BRITISH COLUMBIA | Ministry of Attorney General

FAMILY LAW ACT MODERNIZATION

MNBC Dialogue Sessions

‘What We Heard’

February 13th, 2024

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

Mahihkan MANAGEMENT
IN PARTNERSHIP WITH VGN RESOURCES GROUP, INC.

BRITISH COLUMBIA

Table of Contents

INTRODUCTION **5**

OBJECTIVES **7**

ENGAGEMENT STRUCTURE & OVERVIEW **7**

- **Ministry of Attorney General Presentation** 8
- **Overview of the Dialogue Session** 10

DISCUSSION OVERVIEW **10**

- **Initial Discussion** 10
- **Discussion: Care and Time with the Child** 12
- **Discussion: Assessment and Reports on the Views and Needs of the Child** 15
- **Discussion: Protection from Family Violence** 18

KEY THEMES **21**

- **1. Indigenous Representation in Court Proceedings** 21
- **2. Empowerment and Choice for Métis People** 22
- **3. Streamlining Court Proceedings** 23
- **4. Cultural Sensitivity Training and Implementation of a Circular Court System** 23
- **5. Recognition of Indigenous Family Networks** 24
- **6. Determination and Expansion of Guardianship** 25
- **7. Maintaining Cultural Connection** 26
- **8. Education, Awareness, and Implementation of the Law** 26
- **9. Recognition of Diversity of Nations and Communities** 27
- **10. Preventative Measures and More Wrap-Around Supports** 28
- **11. Considering the Best Interest of the Child and the Family as a Whole** 29
- **12. Reimagining and Defining Key Terms** 30
- **13. Considerations and Barriers in Reporting Abuse** 31

ASSESSMENT OF INITIATIVE **32**

APPENDIX I: AGENDAS **35**

APPENDIX II: LIST OF PARTICIPANTS AND ORGANIZATIONS **37**

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.

EXECUTIVE SUMMARY

On February 13th 2024, B.C.'s Ministry of Attorney General (Ministry) convened a dialogue session in partnership with Métis Nation British Columbia (MNBC) as part of their *Family Law Act* Modernization Project. The session involved Métis People who have had lived experience with family law issues along with legal staff from the Ministry of Attorney General. The session was supported by Mahihkan Management, which provided an Indigenous facilitator, an engagement manager and notetaker.

Key Feedback

The dialogue session resulted in 13 key themes based on feedback from 10 participants. Métis participants emphasized that while amendments to the *Family Law Act* (FLA) were necessary, it was just a small part of a much larger picture. They asserted that if the Ministry 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 Indigenous communities, including First Nations, Métis, and Inuit, and not apply a one-size-fits-all approach.

Participants agreed that with reforms to the FLA the Ministry needs to acknowledge and legitimize the complexity and scope of Indigenous family networks and worldviews. These have not been part of the legislative framework that, in most cases, reflects colonial concepts of the nuclear family, where parents are guardians of their children. When discussing guardianship, it is important to acknowledge Métis family structures and other ways that guardianship could be established. Establishing a balanced process could be made feasible by removing requirements to current guardianship applications that might pose a particular barrier to Indigenous people (for example, a criminal record check) while ensuring that the guardianship applicant is still a safe person.

When amending the FLA, the Ministry should also consider how to incorporate alternative justice methods used by Indigenous communities to address family disputes under the FLA outside of court. It was also deemed important that people working within the family justice sector and service providers be trained in cultural sensitivity.

While hearing the voices of children and protecting their well-being is considered to be a top priority, the voice of the family is equally important. A shift in ideology is needed to prioritise the views of the entire family and determine how to keep the family together. This is seen to be a more holistic approach to family law and colonial individualistic ideas. 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 Métis 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. Hence, the government should 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.

Furthermore, specific thematic takeaways from the session included needs for:

1. Indigenous (legal) representation in court proceedings.
2. Empowerment and choice for Métis People.
3. Streamlining court proceedings.
4. Cultural sensitivity training and implementation of a circular court system.
5. Recognition of Indigenous family networks.
6. Determination and expansion of guardianship.
7. Maintaining cultural connection.
8. Education, awareness, and implementation of the law.
9. Recognition of the diversity of Nations and Communities.
10. Preventative measures and more wrap-around supports.
11. Considering the best interest of the child and the family as a whole.
12. Reimagining and defining key terms.
13. Considerations and barriers in reporting family violence.

NOTE: Expansion on themes later in the report under section 'Key Themes'.

Many participants shared stories that illustrated their experiences with family law and child protection issues. 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. Comments related to child protection have been noted. The Ministry will share these comments, 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*.

INTRODUCTION

The *Family Law Act* (FLA) became law in 2013 and is British Columbia's primary legislation for families going through separation, and families who need to address issues related to caring for and spending time with a child, including child support. B.C.'s Ministry of Attorney General (Ministry) is responsible for providing policy and justice reform advice to the Attorney General. The FLA provides a legislative framework that guides the actions and decisions of families as well as others in the justice system including the police, the judiciary, service providers and lawyers.

The Ministry is responsible for maintaining the FLA to ensure it remains up to date with societal and legal developments, as well as ensuring it meets the needs of all families in 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. Some Indigenous communities may have Indigenous legal orders or processes that could help their members resolve family law disputes as well.

Through its Family Policy, Legislation and Transformation Division, the Ministry is leading the FLA Modernization Project (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 FLA 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. These amendments received Royal Assent on May 11, 2023, and are mostly in force.

The Ministry has now begun Phase 2 of the Project to review parts of the Act that deal with who cares for and spends time with children, child centred decision-making, 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 engagement 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 Solutions (MMS).

The input from the Métis dialogue sessions informed the development of the Ministry‘s public engagement and further engagement with Métis Nation 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 this dialogue session. 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 Mahihkan Management. 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.

This report includes an overview of the discussions and key themes that emerged from the participants' input. This report does not represent the Ministry of Attorney General's position, however, the themes will inform the Ministry's policy development process.

OBJECTIVES

The primary objective of this session was to gain input from Métis people who have lived experience with family law issues. Feedback will help to inform an examination on 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 of the FLA 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 session was held on February 13th, 2024, with a total of 14 participants in attendance.

The engagement was planned in partnership between the Ministry of Attorney General and the Ministry of Children and Families at Métis Nation British Columbia (MNBC), with the support of Mahihkan Management. MNBC took the lead in reaching out to Métis people with lived and living experience, communities, and service providers, and offered input and feedback on engagement structure and content.

The engagement session began with a welcome from the facilitator and a land acknowledgement. The Elder present opened the session in a good way and was presented with an offering of tobacco.

During the session participants were introduced to the Project, the proposed engagement path and timeline, and invited to provide input on areas of interest.

In addition to the February 13th engagement, the Ministry held virtual information sessions and four in-person dialogue sessions held in May and June 2023 that were also open to Métis participants.

