

THE FAMILY LAW ACT: EVERYTHING YOU ALWAYS WANTED
TO KNOW
PAPER 6.1

Baby Steps: Assisted Reproductive Technology and the B.C. Family Law Act

These materials were prepared by barbara findlay QC and Zara Suleman for the Continuing Legal Education Society of British Columbia, January 2013.

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BABY STEPS: ASSISTED REPRODUCTIVE TECHNOLOGY AND THE BC FAMILY LAW ACT^{1 2}

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I. Introduction

New family models and reproductive technologies are challenging family law across the country. The law is struggling to keep up, both legislatively (for instance with the introduction of the *Assisted Human Reproduction Act*, and certain new provisions relating to surrogacy and assisted conception, like Alberta's *Family Law Act*) and through case law, where the courts are grappling with questions like:

Is a surrogate who gives birth to a child that is not her genetic progeny the child's mother?

What about a lesbian woman who bears her partner's genetic child? Are both the genetic and gestational mothers the child's mother?

Can a child have more than two parents?

What about a gay man who helps a lesbian conceive a child or a lesbian woman who bears a child for a gay couple, but then has nothing to do with the child? Should the rights and obligations of parenthood be imposed on genetic contributors?

Or, the converse, where a gay man helps a lesbian couple conceive a child or a lesbian woman bears a child for a gay couple, and then remains involved in the child's life?³

II. Scope of the Article

This article examines the new provisions of the *Family Law Act* which provide a scheme for the determination of legal parentage of children, including children conceived by assisted reproduction.

Prior to those provisions, courts were left to rely on their inherent jurisdiction or their *parens patriae* jurisdiction to determine legal parentage of children born as a result of Assisted Reproduction technology.

The paper is divided into three parts.

In Part 1, we examine the law prior to the enactment of the *FLA*, because it is against that judicial history that the *FLA* provisions with respect to assisted reproductive technology ("ART") have been developed. Part II considers the *FLA* provisions. Part III looks forward to consider how the *FLA* will operate.

We review what assisted technology is and who uses it; what courts have done when faced with difficult questions of parentage arising in the context of children conceived with ART; review the shift from genetic connection to intention as the foundation of parental status; and discuss how the *FLA* treats children conceived with, or without, ART.

Appendix B includes a chart, "Making Parents," which illustrates how the *FLA* will apply to prospective parents depending on the multiple factors set out in the *FLA*. Appendix C, "Making More Parents," is an attempt to determine how many parents it is possible to have under the *FLA*, from an analytic point of view.

Appendix D provides a model Order of declaration of surrogacy. Appendix E has a copy of the current application form to register the birth of a child in BC.

Finally, at Appendix F are the relevant sections of the *FLA*.

3 Heather L. McKay Q.C. "Who is a Parent?" This paper was originally prepared for the Federation of Law Societies of Canada 2010 National Family Law Program held in Victoria BC.

It is crucial to understand that we are discussing **legal parentage**: that is, the determination of who, in law, a child's parent(s) is or are. As a simple proxy for that question: from whom could a child inherit on an intestacy? This is a different question than the question of who in a child's life has responsibility for that child, or rights in relation to that child. We call the latter group "social parents": adults who acquire responsibility or rights in relation to a child by their relationship with that child. And it is a different question again than who is listed as a "parent" on a child's birth certificate: a birth certificate is evidence, but not proof, of parentage.⁴

Prior to the *FLA*, the categories of legal, social, and registered parents overlapped, but they were not congruent. After the *FLA*, legal parents and registered parents will be congruent. Of course, people other than a child's legal parents will continue to have rights and responsibilities in relation to children—stepparents, for example.

III. Part One: Before the Family Law Act

A. Some Conventions

In this paper we have:

- Consistently used the term "prospective parent" to refer to a person who is involved in a parental project of conception and birth of a child, with the intention of raising the child. That term includes, but is broader than, the term "intended parents" as defined in the *FLA*.
- Used the term "legal parent" to refer to a person who is a child's legal parent (i.e., from whom a child would inherit on intestacy), in order to distinguish the legal parent from people under other sections of the *FLA* who have parenting rights and responsibilities in relation to a child, but who may not be a legal parent.

B. Some History

Family law has been premised on the assumption that all children were conceived through sexual intercourse; and that every child had a mother and a father, even if the father was unknown to or unacknowledged by the mother; and no other parents.

Before the advent of ART, a child's parentage was not, generally, much of an issue. Her mother was the woman from whose body she came; her father was the male partner in the sexual intercourse, and her genetic father. There was a presumption in s. 95 of the *Family Relations Act* that a child born to a married woman was the child of her husband. Doubt about a child's paternity could be resolved with a paternity test.

Section 61 of the *Law and Equity Act* was the legislation which established legal parentage. That section provided that a child was the child of "his or her natural parents."⁵

4 *Vital Statistics Act*, R.S.B.C. 1996, c. 479, s. 41.

5 R.S.B.C. 1996, c. 253, s. 61:

Subject to the *Adoption Act* and the *Family Relations Act*, for all purposes of the law of British Columbia,

- (a) a person is the child of his or her natural parents,
- (b) any distinction between the status of a child born inside marriage and a child born outside marriage is abolished, and
- (c) the relationship of parent and child and kindred relationships flowing from that relationship must be determined in accordance with this subsection.

The *Vital Statistics Act* governed registration of a child's parents. A child's "mother" was defined by inference from the definition of "birth" to be the woman who gave birth to, or was delivered of, a child. When registering the birth of a child, a woman could choose whether or not to acknowledge the father of her child.⁶

Two things happened: Assisted Reproductive Technology and new family forms

Two things happened which outstripped the opposite-sex-and-intercourse model which underpinned the legislative framework of legal parentage. Technological advances in fertility treatments made it possible for children to be conceived and gestated even if one or both prospective parents was infertile.

Same sex families began to have children. Lesbians conceived with sperm from an unknown, or known, donor. If they conceived with sperm from a known donor, they did so either by the "turkey baster" method, or by sexual intercourse with the donor. Gay men began to have children with the assistance of an egg donor and a surrogate, who might be the same person.

I. Assisted Reproduction Technologies ("ART")

People look for help to conceive a child for a number of reasons:

- One or both members of an opposite-sex couple is infertile, and/or unable to carry a child.
- A single person wants to have a child.
- One or both prospective parents in a couple is infertile.
- A lesbian couple or a gay couple wants to have a child.
- One or both members of a couple is transgender.
- A couple wants to include a donor or surrogate parent as part of a three parent family.

In the "traditional" way of conception a man inseminates a woman through sexual intercourse, and his sperm unites with her egg to create an embryo. The social father and the genetic sperm donor are the same; the egg donor and gestational carrier and prospective mother are the same; and the child is conceived *in utero*. The child is then raised by her prospective parents.⁷

There are several variations:

- Sperm comes from a sperm donor other than a prospective parent.^{8,9}
- Eggs come from an egg donor who is not an intended parent.
- A child is carried to term by someone other than a prospective parent (i.e., a surrogate mother).

At the same time that children began to be conceived in other ways than sexual intercourse, different family forms began to develop. Lesbian couples chose to have a child together; so did gay couples. Some queer families included the lesbian parents and the sperm donor, who by agreement was actively

6 *Vital Statistics Act*, R.S.B.C. 1996, c. 479, ss. 1 and 3.

7 In this paper we use the term "prospective parent" to refer to the person who will raise the child, whether or not that person is genetically or biologically connected to the child. The term includes a co-parent who consents to raise the child conceived by ART.

8 In this paper we use the term "prospective parent" to mean a person who participated in planning the birth of a child with the intention of parenting that child.

9 *L.B. v. Li Ba*, [2006] Q.J. No. 880. [2006] J.Q. no 880. 2006 QCCS 591. [2006] R.J.Q. 862.

involved in the child's life.¹⁰ Families with one transgender partner chose children; and single women and men chose to have a child. A lesbian couple and a gay couple chose to have a child together, with the intention that the child would be raised by the two couples, spending half of his time from birth with each.

And there are many combinations of family forms and infertility issues. For example, a lesbian couple needing sperm to conceive may also, themselves, be infertile, and so need an egg donation and perhaps a gestational carrier.

At Appendix B we have included a table showing the dizzying permutations and combinations of prospective parent(s) and the ART choices they have.¹¹

2. The Law Lagged Behind

The law lagged far behind the developments in ART and in family forms. Courts were left to fill the gaps in legislative regulation.

In the first case to be decided after “sexual orientation” was added as a protected ground in BC's *Human Rights Code* in 1992, a lesbian couple won the right to have access to sperm from an unknown donor.¹²

After a 2001 human rights challenge to the Vital Statistics Agency's practice of refusing to register both parents of a child when it appeared to the agency that both parents had “female” given names, BC became the first jurisdiction in the world to permit the registration of two women as the parents of a child born to one of them, when the child was born.¹³ The Vital Statistics Agency was forced to change its birth registration practices to include registration of a co-parent who was not genetically or biologically related to the child—a change for which there was no legislative framework.¹⁴ The resulting birth certificate did not identify which of the mothers carried the child.¹⁵

The same issue was successfully fought in Ontario on the basis of the Charter.¹⁶

In Alberta, the lesbian co-mother of a woman whose child was conceived by sperm donation argued successfully that the presumption of paternity in the Alberta legislation was unconstitutionally discriminatory. If a child was born to a woman with a male partner, he was presumed to be the child's

10 Fiona Kelly's paper “(Re)forming Parenthood: The Assignment of Legal Parentage Within Planned Lesbian Families” (2008-2009) 40 *Ottawa L. Rev.* 185-222 outlines her research into lesbian family forms.

11 The chart also includes a description of how the *Family Law Act* applies to each combination.

12 *Potter and Benson v. Korn* (1995), 23 C.H.R.R. D/319, aff'd (1996), 25 C.H.R.R. D/141 (B.C.S.C.). At the time, the only source of sperm was a gynecologist who had decided that he would not provide sperm to lesbian couples because he had had to testify as a witness in a court case in which a lesbian couple had a child with sperm provided by him.

13 *Gill v. Maher*, [2001] B.C.H.R.T.D. No. 34. The two lesbian couples filed a human rights complaint because of the practice of the Vital Statistics Agency. If the Agency received an application to register a birth with a “female name” and a “male name,” they registered the female as the mother and the male as the father. They made no inquiry about whether the named man was genetically related to the child. But if they received a request with two “female names” they returned the application and refused to register it. The BC Human Rights Tribunal held that this was discrimination on the basis of sexual orientation, since there was no distinction between an unrelated male parent and an unrelated female parent seeking registration.

14 A sample of the current birth registration form is at Appendix E.

15 Registration as a parent with the Vital Statistics Agency was *evidence* but not *proof* of legal parentage.

16 *M.D.R. v. Ontario (Deputy Registrar General)*, [2006] O.J. No. 2268, 270 D.L.R. (4th) 90, 141 C.R.R. (2d) 292, 30 R.F.L. (6th) 25, 148 A.C.W.S. (3d) 943, 2006 CarswellOnt 3463, [2006] O.T.C. 489.

father. No such presumption was available to the co-mother. The court read in a parallel provision for same-gender partners.¹⁷

It became possible to get a declaration that a child carried by a gestational carrier, or surrogate mother, was a child of the parent(s) intending to raise her.

Prospective parents who were unable to carry a child used IVF and implanted the resulting embryo in a surrogate mother, who gestated and gave birth to the child. But the prospective parents were precluded from registering the birth of their child showing themselves as parents, because of the structure of the *Vital Statistics Act* which conferred maternal status on the woman who delivered the child. The problem was solved in BC, in the case of *Rypkema*.¹⁸ The Court declared the prospective parents to be the birth parents of the child that had been born and directed that they be registered with the Vital Statistics Agency as the child's parents. Once again, there was no legislative framework for the court's decision; it was based on the court's inherent jurisdiction.

It is against this backdrop, and other cases discussed in more detail below, that the federal government undertook to regulate assisted reproductive technology; and that the new provisions of the *Family Law Act* have been enacted.

IV. Legislative Responses

A. Assisted Human Reproduction Act

Assisted reproduction has been regulated only since 2004, when the federal government enacted the *Assisted Human Reproduction Act*.¹⁹ That law prohibited some activities such as human cloning, and regulated others, including sperm and egg donation and surrogacy.²⁰

After a reference initiated by Quebec, the Supreme Court of Canada ruled that many of the administrative mechanisms in the Act were *ultra vires* the federal government and its criminal law powers. But Quebec conceded that the core prohibitions and regulations of reproductive activities were *intra vires* the federal criminal law power; so they remain.²¹

The federal law currently prohibits the sale of human genetic material (eggs, sperm, embryos). And it prohibits payment to a surrogate mother for carrying a child.²²

As a result of the decision, provinces can legislate in regard to fertility treatments, re-implantation genetic diagnosis, research uses of in vitro embryos no longer required for reproduction, and surrogacy

17 *Fraess v. HRMQ* (AB), [2005] A.J. No 1665. 2005 ABQB 889, 278 D.L.R. (4th) 187, 56 Alta L.R. (4th) 01.

18 [2003] B.C.J. No. 2721, 2003 BCSC 1784, 233 D.L.R. (4th) 760, [2004] 3 W.W.R. 712, 22 B.C.L.R. (4th) 233, 47 R.F.L. (5th) 398, 127 A.C.W.S. (3d) 300.

19 S.C. 2004, c.2 (“*AHRA*”).

20 A discussion of the policy framework behind the *AHRA* is beyond the scope of this paper; but see Ubaka Ogbogu “Reference Re: Assisted Human Reproduction Act and the Future of Technology-Assisted Reproduction and Embryo Research in Canada” (2011) 19 *Health L.J.* 153-189.

21 2010 SCC 61, [2010] 3 S.C.R. 457. The decision was 4-4-1, and was based on a traditional division of powers analysis.

22 It is permissible to reimburse for expenses, but specifically says that loss of wages to carry the baby is not a compensable expense unless a doctor certifies that continuing to work poses a medical risk. *AHRA*, s. 12(1)-(3).

arrangements (excluding contracts).²³ The federal government amended the *AHRA* in 2012 to respond to the decision of the Supreme Court of Canada.²⁴

Part 3 of the *FLA* is the BC response, which does not restrict ART in any way, but spells out the legal parentage of children conceived by ART.

V. Real World Families and ART

We approach this section through the eye of a practitioner with a client who has legal questions about their ART choices. We outline some of the practical considerations for a client embarking on ART; and then look at what the courts have said about the situation of clients like these.

Some of the court cases have been *Charter*-based; it was essential that Part 3 reflect the changes already effectively enacted by that case law.

A. Paradigm Case: A Single Prospective Parent

Single Mother

An autonomous woman²⁵ wanting to become pregnant needs donated sperm. Sperm may come from a known donor, such as a friend, or through a fertility clinic from an unknown donor.²⁶

If she is using sperm from a known donor, many women choose to have a contract with the donor specifying, typically:

- that the donor will have no rights in relation to the child;
- that the donor will have no responsibilities e.g., financially, in relation to the child;
- that the prospective mother is the sole decision maker about whether the donor sees the child;
- that the donor will consent to an adoption or declaration of parentage.

Single Father

An autonomous man wanting to become a father will need both an egg donor and a gestational carrier, or surrogate mother. The egg donor and the gestational carrier may be the same person, in which case the insemination would be by using sperm from the prospective father.

23 Ogbogu, Ubaka “Reference re Assisted Human Reproduction Act and the Future of Technology – Assisted Reproduction and Embryo Research in Canada” (2011) 19 *Health L.J.* 153-167., p. 8.

24 2010 SCC 61, [2010] 3 S.C.R. 457.

25 “Autonomous” is the term preferred by Fiona Kelly, in her article “Autonomous from the Start: Single Mothers by Choice in the Canadian Legal System,” forthcoming 2012 *Child and Family Law Quarterly*. “Single” is a relational status that emphasizes that the woman is without a partner; “autonomous” is a status that emphasizes self-determination and agency.

