

Part 3 – Parentage

This part provides a comprehensive scheme for determining who a child’s parents are, whether the child is born through natural or assisted reproduction. The scheme treats children equally, regardless of the circumstances surrounding their birth, protects children’s best interests and promotes stable family relationships.

Legal parentage is important to establishing a child’s identity, for example, family name, family relationships, and cultural heritage. Inheritance rights also flow from the parent-child relationship.

This Part establishes parentage for all purposes of the law in British Columbia. A person who is defined as a parent under this Part is a parent under all laws of British Columbia.

The former law was inadequate for determining parentage for the many B.C. children who are born through assisted reproduction. The only legislation that spoke to parentage was the Law and Equity Act which states that a person is the child of their natural parents. This Part replaces the parentage provision in the Law and Equity Act.

In addition to providing for the rules that determine parentage where assisted reproduction is not used, this Part provides certainty regarding the legal relationship between a child born through assisted reproduction and their parents and clarifies the role of a donor or surrogate. In many respects this Part is similar to the new Uniform Child Status Act recently adopted by the Uniform Law Conference of Canada.

It is important not to confuse parental status and parenting roles and responsibilities. Other British Columbia acts and other Parts of the Family Law Act, for example, Part 4 - Care of and Time with Children and Part 7 - Child and Spousal Support, recognize that people who are not parents may take on a parenting role and responsibilities in relation to a child, despite not being legal parents. Defining, other non-parents as “parents” for a particular purpose under a law does not grant legal parentage. It simply means that they will be treated in a similar way as a parent for a particular purpose. For example, section 146 under Part 7 Child and Spousal Support provides a definition of “parent” that includes a step-parent. This does not mean that the step parent is a legal parent. It only means that for the purpose of support, a step parent may have similar obligations to a parent.

Division 1 – General Matters

This Division addresses definitions and provides some general principles for Part 3.

Section 20 Interpretation

- Section 20 defines terms for the purposes of Part 3. They are new definitions.

Section 21 Void and voidable marriages

- Section 21 carries forward section 95(2) of the Family Relations Act respecting void marriages, but with gender-neutral language to reflect the fact that same-sex couples may legally marry.
- This section also deems parties to a voidable marriage to be married until a declaration of nullity is made, for the purpose of parentage presumptions.

Section 22 Effect of Part

- Section 22 carries forward, in part, the effect of section 61(2) of the Law and Equity Act.
- It clarifies that the new parentage rules do not act retroactively with regards to dispositions of property which occur before the coming of force of the Family Law Act. For instance, the terms of a will in which disposition of property has already been made will not be reopened.

Division 2 – Determining Parentage

This Division sets out the basic rules that apply throughout British Columbia law to determine parentage of a child born through natural or assisted reproduction, including surrogacy.

Section 23 Parentage to be determined by this Part

- Section 23 carries forward the effect of section 61(1) and (3) of the Law and Equity Act. The Law and Equity Act provided parentage rules that applied for all purposes of the law. However, it did not adequately address situations where assisted reproduction is used. These Law and Equity Act provisions are repealed by the Family Law Act.
- The section provides that for all purposes of the law of British Columbia, Part 3 of the Family Law Act determines who a child’s legal parents are. This ensures that the legal status of a child is consistent in all British Columbian laws.
- Section 23 also expands on the rule for interpreting references to relationships in instruments and enactments by replacing “by blood or marriage” as used in section 61(3) of the Law and Equity Act with “by birth, blood or marriage” in the Family Law Act.

Section 24 Donor not automatically parent

- Prior to the Family Law Act there was no legislation in British Columbia dealing with the legal relationship of donors of genetic material to children born as a result of a donation, which resulted in uncertainty.

- Section 24 provides a general rule that, if assisted reproduction is used, a donor of genetic material is not a parent of a child conceived and born using the donor's genetic material.
- A donor cannot be declared a parent by virtue of the donation, even though there is a genetic link between the child and the donor.
 - There is an exception to the general rule that a donor is not a parent if the donor and the people who would be the child's parents (i.e., birth mother and her partner) agree before the child's conception that all three will be the parents of the resulting child.
 - Similar to section 23, section 24 provides a rule for interpreting references to relationships "by birth, blood or marriage" in instruments and enactments in relation to donors.

Section 25 Parentage if adoption

- Section 25 carries forward from section 61 of the Law and Equity Act the principle that if a child is adopted, the child's parents are as set out in the Adoption Act.