Ministry of Attorney General Presentation

The session included a presentation 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

Overview of the Family Law Modernization Project

In B.C., the FLA 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 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. First Nations in B.C., each with unique traditions and history, may approach family law matters in different ways. The FLA is a tool

[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.

Indigenous families may choose or may need to use in certain circumstances, 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. The goals of the Project are to amend the law to ensure that it continues to reflect societal changes, and to clarify areas of the law for better interpretation. The focus of the project is on improving the FLA. The Ministry is not looking at rewriting it at this time. However, when the FLA was initially developed there was only limited engagement with Indigenous Peoples. An important part of the Project is to reach out to Indigenous communities and 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 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 Phase 2 of the Project, 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/Spring 2023-2024**

  - Further engagement on specific issues will develop and refine policy. This includes engagement with Métis, First Nations, Treaty First Nations and Indigenous organizations on themes raised in these dialogue sessions.
  - Broad public engagement on FLA Modernization Phase 2 topics.

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

Overview of the Dialogue Session

The focus of the one-day session was on the topics of:

- Guardianship.
- Moving with a child (relocation).
- Deciding who can spend time with and care for children.
- Child-centred decision-making including what is in the best interests of a child in family law disputes.
- Protection from family violence.
- Parenting assessments.
- Views of child reports.

DISCUSSION OVERVIEW

Initial Discussion

- There was agreement among participants that the family assessment should be created and reflect Métis standards and should be formatted by them to reflect family structures that are specific to the community. The law needs to recognize Métis people to ensure that the act necessitates Métis inclusion. For example, the court can appoint someone as the child's guardian; however, authority should be with the Nation and not only with the court and this could bridge the gap between the act and the communities. Bridging the relationship between Indigenous People and the province ensures that more people are coming in and their voices are reflected.
- The rights of the child should be fundamental and children should have more say in the process.
- The largest question is how well the voices of families and children are heard. There were questions concerning where this can be addressed within the modernized *Family Law Act.*
- Participants talked about the fear Métis people have regarding the court system, the difficulty of maneuvering the proceedings, and the time it takes to complete the process. This is especially important to consider because it impacts family stability and the well-being of a child, such as in cases where the child is separated from a parent or the family during the proceeding. Because of this many Métis individuals choose not to use the act and avoid the court system altogether.

- There needs to be changes and recognition of traditional family law and opportunities to create more alignment in the act with traditional values.
- There was general agreement that extended family members such as grandparents need to be better recognized and accommodated in the Act as they play important roles in traditional family structures. This family structure needs to better align and connect with the laws as currently they are designed more to accommodate individuals and not the "entire family".
- Participants recognize the importance of the input of the child but recommend an ideological shift to a family-focused perspective and including the whole family in the decision-making process. In this way, the *Family Law Act* would better represent "the family".
- There was agreement in the need for Métis input and representation in the form of a legal court worker in every single court to best advocate for Indigenous Peoples within the court system and create more understanding and support for Métis people during the legal process. This would ensure that Indigenous support is available for Indigenous families.
- The way the current system is designed matters and there needs to be a circular system instead of a hierarchical system to ensure that Métis people can have control in the court process. With the hierarchical system in place, Indigenous voices are at risk of being silenced.
- The diversity of Inuit, Métis, and First Nations needs to be recognized by the court and the Act as each (and the communities within each) have varied politics and needs. Issues arise when court workers are unfamiliar with policies that specifically reflect one community or adopt a broad approach that is not specific to each community.
- There is a need for better implementation of the law as the implementation process is where many challenges arise. This could be addressed with clearer communication with communities and individuals within the community and a directory of where coordination needs to happen regarding an Indigenous child or family. There needs to be better methods of notifying communities as to what is happening with their members within the court system so that they are aware and may be able to support and advise.
- An example of legislation including Métis people was Bill 38 (2022, the *Indigenous Self-Government in Child and Family Services Amendment Act,* which amends the *Child, Family and Community Service Act*) with the Ministry of Children and Child Development, which states that if a child identifies as “Indigenous Child”[2], then the

[2] Under Section 1 (e) of the of Bill 38 an “Indigenous Child” means a child who is (a) a First Nation child, (b) a Nisga’a child, (c) a Treaty First Nation child, (d) who is under 12 years of age and has a biological parent who (i) is of Indigenous ancestry, including Métis and Inuit, and (ii) considers himself or herself to be an Indigenous Person, (e) who is 12 years of age or over, of Indigenous ancestry, including Métis and Inuit, and considers himself or herself to be an Indigenous Person, or (f) who an Indigenous community confirms, by advising a director or an adoption agency, is a child belonging to an Indigenous community.

For more information on Bill 38 visit https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/42nd-parliament/3rd-session/bills/first-reading/gov38-1

Nation must be notified. This Bill ensures the Nation is involved, along with the family, and the agency. It must be explicit in the *Family Law Act* that someone who identifies as Métis must go through this process so the Nation is notified.

- Potential issues arise when reflecting on the decentralized structure of the Métis Nation interacting with the centralized structure of government organizations. This misalignment creates issues when Métis Nation is expected to follow government processes.
- Finally, a challenge reiterating the need for representation is that people feel disempowered when dealing with their situation within the court system as they are dealing with a system that has not recognized their power and autonomy.

Discussion: Care and Time with the Child

- Issues arise in situations where someone who is a non-parental guardian of a child is also in a significant caregiver role for that child's parent. There were questions surrounding how to share guardianship in a way that is less intimidating than going to the courts, and how this arrangement might be recognized in the modernized *Family Law* Act (FLA). There is also a need to support traditional care systems where the whole community is responsible and cares for the child instead of only supporting systems that recognize one or two guardians.
- It is important to have the family involved as a family unit to make decisions on who is going to be the guardian or caregiver for the child. This would mean more implementation of wrap-around systems within the court that prioritize keeping the family together with support, and also giving power to other members of the family and community. This could be characterized by using a different term than "Guardian" but should carry some weight to ensure that anyone caring for the child has some legal rights to make decisions for that child.
- A concept brought up was that of an 'emergency contact'. This carries a certain level of rights that can be entrusted to someone. The designation can be easily decided upon and documented by the family and the community, but is subject to being withdrawn if circumstances change.
- There were questions about how the FLA can empower communities to be able to resolve these issues within the family unit and the community and how this can be legitimized by the court so that Indigenous People don't need to "jump through hoops".
- Requiring criminal record checks in the process of awarding guardianship emerged as an issue. Elders, for example, would never go in to get a criminal record check (even if they had no record). This deters people from receiving guardianship. The time it takes to receive guardianship is also an issue as these checks can take up to a year, during which time people are unsupported. There is a due diligence that is overly extreme. Separating children from their families for extended periods is not in the best interest of the child and the family.