26 Some autonomous mothers conceive by sexual intercourse with the donor: both parties agree that pregnancy is the intended outcome; but that the donor will not be a “father” of the child. Quebec specifically includes this as one of the ways of assisted procreation. It is a question of fact whether or not the sexual intercourse was intended to result in two parents of the opposite gender, or whether the intercourse was a “parental project” where one or two prospective parents acquire sperm through intercourse between her or one of them, and a third party:

If eggs are donated by a woman other than the gestational carrier, the insemination would be done by *in vitro* fertilization, with the embryo implanted in the gestational carrier.

In either case, the gestational carrier is deemed under the *Vital Statistics Act* to be the child's "mother" for the purpose of the registration of the child's birth.

So a single man having a child will have had a contract with the egg donor, if she is different from the gestational carrier, and a contract with the gestational carrier.

A surrogacy contract typically provides:

- the manner of insemination;
- who owns the genetic material;
- that the gestational carrier will accept sperm or be implanted with an embryo, if conception results, carry the fetus to term;
- that the gestational carrier has the exclusive right to decide whether to terminate the pregnancy;
- that the gestational carrier will relinquish the child at birth to the donor;
- that the gestational carrier will consent to having the donor registered as a parent, and to being removed as a parent from the child's birth record;
- that the donor will pay all expenses related to the conception, pregnancy, and delivery of the child.

It continues to be illegal under the *AHRA* to pay a surrogate mother or gestational carrier anything except her expenses. What expenses are allowed has never been spelled out by regulation, though the *AHRA* contemplates such regulations. *Rakhi Ruparelia*²⁷ has argued that the rationale permitting altruistic (unpaid) surrogacy but not commercial surrogacy is flawed, since there may be strong cultural pressure on a woman to agree to an "altruistic" surrogacy.

Because the *Vital Statistics Act* deems the gestational carrier of a child to be the "mother" of that child for the purposes of registration of the child's birth, a prospective father had to obtain a declaration of parentage. This order, available on application immediately after the birth of a child, severs all legal rights and responsibilities of a gestational carrier and substitutes the social father as the child's only parent. Analytically a declaration of parentage has exactly the same effect as an order of adoption; but an adoption order is not available until a child is six months old, whereas a declaration of parentage is available immediately after birth.

I. More Complex Situations

The case of a single parent wanting to have a child is paradigmatic. More commonly, there are two prospective parents at the time of conception.

a. Infertile Opposite-Sex Parents

An opposite-sex couple may be unable to conceive a child because one or both of them is infertile.

If a man is infertile, but the woman is not, donor sperm is required. Prospective parents in that case may or may not disclose that the child's social father is not her genetic father. They may register the

27 "Giving Away the 'Gift of Life': Surrogacy and the Assisted Human Reproduction Act," CJFL (2007) 2 *Can J Fam Law* 11-54.

social father as the child's father on the birth registration form²⁸ and may never even tell the child that her social father is genetically unrelated to her.²⁹

b. Same Sex Couples

An outstanding difference between single parents, same sex parents, families with one transgender parent, on the one hand, and cisgender³⁰ opposite-sex parents on the other, is that in the former there is no opportunity for accident. All of those families are planned families.³¹

A lesbian couple will conceive with donated sperm, obtained either from a fertility clinic or from a known donor. Till the passage of the *Family Law Act* a factor influencing that choice was the possibility that a donor might later assert that he is a "parent" under applicable family law.

One of the lesbian couple may be the gestational and genetic parent of the child. In that case, the child is conceived with simple sperm donation.

But if the two women want both of them to have a connection to the child, they may choose to have one partner donate her eggs. Fertilization of those eggs happens by IVF, and the embryo is then implanted into the other partner, who is then the gestational carrier.

Two gay men may choose to inseminate, with the help of a surrogate mother, either through direct donation or through IVF, using a mixture of sperm from both of them so that a child's parental genetic heritage is unknown.³²

c. Transgender Parents

We are accustomed to thinking of gender as being a single factor. We think that there are two genders; that there are only two genders; that the gender of a person is immediately ascertainable, at birth and ever after; that gender is immutable; that the two genders are complementary.

All of those assumptions are inaccurate.

Gender is multi-factorial. A person's gender includes their hormonal profile, their chromosomal profile, their genitalia, their gender identity (their own sense of their gender) and their social gender (how they are treated in the world).

Intersex people are those whose gender is medically ambiguous.

Transgender people are people whose gender identity does not align with other components of their gender. Trans people may experience themselves as neither male nor female, or both male and female, or they may experience themselves as being "born in the wrong body." When someone experiences themselves as having been born in the wrong body, the incongruence between their gender identity

28 A sample of the current birth registration form is at Appendix E.

29 Wendy Baker, RN, of Genesis Fertility Clinic in Vancouver, counsels couples intending to use donor sperm. She says that a significant percentage of the opposite-sex couples she counsels express an intention not to disclose the fact of sperm donation to anyone.

30 A cisgender individual is someone for whom all of the aspects of gender—gender identity, genitalia, hormones, social gender, chromosomes—are congruent. Cisgender is the opposite of transgender.

31 See Kelly, Fiona, "(Re)forming Parenthood: The Assignment of Legal Parentage Within Planned Lesbian Families" (2008-2009) 40 *Ottawa L. Rev.* 185-222 for a discussion of the role of intentionality in determining parenthood.

32 This practice of mixing sperm is discouraged by fertility clinics because it makes it difficult for the child to know her parentage.

and their other gender components is so acute that they have “gender incongruence,” a condition for which the medical treatment is to administer hormones and have sex reassignment surgery to align their bodies with their gender identity.

Part of the counseling for those corrective treatments is to counsel the individual about making provision to have children in the future to whom they will be genetically connected.

A male-to-female trans person may choose to freeze and store sperm, which can later be used for the insemination of their partner, if their partner is a woman, or for the insemination of a surrogate, if their partner is a man or an infertile woman, or if they want to be a single parent.

A female-to-male trans person may similarly freeze eggs (though the cost is much higher than the cost of sperm storage) for later use to conceive an embryo through IVF. If his post-transition partner is a woman, the eggs can be implanted in her. If his post-transition partner is a man, or if he wants to be a single father, he would use his preserved eggs and his partner’s or a donor’s sperm to create an embryo by IVF. The embryo would be carried by his partner, if she is a woman, or by a surrogate.

Transmen (F to M transsexuals) may be able to conceive and carry a child, even though they have changed gender. For that to happen, the transman must discontinue masculinizing hormones and obviously must not have had a hysterectomy. A transman may become pregnant through sex with a man; or with donated sperm if his partner is a woman.

In the result, it may be that a man gives birth to a child. But that man is defined as the child’s “mother” under the *Vital Statistics Act* since he delivered the child.

2. Sperm Donation

If a couple is opposite-sex, and the man is infertile; or if the couple is gay or lesbian; or if a single woman or trans person wants to have a child on her or his own, sperm donation is required.³³

Sperm can also be acquired from sperm banks. Sperm banks permit a prospective mother to choose a donor (by a description of his attributes) and then, if she wishes, freeze sperm from the same donor to be used later to create genetic siblings of her first child.

3. Egg Donation

A woman may be unable to produce eggs, for example, because of damaged fallopian tubes, or because she is a male to female trans woman who does not have ovaries.

In that case, the prospective mother may use eggs donated from an egg donor. Depending on her own biological circumstance, she may be able to carry a child conceived, through IVF, with donated eggs. Conception occurs *in vitro*, and the embryo is implanted in the uterus of the gestational carrier.

Alternatively the egg can be the egg of the gestational carrier. Or, finally, the egg can come from a woman who is neither the prospective mother nor a surrogate.

Fertility clinics in BC will inseminate through IVF only if the egg donor is known to the prospective mother.

4. Surrogacy

Surrogacy refers to having a woman other than the prospective mother carry the child and give birth.

33 So far, it has not been demonstrated that a female to male trans man can preserve eggs and later have the eggs inseminated and carry a child, though that is theoretically possible.

Conception can happen:

- with an egg from the surrogate and sperm from a prospective father or a known or unknown sperm donor, through donor insemination; or
- with an egg from a prospective mother and sperm from a prospective father or a known or unknown sperm donor, by IVF.

So a surrogate mother may or may not be genetically related to the child. By definition a surrogate mother is not the child's prospective parent.

B. Legislative Framework

I. The Assisted Human Reproduction Act

As discussed above, the 2004 federal *Assisted Human Reproduction Act*³⁴ prohibits the sale of human reproductive material (eggs, sperm, embryos, gametes). It also contained an administrative regime.

In 2010, the Supreme Court of Canada struck down the administrative provisions, as being a constitutionally impermissible incursion into provincial jurisdiction.³⁵ In 2012, the federal government enacted changes to the *AHRA* to comply with that court decision. But the prohibition against the sale of human reproductive materials remains.

As a result, it continues to be illegal to buy sperm or eggs, or to pay a gestational carrier, in order to conceive a child.

An individual using donated genetic material is required to get the written consent of the donor. Section 8 of the *AHRA* provides:

8(1) No person shall make use of human reproductive material for the purpose of creating an embryo unless the donor of the material has given written consent, in accordance with the regulations, to its use for that purpose.

2. Vital Statistics Act

The *Vital Statistics Act* governs the registration of a child's parents. Registration of a newly-born child is mandatory.

There are two important things to note about the *Vital Statistics Act*. The first is that it defines "birth" in a manner which inferentially defines "mother" as the person from whose body a child is born.

The second is that registration under the *Vital Statistics Act* confers a *presumption* of parentage but not *proof* of parentage.³⁶

On the registration of a birth of a child, identification of the birth mother is mandatory. She may choose to acknowledge the father, or identify that he is either unknown or unacknowledged. And she can choose to list a co-parent, at the birth of the child. That co-parent is the person she identifies *at the moment of registration* as the child's co-parent.

The *Vital Statistics Act* also contains provisions with respect to correction of the birth registration.

34 S.C. 2004, c. 2.

35 *Reference re Human Assisted Reproduction Act*, [2010] S.C.J. No. 61.

36 *Vital Statistics Act*, [R.S.B.C. 1996] CHAPTER 479 s. 41(3)(b).

VI. Ownership of Genetic Material

Who owns genetic material? Sperm, eggs, and embryos can all be frozen. That raises the question of who owns the material. What happens if two prospective parents engage the services of a fertility centre, then later break up, leaving some of the genetic material in storage? What happens if a donor who was one of the prospective parents dies before the material is used?

Canadian courts have consistently held that sperm, eggs and embryos are property. The disposition of that property is subject to the ordinary law of gift or contract, and to division if owned by a couple and the relationship ends.

In *C.C. v. A.W.*, A.W. had contributed sperm from which embryos were created by IVF. Twins were born to C.C. after implantation of some of the embryos; other embryos remained. A.W. did not want to release the remaining embryos to C.C., because of disputes he had had with her with respect to access to the twins. The Court found that the sperm was property. A.W. had gifted his sperm unreservedly; the embryos were C.C.'s property to use as she saw fit.³⁷

In *J.C.M. v. A.N.A.*,³⁸ two women in a spousal relationship had together purchased “straws” of sperm from a single sperm donor. Each woman conceived and bore a child using sperm of that donor. They froze 13 straws from the donor at Genesis Fertility Clinic. Then they separated. The issue was the disposition of the remaining 13 straws of sperm. The Court held that each was entitled to some of the straws—JCM got seven, ANA got six; and JCM had to compensate ANA for getting one more straw. The straws of sperm were property subject to division between the spouses. The best interests of any child to be was not a factor to consider.

If a donor dies after having donated reproductive material, but before the donated material is used, the material can be used only if the donor has given written consent to use the material after his or her death.³⁹

VII. Problems Not Addressed by Legislation

Assisted reproductive technology has outpaced legislation in Canada over the last twenty years. Courts have been obliged to answer novel questions without legislative guidance, and many questions remained unsettled. This section outlines the judicial response to the novel questions raised by ART-conceived children and their parents.⁴⁰

37 2005 ABQB 290.

38 [2012] B.C.J. No. 802, 2012 BCSC 584, 33 B.C.L.R. (5th) 140, 16 RFL (7th) 269. After separation, the child borne by each woman lived primarily with her. The issue of ownership of the straws arose because JCM got involved in another relationship, and wanted to have with her new partner a child genetically related to the child she had had with ANA.

39 *Assisted Reproductive Technology Act*, S.C. 2004, c. 2 s. 8(2) and 8(3).

40 Fiona Kelly's “Submission to the Ministry of Attorney General Justice Services Branch (Civil & Family Law Policy Office) Family Relations Act Review – Defining Legal Parenthood” (unpublished, n.d.); and “White Paper on Family Relations Act Reform: Proposals for a New Family Law Act” n.d. offer excellent background.

A. Sperm Donors

I. The Practical Issues

a. Known v Anonymous Donors

Single women wanting to conceive, infertile opposite-sex couples, lesbian couples, and some transgender opposite-sex and lesbian couples⁴¹ use donated sperm for conception.

The choice is between a known and unknown sperm donors. An unknown donor offers certainty that no one could challenge the parental rights of the intended parent(s). A known donor offered the intended parents the possibility that their child might know the donor. Using sperm from an unknown donor requires using a fertility centre, and is therefore more expensive. A woman may not know anyone suitable and willing to be a donor.

Sometimes lesbian couples use sperm from a known donor with an explicit expectation on everyone's part that the donor will play a non-parental but family-like role: an uncle, perhaps. And sometimes a parental project will include both prospective parents, and the donor.

b. Known Donors: The Risks

For anyone inseminating with sperm from known donors, the big, and unsettled, legal issue was whether the donor could ever make a claim for parental rights or be found to have parental responsibilities solely on the basis of having made a donation of sperm.⁴² Lesbians, whether single or in couples, in particular may use sperm from a known donor—often a gay man—to inseminate.⁴³ Their fear was that a “donor dad” might be given parental status in preference to a lesbian co-parent in a two-parent-only regime. The donor's fear was that he might be found to be financially responsible, for example, if the mother(s) received social assistance, the government might make a subrogated claim for child support against the donor.⁴⁴

c. Whoever the Donor is, Risk Remains

There is no hiding the fact that a child in a lesbian or gay family is connected genetically to at most one of her parents.

Many jurisdictions do not permit, or expressly prohibit, same sex couples to have children together: to register both parents on the birth certificate, or even to adopt a child together.

Canadian lesbian travelers report that they are treated with more legitimacy and respect of their parental role if they have, in addition to a birth certificate with both their names on it, a court order of

41 Assuming that sperm was not collected before transition from male to female, and that there is no genetic man in the couple, sperm donation will be required: that is, a lesbian couple or opposite-sex couple in which one partner is an MtF transwoman, or a couple in which an FtM man is able to carry a child.

42 Like anyone else, a known donor who had an ongoing role in a child's life could make a claim for access based not on his sperm contribution but on his role in the child's life after the child was born.

43 Conception is accomplished by the donation of fresh sperm to a woman at the fertile point in her menstrual cycle. The method is colloquially referred to as the “turkey baster method.”

44 The *Huffington Post* reported on December 30, 2012 that the State of Kansas is suing a sperm donor to recover social assistance paid to the lesbian co-parents of a child, in the face of an agreement among the parties that relieved the sperm donor of financial responsibility: online at http://www.huffingtonpost.com/2012/12/30/kansas-sperm-donor_n_2382677.html?utm_hp_ref=politics

adoption or declaration of parentage.⁴⁵ Since acceptance of same-sex parented families is very uneven across the world, there is a good chance that at least one of the jurisdictions will be extremely homophobic and transphobic.

