is different than both the FLA and the Divorce Act laws. There now seems to be some confusion about what family laws apply in BC when a person wants to relocate.

We also know that approximately 90 to 95 per cent of parents applying to relocate with their child are women. Given that the majority of relocation applications are made by women and mothers, there may be unique gender-related issues related to relocation. There are also questions about how the relocation laws affect 2SLGBTQ+ families.

Figure 16 - Backgrounder on Relocation

WHAT THE *FAMILY LAW ACT* SAYS:

The *Family Law Act* (FLA) requires the court and parties to consider the child's views when making decisions about guardianship, parenting arrangements, and contact with the child, unless the child cannot give their views or there is some reason why they should not be considered. To help understand a child's needs and views, as well as the parties' ability and willingness to meet those needs, the court can appoint a person to do an assessment and submit a report with the result of the assessments. These reports are often called "**Section 211 Reports**" because they are ordered under section 211 of the FLA. The report writer will usually interview the parents and the children, as well family members and other people who may have important information about the family law matter. Psychologists and social workers who write reports sometimes use psychometric tests as part of the report process.

Section 211 Reports can be done free of charge by government employees known as "family justice counsellors." Parties can also pay to have a private Section 211 Report prepared by a social worker, or any other person approved by the court, including for example, a psychologist.

The FLA is flexible and allows the court and parties to consider other types of reports that communicate a child's views in a family law dispute. For example, a "**Views of the Child Report**" summarizes the child's views but does not include the report writer's recommendations for a particular outcome in the dispute. "**Hear the Child Reports**" also share a child's views, by setting out almost word for word what the child said during interviews with the report writer, without any assessment or recommendations.

INDIGENOUS PERSPECTIVES:

- Are there certain processes or types of reports that would best help an Indigenous child communicate their views and needs in a family law dispute? How can the ability and willingness of the parties to meet an Indigenous child's needs be best assessed and communicated?
- Should mandatory qualifications and practice standards for report writers include elements specific to Indigenous families and culture? For example, how can the FLA ensure that report writers consider Indigenous culture and family structures when gathering information and writing reports?
- Are there concerns about report writers including recommendations or how recommendations are used when the report is about an Indigenous family?
- Are there other unique issues for Indigenous Peoples related to assessments and reports?

SOME ISSUES WE KNOW ABOUT:

The delay and costs of Section 211 Reports have become a problem for many families in BC. The court frequently orders a Section 211 Report in family law disputes, so there is now a significant delay to get one free of charge from a family justice counsellor (up to 18 months). If families do not want to wait that long, the cost of a private Section 211 Report prepared by a social worker or a psychologist can be more than $10,000.

Even though Section 211 Reports are often requested and ordered, there is some confusion about what type of report is actually needed in each case. A Views of the Child Report or a Hear the Child Report may give the court and the parties the information they need to make a decision in the best interests of the child in some cases. The FLA could be amended to better explain the different types of reports and when each type might be the most useful.

The FLA also currently does not have qualification requirements or practice standards for report writers. As a result, report writers may have very different qualifications, collect information differently, and write reports using very different formats. Consistent practices may especially be important when a family law dispute involves family violence, Indigenous or 2SLGBTQ+ family members, mental health, disability, multicultural or ethnic considerations. Another question is the use of psychometric tests in reports and when these tests may or may not be appropriate.

A party who has concerns about a report or how it was prepared has limited options. Trying to challenge a report through existing court procedures like cross-examining the report writer at trial or hiring another report writer to critique the first report is very difficult. Also, professional governing bodies often cannot adequately respond to these types of complaints.

Figure 17 - Backgrounder on Assessments and Reports

WHAT THE *FAMILY LAW ACT* SAYS:

Violence between family members can take many forms, and people may need to find ways to protect themselves and their children to ensure their safety. Family violence is broadly defined to include physical abuse, sexual abuse, psychological or emotional abuse including intimidation, harassment, coercion, threats, restricting personal or financial independence, stalking, intentional damage to property and exposing a child to family violence (for more information see **Backgrounder: Family Violence**). A "protection order" is available in either the Provincial or Supreme Court under the *Family Law Act* (FLA) in situations where a person is at risk of family violence from a family member.