- A participant mentioned that there was a statistic where 50% of Indigenous People have a criminal record which is a barrier for children in the communities and increases the risk of children being removed more often.
- There is general agreement that a stranger is not the best person to decide the best interest of the child when they do not have any understanding or knowledge of the family. There needs to be more power given to the family in deciding what is in the best interest of a child.
- When situations arise where a parent is incarcerated children can be separated and put into the foster system for years of their lives and moved away from their communities. When a parent gets out of jail there is the possibility for reunion with the children but that means the child/children being removed again from their foster homes and placed back with their parent/parents (who are now strangers). There is no reintegration process to support the child and the parents through this experience, which can be detrimental and traumatic for the child. There needs to be a gentler method that considers what that child has gone through and facilitates a smoother transition back into the family unit.
- There needs to be recognition of traditional family systems. There is a family system that has been used traditionally in Métis communities that can be represented by a circle with the children and the Elders at the centre, the youth around them, and the parents. Within the circle is a system of reciprocity, care, and teaching. Before the child welfare system, communities were healthy and successful using this system as it acknowledged the sharing of responsibility for the children in communities. This sense of sharing has been stunted by the dominant perspective of recognizing only two guardians. For example:
    - There is more integration within families when extended family, aunts, uncles, and grandparents have guardianship and can be interchangeable and are equally important in the care of a child.
    - There is an expectation of the family unit being nuclear, with the extended family and chosen family being less recognized. The definition of “family” in the legislation will be important.
- There needs to be listening and hearing from the community, going back to past structures that did work (i.e. those circles), and having other people involved; the voice of Métis Nation needs to be represented. There also needs to be checks to make sure the family is upholding those responsibilities for the wellbeing of the child.
- Further to criminal record checks, there needs to be more mindfulness that having a criminal record check is not the only determining factor when deciding who should have guardianship of a child. Circumstances can vary from case to case. A person who does not have a criminal record might not be a good guardian for a child. To address this problem, there should be a way for the child to say with whom they feel safe with so similar situations do not continue to happen.
- The number one dysfunction is trust. Many participants agree that without trust in the agency or the family, we are perpetuating problems instead of creating a solution.

- There needs to be representatives from all groups present in discussions. There should not be one dominant voice making all the decisions. This ties back to adopting a circular system instead of a hierarchical one. It should be a collaborative decision and the Ministry needs to be hearing from all parties. If it is family law then the family, the Nation, and the community, all need to be represented.
    - Having a collaborative approach would need to be Indigenous-focused and there should be a collaborative decision process of how these things happen.
- There is agreement about needing to ensure that Métis individuals and Indigenous communities can have access to the legal representation and support to go through court, which is a major strain financially, mentally, and physically.
- When judges ask questions about Indigeneity there are concerns over whether distinctions are being made between Indigenous groups or if they are being looked at in general. Without acknowledgment of the variability and diversity of Nations and communities, Métis people will not be adequately represented as their needs are different from those of First Nations or Inuit people, with further variability between communities within the Nation. These distinctions call for Métis involvement and guidance with the knowledge that this will be acknowledged.
- There is a need for further explanation and guidance when going into the court system and the education component is important for Métis people and their preparation. Knowing what will happen in the proceeding makes a major difference and understanding the nuances could help Indigenous People better maneuver the courts. This education piece is also important for enabling collaboration between the courts and the communities they serve.
- In terms of implementation, there needs to be a process verifying that what is stated in the FLA is being implemented. A suggestion was made on audit processes to get a better sense of what is happening on the ground in communities to ensure a better quality of care. This would mean having a clear methodology and ways to measure success in the implementation of modernized policies and procedures.
- A common theme emerging was trust, which also ties into liability and guardianship. As it stands right now, if parents lose custody of a child (in a child protection proceeding) then the custody goes to a social worker during the investigation. Questions arose on the opportunity for reversal of these orders which might be in the best interest of the child.
- The term 'healthy' is understood by participants as being able to care for a child so that the child does not come into harm. Therefore, there should be a healthy group available to make decisions for a healthy child. A participant suggests a council of some kind made up of community Elders and other appropriate people who know the family and who can assist in recommendations on the wellbeing of a child and a family. This would ensure that more voices were heard, people were not being stepped over and traditional procedures were followed. As one participant explained, “I want all of those family voices sitting at the table so it isn't just one person making all the decisions for the child. I am a parent but it is valuable to have my mother's input because she has been a parent for longer.”

  - There is a need for a more precise definition of 'healthy'. Having a narrow definition is highly exclusionary and does not take into account the issue present in communities that prevent parents from fitting into that definition. Many factors, including mental state, may affect the parent. However, the parent might be deemed unhealthy under the strict standards and risk losing their child, even though the child is healthy under their care.
  - The problem isn't the organization it is the policy. There are both strict black-and-white areas and areas that are more subjective which can be barriers to Indigenous people being able to care for their children. The outcome is embedded into the policies by Acts created by middle-class non-Indigenous people. These policies and systems can be seen as either broken or seen as working exactly how they are supposed to control Indigenous People.
  - There is a need for more shared responsibility as right now the judge has full liability.
- There needs to be support for parents as the processes are traumatic, and issues can be made worse by the removal of their children. This feeds into issues that are already present in Indigenous communities, including substance abuse which feeds into a vicious cycle as families are not being helped. Somebody needs to ask, "How can we work with you and help you to help the collective?". There is no support for reintegration or wrap-around support to keep families together as an alternative to splitting them apart.

Discussion: Assessment and Reports on the Views and Needs of the Child

- The ministry needs to shift its ideological perspective on the question "What is the best interest of the child" to "What is the best interest of the family". This would create more alignment with Métis communities that focus on the collective rather than the individual. The best interest of the child in some cases is the best interest of the family and should be considered in the eyes of the law.
- Cultural continuity is shown to be a strong protective factor for an Indigenous child and this needs to be a priority in decision-making regarding an Indigenous child. If the child is living with a non-Métis parent that parent needs to respect the cultural needs of the child and it would be beneficial for this to be upheld by the FLA.
  - Identity is important and is tied to cultural continuity. It is especially important when someone is brought up in an environment where so much of their life is tied to identity which, when taken away, is devastating.
  - An example was brought up in Bill 38 (2022, the *Indigenous Self-Government in Child and Family Services Amendment Act,* which amends the *Child, Family and Community Service Act*) which talks about the best interest of the child and outlines factors of cultural continuity and the importance of the development of the child's Indigenous cultural identity.
  - Issues arise when a child is adopted outside of the Nation and nobody from the receiving Nation or community is notified. When that happens, communities are expected to uphold cultural competency pieces, which they fail to do in these

cases. There are issues about the lack of resources to uphold cultural competency within the communities. It would be beneficial to have opportunities for funding.