Conflict of laws have to stretch in new directions to deal with issues where sperm is provided from one province, or country; an egg from another; perhaps a fertility clinic in a third jurisdiction and a birth in a fourth.⁴⁶ Courtney G. Joslin's article "Interstate Recognition of Parentage in a Time of Disharmony: Same Sex Families and Beyond"⁴⁷ describes the US jurisprudence when a homophobic state does not consider itself bound by determinations in a non-homophobic state. She argues that the failure to give full faith and credit to the parental determinations of another state will be very complicated in an age of ART. Some of the sperm used in BC fertility clinics is sourced from the US.

d. Donor Insemination Agreements

As a practical matter, prudent prospective mothers wrote donor insemination agreements with the sperm donor⁴⁸ which typically:

- relieved the donor of all responsibility, financial and otherwise, for a child;
- relieved the donor of all responsibility for any genetic or inherited illness, condition, or birth defect provided the donor had and disclosed a medical screen;
- asserted exclusive parental rights and responsibilities, including custody, guardianship, and maintenance on behalf of the mother;
- included a promise by the donor to consent to a declaration of parentage or a stepparent adoption.⁴⁹

e. Registration of Birth

The birth mother and her partner could both be registered as "parents" with the Vital Statistics Agency, and the child's birth certificate reflected each as "parent" of the child. The donor did not appear. The birth mother's partner could be registered whether or not the two had been partners when the child was conceived. The relevant time was the date of registration of the birth.

45 More on the risks of travelling as lesbian co-mothers: Courtney G. Joslin, "'Travel Insurance' Protecting Lesbian and Gay parent Families Across State Lines" (2010) 4 Harv L. & Pol Rev 31.

46 "It is a conflicts professor's dream hypothetical and a parent's worst nightmare: a woman in one state gives birth to a baby with genetically-linked abnormalities after using sperm donated by a donor in a different state and after having pre-implantation genetic diagnosis done by a specialist in a third state." "Interstate Intercourse: How Modern Assisted Reproductive Technologies Challenge the Traditional Realm of Conflict of Laws" by Sonya Bychkov Green, outlines the myriad complexities of legal issues around reproductive technology, including, for example, lawsuits over the technologies themselves; over physician negligence; improper genetic diagnosis; sperm donations; egg donations; embryo donations; and surrogacy; improper genetic diagnosis; over parentage; over the relationship between parent and surrogate; over sperm donation; over embryos; over disposition of unused sperm, ova and embryos ... 24 *Wis J.L. Gender, and Soc'y* 25 (2009).

47 (2009) 70 Ohio S L. J.563.

48 Though the *AHRA* requires in s. 8 that no one use genetic material without written consent of the donor, as a practical matter inseminations with sperm from a known donor often happens without such written consent. Donor insemination agreements are insurance against future issues, not a response to requirements of the *AHRA*.

49 A typical donor insemination agreement also recited the uncertainty of the law and included a clause to the effect that if a court refused to uphold the agreement, it should nevertheless treat it as evidence of the intention of the parties to the agreement.

f. Declaration of parentage or adoption

Because a birth certificate provided evidence, but not proof, of parentage, the mother(s) would either seek a declaration of parentage or, after six months, an adoption, either of which severed at law any parental rights or responsibilities the donor could have had in relation to the child.

An application for a declaration of parentage was made by petition, with notice to and consent of the sperm donor. Because the birth certificate was unchanged by the application, notice to the Vital Statistics Agency was not required. But because the court was being asked to make a ruling on the basis of its inherent jurisdiction, notice to the Crown was wise.

Lesbian co-parents often preferred a declaration of parentage to a stepparent adoption because it was available immediately after birth,⁵⁰ and because it more closely reflected the reality that they were both parents from the moment of the child's conception, rather than one of them being a "natural" parent and the other an adoptive parent.

If the mother uses sperm from a fertility clinic, the donor is anonymous, so an adoption or a declaration of parentage is not necessary to confirm the prospective parent(s) as the only parent(s) of the child.⁵¹ A child born from conception with anonymously-donated sperm cannot learn her paternal lineage unless the sperm donor has agreed that a child may contact him after the child is 18.

2. Case Law

a. Applications by Known Sperm Donors for Parental Status

A 1999 Ontario case illustrates the reason inseminating women were concerned to write donor insemination agreements, and then to confirm their parental status through declarations of parentage or stepparent adoption. In *DeBlois v. Lavigne*, the sperm donor had signed a donor insemination agreement with a lesbian couple, relinquishing all of his parental rights. After the birth of the child, the couple refused to permit the donor to see the child. Notwithstanding the donor insemination agreement, he applied shortly after the birth of the child for interim access. At issue in the interim application was the effect of systemic delays on the outcome of the case if the donor was, or was not, able to see the child pending trial. In a 2012 decision, the Court denied his interim application, applying the usual rule that the status quo be maintained pending trial of the matter. However, the Court referred to the donor as the "father" of the child.⁵²

No trial decision in the case is reported.

In *K.G.D. v. C.A.P.*, the Court made a declaration of parentage in favour of a single gay man, whose child had been conceived with the help of a surrogate mother. He was successful in seeking half of his costs to obtain the declaration of parentage, because his situation was not provided for in Ontario's birth registration system.⁵³

50 An adoption within a child's family is usually referred to as a "stepparent adoption." The adoption of a child born to a parent or parents who will not raise the child is called a stranger adoption. Through an oversight in the most recent amendments to the *Adoption Act*, it is no longer possible for a stepparent adoption to be done immediately after birth. Instead, all adoptions must wait till a child is six months old.

51 Though anonymous, a sperm donor may have agreed that his identity can be revealed to the child when the child is 18.

52 *DeBlois v. Lavigne*, [2012] O.J. No. 3671, 2012 ONSC 3949.

53 [2004] O.J. No. 3508.

In a much-criticized decision, the Supreme Court of Canada held that the biological father of a child may be registered as the child's parent over the objections of the child's mother.⁵⁴

b. Donor Insemination Agreement Cannot Usurp Court's Jurisdiction

A donor insemination agreement cannot oust the jurisdiction of the court with respect to a determination of the best interests of the child. In *Doe v. A.B.*,⁵⁵ Jane and John Doe were partners. Jane Doe wanted a child; John Doe did not want to be a parent. So they created an agreement relieving John Doe from any parental rights and responsibilities (never executed); and Jane Doe got pregnant with assisted insemination through John Doe.

The Alberta Court of Appeal held that the settled intention of John Doe to continue living with Jane Doe while she raised the child thrust him inevitably into the role of parent. John Doe's intention not to be a parent would inevitably lead to the practicalities of responding to the needs of the child living in the same household.

The donor insemination agreement was ineffective in the face of the day-to-day role of the donor in the child's life after birth.

c. Three Parents Can be Registered

In *A.A. v. B.B.*, the sperm donor and the birth mother were listed on the child's birth certificate as the child's parents. The child lived with A.A. and her lesbian partner, but the sperm donor was by agreement among all parties actively involved in the child's life. The parties did not want to supplant the donor by a stepparent adoption. They wanted the child's birth certificate to reflect the reality that the child had three parents. The Ontario Court of Appeal agreed, relying on its *parens patriae* jurisdiction to declare the co-mother to be a parent along with the sperm donor and the birth mother.⁵⁶

54 *Trociuk v. British Columbia (A.G.)*, 2003 SCC 34 (CanLII), 226 D.L.R. (4th) 1, [2003] 7 W.W.R. 391, 107 C.R.R. (2d) 277, 36 R.F.L. (5th) 429, 14 B.C.L.R. (4th) 12. The father was unacknowledged by the mother, and pursuant to the *Vital Statistics Act* the father was refused registration for that reason. The Supreme Court of Canada held that the registration scheme which provided no recourse to a father wanting to be registered infringed his rights on the basis of sex and therefore were unconstitutional and not saved by s. 1 of the *Charter*. For an analysis of this case, see Lori Chambers "In the Name of the Father: Children, Naming Practices and the Law in Canada" (2010) 43 *U.B.C. L. Rev* 1.

55 *Doe v. Alberta*, [2007] A.J. No. 138, 2007 ABCA 50, 278 D.L.R. (4th) 1, [2007] 4 W.W.R. 12, 71 Alta. L.R. (4th) 14, 404 A.R. 153, 151 C.R.R. (2d) 32; 35 R.F.L. (6th) 265, 155 A.C.W.S. (3d) 1159.

56 *A.A. v. B.B.*, [2007] O.J. No. 2, 2007 ONCA 2, 83 O.R. (3d) 561, 83 O.R. (3d) 75, 278 D.L.R. (4th) 519, 220 O.A.C. 115, 150 C.R.R. (2d) 110, 35 R.F.L. (6th) 1, 2007 CarswellOnt 2. The Court of Appeal held that the declaration was within the *parens patriae* jurisdiction of the court. The *Children's Law Reform Act* did not contemplate more than one mother for a child. However, given present social conditions and attitudes, there were gaps in the legislative scheme of the Act that the court could use its *parens patriae* jurisdiction to fill. It would be contrary to the best interests of DD to deny the legal recognition of both his mothers. The legislative gap was not deliberate, in that it was not a policy choice to exclude the children of lesbian mothers from the advantages of equality of status accorded to other children under the Act. (headnote) For an analysis of this case, see Bouchard, Donna "The Three-parent Decision: A Case Commentary on A.A.v B.C." 70 *Sask L. Rev* 459.

d. Right for a Child to Know Who Donated Sperm for Conception

In a recent case, the BC Court of Appeal⁵⁷ held that a child born as the result of conception with sperm from an anonymous donor did not have a right to know her paternal lineage. Pratten had been conceived in 1982 with sperm from an unknown donor. Her mother and father knew that the donor would remain anonymous. Pratten sought an order that the failure to legislate provisions under the *Adoption Act* to permit children conceived in this way to learn the identity of the sperm donor was constitutionally impermissible; and related orders. The BC Court of Appeal reversed the trial-level decision in her favour, holding that the creation of a scheme to benefit adoptees to learn the identity of their birth parents did not mean that the legislature was obliged to extend that scheme to people conceived by ART.

B. Egg Donors

I. Practical Issues

In BC, conception with donated eggs is permissible only if the donor is known to the parties to the conception project.

A woman may donate an egg:

- to another woman in an opposite-sex relationship; sperm comes from the recipient's partner;
- to another woman in a same-sex relationship; sperm comes from a sperm donor; or
- she may be herself both the donor of an egg and a surrogate; conception is with sperm either from a prospective father or from a known or unknown donor.

It is wise to have a contract between the egg donor and the prospective parent or parents, similar in terms to a donor insemination agreement.

If the egg donor will also be a surrogate, the agreement is more critical from the perspective of the intended parent(s), since the *Vital Statistics Act* defines her as the “mother” of any child born as a result of the assisted conception.

C. Surrogacy (Gestational Carriers)

I. Practical Issues

The underlying philosophy of the *AHRA* is that reproductive material should not be commercialized. So it is illegal to pay sperm or egg donors, and illegal to pay a surrogate to carry a child.

It is not illegal to pay expenses relating to the surrogacy, but it is not permissible to pay a woman's wages so she can stay home during the pregnancy, unless it is medically necessary to do so.

A surrogacy agreement should set out what expenses are compensable.

A surrogacy agreement also typically provides:

- that the woman may terminate her pregnancy;
- that the woman will provide regular medical information to the intended parent(s) during her pregnancy;

57 *Pratten v. British Columbia*, 2012 BCCA 480.

- that the woman will follow medical advice during her pregnancy; and will abstain from potentially harmful activities (such as unprotected sexual intercourse, smoking, drugs, etc.);
- that the intended parent(s) are entitled to be present at the birth of the child;
- that the intended parents will take, and the surrogate will relinquish, the child immediately after birth;
- that the surrogate is not responsible for genetic or congenital conditions a child may have;
- that the surrogate will consent to a declaration that the intended parent(s) is/are the child's only parent(s);
- that the surrogate will have no parental rights or responsibilities in relation to the child.

Under the terms of the old law, at birth the prospective parent(s) obtained a declaration of parentage and an Order that they be registered as the child's parents by the Vital Statistics Agency.⁵⁸ He/she/they were then registered as a child's only parents.

By its nature, surrogacy arrangements are fraught with uncertainty. There may be strong differences between the prospective parents and the surrogate about such things as what she should eat, drink, or do during her pregnancy. There may be financial disagreements. There is always the possibility that the surrogate mother will bond with the child she is carrying, and not want to give it up.

2. Case Law about Surrogacy

An Alberta case concerned the financial issues of compensation for reasonable expenses. HLW agreed to act as a surrogate mother for JCT and JT. She conceived a child with JCT's sperm. The terms of the agreement included that HLW would have some ongoing contact with the child, and that JCT and JT would pay the expenses related to the pregnancy. Expenses escalated; tempers flared. HLW relinquished the child, but after birth petitioned for interim interaction with the child. The Court refused the interim application, saying the intention of the parties was clear.⁵⁹

There was no legislative treatment of children born as a result of assisted insemination using a gestational carrier (surrogate mother). The problem to overcome was that the *Vital Statistics Act* defines "mother" as the person who gave birth to the child. The courts solved the problem by relying on its inherent jurisdiction to make a "declaration of parentage." In favour of the prospective parent(s), which substituted her, him, or them as the child's parent(s) in the Vital Statistics Registry and on the child's birth certificate.

In *J.R. v. L.H.*,⁶⁰ a 2002 Ontario case, an opposite-sex couple J.R. and J.K. contracted with a surrogate mother, L.H. to carry a child conceived with J.R.'s egg and J.K.'s sperm, using IVF. Finding the declaration to be in the best interest of the twins who were born, the court declared J.R. and J.K. to be the children's only parents, and granted an order directing the Registrar General to register a Statement of Birth consistent with that declaration. The application was by consent.

58 Sample Order at Appendix C.

59 *H.L.W. and T.H.W.*, [200] B.C.J. No. 2616, 2005 BCSC 1679. Here we see the court moving in the direction of intentionality, and away from genetic or biologic connection, in determining parentage.

60 *J.R. v. L.H.*, [2002] O.J. No. 3998, [2002] O.T.C. 764, 117 A.C.W.S. (3d) 276.

To the same effect is the 2003 BC case of *Rypkema*.⁶¹ The Vital Statistics Agency had refused to register the intended parents on the child's birth certificate, because the child had been delivered by the surrogate mother who was thus by definition the child's "mother" for purposes of registration of birth. The Rypkemas' application for an order directing the Vital Statistics Agency to register them as parents was granted. Though the same relief would have been available through a stepparent adoption, the Court noted that the expense and trouble of an adoption were not justified (and of course an adoption order would only have been available after the child reached six months of age). Registration would affirm the parent-child relationship, and would provide presumptive proof of the relationship.

D. The Non-Biological Co-Parent

I. Practical Issues

A non-biological co-parent of a child born in BC could be registered as the co-parent of a child on the child's birth registration, and the child's birth certificate (regardless of how she was conceived) shows the name of each parent, and designates them both as "parent."⁶² Importantly, a co-parent could be registered whether s/he was involved with the birth mother at the time of conception or became involved with her after conception but before the birth of the child, since the relevant date was the date of registration of the child's birth.

However, since being on the birth certificate was (and is) evidence, but not proof, of a child's legal parentage, the non-biological co-parent of a child born by ART had no *legal* status as a parent unless s(he) had obtained a declaration of parentage, or a stepparent adoption, after the child was born. For example, a child would be unable to inherit on an intestacy or make a *Wills Variation Act* claim solely on the basis of her birth certificate.

a. Presumption of Parentage

The presumption of parentage provisions of the *Family Relations Act*, created a rebuttable presumption that a child born to a woman in an opposite-sex relationship was the child of her partner. That presumption of parentage was unavailable to same sex couples.

Until *A.A. v. B.B.*,⁶³ a child was limited to two "legal parents"; and so a co-parent was legitimately apprehensive that if a donor of egg or sperm, or a surrogate mother, asserted a parental claim it would be at the expense of any claim that the non-biological co-parent might have.

