

PARENTAGE & ASSISTED REPRODUCTION



Ministry of
Attorney General

Relevant Sections: Part 3-Parentage, sections [20-36](#)

Information about the review of the parentage provisions in Part 3 of the FLA is available on the British Columbia Law Institute website at:

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

WHAT THE FAMILY LAW ACT SAYS:

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

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

INDIGENOUS PERSPECTIVES:

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

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

SOME ISSUES WE KNOW ABOUT:

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

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