- Another issue lies in the definitions used by adoption agencies, the term 'Indigenous' in particular. Adoption agencies tend to use this as an umbrella term instead of applying distinctions among First Nations, Métis, and Inuit.
    - The same can be said for terms like 'cultural continuity' and what that means in the context of the law and adoption agencies. There should be an articulated list outlining these terms in the FLA similar to the list in the Adoption Act.
- There is a need for better access to information and more effort devoted to notifying communities about the resources available to them. For example, most of the participants in the room had never heard of the Assessment Reports done in the context of the FLA, as participants agreed that such reports could be useful to them.
    - It was noted that it is important to consider who is writing these reports and if the person writing them is familiar with Métis culture. Participants agreed that if the person has no sense of Métis culture then they are not qualified to write a report regarding Métis families or children.
    - This alludes to another issue of not having enough cultural competency training regarding Métis people. A solution to this would be a collaborative writing system between report writers and Métis community members (such as Elders or through a circle) so that a Métis person could feel a sense of trust that what was written accurately reflects them.
    - Collaboration in the report writing process would fulfill an important validation factor as well as provide a path for mutual understanding.
    - Questions arose surrounding the possibility for a Métis person to write the reports to increase the cultural sensitivity element as it is difficult to ensure that somebody outside the Métis Nation could fulfill this need.
    - Issues also arose with the cost of writing reports and funding availability for people who cannot afford these costs. Financial constraints must be considered when the court orders these reports.
- Regarding the element of choice and empowerment, Métis people should be able to contract who they would want to see writing the reports based on their training and education. They should be able to collaborate with the report writers on compensation that works for both the community and the report writer. This would also ensure that someone with experience is guiding the community, individuals, or families while working collaboratively. These reports should also be written according to guidelines established for writing reports related to Métis families.
    - The criteria and questions asked on these reports should cater to Métis people by looking at intersectional and holistic factors such as standard of living but also ask "why" questions about what caused the current condition in regard to standard of living. With this knowledge, opportunities will arise to better support families and consider not just what the family can provide but what the community provides as well.

  - Cultural differences should be considered and informed by knowledge of Métis family culture and trauma.
- There are many cases where people outside the community (e.g., foster parents) who are caring for a child receive financial support from the government. There was agreement that these funds could be better allocated towards supporting Métis families to prevent the removal of children.
- There should be a referral process to MNBC that facilitates the gathering of support around the family, looking at all of their needs, risks, and strengths, and better-mitigating risk. The courts need to consider the family and support them first. This should be the priority. This would also mean having support for families in the court like a lawyer or social worker (holistic approach).
- The participants suggested further involvement of Elders, asking them to come in and sit down with the families to work through issues with them. With funding, there could be opportunities for preventative measures to help the parents before the court is involved or while they are in the court process. When the Elders are present and working with families it ensures better support from the people who understand the community the best and this could happen under the guidance of the court instead of against the court.
- In terms of "the circle of trust" (which was a term brought up a few times throughout the session) child protection agencies could have a place in the circle. There also has to be space to remove people from the circle when necessary. To have a voice in the circle an agency, for example, has to work and prove their place in the circle for the betterment of the family.
- Support for the family is viewed as facilitating proactive grassroots solutions instead of reactive band-aid responses applied after the harm is already done.
- In regard to what type of reports are needed and what types of information will be in these reports, participants enquired about the possibility of including letters of support from people who know the families and who could better inform the report. This could create a middle ground, bringing some authority back into the Métis Nation, and would mean the reports are informed by the Métis Nation.
- Participants opined that while children should have a say at any age, the decision should not be completely on the child alone. Everyone involved in the care of the child should be at that table, with the people involved varying according to the situation. In some places, a child can start to make medical decisions for themselves at age 12. In the communities, some children leave the house at the age of 15.
  - There was concern among the participants over what happens if the child disagrees with the decision of who should be their guardian and, and a question of what the FLA can do in these situations that takes all the views of all parties into account.
  - Some participants determined that a child has full mental capacity at 12 years old, and should have a say in who they want to be their guardian/guardians.
  - Some participants shared experiences of leaving the house at 12 themselves at that age and the difficulty that arose. But this also shows that they were capable of making that decision for themselves when they could no longer live at home

for serious reasons. However, there was also agreement that there needs to be a balance between the voice of the family and the voice of the child so that the child's voice doesn't get lost but the decision is informed by the family.

Discussion: Protection from Family Violence

- The discussion started with situations where a mother or a father gets a protection order against their spouse, which cuts off the contact of the child with that parent. This is an issue because in some cases violence towards the partner does not mean violence towards the child and it would be more beneficial to the child to have that parent in their life.
- A participant shared their experience as a child living in a home where spousal violence occurred. They said that what hurt them most about the situation was being disconnected from their family because someone else took that decision away from them. In some cases protecting the whole unit makes a stronger foundation. There is a need to look at the bigger picture of what creates that violence in the first place.
- Another participant shared their experience of family violence, and how in their teenage years they became very aggressive and sometimes hurt people because they were hurt themselves. There was nobody able to support them and their father, who also had violent tendencies. The participant voiced hope that these situations can be addressed somewhere in the *Family Law Act* before family violence becomes a "fork in the path". It is important to consider how to support parents in these situations before it become a major issue.
- Verbal and racial abuse within the home were discussed as being considered a type of violence under the FLA. Measures such as supervised visits could be put in place that are culturally sensitive and done cohesively and naturally to encompass culture and community, preventing the abuse from happening. All the resources for the family and the child (for example childcare benefits that families may depend on) are also taken away.
- A participant shared their experience with a father who was abusive to their mother, but since their mother did not report it or keep the children from their father, the children built a strong bond with him and were never in any danger from him. The participant was grateful for this as it was important for her as a child to have her father present in her formative years.
- Issues were brought up surrounding the stigma placed on families that report abuse or speak out about abuse, and how this brings a high level of scrutiny by non-Indigenous People into every part of the life of the family. This, in many cases, puts unwanted pressure and stress on the family. The fear that their children will be taken away prevents people from reporting violence to the authorities.
- Statistically, the group wants the ministry to consider that people don't leave their partners until they are ready. This places a lot of blame on the victim, fear of which might create new barriers to them accessing services. This can also result in financial

consequences if, for example, a parent who has been abused needs to pay for supervised visits with their abusive partner when they want to see the children.

- Another example of family violence that has not been given enough consideration is the situation where children are abusing their parent(s). Participants questioned what happened in these cases. These situations need to be met with support and understanding of the circumstances of the family and the child, and the context of these situations.
- There was also concern that when a person seeks medical or professional help, this can be and often is permanently placed on the medical record of the person, visible to potential employers and others. A participant alluded to having this as an example of their experience, and how it made the participant's life harder down the line. They offered MCFD's Extended Family Program as a possible solution but did not expand.
- A participant shared their experience of being abused as a child by their caregiver, who at one point broke the child's back. The participant described the beating as being so bad that it was dehumanizing, saying "not even a dog gets beat that badly." Making the situation worse was the widespread perception by everybody that the abusive caregiver was 'amazing.' The participant also described suffering abuse from their stepfather who was also a pedophile. The participant voiced the wish that they had had someone around at that time (age 12 specifically) to ask them what they wanted for their life. At age 13 the participant was in court where they were sent off to an institution, which was an extremely traumatic experience. The participant was expelled from that institution many times yet he kept coming back because it was better than being on the streets.
- A participant expressed the value they have seen in peer-led programs that enable support between men and encourage them to stand together and respectfully call out destructive behaviour. They note having a peer-led program with other men who have been through the healing process can help catch signs of abuse before it becomes systemic.
- A common theme brought up in the session is that when Indigenous people reach out to the police it is often ignored. There is an external stigma that Indigenous People "just live like that". Support if necessary for men as well. Men are important, and when they are excluded, blamed, and unsupported it makes situations worse for them.
- There was major agreement in the group that stigmatization and supposition take away a person's power.
- In situations of abuse, there must be consultation with both parents by people who can assess the context of what is happening within the household rather than taking things at face value. It was stated that with only half of the story, you only get half the picture. A participant shared their experience of being falsely accused of committing a crime, for which they were incarcerated, because the situation was described only from one side and not investigated further. Cases such as this illustrates the need for a mediator and further mediation.
- Concerns arose among the participants regarding the time it takes to get into court being very long and filing protection orders being frightening and sterile. Participants