In an Alberta case,⁶⁴ the Court held the presumption of parentage provisions in that province to infringe on the equality rights of a gay man in a conjugal relationship with the biological father of a child conceived with the assistance of a surrogate. The Court would have suspended the operation of

61 [2003] B.C.J. No. 2721, 2003 BCSC 1784, 233 D.L.R. (4th) 760, [2004] 3 W.W.R. 712, 22 B.C.L.R. (4th) 233, 47 R.F.L. (5th) 398, 127 A.C.W.S. (3d) 300. The same result was arrived at in *B.A.N and R.C.N.*, [2008] B.C.J. No. 1169, 2008 BCSC 808, [2009] 2 W.W.R. 522, 86 B.C.L.R. (4th) 106, 294 D.L.R. (4th) 564, 2008 CarswellBC 1298, 167 A.C.W.S. (3d) 342.

62 Formerly, if a child had same sex parents, the birth certificate said "parent/parent," but if she had opposite sex parents, the birth certificate said "mother/father."

63 *A.A. v. B.B.*, [2007] O.J. No. 2, 2007 ONCA 2, 83 O.R. (3d) 561, 83 O.R. (3d) 75, 278 D.L.R. (4th) 519, 220 O.A.C. 115, 150 C.R.R. (2d) 110, 35 R.F.L. (6th) 1, 2007 CarswellOnt 2. That case has yet to be followed in BC.

64 *D.W.H. v. D.J.R.*, [2011] A.J. No. 1082, 2011 ABQB 608, 248 C.R.R. (2d) 38, 518 A.R. 165, 53 Alta. L.R. (5th) 305, [2012] 6 W.W.R. 539.

the section granting a presumption of parentage, but the legislation had already been amended to remove that section by the time the case got to court. The Court issued a declaration of parentage in favour of the non-biological co-parent.

This was one of the two reasons—the other being to sever any legal connection between the biological or genetic parent and the prospective parent—to get a declaration of parentage or an adoption.

A lesbian co-parent had to be sure to get a declaration of parentage or an adoption order as soon as possible after the child was born, or at least while she and her partner were on good terms. Once the co-parents separated and difficulties between them arose over parenting issues, a court refused an adoption order in favour of the non-biological co-parent, even though it found as a fact that the birth mother would have consented to an adoption after birth.⁶⁵

E. When the Arrangement Falls Apart

I. Practical Issues

If the parents of a child conceived with ART break up, there may be complicated questions of custody and access. A birth parent may assert that he or she has greater “rights” than a co-parent. A donor who has been involved with the child after birth may claim continuing access rights.

a. Lesbian Co-Parents

As between two lesbian co-mothers, it has been not uncommon to see an assertion by the birth mother that she had more claim to custody of the child than did her non-biological co-mother, even if the co-mother was a “parent” on the child’s birth certificate.⁶⁶

After it became legally possible to do so, the best position for the non-biological co-mother to be in, legally, is to be an adoptive co-parent or have had a declaration of parentage. This put her in the same legal position as the biological mother. However, if the parties had not had an adoption before the parents broke up, a court was unlikely to dispense with the consent of the bio-mother to enable her to adopt the child.

Nevertheless, the non-biological mother was able to make a custody claim, as a stepparent, under the *Family Relations Act*. Advancing such claims could be tricky: one could encounter homophobic assumptions even among well-known experts who prepared custody and access reports (so-called s. 15 reports) to the significant disadvantage of the non-biological co-mother.⁶⁷

b. Opposite Sex Co-Parents

Opposite sex co-parents are more likely to be able to rely on the fact that they are on the birth certificate, perhaps in combination with the presumption of parentage, to assert a parental claim to custody and/or access.

65 *K.G.T. v. P.D.*, [2005] B.C.J. No. 2935, 2005 BCSC 1659, 21 R.F.L. (6th) 183.

66 Prior to amendments to the *Adoption Act* to permit same sex parents to adopt, and prior to amendments to the *Family Relations Act* to recognize same-sex parents, it was common for a biological parent to successfully resist even an access claim by the non-biological parent. Lesbian co-mothers were invisible to the law.

67 One of the authors had the experience of her non-biological co-mother being described in the custody and access report as being “like an uncle.”

c. And Donor Makes Three

If a donor has been actively involved in the child's life after birth, then unless the parties have an adoption or a declaration of parentage, the donor may later assert parental rights in order to continue to have access to the child if the child's co-parents break up.

Sometimes, the parties have an explicit three-parent arrangement, with or without a written agreement, in which the donor plays an ongoing role in the child's life. If unhappy differences arise between the donor and the co-parents, the donor might make an application for access relying on his parental status.

A donor may also make a claim if the co-mothers break up and his continuing access to the child is threatened.

In both of those situations, the fact that the donor has been involved with the child on an ongoing basis carries much more weight than the simple fact of donation of sperm or egg in the court's determination of the best interests of the child and award of access.

2. Case Law

A.A. v. B.C. paved the way for "three-parent families" of the birth mother, the co-mother, and the donor.⁶⁸

Whatever arrangements parties made before or after a child is born about the child's parentage and the roles each of the parties will play in the child's life, a court faced with an application relating to the custody of, access to, or parentage of a child will take into account not only any agreement the parties have made, but the roles each party has actually played in the life of the child, and may refuse to give effect to the parties' agreement.

A 2009 Ontario case,⁶⁹ *M.A.C. et al. v. M.K.*,⁷⁰ concerned the disintegration of a three-parent arrangement. The parties were a cohabiting lesbian couple and a gay man who had donated sperm. Their intention was that the gay man be recognized as their child's father and would see the child often. After the child was born the three signed an agreement embodying their intentions with respect to custody, access, support, and adoption. This arrangement continued happily for many years; but then relations between the lesbian couple and the father became strained. The couple made an application to adopt the child, relying on the clause in their agreement that the donor would consent to an adoption to request that his consent be dispensed with. The Court refused the application, finding that the agreement was not a "domestic contract" within the *Family Law Act* and, even it was, it was not in the best interests of the child to sever the child's ongoing relationship with the father. The Court noted that the non-biological mother could seek an order that she was a custodial parent, without severing the parental relationship between the donor and the child.

68 [2007] O.J. No. 2, 2007 ONCA 2, 83 O.R. (3d) 561, 83 O.R. (3d) 75, 278 D.L.R. (4th) 519, 220 O.A.C. 115, 150 C.R.R. (2d) 110, 35 R.F.L. (6th) 1, 2007 CarswellOnt 2.

69 *M.A.C. et al. v. M.K.* [Indexed as: *C. (M.A.) v. K. (M.)*] 94 O.R. (3d) 756 (Ontario Court of Justice). To the same effect is *D. (M.) v. L. (L.)*, 90 O.R. (3d) 127 (2008).

70 94 O.R. (3d) 756.

F. Other Issues

I. One Parent is Transgender

There is no analytic difference between a couple with a transgender parent, and one without—with one significant exception.

Because a female to male trans prospective parent is able to carry a child, notwithstanding that he has completed his transition and may even have a birth certificate showing him as male, he could be the one to give birth to a child.

In that case, because of the way the *Vital Statistics Act* is written, he was the child's "birth mother" notwithstanding his gender. (The birth certificate, however, showed him simply as a 'parent,' as is the case with all birth certificates.)

In this situation, we would strongly recommend a declaration of parentage or a stepparent adoption because we would anticipate that the family might have difficulties, especially if the family is planning to travel.

2. Parties to an ART Process Change Their Minds

Parties who embarked on a parental project together may at some point in the process get cold feet.

Hopefully they back out before a conception has occurred. However, it has been our experience that donor insemination agreements were very, very often signed after conception occurred: and occasionally there were severe differences among the prospective parents and the donor about, specifically, the donor's role.⁷¹ Those differences arose either at the point of negotiating a donor insemination agreement, or later, when the donor's consent to a declaration of parentage or an adoption was sought pursuant to the terms of the donor insemination agreement.

3. State Sues Donor for Child Support of Parent on Social Assistance

Though there was always the theoretical possibility that the state could pursue a donor if the donee parent(s) went on social assistance, that has never happened in BC.

As noted above, it has recently happened in Kansas.

4. Inheritance Issues

A child is entitled to inherit on an intestacy of a parent, or to make a claim against the estate under the *Wills Variation Act* of a parent who makes inadequate provision for them in their will.

For these purposes, who is a 'parent'?

71 One of the writers had the experience of having a donor agree verbally that the lesbian co-parents would be the child's only parents, on the basis that he would be in the child's life. Conception occurred. Donor finally signed a donor insemination agreement which put the power to decide when, where and on what terms he would be in the child's life in the control of the mothers; and he agreed to sign a consent to a declaration of parentage or an adoption. At birth the mothers were horrified to receive 50 cards from relatives and friends of the donor congratulating them on the birth of "his" child. The donor then dragged his feet about signing the consent to the adoption. Though he ultimately did consent, and an adoption was done, he nevertheless went to court to seek access to "his son."

The names on a child's birth certificate, we know, are evidence but not proof of a child's legal parentage. In order to protect the interests of a child who was conceived with the assistance of donated sperm, donated ova, or surrogacy, we have always recommended a declaration of parentage or a stepparent adoption, even if the parties have a donor insemination or a surrogacy agreement.

G. Conclusion

As you will see, many of the issues which have existed in the limbo of judge-made law about the rights and responsibilities of 'parents' of children conceived with ART are addressed by the *FLA*.

VIII. Part Two: Legal Parentage of Children Under the FLA

A. Introduction

On March 18, 2013, BC will, through its new provincial family law legislation, the *Family Law Act* (“FLA”), address issues related to the determination of legal parentage of children conceived by assisted reproductive technology (“ART”). This is the first time that BC has legislated with respect to determinations of parentage of ART-conceived children.

Part 3 of the *FLA* is reproduced in its entirety at Appendix F.

Part 3 (Parentage) of the FLA:

- Addresses determination of parentage for children conceived without, and with, ART.
- Spells out the legal standing of donors, depending on whether they are donating their reproductive material for conception of a child they will raise, or a child to be raised by other prospective parents.
- Specifies what happens if a participant in the creation of an embryo dies before the embryo is used to conceive a child.
- Sets out the requirements for a surrogacy.
- Provides mechanisms to amend a determination of parentage.

It is important to note that Part 3 of the *FLA* addresses *legal* parentage. It does not deal with parenting rights and responsibilities, set out in Part 4 of the *FLA*, which may be extended to people in a child’s life who are not the child’s legal parent(s).⁷² This paper focuses exclusively on the legal parentage provisions contained in Part 3.

B. Family Relations Act vs Family Law Act

In this section of the paper we will compare the *FRA* (*Family Relations Act*) and *FLA* (*Family Law Act*) regimes as they relate to the parentage of children conceived by ART. We will then review the underlying principles and provide a walk-through of the sections in Part 3 of the *FLA*, and, finally, address some of the problems answered by the *FLA* and practical tips to consider moving forward.

As outlined in Part One of the paper, determinations of parentage under the *FRA* regime were made in a legislative vacuum. A comparison of matters as they existed when the *FRA* was in force to matters under the *FLA* is in the table below.

72 In their backgrounder to the *Family Law Act*, the Ministry of Justice provides the following clarification: It is important not to confuse Parental status and Parenting roles and responsibilities. Other BC 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, s. 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. The *FLA* also provides that “guardians and Stepparents” will be referred to as “Parents” under the Act but they may not be legal parents. However, under Part 4 of the *FLA*, “guardians and Stepparents” are assigned “legal responsibilities” for a Child. And see. “Family Law Act Explained” see: <http://www.ag.gov.bc.ca/legislation/family-law/pdf/part3.pdf>

FAMILY RELATIONS ACT (FRA)	FAMILY LAW ACT (FLA)—NEW
No definition of legal parentage: it was determined under s. 61 of the <i>Law and Equity Act</i> .	The definition of legal parentage is in Part 3 of the Act and is the interpretation to be used for all purposes of BC laws.
Birth certificate provided evidence, but not proof of parentage.	Birth certificate provides proof of parentage: <i>FLA</i> combined with <i>Vital Statistics Act</i> .
“Legal parentage” was determined on the basis of a child’s genetic connection to his/her parent. There were presumptions of paternity in the <i>FRA</i> .	“Legal parentage” is determined: <ul style="list-style-type: none"> • In non-ART: by the birth mother and the biological father. (s. 26). There are presumptions of who is a biological father. (s. 26(a) to (f)); or • In ART: pursuant to the scheme in Part 3.
No legislation re: ART-conceived children	Comprehensive scheme re: legal parentage of ART-conceived children
No reference to status of “donors” or whether a person was a legal parent because he or she had donated sperm or eggs.	Donors are never legal parents by virtue of only being donors (s. 24) unless the donation was for the purpose of the donor’s own reproductive use (s. 20: “donor”).
Maximum of two parents.	Multiple legal parents by pre-conception agreements (s. 29, 30) or by a declaration of parentage (s. 31).
A co-parent of a child conceived with ART could be registered as a “parent” on the child’s birth certificate, but needed a declaration of parentage or adoption to be legal parent.	A co-parent with the birth mother of a child conceived by ART is presumed to be legal parent (s. 27) unless consent to parental project was withdrawn before conception or was never consented to.
Declaration of parentage not contemplated by legislation; courts relied on inherent jurisdiction	Declaration of parentage specifically provided for in Act (s. 31).
No provision for determination of parentage of children carried by surrogate mothers: a declaration of parentage required.	Provides scheme for (a) pre-conception agreement between intended parents and surrogate followed by (b) relinquishment of child to intended parents and (c) birth registration of intended parents based on agreement: no court order required (s. 29).
No dispute resolution section re: legal parentage determination.	Section 31 permits a court to make a declaration of legal parentage where there is “uncertainty or dispute” as to parentage.
Any declaration of parentage had to be done in Supreme Court; Provincial court could do determinations of paternity.	Provincial court can do declaration of parentage wherever the issue comes up, assuming the issue is otherwise in the jurisdiction of the Provincial court (s. 31).
No provision for parentage of children conceived with genetic material from a person who died before conception.	Specific provision for children conceived with genetic material from person who died before conception (s. 28).
“Parenting” rights and responsibilities assigned to legal parents and others who played a role in the life of the child, e.g., stepparents.	“Parenting” rights and legal responsibilities assigned to legal parents and others who played a role in the life of a child, e.g., guardians and stepparents; not dependent on determination of parentage under Part 3—see Part 4 of <i>FLA</i> .

C. “Parents” Under the FLA

“Parent” is defined under the *FLA* to mean a “parent under Part 3–Parentage.” A “parent” under Part 3 of the *FLA* is a parent for the purpose of all BC legislation.⁷³

The determination of who is a parent of a child conceived by sexual intercourse is straightforward: that child is a child of his or her birth mother and biological father: s. 26(1). And the parentage of an adopted child is established under the *Adoption Act*.

However, the determination of children conceived by ART is complex. The factors to assess parentage under the *FLA* include:

- Whether a child was conceived using donated genetic material; and, if so,
 - whether the donor(s) of the genetic material used that material for their own reproductive project;
 - whether the donor provided sperm through the “turkey baster” method or through sexual intercourse
- Whether a child was gestated by a surrogate mother, and, if so, whether there is a pre-conception agreement between the surrogate and the “intended parents” which complies with the requirements of the *FLA*.
- Whether there is a prospective co-parent, and if so,
 - whether the co-parent was in a relationship with the birth parent when the child was conceived;
 - whether the co-parent agreed to be a co-parent when the child was conceived; and
 - whether the co-parent continued to agree to be a co-parent till the child was born.
- Whether there are more than two prospective parents, and if so, whether there is a pre-conception agreement among the “intended parents” which complies with the requirements of the *FLA*.