A family member at risk of family violence or another person acting on the at-risk family member's behalf may apply to the court for a protection order. The FLA sets out risk factors the court must consider when deciding whether to make a protection order:

- History of family violence
- Whether the violence is increasing or happening repeatedly
- Whether there is a pattern of coercive and controlling behaviour
- The relationship between the parties, including whether they've recently separated or plan to
- Things that increase risk of violence, including substance abuse, financial or work-related issues, weapons, mental health problems associated with violence, history of violence
- Circumstances that put the victim at greater risk, including pregnancy, age, health problems, family circumstances, relying on the abuser for financial support

A protection order will be in effect for one year, unless the judge specifically makes the order for another period of time. The FLA also suggests what terms might be included in the order to protect the at-risk family member:

- Restraining communication or contact
- Preventing the person from entering or going near a place the at-risk family member is regularly at, including their workplace, school, church, or home, even if the restrained person owns or leases that place
- No following the at-risk family member
- Preventing possession of a weapon, firearm or specified object
- Directing police to remove the person from a residence or supervise the removal of personal belongings from a residence
- Requiring the person to report to the court or a person named by the court
- Any other term needed to protect the at-risk family member's safety or implement the order

When a protection order is made (or changed or terminated) the information, including the terms, is entered in the Protection Order Registry. All police in BC, including RCMP and municipal police, can see this information and enforce the protection order. Although a protection order is a civil order, a person who does not follow the terms of the order may be prosecuted under the Criminal Code.

SOME ISSUES WE KNOW ABOUT:

There are situations where people do not meet the definition of family member and are not eligible to apply for a protection order. These include people who are in a dating relationship but do not live with their dating partner, relatives who do not live together (for example, there may be an abusive relationship between an uncle and niece but an FLA protection order would not be available). It also may not capture people who live together and consider themselves family but the relationship is really a close friendship.

In some communities, for a variety of reasons, protection orders are difficult to apply for and obtain. Sometimes people are not aware protection orders are available under the FLA, sometimes there are few resources in a community to support people understanding and applying for protection orders, sometimes the victim isn't believed, or the risk isn't taken seriously.

People in some communities, including rural and remote communities, describe challenges enforcing FLA protection orders. Some people report difficulty getting police to enforce a term in a protection order that restrains a person from entering their home in order to protect a victim living in the home. Sometimes the victim is reluctant to involve police and doesn't report a breach of the protection order.

Sometimes victims of family violence who have not been successful in getting a protective order through the criminal justice system feel there is no point in applying for an FLA protection order. Some victims may not know that an FLA protection order is still an option that is enforceable by the police, even if they were not given a peace bond or do not feel protected by the results of a criminal law trial or process. Although a person charged with an offence under the Criminal Code must be found guilty beyond a reasonable doubt, that standard of proof does not apply to applications under the FLA.

INDIGENOUS PERSPECTIVES:

- Based on your experiences in your family and your community, what can family violence look like? How has your family or community responded to incidents of family violence?
- What challenges do people, especially Indigenous women, two-spirit and LGBTQ people face when dealing with family violence? How can they protect themselves when they are at risk of family violence?
- How could the FLA offer better protection against family violence?
- Based on your experience, are protection orders a useful way to protect members of your family or your community from family violence?

Figure 18 - Backgrounder on Protection Orders

WHAT THE *FAMILY LAW ACT* SAYS:

Violence between family members is a serious issue that can have immediate and long-term effects on adults and children. Family violence can take many forms, and some may be less obvious than others. The *Family Law Act (FLA)* defines family violence broadly to include physical abuse, sexual abuse, psychological or emotional abuse including intimidation, harassment, coercion, threats, restricting personal or financial independence, stalking, intentional damage to property and exposing a child to family violence.

Whether family violence has already happened or there is a risk that it will happen in the future is important for deciding what parenting arrangements are in a child's best interests as well as making decisions about protection orders (for more information see **Backgrounder: Parenting Arrangements** and **Backgrounder: Protection Orders**).

Any decision about who will care for, spend time with or make decisions about a child must be made based only on what is in the best interests of the child (for more information see **Backgrounder: Child-Centered Decision-Making**). Any impact on the child from family violence and whether the person responsible for family violence is able to meet the child's needs must be considered when deciding what is in the child's best interests. The FLA sets out this list of factors to consider:

- The nature and seriousness of the family violence
- How recently the family violence occurred
- How often the family violence occurred
- Whether there was a pattern of coercive and controlling behaviour
- Whether the family violence was directed toward the child
- Whether the child witnessed family violence directed toward someone else
- The harm to the child's physical, psychological and emotional safety, security and well-being
- Steps the person responsible for the family violence has taken to prevent it from happening again

SOME ISSUES WE KNOW ABOUT:

It can be difficult to decide what parenting arrangements are in a child's best interests in a situation where one parent has been abusive towards the other parent. Sometimes the abusive parent will use their relationship with the child as a way to continue to control and harass the other parent. For example, they might yell and call the other parent names when they are picking up or dropping off the child, threaten not to return the child, or repeatedly phone saying they need to talk about the child, but they are really just harassing the other parent. On the other hand, spending meaningful time with each parent is often important for a child, as long as it is in the child's best interests.