agreed that the process in the courts is difficult and unguided. Even with these laws, the Ministry is not adequately supporting people with these processes, and some participants feel that they cannot even ask a question without court workers being curt and denying them a detailed answer. Difficulties also arise when there are procedural and evidentiary requirements and people need to provide sufficient proof documents which is extremely stressful for people in a desperate situation. There is a need for a more streamlined process in this regard.

- In situations where somebody needs to make a decision regarding an Indigenous family, whether it be a judge or the two parties, and mediation is required, there needs to be something in the FLA that states that the mediator should be Indigenous (specifically a Métis mediator for Métis people, First Nations mediator for First Nations, etc.). In an ideal world, the Métis Nation would provide a mediator and a lawyer.
    - For family law disputes without high conflict this might be a good solution, and it would not take long to implement. However, it can feel like a long time for a child. Even if not a complete solution mediation could be a good start for creating a bridge. An issue however arises when considering the cost of mediation which can be thousands of dollars.
- A participant suggested that having 10% of the people who work in social services receive training to specialize in serving Indigenous communities could improve the situation: all that is required is the political will to make it happen.
- Circling back to supporting the family, working with the family regarding parenting would have a bigger impact on the situation as a whole instead of taking the child out of the home. The participant believes that working with the family and having specialized social workers would change the trajectory of people's lives.
- A participant asserted that having sufficient funding to provide wrap-around support for families (e.g., counselors and therapist) instead of removal services would make a change towards how Indigenous families have worked in the past - and how they would like to work in the present. This approach would also work to repair the family as a whole and stop this cycle.
- There is a wholeness to the family that should be considered and protected within the FLA. Current programs tend to look at families facing difficulties in fragmented pieces, which is where these types of programs fail. This wholeness and holistic approach are a philosophy that needs to guide the design of the system.
- While there is a much larger population of Métis people who are urban, they receive much less funding than people in community.
- It is especially important to consider how we keep families together instead of separating them because oftentimes, this is not in the best interest of the child nor the family. There are programs that are already offering wrap-around services as well as helping with housing security, working with parents, etc. It is important to consider how we can make parenting arrangements more holistic and use these programs as examples of how we can implement more of these systems within the context of the law for Indigenous families.

- If a parent is incarcerated their parental rights are stripped away and they are no longer consulted by agencies regarding their children. Questions arise over how the FLA can prevent this from happening when it is not in the best interest of the child and the family.
- Questions also arose as to what makes someone a good parent and how this should also be considered. For example, just because a parent uses substances does not mean they are a bad parent, provided they continue to take good care of the child. There needs to be more clarification around these terms and the recognition that what makes someone a "good parent" is subjective and variable.

KEY THEMES

This section summarizes the key themes that were heard throughout the dialogue session with no response or clarification added by the Ministry to what was said. Themes are representative of the participants' input and do not represent the Ministry of Attorney General's position. However, these themes will inform the Ministry's 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. Indigenous Representation in Court Proceedings

It is important to have Indigenous representation (in this case Métis representation) throughout all court proceedings including the process of family assessments. These assessments should be created to reflect Métis standards and should be formatted by them to reflect family structures that are specific to the community. The law needs to recognize Métis people to ensure that the act necessitates Métis inclusion in decision making which would ensure that the authority of the Nation as well as the court is recognized. This would bridge the gap between the act and the communities and bring in Indigenous voices.

Indigenous support should be available for Indigenous families. Indigenous representation in the form of legal court workers in every single court would necessitate a system of increased understanding and support for Métis people during the legal process. Doing this would ensure that families are being advocated for and the voices of families and children are being heard. Without this support, Indigenous people feel a lack of empowerment when dealing with court proceedings because they are dealing with a system that does not recognize their power and autonomy, which deters them from using the FLA. Supports would be most effective if they recognized financial, mental, and physical challenges throughout the proceedings as well as education and awareness as much as possible.

2. Empowerment and Choice for Métis People

A part of empowering Métis people through the FLA would be the willingness to listen to the community and align the court systems with traditional systems. This could happen through the adoption of a circular system that encourages involvement from people in the community who can represent the voice of the community. The community can also be involved in providing checks to ensure that Métis families are upholding their responsibilities for the wellbeing of the family and the child, bringing the power back into the community.

Solely depending on a 'stranger' to decide what happens with Indigenous families removes power and choice from families and communities in deciding what is in the best interest of an Indigenous child. The strangers making decisions about the family do not have the level of understanding and knowledge of the family that the community does, so should not have full control over outcomes. There needs to be trust in the system and the people making decisions within the court system. As it stands now that is not the case because time is not taken to build trust. Trust would mean having equal conversations between families, communities, children, and the court.

Empowerment could also be bolstered by the FLA when writing parenting assessment and views of the child reports. As it stands there is no method to reverse assessments and communities are seldom given the opportunity to inform these assessments (sometimes due to financial barriers). In modernizing the Act, Métis communities must have the power to inform these reports, decide who writes them, and reverse them if they do not agree with what was written or disagree with how they are being represented. Métis people should be able to contract who they would want to see writing the reports based on their criteria and should have the opportunity to collaborate with report writers. Furthermore, these reports should be written with guidelines that specifically cater to Métis people that consider intersectional and holistic factors such as standard of living. These guidelines should also consider cause and effect as to why conditions are the way they are. This would better support families in a way that considers not just what the family can provide but what the community can provide as well.

Regarding what type of reports are needed and what types of information will be in these reports, opportunities for further involvement from the community should be available. The specific people involved should be people within the community who know the family as they are most qualified to inform reports and would create a middle ground that brings authority back into the community.

If a parent is incarcerated their rights are stripped away and they are no longer consulted by agencies regarding their children. The FLA should recognize complex situations and systems that

have contributed to the restriction of Indigenous rights while still considering the best interest of the child and the family. Stigmatizations and suppositions take away power from Indigenous people. There need to be safeguards in place ensuring this does not happen.