I. Principles of Parentage

Underlying the *FLA* are the following principles:

- that children will be treated equally regardless of whether they were conceived by sexual intercourse or by ART;
- that a child’s legal parents for the purposes of all BC laws, including, for example, registration of birth and inheritance, are consistent;
- that a child may have more than two legal parents; and

73 “Parent” is defined in terms of legal parentage. Part 3 of the *FLA* provides a comprehensive framework for determining who is a legal parent for all purposes of the law. The definition in the *FRA* did not define who had legal parentage. Rather, the definition provided for an expanded meaning of parent for the purposes of that Act to include guardians of the person and stepparents. This expanded definition does not mean these people become legal parents, but rather that under the Act they will be treated in the same way as a parent; wherever the Act refers to a “parent” it also means a “guardian” or a “stepparent.” These expansions are carried forward in the *FLA* but are located in the relevant parts of the Act: Part 7 – Child and Spousal support, ss. 146 [Definitions] (§3.146) and 147 [Duty to provide support for Child] (§3.147) *Family Law Act Transition Guide*, Continuing Legal Education Society of British Columbia, August 2012 at 3.11).

- that the determination of who a child’s legal parents are relates to who gave birth to a child, and who intends to raise the child, rather than who is genetically connected to a child: intention trumps genetics.

IX. First Steps: Walking through Part 3 of the FLA⁷⁴

The starting points to understand Part 3 of the *FLA* are the definitions in s. 1 and in s. 20, the “definitions” section for Part 3.

A. Definitions

“Child” and “parent” are defined in section 1:

“**Child**,” except in Parts 3 [*Parentage*] and 7 [*Child and Spousal Support*] and section 247 [*Regulations Respecting Child Support*], means a person who is under 19 years of age;

“**Parent**” means a parent under Part 3 [*Parentage*].

In Section 20:

“**Assisted reproduction**” means a method of conceiving a child other than by sexual intercourse; ART includes donor insemination, in vitro fertilization (IVF), inter uterine insemination (IUI) and surrogacy.⁷⁵

Under the *FLA*, the definition of “birth mother” is the starting point for the determination of all legal parents of a child.

“**Birth mother**” means the person who gives birth to, or is delivered of, a child, regardless of whether her human reproductive material was used in the child’s conception.

A donor under the *FLA* is someone who provides eggs or sperm to be used for conception, or an embryo created with the use of the donated eggs or sperm:

“**Donor**” means a person who, for the purposes of assisted reproduction other than for the person’s own reproductive use, provides

- (a) his or her own human reproductive material, from which a child is conceived, or
- (b) an embryo created through the use of his or her human reproductive material.

Note that someone using ART to assist in the conception of their own genetically related child, from their own human reproductive material, is not a “donor” under the *FLA*.

“**Embryo**” means a human organism during the first 56 days of its development following fertilization or creation, excluding any time during which its development has been suspended, and includes any cell derived from such an organism that is used for the purpose of creating a human being.

74 Useful resources to understand the *FLA* include: *Family Law Act Transition Guide*, CLEBC, August 2012 (hereinafter “Transition Guide”); *The Family Law Act Explained*, Ministry of Justice, online: <http://www.ag.gov.bc.ca/legislation/family-law/acts-explained.htm>; *Family Law Act Questions and Answers*, Ministry of Justice, online: <http://www.ag.gov.bc.ca/legislation/family-law/qa.htm>; *White Paper on the Family Relations Act Reform, Proposals for a New Family Law Act*, Ministry of Attorney General Justice Services Branch Civil Policy and Legislation Office, July 2010, online: <http://www.ag.gov.bc.ca/legislation/pdf/Family-Law-White-Paper.pdf>

75 A brief explanation of these kinds of ART is at Appendix A.

Fifty six days marks the last phase of the embryonic period and at this point the development of the embryo transitions into the foetal stage of development. After 56 days the major organs of the foetus are developed including the development of brain function. The suspension of the 56 day period relates to circumstances in which an embryo has been frozen through ART to be used at a later time.

“**Human reproductive material**” means a sperm, an ovum or another human cell or human gene, and includes a part of any of them.

The definitions of “embryo” and “human reproductive material” are the same as under the *Assisted Human Reproduction Act*.⁷⁶

“Intended parent(s)” is defined under the *FLA* but does **not** mean the two (or more) people who are going to raise a child conceived with ART. The definition of “intended parent” is restricted to the prospective parents of a child gestated by a surrogate. The definition provides:

“**Intended Parent**” or “**Intended Parents**” means a person who intends, or two persons who are married or in a marriage-like relationship who intend, to be a parent of a child and, for that purpose, the person makes or the two persons make an agreement with another person before the child is conceived that:

- (a) The other person or the two persons, will be the child’s parent or parents on the child’s birth, regardless of whether that person’s or those persons’ human reproductive material was used in the child’s conception.
- (2) A child born as a result of assisted reproduction is deemed to have been conceived on the day the human reproductive material or embryo was implanted in the birth mother.

In this paper we have used the term “prospective parent(s)” to refer to a person or a couple who intends to raise an ART-conceived child. “Prospective parent” includes an “intended parent” in a surrogacy situation, but also includes, for example, a birth mother (and her partner, if she has one); who will conceive and raise the child conceived with donated sperm the partner of a gay man who has a child by egg donation and surrogacy; both parents in a couple, one of whom is transgender and who use ART to conceive; and all of the people who are parties to a multi-parent agreement under the *FLA*. A prospective parent may be using ART because she or her partner is infertile; because he or she will be an autonomous parent; or because he or she is in a same sex couple or a couple in which one parent is transgender. Appendix B provides a list of prospective parents.

B. Legal Parentage Established for All Purposes

The core of Part 3 is s. 23, which provides that a determination of parentage under Part 3 of the *FLA* is a determination for the purposes of all of the laws of BC.

- 23(1) For all purposes of the law of British Columbia,
 - (a) A person is the child of his or her parents,
 - (b) A child’s parent is the person determined under this Part to be the child’s parent, and
 - (c) The relationship of parent and child and kindred relationships flowing from that relationship must be as determined under this Part.
- (2) For the purposes of an instrument or enactment that refers to a person, described in terms of his or her relationship to another person by birth, blood or marriage, the reference must be read as a reference to, and read to include, a person who comes within the description because of the relationship of parent and child as determined under this Part.

C. Determination of Parentage: Where Child is Conceived without ART

The *FLA* distinguishes between a child conceived without ART and a child conceived with ART.

Section 26(1) provides that parents of a child *not* conceived by way of ART are the birth mother and the biological father. Presumptions of paternity for a child born to a woman in a relationship with a man are set out in s. 26(2).⁷⁷ The s. 26(2) presumptions do not apply if more than one person can be presumed to be a child's biological father (s. 26(3)).⁷⁸

D. Adoptive Parents

Where children are adopted, their parents are established under the *Adoption Act*. Part 3 of the *FLA* does not apply.⁷⁹

E. Parentage where a Child is Conceived Using Assisted Reproduction

The *FLA* treats a child conceived by ART and born to a woman who will raise the child differently from a child conceived by ART and gestated by a surrogate who will not raise the child.⁸⁰

Examples of the former include:

- A woman intending to raise a child alone, who conceives with donated sperm.
- An opposite sex couple in which the man is infertile and the woman conceives with donated sperm, and the couple plan to raise the child.
- A lesbian couple, one of whom conceives with donated sperm, and both of whom plan to raise the child.

Section 27 applies if a child is conceived with sperm and/or egg donation and born to a birth mother who will raise the child.

But s. 27 only applies if there has been no sexual intercourse between a donor and a prospective mother. Regardless of whether the donor and the prospective mother have agreed that he will be only a donor of sperm and not a parent, if they have intercourse to conceive the child instead of using the turkey baster method, the child they conceive is no longer an ART-conceived child under s. 27, but instead falls under s. 26. That makes the donor/sex partner a parent.

Section 27 also confers parental status on the partner of the birth mother. The co-parent is a legal parent without the necessity for a declaration of parentage or an adoption. This is a significant and useful change from the pre-*FLA* regime. However, a prospective co-parent must have agreed to be a co-parent at the time that a child is conceived, and maintained that agreement till the child is born. This is a change: till now, a birth mother could determine who the co-parent would be as late as at the birth of her child.

A conjugal partner is deemed to be a co-parent unless s/he does not consent to be a parent, or withdraws consent before conception.

By s. 24, a donor of eggs, sperm or embryo is never a parent simply by virtue of the donation. The two exceptions are if the reproductive material is used for the conception of a child to be raised by the donor, or if the child is conceived by sexual intercourse.

⁷⁷ The presumption of paternity from the *FRA* in s. 95 have been replaced by s. 26(2) of the *FLA*.

⁷⁸ If parentage is an issue a party can apply to obtain a parentage test under s. 33, q.v.

⁷⁹ *FLA* s. 25.

⁸⁰ For treatment of children born with the use of a surrogate, see below.

F. Parentage if Assisted Reproduction after Death

If a person donates eggs or sperm for conception or for creation of an embryo for conception, and that person will raise the child, that person can provide that their reproductive material can be used even if they die. Section 28 provides that if the donor/prospective parent gives their written consent, the reproductive material can be used after death; and the deceased is one of the child's legal parents. An example would be where a couple has frozen embryos stored at a fertility clinic, and one of the prospective parents dies before a child is conceived.⁸¹

Section 28 will impact wills and estate law matters in BC which address inheritance rights for a child conceived after a parent's death. Children conceived posthumously will have same inheritance rights as other children of the deceased person.

The *Transition Guide* provides:

The resulting parental status will have implications for inheritance law in the interpretation of wills and under the *Wills Variation Act*, the intestacy provisions of the *Estate Administration Act* and *WESA*. The section does not apply to children conceived before death, whose parentage is covered by other sections of Part 3. Also, under s.8 of *WESA*, descendants and relatives conceived before death but born after and living at least 5 days inherit on intestacy as if they had been born in the lifetime of the testator.⁸²

In addition:

The *Assisted Human Reproduction Act* allows human reproductive material to be removed from a Donor's (as defined under that Act, being the individual from whose body it was obtained) body after death if the Donor gave written consent during life. It is questionable whether section 28(1)(b) would apply where the human reproductive material was not provided during life, although likely a court would apply a similar analysis.⁸³

G. Parentage if Surrogacy Arrangement

Section 29 of the *FLA* provides a statutory provision for determining parentage via surrogacy.

The most significant difference from the pre-*FLA* regime is that it is no longer necessary for the prospective parents (in this section called "intended parents") to get a declaration of parentage before they can be registered as a child's parent with the Vital Statistics Registry. Provided that all of the requirements of s. 29 are met, the prospective parents are the child's legal parents at birth.

The preconditions for the application of s. 29 are:

- That the parties (the prospective parent(s) and the surrogate) have a written agreement made before conception, which provides that:
 - the surrogate will not be a parent⁸⁴;
 - the surrogate will surrender the child to the intended parent(s) at birth; and
 - the intended parent(s) will be the child's parents.

81 Under *AHRA* written consent is required to use human reproductive material and embryos for the use of said materials prior to the death of the person's partner.

82 *Transition Guide*, at 3-51.

83 *Transition Guide*, at 3-51.

84 Unless the surrogate and the intended parent(s) make an "other arrangement" under s. 30 to include the surrogate as a parent.

- No one withdraws from the agreement before the child is born;
- The surrogate gives written consent after birth for the intended parents to be the child's parents⁸⁵; and
- The intended parents take the child at birth.⁸⁶

If a dispute arises after birth, the pre-conception agreement cannot serve as the post-birth consent required of the surrogate, but can be used as evidence of the parties' intention: s. 29(6).

Section 29(7) provides for the consequences of death of an intended parent before the birth of the child, outlining the requirements for the deceased to be listed as a parent of the child.

H. Section 30—Parentage if Other Arrangement

Section 30 is the first time that family law in BC has made it possible for a child to have more than two parents. That section governs arrangements between parties that entitle more than two people to be the parents of a child where ART is used to conceive the child. Provided that the requirements of s. 30 are met, the parties may be registered as a child's parents without the necessity of a declaration of parentage.

A condition precedent to there being more than two legal parents is a pre-conception agreement among all of the prospective parents.

The written agreement must provide that the potential birth mother will be the birth mother of the child; and on the child's birth, the parties to the agreement will be the parents of the child.

An agreement made under s. 30 is revoked if, before a child is conceived by way of ART, a party to the agreement either withdraws and/or dies: s. 30(3).

The agreements under s. 30 will be legally binding on courts in BC and in Canada.⁸⁷

It is an open question what the maximum number of parents may be. Section 30(1)b) contemplates an agreement between:

- (i) An intended parent or the intended parents and a potential birth mother, or
- (ii) The potential birth mother, a person who is married to or in a marriage-like relationship with the potential birth mother, and a donor who agrees to be a parent.

"Intended parent" is defined:

"Intended parent" or "intended parents" means a person who intends, or 2 persons who are married or in a marriage-like relationship who intend, to be a parent of a child and, [for that purpose make a surrogacy agreement].

So at the minimum, it appears that a s. 30(i) agreement can be made between a surrogate and intended parent(s). But that does not answer the question of numbers. There are two problems. "Intended parent" is defined in relation to s. 29; and if that definition is substituted where "intended parent" is included in s. 30, the s. 30 does not make sense.

85 Consent can be waived if, after birth, the surrogate dies or is unlocatable: s. 29(5).

86 *FLA* s. 29(1)-(3).

87 The agreements will be binding across Canada because BC has the constitutional power to determine parentage. Parties may want a declaration of parentage regardless of their ability to have a birth certificate naming more than two parents not because of uncertainty about their parental status in BC or Canada, but because of the potential difficulties they may face in other jurisdictions.

The second problem is that in s.29, “surrogate” is defined as the woman who carries the child, but s. 30 does not refer to a surrogate.

Nevertheless it appears that s. 30(1)(b)(i) contemplates a situation in which intended parents make an agreement with a surrogate to have a family that includes the intended parents and the surrogate as the parents of a child.

By virtue of the *Interpretation Act* a singular term includes plural terms and vice versa.⁸⁸ So there is no restriction on the number of “intended parents” who can co-parent with the surrogate.

Since 30(1)(b)(i) is written in terms of a relationship between a “potential birth mother” rather than between a “surrogate” and an intended parent or parents, on its face it seems that as long as the potential birth mother is part of the arrangement, there is no limit to the number of intended parents who may also become parents of the child.

While it might appear that the definition of intended parent is intended to be restricted to one person or a couple, we suggest the section is phrased that way to be clear that both individuals and couples are able to be intended parents. Had the intention been to exclude the application of the *Interpretation Act*, the definition would have said so.

Section 30(1)(b)(ii) contemplates an arrangement between a potential birth mother, her partner, and a donor who agrees to be a parent. In this subsection, it is clear that there can be at least four parents: the birth mother and her partner, an egg donor and a sperm donor.

It seems logically untenable that if two intended parents had a child using donated eggs and sperm, and an egg donor, they would have to choose between including the donors OR the birth mother as co-parents, or that a birth mother is not entitled to include her partner in the parenting arrangement unless donors are also going to be part of the arrangement; but that seems to be what the sections say.

As a practical matter, it is likely that the Vital Statistics Agency will establish a maximum number of “parents” that they consider to be eligible under these sections to be registered. If more parents than that request to be registered, the Vital Statistics Agency will probably refuse the registration and send the parties to get a declaration of parentage.

I. Orders Declaring Parentage

Section 31 provides the court the ability to make declarations of parentage in cases where there may be a “dispute or any uncertainty” regarding parental status of one or more parties. The declarations can be made in Supreme Court and in Provincial Court if the parties have an existing family law action and require a determination of parentage.

Section 31(2) lists all of the parties who must be served with an application under this section.