Section 26 Parentage if no assisted reproduction

- Section 26 carries forward the rule in section 61(1)(a) of the Law and Equity Act that if a child is born through natural conception, the child's parents are their birth mother and biological father, and modernizes the language used.
- Section 26 also carries forward the rebuttable presumptions of paternity in section 95(1) of the Family Relations Act. In the Family Relations Act, these presumptions apply if parentage is at issue in a claim for child support. Section 26 expands the application of the presumptions in the Family Law Act to determining who a child's father is in all cases where assisted reproduction is not used.
- The section carries forward the provision in section 95(3) of the Family Relations Act that if more than one man may be presumed to be the father under the presumptions, no presumption of paternity may be made.

Section 27 Parentage if assisted reproduction

- Section 27 provides the general rule for determining parentage if assisted reproduction is used in a child's conception: a child's parents are the birth mother and the person married to or in a marriage-like relationship with the birth mother at the time of conception.

Section 28 Parentage if assisted reproduction after death

- Section 28 provides rules for determining who a child's parents are if assisted reproduction is used to conceive the child and the person who provides the reproductive material dies before the assisted conception. It sets out the circumstances in which the deceased person will be considered to be a parent.
- This section only applies where the person who provides the reproductive material and subsequently dies intended to be a parent along with their surviving spouse or partner. It does not apply to donors.
- The rules in section 28 have implications for the related field of wills and estates. B.C. wills and estate law has been amended to provide inheritance rights for posthumously

conceived children. While posthumously conceived children will presumptively have the same rights of inheritance as any other children of the deceased person, it is only after birth that they will be able to assert these rights against relatives other than their deceased parent.

Section 29 Parentage if surrogacy arrangement

- Prior to the Family Law Act, there were no statutory provisions for determining parentage where surrogacy is used and judges used their inherent discretion to make declarations of parentage in surrogacy situations.
- Section 29 provides rules for determining who a child's parents are where assisted reproduction involves a surrogacy arrangement, without requiring a court application for a declaration of parentage.
- This section defines a surrogacy arrangement as an arrangement where a person or couple who intend to be parents enter into an arrangement with a woman, who does not intend to be a parent, under which the woman agrees to give birth to a child conceived through assisted reproduction with the intention of relinquishing the child to the intended parents after the child's birth.
- If the surrogacy agreement is in writing and otherwise complies with section 29 and is carried out according to its terms, the intended parents are the child's legal parents.
- If there is a surrogacy agreement, but the surrogate does not consent to surrender the child after the child's birth, the agreement is not sufficient to require her to relinquish the child. The agreement can only be used as evidence of the parties' intention with regards to parentage where, for example, a declaration for parentage is sought from the court in the matter.

Section 30 Parentage if other arrangement

- Section 30 provides for an exception to the rule that a donor may not be a parent.
- It provides for the possibility that where assisted reproduction is used, a child may have more than two parents in certain limited circumstances:
 - intended parents, who are in a relationship with each other, and a birth mother who wants to be a parent, or
 - a birth mother and the person she is in a relationship with, and a donor who wants to be a parent.
- There must be a written agreement between all parties prior to the assisted conception of the child that provides that all parties be parents.
- If any party to the agreement withdraws or dies before conception, the agreement is revoked.
- Establishing rules regarding the circumstances under which there may be more than two parents ensures a consistent approach and provides greater certainty for children and families when planning for children where assisted reproduction is required.

Section 31 Orders declaring parentage

- Section 31 authorizes the court to make declarations of parentage. Prior to the Family Law Act, the court used its inherent jurisdiction to make declarations of parentage.
- This section provides a mechanism for the courts to determine parentage in cases which the parentage provisions do not otherwise cover or where there is a dispute about who the parents are.

Section 32 New evidence

- Section 32 allows the court to consider new evidence when a court had previously made an order declaring parentage or dismissed an application for such an order.

Section 33 Parentage tests

- Section 33 provides authority for the court to order parentage tests where required, for example, where a presumption of parentage is challenged.
- It provides authority for the court to order a party to pay all or part of the cost of the test.
- The section allows the court to take into account a person's failure to comply with an order for a parentage test when making a determination of parentage.
- Section 33 carries forward section 95.1 of the Family Relations Act.

Division 3 – Orders made outside British Columbia

This Division addresses how to deal with declaratory orders of parentage made by a court or tribunal outside of British Columbia. There are separate provisions dealing with orders made elsewhere in Canada and orders made outside Canada.

Section 34 Definitions

- Section 34 defines terms used in this division.

Section 35 Recognition of Canadian extraprovincial declaratory orders

- Section 35 provides that declarations of parentage made in another province or territory must be recognized in British Columbia, and have the same effect as if made here.
- A B.C. court may decline to recognize a declaration of parentage made elsewhere in Canada if evidence becomes available that was not available when the original declaratory order was made or the court is satisfied that the order was obtained through fraud or duress.

Section 36 Recognition of non-Canadian extraprovincial declaratory orders

- Section 36 provides for recognition of declarations of parentage made by courts or tribunals outside of Canada in certain circumstances.