3. Streamlining Court Proceedings

Streamlining court proceedings would reduce the difficulties in maneuvering the system for Métis people as this creates fear and deters people from using the system. Another deterrent is the time it takes to complete these processes. This is especially important to consider because it impacts family stability and the well-being of the child. Assessment reports also need to be streamlined and supported as financial constraints and the time it takes to write them create another serious barrier.

As it stands the court waiting time involves a lengthy process that is difficult and unguided. Filing protection orders is frightening and sterile. The ministry is not adequately supporting Indigenous people with these processes and making sure they understand what is happening in real-time. Individuals and families needing to provide documents are unsupported and the experience can be overwhelming.

Mediation might be a solution for streamlining processes that would not take long to implement. Mediation would create a bridge between communities and families and the courts but is expensive and timely.

The time it takes to receive guardianship is lengthy, with legal procedures taking up to a year. Furthermore, people are unsupported throughout the process. There is a due diligence that is over extreme and separating children from their families for extended periods is not in the best interest of the child and the family.

4. Cultural Sensitivity Training and Implementation of a Circular Court System

Cultural sensitivity training for court workers and the implementation of circular systems would ensure more trust in the system. Without creating trust, the FLA is feeding into problems more than providing solutions. The way the current system is designed matters. There needs to be a circular system instead of a hierarchical system to ensure that Métis people can have control in the court process. With the hierarchical system in place, Indigenous voices are at risk of being silenced.

Implementation of a circular system would mean consulting with representatives from all groups present and involving them in discussions and decision-making. There should not be one dominant voice that makes all the decisions; rather, it should be a collaborative decision and the Ministry needs to be hearing from all parties about the situation. If it is family law then it needs to be the family, the Nation, and the community who are all represented. Having a collaborative approach would need to be Indigenous-focused.

Regarding cultural sensitivity and circular systems in writing parenting assessment and views of the child reports, it is important to consider who is writing these reports and knowing if the person writing them is familiar with Métis culture. A report writer with no sense of Métis culture is not qualified to write a report regarding Métis families or children. However, there is neither enough cultural competency training regarding Métis people nor enough non-Indigenous workers taking this training. A solution to this would be to have more cultural competency training that is mandated and incorporate a collaborative writing system between agencies and individuals so that a Métis person could feel a sense of trust that what was written accurately reflects them. Collaboration in the report writing process would fulfill an important validation factor as well as provide a path for mutual understanding. Ideally, it should be a Métis person writing these reports when possible.

In situations where somebody needs to make a decision regarding an Indigenous family, whether it be a judge deciding or the two parties, and mediation is required, the FLA needs to state that the person doing the mediation be Indigenous (specifically a Métis mediator for Métis people, First Nations mediator for First Nations, etc.). In an ideal world, the Métis Nation would provide a mediator and a lawyer. Cultural differences should also be considered and informed by Métis family culture and trauma.

5. Recognition of Indigenous Family Networks

The traditional structure of Indigenous families has much larger familial networks compared to the colonial concept of the nuclear family. Indigenous cultures extend the concept of family to include aunts, uncles, grandparents, and even non-related community members who step in and act as guardians. Before the child welfare system was in place, communities were healthy and successful in these methods as they acknowledged the sharing of responsibility for the children. This has been stunted by the dominant perspective of recognizing only two guardians. 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 and 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.

Many Indigenous peoples may not know that their Nation can sometimes assist them with legal, financial, emotional, and protective support 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.

6. Determination and Expansion of Guardianship

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. The FLA needs to consider situations where someone is a guardian and a significant caregiver in the parent and the child's life but is not the parent. The law would need to recognize guardianship as being shared and be able to support and authorize that in a way that is less intimidating than going to the courts.

While it is possible to transfer guardianship responsibilities under Section 50 of the *Family Law Act,* it is currently only available for limited situations. These circumstances should be expanded, to permit the primary guardian to temporarily give another person the ability to make important decisions for a child (e.g., in cases where another family member lives closer and can make such decisions promptly.) The Ministry should recognize documentation, such as band affidavits, that confirm the primary guardian of a child.

It is important to have the family involved as a family unit to make decisions on who is going to be the guardian or caregiver for the child. This would mean more implementation of wrap-around systems that prioritize keeping the family together and supported but also giving power to other members of the family and community. This could be a different term than "Guardian" but should carry some weight to ensure that anyone caring for the child has some legal rights to make decisions for the child. Certain titles, such as being an "emergency contact," can be entrusted to someone and carry certain rights and responsibilities. This term is also easily documented. There also needs to be room in the FLA that allows for changes to be made when necessary. The FLA needs to legitimize and empower communities to resolve these issues and circumstances within the family unit and the community without needing to "jump through hoops". 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.

There needs to be more mindfulness in the FLA when considering criminal record checks as having a criminal record is not the only determining factor in being the best parent for a child. These cases can vary from case to case. On the other hand, a person who does not have a criminal record might not be a good parent for a child either. There are also issues with the process of obtaining a criminal record check as, in many cases Elders, for example, would never go in to get

a criminal record check even if they have no record. This reluctance forms a barrier to receiving guardianship and being able to legally make decisions for the child.

7. Maintaining Cultural Connection

Cultural continuity is shown to be a strong protective factor for an Indigenous child and is tied to personal identity. This needs to be a priority in decision-making regarding an Indigenous child. If the child is living with a non-Métis parent the custodial parent needs to respect the cultural needs of the child, especially considering the historic oppression of Indigenous peoples. Every Indigenous child needs to grow up with their culture, which begins at birth and is continuously nurtured throughout their life. It is an ongoing practice that is passed from generation to generation. 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 about a child. Children will suffer the most from being deprived of those family and cultural connections. Children who lose their sense of belonging can turn elsewhere for kinship and culture, which can lead them to problems.

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.

8. Education, Awareness, and Implementation of the Law

When the Ministry of Attorney General amends the *Family Law Act*, additional resources should be available to provide education on the changes and ensure enforcement measures are understood and 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 available supports 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 awareness about which supports and resources are available to Indigenous people, as many 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.

Indigenous youth need access to both life skills and cultural teachings to better prepare them for life outside of school and as future parents. Youth need wraparound services to help bridge gaps in their knowledge, especially those that have been created by intergenerational trauma.

There is a need to address the disconnect between legislation and implementation by ensuring there is clear communication with communities and individuals. A directory of where coordination needs to occur regarding an Indigenous child or family should be outlined in the FLA. Furthermore, there needs to be better methods of notifying communities as to what is happening with their members within the court system so that they are aware and may be able to support and advise. The FLA should consider the need for better accessibility to this information and take an active role in notifying communities about the resources available to them.

An example of legislation including Métis people was Bill 38 with the Ministry of Children and Child Development, which states that if a child identifies as Métis the Nation must be notified. That act specifically ensures the Nation is involved, the family, and the agency. It must be in the Act that someone who identifies as Métis must go through this process so the Nation is notified so children are not lost in the system.