It remains to be seen whether the precondition of “uncertainty” in s. 30 will extend to situations where registered parents may want a declaration of parentage because of the uncertainty of the reception of their birth certificate in another jurisdiction.

There is no limitation period to request a declaration of parentage. Nor is there a limitation to applying before a child’s birth is registered. However, an application cannot be made if a child has been adopted: s. 31(5).

Section 31 requires a court to apply the parentage rules under Part 3 as far as possible: s. 31(3).

An order may be made even if the child or one of the parties to the application has died.

⁸⁸ *Interpretation Act*, R.S.B.C. 1996, c. 238, s. 28(3) provides: (3) In an enactment words in the singular include the plural, and words in the plural include the singular.

J. New Evidence

Under s. 32, a declaration of parentage may be varied if evidence not available at the time an application for a declaration of parentage was made becomes available, whether the original application for a declaration of parentage was granted or dismissed.

The section provides that a new declaration of parentage will not affect rights or duties already exercised, or property interests that have already been distributed.⁸⁹

K. Parentage Tests

Parentage test can be ordered by the court for a child or a person to provide samples of their tissue or blood or both to assist in identifying the “inheritable characteristics” that may reflect their biological connection to the child. Parentage tests may establish or refute any such genetic connections with the child.

An order for a parentage test can be granted by Supreme Court or Provincial Court: s. 33(2).

The court can order a party to pay all or a portion of the costs associated with obtaining such tests: s. 33(3).

Where a party does not adhere to an order to provide their genetic material to be tested, the court has the discretion to draw an inference based on a party not proceeding with a parentage test: s. 33(4).

Parentage tests will generally be relevant when children are not conceived by ART, since ART-conceived children will generally not be genetically connected to the child or, if they are, that connection will be known before the child is born.

L. Orders Made Outside of British Columbia

By a combination of ss. 34 and 35, a BC court must recognize any orders with respect to parentage of a child made by another Canadian jurisdiction, unless there is evidence which was not available at the time the extra-provincial order was made that the original order with respect to parentage was obtained by fraud or duress. Once a court has recognized an order from outside BC, that order has the same effect as if a declaration of parentage had been made under s. 31: s. 35(3).

I. Recognition of Non-Canadian Extraprovincial Declaratory

Where a child was born outside of Canada, and there is an order with respect to the child’s parentage, s. 36 requires a BC court to recognize that order, provided that at least one of the child’s parents was habitually resident in the jurisdiction where the child was born, or has a real and substantial connection to that jurisdiction.

M. Transition

By virtue of s. 22, Part 3 of the *FLA* does not apply retroactively to a disposition of property under an enactment or instrument before the date the *FLA* comes into force.

⁸⁹ Section 32(e).

X. Part Three: Looking Forward

The changes to the *FLA* have brought a welcome certainty to the law around children conceived by ART, but its provisions also create some foreseeable issues.

A. Improvements

Part 3 of the *FLA* has answered many of the questions raised by the jurisprudence.

That a “parent” under Part 3 is a “parent” for all the purposes of BC law is a sensible and economical development.

The status of a donor is now clear. Unless a donor of sperm is using the sperm for his own reproductive project (including a multi-parent project), the sperm donor is never a “parent.” An egg donor is also not a parent by reason of that donation.

This is a welcome clarification.

Similarly, the ability under the *FLA* to have a surrogacy agreement and register the child as the child of his or her “intended parents” without a court order is a helpful change.

The ability to create families with more than two parents is a sensible provision. Though it will be used by a minority of potential parents, it is parents in these circumstances who are among the most vulnerable to a challenge of their parental status.

The status of a co-parent whose partner conceives with ART has also been clarified. She or he will continue to be able to be registered as a parent of the child when the child is born; and, unlike the old regime, will not require a declaration of birth or an adoption in addition to registration of the birth. Because a “parent” is defined as someone who conforms to Part 3; and because “parents” are parents for the purposes of all laws of BC, they are “legal parents” when they are registered at the Vital Statistics Registry. A birth certificate, which formerly provided evidence but not proof of parentage, now shows who a child’s legal parents are.

B. Foreseeable Issues

Though the *FLA* regime with respect to the parentage of ART-conceived children was intended to provide straightforward answers to questions previously addressed piecemeal by the courts, the application of the new legislation will be anything but straightforward.

Some of the problems are these.

I. Vital Statistics Agency Becomes Gatekeeper of “Parentage”

As we discussed at the beginning of the paper, until passage of the *FLA* a child’s legal parent(s) (i.e., the person or two people from whom she could inherit), her registered parents (i.e., the parent or parents on her birth certificate) and her social parents (the people who raised her) could all be different. The concepts of legal, registered, and social parents overlapped; but they were not congruent.

With the passage of Part 3, a determination that an individual is a “parent” of a child means:

- That the person is entitled to be registered at the Vital Statistics Registry as a parent of the child; and
- The person is a parent for all legal purposes under BC law.⁹⁰

⁹⁰ It is beyond the scope of this paper to consider whether a person who is a ‘parent’ under BC law is also a ‘parent’ for all federal purposes.

There is a circularity. Because the individual who is a parent under Part 3 is a parent for the purposes of **all** laws of BC, the individual is a parent for the purposes of the *Vital Statistics Act*. As a practical matter, the Agency will receive applications and approve or reject them based on the requirements of their own legislation, which may at times conflict with a determination that an individual is a “parent.”

Any correction to its records that the Vital Statistics Agency makes formerly had the result only of changing the birth certificate of the child; now, a change is effectively a bureaucratic change in the determination of a child’s **legal** parentage.

2. Common Practice: Registering a Spouse as a Parent

Under Part 3, many factors determine whether an individual is a “parent,” and therefore entitled to be registered under the *Vital Statistics Act*.

Those factors include, for example, whether the parent had sex with a donor; whether there is a written agreement about a family with more than two parents; whether that agreement was made before conception; whether an individual’s partner has cohabited with a parent long enough to be a Part 3 parent; and so on. And on. The Vital Statistics Agency is in the process of developing its forms and registration procedures.

It is currently common practice for a couple who have used sperm donation or egg donation to register the “husband” as the child’s “father.” This practice is contemplated by the presumption of parentage provisions of the *FLA* (s. 26). But under the *FLA*, the Vital Statistics Agency will have to inquire about whether a child was conceived with ART or not, since there is a different result for the parentage of the child.⁹¹

The relatively simple application for registration of birth will now necessarily become much, much more complex for all parents.

91 A non-exhaustive list of things that can affect whether an individual is a ‘parent’ and therefore entitled to be registered under the *Vital Statistics Act* include the following:

- a. Was the child conceived through intercourse or through ART?
- b. If the child was conceived through ART,
 - i. What form of ART?
 - ii. What form of ART?
 1. Sperm donation
 - a. Known or unknown donor?
 - b. Who is/are the child’s intended parents?
 - c. If known donor, is the donor going to be a parent ?
 - d. Does intended parent have a partner?
 2. Egg donation or embryo donation
 - a. From whom is the donation?
 - b. Is donor also surrogate mother?
 - c. Is there an egg or embryo donor agreement?
 - d. If donor will not be the surrogate, who will carry the child?
- c. Does the birth mother have a partner?
- d. Has the birth mother agreed to carry the child for someone else?
- e. If the birth mother agreed to carry the child for someone else, did she make an agreement?
- f. If she made a surrogacy agreement, does it fulfill the requirements of a s. 29 surrogacy agreement?
- g. Has the surrogate relinquished/will she relinquish the child?
- h. If there is no agreement, or the agreement was not made according to the s 29 requirements, what is the parties’ intention with respect to who the legal parents of the child will be?

It is the opinion of the authors that if the Vital Statistics Agency makes a determination not to register the parents who request to be registered, it should routinely provide a written decision outlining in detail the reasons for its determination, including a statement directing the applicant to s. 31 of the *FLA* if they dispute the determination.

3. Sex and the System

Currently many individual or couples, including many lesbian, gay or trans individuals, who want to conceive with sperm or an egg from someone else, take the simple expedient of having sex with the donor.

But if they follow that route, they come not under the ART provisions of Part 3, but under the provisions relating to children NOT conceived with ART. That means, for example, that the birth parent cannot register a co-parent when a child is born.

It is completely inconsistent with past practice, and it defies logic, that a child's rights, and the rights of her prospective parents, depend on whether the man donating sperm donated it into a vial, or directly to the woman. But that is the situation.

It will be people conceiving informally—for example, a lesbian couple and a gay couple, where the four have decided that one of the men and one of the women will together make two babies, who are most affected by the distinction between conception by sexual intercourse and any other form of conception. But those are the people least likely to be aware of the requirements of the *FLA* in this regard; and those people do not, currently, seek legal advice in advance of conception. So suddenly a population will be unintentionally disintitiled from registering their co-parenthood when their child is born, simply because they didn't know to conceive with a turkey baster rather than through intercourse.

4. Primacy of the Birth Mother: Surrogacies without the Formalities

The *FLA* centres the determination of a child's legal parentage around her or his "birth mother." The birth mother—she who gave birth to the child—is the child's legal parent unless she is supplanted. She may be supplanted by a s. 29 agreement, without the need for a court order, or by a declaration of parentage or, later, by an adoption of the child.

Clearly the intent of this section is to obviate the current need for a declaration of parentage whenever a surrogate mother births a child.

But there are foreseeable problems:

Consider a child who is conceived by an informal surrogacy—the gay men/lesbian women cooperative example above. Section 29 permits the Vital Statistics Registry to register the intended parents as parents on the basis of their agreement only if that agreement was written in advance of conception: which most of the time won't happen in these situations. So who are the parents? Not the intended parents, who have no agreement. If the child was conceived by intercourse between one of the lesbians and one of the gay men, then they are the child's parents, because no ART was involved, regardless of anyone's intention.

If the child was not conceived through sexual intercourse, but through ART, then the surrogate is the child's mother, in default of an agreement. And the donor is not a father on the basis of being a sperm donor.

A declaration of parentage will be required.

It is odd that one's registrable legal parentage hinges on whether or not one was conceived through sexual intercourse or through sperm or egg donation.⁹²

5. How Many Parents?

We have discussed in Part Two the open question of how many legal parents a child can have.

6. Status of a Co-Parent

A birth mother used to be able to register her partner as her child's co-parent at the birth of her child. For that co-parent to be a child's legal parent, a declaration of parentage or an adoption was required.

But now, a birth mother can register her partner as the parent of an ART-conceived child only if her partner consented before the child was conceived, and has not withdrawn her or his consent by the time the child is conceived.

⁹² This is much more likely to happen with sperm donation, because egg donation involves IVF, which involves a fertility clinic, who will provide contracts.

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XII. Appendix A—Definition of Terms with Respect to Assisted Reproductive Technology

Egg donation	Harvesting a fertile egg from one woman, which is then inseminated using IVF and implanted into a gestational carrier
Intracytoplasmic sperm injection	A process used when the donor has poor sperm quality or a low sperm count, in which individual eggs are microscopically injected with individual sperm; the fertilized eggs are then implanted into the gestational carrier
Intrauterine Insemination (IUI)	Donated sperm is “washed” of seminal fluid and extraneous debris, and the remaining sperm is injected into the uterus.
In Vitro Fertilization (literally, “in glass”)	An egg and sperm are acquired, and inseminated outside the body, then implanted into the gestational carrier to grow. Extra embryos may be frozen for future use.
Ovulation induction and superovulation	Administration of prescription medication to improve a woman’s production of ova.
Sperm donation	The process of placing donated sperm (either fresh or frozen) into a woman’s uterus at the time of ovulation. Donated sperm used by clinics are quarantined for six months and tested to be sure they are free of diseases such as HIV and other transmissible conditions.
Surrogacy	Surrogacy is when an embryo is carried to term by a woman who will not be the child’s prospective parent. The egg may either be produced by the surrogate, in which case donor insemination of sperm is used, or eggs from one of the partners, in which case IVF is used.

Appendix B Making Parents

1

Prospective Parent A ¹	Prospective Parent B	Egg Source	Sperm Source	Birth mother ²	Situation	FLA section(s)	Who is Legal 'Mother' at birth	Who is legal Coparent at birth, if any	Vital statistics process
Single parent									
Prospective single mother A	None	Prospective mother A	Sexual intercourse	Birth mother	Woman planning to raise child alone gets pregnant by sexual intercourse	s. 26 makes the man a "parent" regardless of woman's intention to parent alone	Prospective mother.	Sexual partner	Prospective mother registers without acknowledging sexual partner; sexual partner may later apply for registration
Prospective single mother A	None	Prospective mother A	Known sperm Donor	Prospective mother	Single woman has child with known donor.	s. 24 : donor is not a parent s. 27(2) birth mother is parent	Prospective mother	n/a; donor is not 'parent' by s. 24	Prospective mother registers
Prospective single mother A			Unknown sperm donor	Prospective mother	Single woman; unknown sperm donor	s. 24 donor is not a parent s. 27(2) birth mother is parent	Prospective mother	n/a	Prospective mother registers
Prospective single mother A	None	Prospective mother A	Known Sperm Donor	Surrogate	Single woman, known sperm donor, IVF, surrogate carries child	Definition "birth mother"; s. 29 if pre-conception surrogacy agreement; s. 24 re sperm donor; s. 31 declaration of parentage if no pre-conception agreement or if surrogate refuses to relinquish	Surrogate, subject to pre-conception surrogacy agreement making prospective mother the mother	n/a; donor is not 'parent' by s. 24	Prospective mother and surrogate file consent to registration of prospective mother as child's only parent; if no pre-conception agreement, dec parentage required

¹ The term 'prospective parent' means the person who is planning to raise the child that is born. In a surrogacy situation, this is an 'intended parent' ; but that term is defined to be restricted to surrogacy situations.

² Birth mother means the person from whose body the child is born. By definition that person is the child's "mother" for the purpose of the Family Law Act, unless changed under the surrogacy provisions.

