

*Family Law Act Modernization Project:*  
**Care of and Time with Children & Protection from Family Violence**  
**Discussion Paper**

EXECUTIVE SUMMARY

When the [Family Law Act](#) (FLA) came into force in 2013, its primary objective was to modernize family law. Since then, case law has developed, and many societal changes have occurred. It is important that the FLA keeps pace. To ensure that it does, the Ministry of Attorney General is undertaking a project to modernize the Act. The project is being conducted in phases over a number of years to allow government, stakeholders, and the public adequate time to address various issues.

Phase One of the FLA Modernization project reviewed issues related to division of family property and pensions as well as spousal support. Public consultation on those issues closed in September 2023 and amendments that were informed by the review and feedback from the engagement processes were introduced in [Bill 17 - 2023 Family Law Amendment Act, 2023](#).<sup>1</sup>

Phase Two of the FLA Modernization project is focused on issues related to caring for and spending time with children as well as protection from family violence. The FLA introduced a host of changes to family law, including establishing a new regime for care and time with a child in [Part 4 – Care of and Time with Children](#). This Part, probably more so than any other Part in the Act, represented the greatest departure from the previous *Family Relations Act*. Not only did it add clarity to the law surrounding time and care with children, but it also changed the framework for looking at family law issues where children are involved to promote a more collaborative approach to parenting after separation, where appropriate. Some of the key changes introduced in the FLA included adding family violence factors to the “best interests of the child” test and changing terminology and the underlying concepts from custody and access to parental responsibilities, parenting time and contact. The FLA was also the first Canadian jurisdiction to set out a legislative framework to guide decisions about the relocation of children and their guardians. In addition, [Part 9 – Protection from Family Violence](#) of the FLA introduced a new protection order regime that responded to numerous recommendations on how to improve safety when there is a risk of family violence. Under the new regime, protection orders are available to a broader range of family members and a breach of a protection order is a criminal offence. The provisions in Part 9 help to ensure that protection orders are accessible, clear and effective and a list of risk factors offers guidance to the court on when protection orders may be appropriate.

Since 2013, there has been continued change impacting Canadian families, including a trend towards increasing diversity of family structures and the impacts of technology on how we communicate and interact. Case law and feedback from the public and the legal community have identified where there may be legislative gaps as well as opportunity to increase clarity and ensure the FLA better meets the diverse needs of all families in BC. There were also significant amendments to the federal *Divorce Act* that were implemented in 2021 which should be compared against the FLA. Given the breadth and complexity of these issues, this discussion paper has been organized into five chapters, with each chapter focusing on a specific topic:

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<sup>1</sup> [Bill 17, Family Law Amendment Act, 2023](#), 4<sup>th</sup> Sess, 42<sup>nd</sup> Parl, British Columbia, 2023 (assented to 11 May 2023), SBC 2023, c 12.

- Chapter 1 – Guardianship, Parenting Arrangements & Contact
  - Explores ways of determining guardianship and who is responsible for caring for a child, the time guardians spend with a child, and who can have contact with a child.
- Chapter 2 – Relocation of a Child
  - Explores issues that may arise when one guardian wants to move with a child to another community that could affect the child’s relationships with other guardians and important people in their lives.
- Chapter 3 – Child-Centered Decision Making
  - Explores the various ways that a child may participate in family law disputes involving them, including what factors must be considered in determining what is in a child’s best interests and ways to have a child’s views heard by the parties and decision makers.
- Chapter 4 – Children’s Views & Parenting Assessments and Reports, and
  - Explores methods for obtaining and presenting the views and needs of a child and parents’ abilities and willingness to meet those needs in a family law dispute specifically through reports prepared by professionals.
- Chapter 5 – Family Violence & Protection Orders
  - Explores issues of family violence as it relates to parenting arrangements and obtaining and enforcing protection orders under the FLA.

Note – the British Columbia Law Institute (BCLI) is currently leading a policy review and public consultation on the [Part 3 – Parentage](#) provisions in the FLA. Part 3 sets out a comprehensive scheme for determining who a child’s parents are, including when a child is born through assisted reproduction and surrogacy. More information about the review and consultation on Part 3 – Parentage is available on the [BCLI website](#).

Each chapter discusses issues and concerns that have been identified through case law as well early feedback on these topics. Early feedback has been provided by legal practitioners, advocates, professional report writers, representatives from professional governing bodies, and from people with lived experiences in these topics from across the province. The Ministry conducted some early engagement with Indigenous Peoples through regional in-person dialogue sessions that are referenced throughout the paper as “What We Heard.” A What We Heard Report prepared by the Indigenous facilitator summarizing the dialogue sessions is available on the FLA Modernization engagement govTogetherBC webpage.<sup>2</sup> The Ministry also conducted early engagement with the anti-violence community through virtual dialogue sessions. These early engagements helped the Ministry identify the issues that are presented in this technical paper for your feedback. We are seeking your feedback on specific questions asked in each chapter, as well as any other issues or concerns you may have.

For your convenience, you may review the discussion paper in its entirety, or you can read or download each chapter individually. Also, to make it easier to provide feedback, the discussion questions asked in the individual chapters have been compiled into a single list in [Appendix A](#).

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<sup>2</sup> Mahihkan Management on behalf of the B.C. Ministry of Attorney General, *What We Heard: Family Law Act Modernization Dialogue Sessions*, (Coming Soon).