More funding is required to support cases where children are reintroduced to the community, as communities cannot be expected to uphold cultural competency pieces without it.

To ensure adequate implementation of the FLA there needs to be a more robust verification process to make sure that what is stated in the law is happening on the ground. An audit process should be put in place with clear guidelines outlining methodology and measuring success.

9. Recognition of Diversity of Nations and Communities

There should be space in the FLA for recognition of the diversity of Métis Communities. There are over 200 Indigenous communities within B.C., each with their own culture, political processes, and needs. The government needs to recognize that smaller communities cannot always follow the same processes as larger ones because there are significant differences in capacity. This diversity needs to be recognized by the court and the Act. Issues arise when court workers are unfamiliar with policies that specifically reflect one community or adopt a broad approach that is not specific to each community.

When judges ask questions about Indigeneity there are concerns over if distinctions are being made between Indigenous groups or if they are being looked at in general. Without

acknowledgment of the variability and diversity of Nations and communities, Métis people will not be adequately represented as their needs are different from those of First Nations or Inuit people, with further variability between communities within the Nation. These distinctions call for Métis involvement and guidance with the knowledge that this will be acknowledged.

Equality concerns needs to be considered by the FLA. While the population of urban-dwelling Métis people is large, there is substantially more funding available for persons living in community.

Remote communities face unique challenges when it comes to family violence. 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. Considerable damage can be done in the hours it takes for help to arrive. Victims may die and perpetrators may flee.

Decisions being made by communities themselves to address family law disputes need to be recognized. For example, some communities may issue a resolution to ban a person who has committed family violence from entering the community. Any laws need to work in harmony with and respect for the authority of the community. There needs to be signed agreements that outline Indigenous governance and give credence to Indigenous leadership. Government needs to demonstrate commitment to work in partnership with Indigenous communities and Métis communities need to be treated as distinct from other Indigenous communities.

10. Preventative Measures and More Wrap-Around Supports

With funding, there are opportunities for preventative measures to help parents before courts need to get involved or while they are in the court process, especially by recognizing and legitimizing the involvement of Elders in the FLA. When the Elders are present and working with families it ensures better support from people who understand the community best. This is an activity that could occur under the guidance of the court instead of against it. This would build trust with communities and the courts as well as incorporated agencies.

Métis communities should have the power to dictate who falls within the circle of trust concerning families and the child and not have this dictated for them. Working with the family regarding parenting would have a bigger impact on the situation as a whole instead of taking the child out of the home. The FLA should consider having specialized social workers to assist in these cases.

The FLA providing support for families would facilitate grassroots initiatives that emphasize being proactive rather than being reactive. When children start exhibiting violent tendencies, for

example, there should be a space to offer support to that child before violence becomes a pattern and turning point in their lives. There is value in peer-led programs that enable these supports.

The 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 who must leave their homes may need access to transportation, daycare and other services. Those who are going through the court process need wrap-around support to help with the emotional toll from being re-traumatized by recalling painful experiences. This would require a redirecting of funds and would align with how Indigenous families have worked in the past and would like to work in the present. This would also work to repair the family as a whole and stop this cycle.

There needs to be support for parents as the processes are traumatic, and issues can be exasperated by the removal of their children. This feeds into issues that are already present in indigenous communities which in turn feeds into vicious cycles. The FLA needs to consider how to help the collective. Currently, there is no support for reintegration or wrap-around support to keep families together instead of splitting them apart.

The FLA should support a referral process to MNBC that facilitates the gathering of resources and wrap-around support for the family, looking at all of their needs, risks, and strengths, and better-mitigating risk. The courts need to consider the family and support them first. The priority should be holistic approaches to supporting families instead of the consideration of only one or a few factors.

11. Considering the Best Interest of the Child and the Family as a Whole

The modernization of the FLA should represent an ideological shift to a family-focused perspective and include the whole family in the decision-making process in determining the best interest of a child. This would create more alignment with Métis communities that focus on the collective rather than the individual. The best interest of the child in some cases is the best interest of the family and should be considered in the eyes of the law.

A child has full mental capacity at 12 years old and should have a say in who they want to be their guardian/guardians. However, there needs to be a balance between the voice of the family and the voice of the child so that the child's voice doesn't get lost but the decision is informed by the family. The FLA should support everyone involved in the care of the child having a say by creating space at the table. Who is at the table for that child varies from situation to situation. At age 12 children should be able to start making medical decisions with the family as in some Métis communities' children are leaving the home earlier than children in non-Indigenous communities and their autonomy needs to reflect that difference more than it does currently.

In cases where there is disagreement among the group over what happens with the child or if a child disagrees with the decisions being made for them there should be an opportunity for the FLA to step in and support the family. However, the family, community, and the child need to continue to be recognized and empowered through this process and all parties need to be taken into account.

In situations where a one parent obtains a protection order against another parent, this should not necessarily mean isolating the alleged offending parent from the child. In some cases violence towards the partner does not mean violence towards the child and it would be more beneficial to the child to have that parent in their life. It is sometimes more detrimental to the wellbeing of a child to be separated from their parent and it is always detrimental when a child feels disconnected from their family. It is important that the FLA uphold the views of the child (while still considering their safety) instead of taking that decision away from them. Context needs to be considered as there is considerable variability between situations. There is also a further need for the FLA to consider cause and effect, and what factors create situations of violence in the first place.

Removal of a child from the family should not be considered by the FLA as the best option as taking away a child also takes resources away from the family of that child such as childcare benefits, that exacerbate negative situations. The priority of the FLA should always be to keep the family together when possible instead of separating them. There is a wholeness to the family that should be considered and protected by the FLA, and used to guide design. Currently, programs tend to look at families facing difficulties as fragmented pieces which is where the programs tend to fail. Thus, the FLA should consider how to make parenting arrangements more holistic and use these programs as examples of how the FLA can implement more of these systems within the context of the law for Indigenous families.

12. Reimagining and Defining Key Terms

The ability of the FLA to reimagine and define terms would create clarity in court processes and enable alignment with traditional norms and values. The term ‘healthy’ came up when discussing parenting assessments and determining whether a parent is a safe guardian for a child. Terms like these used is the assessments need to be defined and take into account Indigenous experiences. More clarification is needed in this case as the definition of ‘healthy’ in these reports may be narrow and exclusionary. It also does not take into account the issues present in communities that prevent parents from fitting into that definition. These voices and perspectives need to be heard by the FLA and there needs to be space at the table for anyone involved in the care of that child to speak and be heard. Elders and other appropriate people who know the family and who can assist in recommendations on the wellbeing of a child and a family should be

considered. Hence, while a parent who uses substances might not be considered "healthy" in the eyes of the law, it does not always follow that they are not the best parent for the child or are unable to fulfill their parental responsibilities. Other factors, such as the mental state of the parent, which may affect the parent - but not the child, might be deemed unhealthy under these strict standards and place the parent at risk losing their child even if the child is healthy under their care. In this context, the term 'good parent' should also be considered by the FLA.