Making Parents

Appendix B

	Prospective Parent A ¹	Prospective Parent B	Egg Source	Sperm Source	Birth mother ²	Situation	FLA section(s)	Who is Legal 'Mother' at birth	Who is legal Coparent at birth, if any	Vital statistics process
5	Prospective single mother A	None	Prospective mother A	Unknown sperm donor	Surrogate	Single woman, unknown sperm donor, IVF, surrogate carries child	Definition "birth mother"; s. 29 if pre-conception surrogacy agreement; s. 24 re sperm donor; s. 31 declaration of parentage if no pre-conception agreement or if surrogate refuses to relinquish	Surrogate, subject to pre-conception surrogacy agreement making prospective mother the mother	Na/ bec sperm donor is unknown and is not a parent: s 24	Prospective mother and surrogate file consent to registration of prospective mother as child's only parent; if no pre-conception agreement, dec parentage required
6	Prospective single mother A	None	Prospective mother	Known Sperm Donor	Surrogate	Single mother; surrogate inseminated with sperm from known donor; egg from prospective mother	Definition "birth mother"; s. 29 if pre-conception surrogacy agreement; s. 24 re sperm and egg donor; s. 31 declaration of parentage if no pre-conception agreement or if surrogate refuses to relinquish	Surrogate, subject to pre-conception surrogacy agreement making prospective mother the mother	n/a bec sperm donor is not a parent s. 24	Prospective mother and surrogate file consent to registration of prospective mother as child's only parent. If there is no pre-conception agreement, birth mother is reg. pending ct order
7	Prospective single mother A		Surrogate	Unknown sperm donor	surrogate	Single mother; surrogate inseminated with sperm from unknown sperm donor; egg from surrogate	Definition "birth mother"; s. 29 if pre-conception surrogacy agreement; s. 24 re sperm and egg donor; declaration of parentage if no pre-conception agreement or if surrogate refuses to relinquish	Surrogate, subject to pre-conception surrogacy agreement making prospective mother the mother	n/a bec sperm donor is unknown; and is not a parent	Prospective mother and surrogate file consent to registration of prospective mother as child's only parent. If there is no pre-conception agreement, birth mother is reg. pending ct order

Appendix B Making Parents

	Prospective Parent A ¹	Prospective Parent B	Egg Source	Sperm Source	Birth mother ²	Situation	FLA section(s)	Who is Legal 'Mother' at birth	Who is legal Coparent at birth, if any	Vital statistics process
8	Prospective single mother A	None	Known Egg donor	Known Sperm donor	surrogate	Single mother, eggs from known donor other than surrogate, sperm from known donor, IVF,	Definition "birth mother"; s. 29 if pre-conception surrogacy agreement; s. 24 re sperm and egg donor; s. 31 declaration of parentage if no pre-conception agreement or if surrogate refuses to relinquish	Surrogate, subject to pre-conception surrogacy agreement making prospective mother the mother	n/a bec donor is not a parent s. 24	Prospective mother and surrogate file consent to registration of prospective mother as child's only parent. If there is no pre-conception agreement, birth mother is reg. pending ct order
9	Prospective single mother A	none	Known egg donor	Unknown sperm donor	Surrogate	Single mother, eggs from known donor other than surrogate, sperm from unknown donor, IVF,	Definition "birth mother"; s. 29 if pre-conception surrogacy agreement; s. 24 re sperm and egg donor; s. 31 declaration of parentage if no pre-conception agreement or if surrogate refuses to relinquish	Surrogate, subject to pre-conception surrogacy agreement making prospective mother the mother	n/a bec donor is not a parent s. 24	Prospective mother and surrogate file consent to registration of prospective mother as child's only parent. If there is no pre-conception agreement, birth mother is reg. pending ct order
10	Prospective single mother A	None	Unknown egg donor	Known sperm donor	Surrogate	Procedure not available through BC clinic	n/a	n/a	n/a	n/a
11	Prospective single mother A	none	Unknown egg donor	Unknown sperm donor	surrogate	Procedure not available through BC clinic	n/a	n/a	n/a	n/a

Making Parents

Appendix B

	Prospective Parent A ¹	Prospective Parent B	Egg Source	Sperm Source	Birth mother ²	Situation	FLA section(s)	Who is Legal 'Mother' at birth	Who is legal Coparent at birth, if any	Vital statistics process
12	Prospective single mother A	None	Known Egg donor	Known sperm donor	Prospective mother	Infertile single mother; IVF with donated eggs and sperm from known donor; prospective mother carries child	s. 24 – donors are not 'parents' UNLESS sperm comes from her husband/partner. 27(2) birth mother is parent	Prospective mother (definition of "birth mother" and 27(2))	n/a bec donor is not a parent s. 24	Prospective mother is birth mother and registered as legal parent
13	Prospective single mother A	none	Known egg donor	Unknown sperm donor	Prospective mother	Infertile single mom; IVF with donated eggs from known donor; donated sperm from unknown donor	s. 24 – donors are not 'parents' 27(2) birth mother is parent	Prospective mother (definition of "birth mother" and 27(2))	n/a bec donor is not a parent s. 24	Prospective mother is birth mother and registered as legal parent
14	Prospective single mother A	None	Unknown Egg donor	Known sperm donor	Prospective mother	Procedure not available through BC clinic	n/a	n/a	n/a	n/a
15	Prospective single mother A		Unknown egg donor	Unknown sperm donor	Prospective mother	Procedure not available through BC clinic	n/a	n/a	n/a	n/a
16	Prospective single father	None	Known Egg donor	Prospective father	Surrogate	Single father has child with his sperm, egg from a woman not the surrogate, and gestation by surrogate	(s. 29 re: surrogacy regime; s. 31 re declaration of parentage Prospective father is not a "donor" and can be a parent bec using sperm for his own reproductive purpose: definition of 'donor')	Surrogate, subject to preconception surrogacy agreement making prospective father the child's only parent. If no preconception agreement, or if surrogate refuses to relinquish, declaration of parentage	n/a	Prospective father and surrogate file consent to registration of prospective father as child's only parent. If there is no preconception agreement, birth mother is reg. pending ct order. Decl parentage

Making Parents									
Prospective Parent A ¹	Prospective Parent B	Egg Source	Sperm Source	Birth mother ²	Situation	FLA section(s)	Who is Legal 'Mother' at birth	Who is legal Coparent at birth, if any	Vital statistics process
17	Prospective single father	None	Prospective father	surrogate	Single father has child with his sperm, egg from an unknown donor, and gestation by a surrogate. Not available in B.C.	n/a	n/a	n/a	n/a
18	Prospective single father	None	Known Sperm donor	Surrogate	Single father has child with sperm from a known sperm donor, egg from surrogate, gestation by a surrogate	s. 29 re: surrogacy regime; s. 31 re declaration of parentage s. 24: donor not a parent	Surrogate, subject to preconception surrogacy agreement making prospective father the child's only parent. If no pre-conception agreement, or if surrogate refuses to relinquish, declaration of parentage	n/a bec donor is not a parent s. 24	Prospective father and surrogate file consent to registration of prospective father as child's only parent. If there is no pre-conception agreement, birth mother is reg. pending ct order. Decl parentage
19	Prospective single father	None	Unknown sperm donor	surrogate	Single father has child with egg from surrogate, sperm from unknown donor, and gestation by surrogate	(s. 29 re: surrogacy regime; s. 31 re declaration of parentage s. 24: donor not a parent	Surrogate, subject to preconception surrogacy agreement making prospective father the child's only parent. If no pre-conception agreement, or if surrogate refuses to relinquish, declaration of parentage	n/a bec donor is not a parent s. 24	Prospective father and surrogate file consent to registration of prospective father as child's only parent. If there is no pre-conception agreement, birth mother is reg. pending ct order. Decl parentage

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Appendix B

	Prospective Parent A ¹	Prospective Parent B	Egg Source	Sperm Source	Birth mother ²	Situation	FLA section(s)	Who is Legal 'Mother' at birth	Who is legal Coparent at birth, if any	Vital statistics process
20	Prospective single father	None	Known Egg donor	Known Sperm donor	Surrogate	Single father has child with egg from egg donor, sperm f	s. 29 re: surrogacy regime; s. 31 re declaration of parentage s. 24: donor not a parent	Surrogate, subject to preconception surrogacy agreement making prospective father the child's only parent. If no preconception agreement, or if surrogate refuses to relinquish, declaration of parentage	n/a bec donor is not a parent s. 24	Prospective father and surrogate file consent to registration of prospective father as child's only parent. If there is no preconception agreement, birth mother is reg. pending ct order. Decl parentage
21	Prospective single father	None	Known Egg donor	Unknown sperm donor	surrogate	Single father has child with egg from known donor, sperm from unknown donor, gestation by surrogate	s. 29 re: surrogacy regime; s. 24: donor not a parent s. 31 re declaration of parentage	Surrogate, subject to preconception surrogacy agreement making prospective father the child's only parent. If no preconception agreement, or if surrogate refuses to relinquish, declaration of parentage	n/a bec donor is not a parent s. 24	Prospective father and surrogate file consent to registration of prospective father as child's only parent. If there is no preconception agreement, birth mother is reg. pending ct order. Decl parentage
22	Prospective single father	None	Unknown egg donor	Known sperm donor	Surrogate	Single father has child with egg from unknown donor, sperm from known donor, gestation by surrogate	s. 29 re: surrogacy regime; s. 31 re declaration of parentage s. 24: donor not a parent	Surrogate, subject to preconception surrogacy agreement making prospective father the child's only parent. If no preconception agreement, or if surrogate refuses to relinquish, declaration of parentage	n/a bec donor is not a parent s. 24	Prospective father and surrogate file consent to registration of prospective father as child's only parent. If there is no preconception agreement, birth mother is reg. pending ct order. Decl parentage

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Prospective Parent A ¹	Prospective Parent B	Egg Source	Sperm Source	Birth mother ²	Situation	FLA section(s)	Who is Legal 'Mother' at birth	Who is legal Coparent at birth, if any	Vital statistics process
26	Prospective mother?	Prospective mother	Unknown sperm donor	Surrogate	Cisgender opposite-sex couple; male infertility ; IVF with eggs from mother; surrogate carries child.	s.24 donor is not a parent Definition of 'birth mother' S 29 regime re surrogacy s. 31 re declaration of parentage if required	Surrogate, subject to preconception surrogacy agreement making prospective father the child's only parent. If no preconception agreement, or if surrogate refuses to relinquish, declaration of parentage	Prospective father if named in surrogacy agreement	Prospective father and mother surrogate file consent to registration of prospective father as child's only parent. If there is no preconception agreement, birth mother is reg. pending ct order. Decl parentage
27	Prospective mother	Surrogate	Prospective father	Surrogate	Cisgender opposite-sex couple; female infertility ; IVF with eggs from surrogate, surrogate carries child	s.24 donor is a parent bec sperm is used for his own reproductive project Definition of 'birth mother' 27(2) surrogate is birth mother unless there is an agreement re 29 regime re surrogacy s. 31 if declaration of parentage is required	Surrogate, subject to preconception surrogacy agreement making prospective father the child's only parent. If no preconception agreement, or if surrogate refuses to relinquish, declaration of parentage	Prospective father if named in surrogacy agreement OR presumption of parentage	Prospective father and mother surrogate file consent to registration of prospective father as child's only parent. If there is no preconception agreement, birth mother is reg. pending ct order. Decl parentage
28	Prospective mother	Known Egg donor*	Prospective father	Surrogate	Cisgender opposite-sex couple; female infertility ; IVF with eggs from egg donor; sperm from prospective father	s.24 donor is not a parent Definition of 'birth mother' 29 regime re surrogacy s. 31 re declaration of parentage	Surrogate, subject to preconception surrogacy agreement making prospective father the child's only parent. If no preconception agreement, or if surrogate refuses to relinquish, declaration of parentage	Prospective father if named in surrogacy agreement	Prospective father and mother surrogate file consent to registration of prospective father as child's only parent. If there is no preconception agreement, birth mother is reg. pending ct order. Decl parentage

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	Prospective Parent A ¹	Prospective Parent B	Egg Source	Sperm Source	Birth mother ²	Situation	FLA section(s)	Who is Legal 'Mother' at birth	Who is legal Coparent at birth, if any	Vital statistics process
29	Prospective mother ?	Prospective father ?	Unknown Egg donor	Prospective father	Surrogate	Cisgender opposite-sex couple; female infertility ; IVF with eggs from egg donor; sperm from prospective father	s.24 donor is not a parent Definition of 'birth mother' 29 regime re surrogacy s. 31 re declaration of parentage	Surrogate, subject to preconception surrogacy agreement making prospective father the child's only parent. If no preconception agreement, or if surrogate refuses to relinquish, declaration of parentage	Prospective father if named in surrogacy agreement	Prospective father and mother & surrogate file consent to registration of prospective father as child's only parent. If there is no preconception agreement, birth mother is reg. pending ct order. Decl parentage
30	Prospective mother	Prospective father	Known Egg donor*	Prospective father	Prospective mother	Cisgender opposite-sex couple; female infertility ; IVF with eggs from egg donor, sperm from prospective father, carried by prospective mother	s. 24 donor is not a parent; Definition of 'birth mother' s. 27 prospective mother and her partner parents.	Prospective mother	Prospective father :	Prospective mother and father registered as legal parents.

	Prospective Parent A ¹	Prospective Parent B	Egg Source	Sperm Source	Birth mother ²	Situation	FLA section(s)	Who is Legal 'Mother' at birth	Who is legal Coparent at birth, if any	Vital statistics process
31	Prospective mother	Prospective father	unknown Egg donor	Prospective father	Prospective mother	Cisgender opposite-sex couple; female infertility ; IVF with eggs from egg donor, sperm from prospective father, carried by prospective mother <i>procedure not available in BC</i>	n/a	n/a	:n/a	Prospective mother and father registered as legal parents
32	Prospective mother	Prospective father	Prospective mother	Known sperm donor*	Surrogate	Prospective Mother can produce/ has frozen eggs but cannot carry child; prospective father cannot produce sperm; IVF w/ eggs from prospective mother, sperm from known donor; surrogate carries	S 24 donor is not a parent Definition of 'birth mother' 29 re: surrogacy agreement; s. 31 if declaration of parentage is required	Surrogate, subject to preconception surrogacy agreement making prospective father the child's only parent. If no preconception agreement, or if surrogate refuses to relinquish, declaration of parentage	Prospective father per surrogacy agreement	Prospective mother and father consent to registration of prospective father as child's only parent. If there is no preconception agreement, birth mother is reg. pending ct order. Decl parentage

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	Prospective Parent A ¹	Prospective Parent B	Egg Source	Sperm Source	Birth mother ²	Situation	FLA section(s)	Who is Legal 'Mother' at birth	Who is legal Coparent at birth, if any	Vital statistics process
33	Prospective mother	Prospective father	Prospective mother	Unknown sperm donor	Surrogate	Prospective Mother can produce/ has frozen eggs but cannot carry child; prospective father cannot produce sperm; IVF w/ eggs from prospective mother, sperm from known donor; surrogate carries	S 24 donor is not a parent 29 re: surrogacy regimes. s. 31 if declaration of parentage is required	Surrogate, subject to preconception surrogacy agreement making prospective father the child's only parent. If no preconception agreement, or if surrogate refuses to relinquish, declaration of parentage	Prospective parents per surrogacy agreement	With preconception surrogacy agreement and post-birth surrogate's consent, prospective parents can register as parents
34	Prospective mother	Prospective father	Known egg donor	Known sperm donor*	Surrogate	Infertility of both prospective parents; IVF; surrogate	S 24 donor is not a parent Definition of 'birth mother' 29 re surrogacy regime\ S 31 if declaration of parentage is required	Surrogate, subject to preconception surrogacy agreement making prospective father the child's only parent. If no preconception agreement, or if surrogate refuses to relinquish, declaration of parentage	Prospective parents per surrogacy agreement	With preconception surrogacy agreement and post-birth surrogate's consent, prospective parents can register as parents

	Prospective Parent A ¹	Prospective Parent B	Egg Source	Sperm Source	Birth mother ²	Situation	FLA section(s)	Who is Legal 'Mother' at birth	Who is legal Coparent at birth, if any	Vital statistics process
35	Prospective mother	Prospective father	Known egg donor	Unknown sperm donor	Surrogate	Infertility of both prospective parents; known egg donor; unknown sperm donor IVF; surrogate	S 24 donor is not a parent Definition of 'birth mother' 29 for surrogacy regime; s. 31 if declaration of parentage required	Surrogate, subject to preconception surrogacy agreement making prospective father the child's only parent. If no preconception agreement, or if surrogate refuses to relinquish, declaration of parentage	Prospective parents per surrogacy agreement	Prospective father and mother surrogate file consent to registration of prospective father as child's only parent. If there is no preconception agreement, birth mother is reg. pending ct order. Decl parentage
36	Prospective mother	Prospective Father	Unknown egg donor	Known sperm donor*	Surrogate	Infertility of both prospective parents; unknown egg donor; known sperm donor; IVF; surrogate <i>Not available in BC</i>	n/a	n/a	n/a	n/a
37	Prospective mother	Prospective Father	Unknown egg donor	Unknown sperm donor	surrogate	Infertility of both prospective parents; unknown egg donor; unknown sperm donor; IVF; surrogate <i>Not available in BC</i>	n/a	n/a	n/a	n/a

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Prospective Parent A ¹	Prospective Parent B	Egg Source	Sperm Source	Birth mother ²	Situation	FLA section(s)	Who is Legal 'Mother' at birth	Who is legal Coparent at birth, if any	Vital statistics process	
38	Prospective mother	Prospective father	Surrogate	Known sperm donor*	Surrogate	Infertility of both prospective parents; known sperm donor; IVF; surrogate	S 24 donor is not a parent 29 (3) re surrogacy agreement; s. 31 if declaration of parentage was required	Surrogate, subject to preconception surrogacy agreement making prospective father the child's only parent. If no preconception agreement, or if surrogate refuses to relinquish, declaration of parentage	Prospective father and mother surrogate consent to registration of prospective father as child's only parent. If there is no preconception agreement, birth mother is reg. pending ct order. Decl parentage	
39	Prospective mother	Prospective father	Surrogate	Unknown sperm donor	Surrogate	Infertility of both prospective parents; unknown sperm donor; IVF; surrogate	S 24 donor is not a parent 29 re surrogacy contract; s. 31 if definition of parentage required	Surrogate, subject to preconception surrogacy agreement making prospective father the child's only parent. If no preconception agreement, or if surrogate refuses to relinquish, declaration of parentage	Prospective father and mother surrogate consent to registration of prospective father as child's only parent. If there is no preconception agreement, birth mother is reg. pending ct order. Decl parentage	
Lesbian couple										
40	Prospective mother A	Prospective mother B	Prospective mother A	Known sperm donor*	Prospective mother A	Lesbian couple has a child together. Prospective mother A uses sperm from known donor to inseminate with her eggs; and carries child	s. 24 donor is not a parent; Definition of birth mother and s. 27(2) re birth mother is a parent of the child; 27(3): partner married to/ in relationship with birth mother is parent unless partner did not consent to conception	Prospective mother A	Prospective mother B	Mothers A and B both parents registered as legal parents.