What needs to be considered when making decisions about parenting arrangements in situations where there is family violence?

Some parents, especially mothers, have said they've been told not to talk about family violence because they won't be believed or they will be labelled as trouble-makers. It can also be difficult to bring forward evidence or information about family violence because it is often hidden behind closed doors; it becomes the victim's word against the abuser's.

INDIGENOUS PERSPECTIVES:

- Based on your experiences in your family and your community, what can family violence look like? How has your family or community responded to incidents of family violence?
- What kinds of parenting arrangements do Indigenous families choose when there is family violence?
- What factors are considered when deciding on parenting arrangements in situations involving family violence? Should the Family Law Act be updated to include any of these factors?
- How can families be better supported to consider family violence and its impact on children when making decisions about parenting arrangements?
- How should information about family violence be included in the decision-making process?
- Once parenting arrangements have been decided, how should they be reviewed to consider whether the risk of family violence has changed?

Figure 19 - Backgrounder on Family Violence

Information about the review of the parentage provisions in Part 3 of the FLA is available on the British Columbia Law Institute website at:
https://www.bcli.org/project/review-of-parentage-under-part-3-of-the-family-law-act/

WHAT THE *FAMILY LAW ACT* SAYS:

Part 3 of the *Family Law Act* (FLA) sets out who is considered a child's legal parents, including in situations where a child is conceived using assisted reproduction or surrogacy. If a child is conceived using assisted reproduction, the parents will be the person who gives birth to the baby as well as that person's spouse, if they are married or in a marriage-like relationship with someone (unless the spouse did not consent to be a parent). A donor who provided eggs, sperm or an embryo will not be the child's parent just because they were a donor. However, they will be a parent if they signed a written agreement before the child was conceived, stating that they intend to be a parent.

The FLA also sets out who a child's parents are in cases where a child is conceived using a surrogate. A surrogate is a person who carries and gives birth to a child for the intended parent(s). The intended parents' genetic material (eggs/sperm/embryo) may be used, or donor material may be used, or it may be a combination. If the surrogate's eggs are used it is sometimes called a "traditional surrogacy". The FLA requires there be a written surrogacy agreement before the child is conceived and that the surrogate give written consent to surrender the child to the intended parents after the child is born.

INDIGENOUS PERSPECTIVES:

- How do Indigenous families deal with fertility issues?
- Are there any challenges or barriers for Indigenous families facing fertility issues to access donors and/or surrogates?
- Do Indigenous families face any challenges or issues around establishing who a child's legal parents are?

We would like to hear more about assisted reproduction and surrogacy in Indigenous families. If you or someone you know has information or experiences you would like to share and there isn't an opportunity to do so during the community dialogue sessions, please email us at: jsb.fplt@gov.bc.ca. We are happy to receive information by email or we can set up a telephone or video call if you prefer.

SOME ISSUES WE KNOW ABOUT:

Sometimes families use fertility clinics and agencies when trying to conceive using assisted reproduction or surrogacy. However, these services can be expensive and some families will use donor sperm from a friend or family member, or a relative or friend will agree to act as a surrogate. In these situations, people may not get legal advice or understand that the FLA requires they enter into an agreement before the child is conceived.

The FLA also does not recognize sexual intercourse as a way of achieving assisted reproduction. Families who do not use a clinic do not always know this. If people have sexual intercourse and conceive a child, they may become legal parents of the child even if this was not their intention.

Figure 20 - Backgrounder on Parentage & Assisted Reproduction

Indigenous Cultural Property

INFORMATION AND INVITATION

BRITISH COLUMBIA Ministry of Attorney General

We are currently undertaking a multi-phased review of the *Family Law Act* (FLA) with a view to modernizing it and addressing issues that have come to light since it came into force in 2013.

In the summer of 2022, as part of Phase 1 of the of the Family Law Act Modernization Project, we conducted a public consultation about the part of the FLA that deals with the division of property (both real property and personal property) when spouses separate.

We received feedback from some First Nations about how property with Indigenous cultural value or significance is divided between spouses when they separate. Our engagement on this topic is ongoing.

We would like to better understand this issue and would like to know if you or your Nation or Indigenous community would be interested in discussing it with us.

BACKGROUND

As background, the FLA creates two categories of property that spouses may have in a relationship: family property and excluded property.

"**Family property**" is all property that spouses own at the time they separate. It also includes all the debt the spouses have at that time. Family property is generally divided equally between the spouses. Family property can be divided unequally in certain situations if equally dividing the property will lead to significant unfairness.