As it stands the law has strict black-and-white guidelines and does not consider areas that are more subjective and can act as barriers to Indigenous people being able to care for their children. The outcome is embedded into laws and policies which are created by middle-class non-Indigenous People. The system emerging from these policies can be seen as either being broken or working exactly how they were intended in terms of controlling Indigenous people. The FLA should have an active role in examining this and working to prevent discrimination against Indigenous people in family disputes (both conscious and unconscious).

Definitions used by adoption agencies, namely the term 'Indigenous', are used too often and loosely. Adoption agencies tend to use this as an umbrella term when more specificity should be applied. Distinctions between First Nations, Métis, and Inuit should be clearly outlined under the FLA and adoption agencies. The same thing can be said for terms like 'cultural continuity' and 'cultural sensitivity' and what the term means in the context of the law and adoption agencies. There should be an articulated list outlining these terms in the Family Law Act, as there is in the Adoption Act.

In defining abuse, broader definitions should also apply. Another form of abuse, for example, is verbal and racial discrimination within the home which should be considered as a type of violence under the FLA.

13. Considerations and Barriers in Reporting Family Violence

There are significant reasons as to why family violence happening in a household may not be reported. In some cases, parents will not report another parent, fearing to break the bond between that parent and their child. Stigma is also placed on Indigenous families that report abuse or speak out which brings in a high level of scrutiny in every part of the family's life done by non-Indigenous people. In many cases, this puts unwanted pressure and stress on the family and the fear that their children will be taken away which prevents people from reporting violence to the authorities.

The FLA should consider that statistically people do not leave their partners until they are ready, and this results in significant blame put on the victim which creates new barriers to accessing

services (fear of blame). This can also result in financial consequences, like if a parent who has been abused needs to pay for supervised visits with their abusive partner when they want to see the children. These issues need to be addressed by the FLA.

Other forms of abuse need to be considered under the FLA including cases where children are abusing a parent/the parents, and what can be done. These situations need to be met with support and understanding of the circumstances of the family, the child, and the context behind these situations.

Another barrier for people in abusive situations to access support is the fear that seeking medical or professional help could end up as part of their permanent record. The FLA needs to enforce privacy and confidentiality so that people seeking help are not visible to everybody unless necessary as it prevents them from seeking help in the first place.

In abusive situations, people can be reluctant to contact the police as their calls are often ignored because of prevalent negative stereotypes that Indigenous People "just live like that". The FLA needs to be working against these stereotypes to ensure that Indigenous people are receiving police intervention when it is needed. The FLA should also be promoting more support for men in Métis communities as when men are excluded, blamed, and unsupported, feelings of alienation can feed into abuse and violent tendencies and make situations worse for everybody involved. Empathy and understanding need to be applied at all levels and in all situations regarding Métis communities and individuals.

In situations of abuse, there must be consultation by the FLA with both parents and with people who can better inform the situation (like the family). More investigation is required into the dynamics of the relationships among the persons in the household so that events are not simply taken at face value. Accusations should also be better investigated, as in dispute situations there are always multiple sides of an argument and there is sometimes the possibility of false accusations being made that have real and long-term effects on those accused. In cases like this, there needs to be mediation enforced by the FLA to identify issues and the best means to address them.

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 the engagement was delivered with steps taken to create a safe and respectful environment. The session was facilitated by an Indigenous facilitator and was limited to a small group of 10 individuals (not including Mahihkan and Ministry

staff). The session was opened and closed by an Elder, a separate quiet space was provided, and an Indigenous Trauma Counsellor was present for anyone who needed support during the event and in the days following. Furthermore, the cultural practice of Talking Circle Principles was adopted in the facilitation of the session providing guiding principles to those in attendance.

The in-person session captured a varied representation of Métis participants from around the province and Métis Nation British Columbia (MNBC) members with varying backgrounds as well as non-Indigenous participants with experience working with Indigenous people in relation to the legal system.

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 the session with a presentation that provided further context on the Act and the areas that pertained to the engagement. Updates and progress reporting was provided based on input from previous sessions and key themes were reiterated to participants. The areas of discussion were also highlighted with further clarification provided on key terms as they pertain to the Act.

The session opened with roundtable introductions to get to know the people in the room. Short breaks were provided throughout the day for wellness and rest between topics. Breakfast was provided in the morning before the session with lunch provided in the afternoon. Snacks were available throughout the day for participant nourishment.

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. A recording was taken during the session to cross-reference notes and to ensure participants feedback was fully captured and as accurate as possible. With regards to participant privacy and confidentiality, permission to record was requested at the beginning of the session and recordings were deleted upon completion of the notes.

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 this stage of the law-making process and were optimistic that their input could help inform practical aspects of updated law, regulations and policy. Participants were also able to provide feedback and clarification on past engagements and give further input on how best to represent their needs and values in the Modernization of the Act.

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: AGENDAS

New Westminster: February 13th, 2024

BRITISH COLUMBIA | Ministry of Attorney General

Modernization of the Family Law Act
Dialogue Session in Partnership with Métis Nation BC
New Westminster, BC

Tuesday, February 13
8:00am-4:00pm
Inn at the Quay – 900 Quayside Drive
Room: Hyack North **Floor:** 2nd

Agenda

8:00am-8:30am	**Breakfast & Registration**
8:30am-9:00am	**Welcome by Facilitator & Opening by Elder**
9:00am-9:10am	**Ministry Presentation** **Presented by:** • **Aurora Beraldin**, Legal Counsel, Family Policy, Legislation and Transformation • **Shannan Knutson**, Legal Counsel, Family Policy, Legislation and Transformation Division
9:10am-10:15am	**Discussion Block 1 – Initial Thoughts**
10:15am-10:30am	**Nourishment Break**
10:45am-12:00pm	**Discussion Block 2 – Care of and Time with Children**
12:00pm-12:45pm	**Lunch**
12:45pm-2:15pm	**Discussion Block 3 – Assessments & Reports on the Views & Needs of a Child**
2:15pm-2:30pm	**Nourishment Break**

Figure 1 - New Westminster Agenda (Page 1)

2:30pm- 3:45pm	Discussion Block 4 – Protection from Family Violence
3:45pm- 4:00pm	Next Steps and Closing Remarks

Figure 2 - New Westminster Agenda (Page 2)

APPENDIX II: LIST OF PARTICIPANTS AND ORGANIZATIONS

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

New Westminster: February 13, 2024

Indigenous Participants
FVACFSS
Fraser Valley Métis Association
Xyolhemeylh (FVACFSS)
Secwepemc Children and Family Services
Pixie Wells - Fraser Valley Métis Association

MNBC
Anna Sallah – MNBC
Autumn Moreno-Jimenez – MNBC
Carly Hale – MNBC
James Cunningham - MNBC (practicum student)
Kristen Franklin – MNBC

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
Jemma Galt – Event Lead
Patrick Kelly – Facilitator
Kagiso Pupp – Notetaker
Vanessa Ong – Technical Support