"**Excluded property**" is property that generally one spouse keeps as their own after the couple separates. Excluded property includes property that one spouse had before the relationship started or after the relationship ended, gifts and inheritances one spouse received from other people (other than their spouse), some settlement or damage awards, some insurance payments, and some kinds of trust property. Excluded property can only be divided between the spouses in a few situations if not dividing the property will lead to significant unfairness.

The FLA applies to all real property and personal property that spouses own at the time they separate, .however, it does not apply to the use or possession of family homes or the division of interests in buildings or land on reserves, which is governed by the federal Family Homes on Reserves and Matrimonial Interests or Rights Act.

Determining whether property is family property or excluded property plays a big part in deciding who keeps what at the end of a relationship. However, the FLA currently does not explicitly allow the court to consider the Indigenous cultural value or significance of property spouses may own when dividing property upon separation.

WHAT THE FLA COULD DO

A suggestion has been made that if one spouse is a member of an Indigenous community and another spouse is not, a court should consider whether the property with cultural value or significance should remain with the spouse who is connected to that Indigenous community if the spouses separate. For example, an Indigenous spouse may own ceremonial regalia that has cultural value or significance. Another example is that an Indigenous spouse may have received a benefit, an award of damages or settlement funds that has some Indigenous significance. How should these types of property be divided between spouses?

WHAT DO YOU THINK?

We are interested in hearing your thoughts on this issue including the type of cultural property that might be at issue in these cases, the different ways that spouses may acquire that property, what type of evidence might be appropriate for the court to consider in relation to this cultural property, as well as other associated issues.

If you or your Nation or Indigenous community are interested in discussing these issues with us, please let us know!

You can contact Aurora Beraldin at aurora.beraldin@gov.bc.ca, or Darryl Hrenyk at darryl.hrenyk@gov.bc.ca.

Family Policy Legislation and Transformation Division
Justice Services Branch, Ministry of Attorney General
Email: JSB.FPLT@gov.bc.ca
Mail: PO Box 9222 Stn Prov Govt
Victoria BC V8W 9J1

Figure 21 - Backgrounder on Indigenous Cultural Property

APPENDIX IV: LIST OF COMMUNITIES AND ORGANIZATIONS

Participants that are identified by name have given their written consent to Mahihkan Management.

Nanaimo: May 24 & 25, 2023

Indigenous Participants
Ahousaht First Nation
- Including G. Iris Frank

Cowichan Tribes
Musqueam Indian Band
Pacheedaht First Nation
Songhees First Nation
Tla-o-qui-aht First Nation
Tsawout First Nation

Snuneymuxw First Nation
Elder Geraldine Manson

Ministry of Attorney General
Aurora Beraldin – Legal Counsel, Family Policy, Legislation and Transformation Division
Shannan Knutson – Legal Counsel, Family Policy, Legislation and Transformation Division

Mahihkan Management
Nicole Etherington – Event Lead
Patrick Kelly – Facilitator
Caitlin Bergh – Notetaker

New Westminster: June 12 & 13, 2023

Indigenous Participants
Boothroyd Indian Band
Chawathil First Nation
Indian Residential School Survivors Society (IRSSS)
Kispiox Band Council
Mamalilikulla First Nation
Mosquito First Nation (Saskatchewan)
Nak'azdli Whut'en First Nation
Namgis First Nation
Xaxli'p First Nation

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Patrick Kelly – Facilitator
Caitlin Bergh – Notetaker

Prince George: June 15 & 16, 2023

Indigenous Participants
Blueberry River First Nation
Cook's Ferry Indian Band
- Including Mandy Cormier

Esk'etemc First Nation
- Including Doreen Johnson

Gitga'at First Nation
Gitxsan Nation
Splatsin Nation
- Including Michael Louie

Wet'suwet'en First Nation
Witset Nation

Lheidli T'enneh First Nation
Elder Darlene McIntosh

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Mahihkan Management
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Patrick Kelly – Facilitator
Caitlin Bergh – Notetaker

Kamloops: June 27 & 28, 2023

Indigenous Participants
Canim Lake Band
- Including Gabriel Christopher
Esk'etemc First Nation
Lower Similkameen Indian Band
Lytton First Nation
- Including Alfreda Nelson
Okanagan Indian Band
Osoyoos Indian Band
- Including Muriel Tanner
Shxw'owhamel First Nation
T'it'q'et First Nation
Ts'kw'aylaxw First Nation
Xaxli'p First Nation

Tk̓emlúps te Secwépemc
Elder Hank Gott

Ministry of Attorney General
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