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	Prospective Parent A ¹	Prospective Parent B	Egg Source	Sperm Source	Birth mother ²	Situation	FLA section(s)	Who is Legal 'Mother' at birth	Who is legal Coparent at birth, if any	Vital statistics process
41	Prospective mother A	Prospective mother B	Prospective mother A	Unknown sperm donor	Prospective mother A	Lesbian couple has a child together. Prospective mother A uses sperm from unknown donor to inseminate with her eggs; and carries child	s.24 donor is not a parent; definition of birth mother and s. 27(2) re birth mother is a parent of the child; 27(3) partner married to/in relationship with birth mother is parent unless partner did not consent to conception	Prospective mother A	Prospective mother B	Mothers A and B both parents registered as legal parents.
42	Prospective mother A	Prospective mother B	Prospective mother B	Known sperm donor*	Prospective mother A	Lesbian couple inseminates: B's eggs are fertilized with sperm from known donor and implanted into A who carries child.	s.24 donor is not a parent; definition of birth mother and s. 27(2) re birth mother is a parent of the child; 27(3) partner married to/in relationship with birth mother is parent unless partner did not consent to conception	Prospective mother A	Prospective mother B	Mothers A and B both parents registered as legal parents.
43	Prospective mother A	Prospective mother B	Prospective mother B	Unknown sperm donor	Prospective mother A	Lesbian couple inseminates: B's eggs are fertilized with sperm from unknown donor and implanted into A who carries child.	s.24 donor is not a parent; definition of birth mother and s. 27(2) re birth mother is a parent of the child; 27(3) partner married to/in relationship with birth mother is parent unless partner did not consent to conception	Prospective mother A	Prospective mother B	Mothers A and B both parents registered as legal parents.

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	Prospective Parent A ¹	Prospective Parent B	Egg Source	Sperm Source	Birth mother ²	Situation	FLA section(s)	Who is Legal 'Mother' at birth	Who is legal Coparent at birth, if any	Vital statistics process
44	Prospective mother A	Prospective mother B	Prospective mother B	Known sperm donor*	Prospective mother B	Lesbian couple inseminates; prospective mother B inseminates with sperm from known donor and carries child	s.24 donor is not a parent; definition of birth mother and s. 27(2) re birth mother is a parent of the child; 27(3) partner married to/in relationship with birth mother is parent unless partner did not consent to conception	Prospective mother B	Prospective mother A	Mothers A and B both parents registered as legal parents.
45	Prospective mother A	Prospective mother B	Prospective mother B	Unknown sperm donor	Prospective mother B	Lesbian couple inseminates; prospective mother B inseminates with sperm from unknown donor and carries child	s.24 donor is not a parent; definition of birth mother and s. 27(2) re birth mother is a parent of the child; 27(3) partner married to/in relationship with birth mother is parent unless partner did not consent to conception	Prospective mother B	Prospective mother A	Mothers A and B both parents registered as legal parents.
46	Prospective mother A	Prospective mother B	Prospective mother A	Known sperm donor*	Prospective mother B	Lesbian couple inseminates; IVF embryo from eggs from prospective mother A and sperm from known donor; embryo is implanted in prospective mother B who carries child	s.24 donor is not a parent; definition of birth mother and s. 27(2) re birth mother is a parent of the child; 27(3) partner married to/in relationship with birth mother is parent unless partner did not consent to conception	Prospective mother B	Prospective mother A	Mothers A and B both parents registered as legal parents.

	Prospective Parent A ¹	Prospective Parent B	Egg Source	Sperm Source	Birth mother ²	Situation	FLA section(s)	Who is Legal 'Mother' at birth	Who is legal Coparent at birth, if any	Vital statistics process
47	Prospective mother A	Prospective mother B	Prospective mother A	Unknown sperm donor	Prospective mother B	Lesbian couple inseminates; IVF embryo from eggs from prospective mother A and sperm from unknown donor; embryo is implanted in prospective mother B who carries child	s.24 donor is not a parent; definition of birth mother and s. 27(2) re birth mother is a parent of the child; 27(3) partner married to/in relationship with birth mother is parent unless partner did not consent to conception	Prospective mother B	Prospective mother A	Mothers A and B both parents registered as legal parents.
48	Prospective mother A	Prospective mother B	Known egg donor*	Known sperm donor*	Surrogate	Infertile Lesbian couple choose to have a child through surrogacy: known egg donor, known sperm donor; surrogate	s.24 donor is not a parent; definition of birth mother s. 29 sets out surrogacy regime	Surrogate, subject to preconception surrogacy agreement making prospective parents the child's parents if no pre-conception agreement, or if surrogate refuses to relinquish, declaration of parentage	Prospective mothers A and B	Prospective mothers and surrogate file consent to registration of prospective mothers as child's only parents. If there is no pre-conception agreement, birth mother is reg. pending ct order. Decl parentage

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Prospective Parent A ¹	Prospective Parent B	Egg Source	Sperm Source	Birth mother ²	Situation	FLA section(s)	Who is Legal 'Mother' at birth	Who is legal Coparent at birth, if any	Vital statistics process	
49	Prospective mother A	Prospective mother B	Known egg donor*	Unknown sperm donor	surrogate	Infertile Lesbian couple; known egg donor, known sperm donor; IVF; surrogate	s.24 donor is not a parent; definition of birth mother s. 29 re surrogacy regime	Surrogate, subject to preconception surrogacy agreement making mothers the parents. If no pre-conception agreement, or if surrogate refuses to relinquish, declaration of parentage	Prospective mothers A and B	Prospective mothers and surrogate file consent to registration of mothers as child's only parents. If there is no pre-conception agreement, birth mother is reg. pending ct order. Decl parentage
50	Prospective mother A	Prospective mother B	Unknown egg donor	Known sperm donor*	Surrogate	Infertile lesbian couple unknown egg donor, known sperm donor; IVF; surrogate <i>Not available in BC</i>	n/a	n/a	n/a	
51	Prospective mother A	Prospective mother B	Unknown egg donor	Unknown sperm donor	surrogate	Infertile lesbian couple unknown egg donor, unknown sperm donor; IVF; Surrogate <i>Not available in BC</i>	n/a	n/a	n/a	

	Prospective Parent A ¹	Prospective Parent B	Egg Source	Sperm Source	Birth mother ²	Situation	FLA section(s)	Who is Legal 'Mother' at birth	Who is legal Coparent at birth, if any	Vital statistics process
52	Prospective mother A	Prospective mother B	Surrogate	Known sperm donor*	Surrogate	Infertile lesbian couple; Surrogate is egg donor; known sperm donor; Surrogate	s.24 donor is not a parent; definition of birth mother s. 29 re surrogacy regime	Surrogate, subject to preconception surrogacy agreement making prospective mothers the child's only parents. If no pre-conception agreement, or if surrogate refuses to relinquish, declaration of parentage	Prospective mothers A and B	Prospective mothers and surrogate file consent to registration of prospective mothers as child's only parents. If there is no pre-conception agreement, birth mother is reg. pending ct order. Decl parentage
53	Prospective mother A	Prospective mother B	Surrogate	Unknown sperm donor	surrogate	Infertile lesbian couple; Surrogate is egg donor; unknown sperm donor; Surrogate	s.24 donor is not a parent; definition of birth mother s. 29 re surrogacy regime	Surrogate, subject to preconception surrogacy agreement making prospective mothers the child's only parent. If no pre-conception agreement, or if surrogate refuses to relinquish, declaration of parentage	Prospective mothers A and B	Prospective mothers and surrogate file consent to registration of prospective mothers as child's only parents. If there is no pre-conception agreement, birth mother is reg. pending ct order. Decl parentage

	Prospective Parent A ¹	Prospective Parent B	Egg Source	Sperm Source	Birth mother ²	Situation	FLA section(s)	Who is Legal 'Mother' at birth	Who is legal Coparent at birth, if any	Vital statistics process
54	Prospective father A	Prospective father B	Known egg donor*	Prospective father A	surrogate	Two gay dads want a child. Surrogate gestates with egg from donor, sperm from a prospective father	s. 24 donor is not a parent s. 29 re surrogacy agreement s 31 if declaration of parentage required	Surrogate, subject to preconception surrogacy agreement making prospective fathers the child's only parents. If no pre-conception agreement, or if surrogate refuses to relinquish, declaration of parentage	Prospective fathers A and B	Prospective fathers and surrogate file consent to registration of prospective fathers as child's only parents. If there is no pre-conception agreement birth mother is registered and dec parentage required.
55	Prospective father A	Prospective father B	Known egg donor*	Prospective father b	surrogate	Two gay prospective fathers, known egg donor; father B is sperm donor gestation by surrogate	s. 24 egg donor is not a parent s. 29 re surrogacy agreement s 31 if declaration of parentage required	Surrogate, subject to preconception surrogacy agreement making prospective fathers the child's only parents. If no pre-conception agreement, or if surrogate refuses to relinquish, declaration of parentage	Prospective fathers A and B	Prospective fathers and surrogate file consent to registration of prospective fathers as child's only parents. If there is no pre-conception agreement birth mother is registered and dec parentage required.

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	Prospective Parent A ¹	Prospective Parent B	Egg Source	Sperm Source	Birth mother ²	Situation	FLA section(s)	Who is Legal 'Mother' at birth	Who is legal Coparent at birth, if any	Vital statistics process
56	Prospective father A	Prospective father B	Known egg donor*	Known donor	surrogate	To gay dads: known egg donor, known sperm donor, surrogate	s. 24 egg and sperm donor are not a parent s. 29 re surrogacy agreement s 31 if declaration of parentage required	Surrogate, subject to preconception surrogacy agreement making prospective fathers the child's only parents. If no pre-conception agreement, or if surrogate refuses to relinquish, declaration of parentage	Prospective fathers A and B	Prospective fathers and surrogate file consent to registration of prospective fathers as child's only parents. If there is no pre-conception agreement birth mother is registered and dec parentage required.
57	Prospective father A	Prospective father B	Known egg donor*	Unknown donor	surrogate	To gay dads: known egg donor, unknown sperm donor, surrogate	s. 24 egg donor is not a parent s. 29 re surrogacy agreement s 31 if declaration of parentage required	Surrogate, subject to preconception surrogacy agreement making prospective fathers the child's only parents. If no pre-conception agreement, or if surrogate refuses to relinquish, declaration of parentage	Prospective fathers A and B	Prospective fathers and surrogate file consent to registration of prospective fathers as child's only parents. If there is no pre-conception agreement birth mother is registered and dec parentage required.
58	Prospective father A	Prospective father B	Unknown egg donor	Prospective father A	surrogate	Unavailable in B.C.	n/a	n/a	n/a	n/a
59	Prospective father A	Prospective father B	Unknown egg donor	Prospective father B	surrogate	Unavailable in B.C.	n/a	n/a	n/a	n/a
60	Prospective father A	Prospective father B	Unknown egg donor	Known donor	surrogate	Unavailable in B.C.	n/a	n/a	n/a	n/a
61	Prospective father A	Prospective father B	Unknown egg donor	Unknown donor	surrogate	Unavailable in B.C.	n/a	n/a	n/a	n/a

	Prospective Parent A ¹	Prospective Parent B	Egg Source	Sperm Source	Birth mother ²	Situation	FLA section(s)	Who is Legal 'Mother' at birth	Who is legal Coparent at birth, if any	Vital statistics process
	Trans parent(s)									
62	Mtf prospective mother A	Prospective mother B	Prospective mother B	Mtf prospective mother A (frozen sperm)	Surrogate	Lesbian couple; egg from prospective mother B; sperm frozen pre-transition from Mtf prospective mother A	s.24 donor is a parent; bec sperm used for own reproductive project s. 29 re surrogacy regime; s. 31 if declaration of parentage required	Surrogate, subject to preconception surrogacy agreement making prospective father the child's only parent. If no pre-conception agreement, or if surrogate refuses to relinquish, declaration of parentage	Donor of sperm	Prospective mothers and surrogate file consent to registration of prospective father as child's only parent. If there is no pre-conception agreement, birth mother is reg. pending ct order. Decl parentage
63	MtF prospective mother A	Prospective mother B	Prospective mother B	Known sperm donor*	Surrogate	Lesbian couple; Eggs from prospective mother B; sperm from known donor; surrogacy	s.24 donor is not a parent; s. 29 re surrogacy regime; s. 31 if declaration of parentage required	Surrogate, subject to preconception surrogacy agreement making prospective father the child's only parent. If no pre-conception agreement, or if surrogate refuses to relinquish, declaration of parentage	Prospective mothers A and B	Prospective mothers and surrogate file consent to registration of prospective father as child's only parent. If there is no pre-conception agreement, birth mother is reg. pending ct order. Decl parentage

	Prospective Parent A ¹	Prospective Parent B	Egg Source	Sperm Source	Birth mother ²	Situation	FLA section(s)	Who is Legal 'Mother' at birth	Who is legal Coparent at birth, if any	Vital statistics process
64	MIF prospective mother A	Prospective mother B	Prospective mother B	Unknown sperm donor	surrogate	Lesbian couple; Eggs from prospective mother B; Sperm from unknown donor; surrogacy	s.24 donor is not a parent; definition of birth mother s 29 re surrogacy arrangement s 31 if declaration of parentage is required	Surrogate, subject to preconception surrogacy agreement making prospective father the child's only parent. If no preconception agreement, or if surrogate refuses to relinquish, declaration of parentage	Prospective mothers A and B	Prospective mothers and surrogate file consent to registration of prospective father as child's only parent. If there is no preconception agreement, birth mother is reg. pending ct order. Decl parentage
65	MIF prospective mother A	Prospective mother B	Known egg donor*	Known sperm donor*	Surrogate	Lesbian couple; Eggs from known donor; Sperm from known donor; Ivf; Surrogacy	s.24 donor is not a parent; definition of birth mother s. 29 re surrogacy arrangement s 31 if declaration of parentage is required	Surrogate, subject to preconception surrogacy agreement making prospective father the child's only parent. If no preconception agreement, or if surrogate refuses to relinquish, declaration of parentage	Prospective mothers A and B	Prospective mothers and surrogate file consent to registration of prospective father as child's only parent. If there is no preconception agreement, birth mother is reg. pending ct order. Decl parentage

Prospective Parent A ¹	Prospective Parent B	Egg Source	Sperm Source	Birth mother ²	Situation	FLA section(s)	Who is Legal 'Mother' at birth	Who is legal Coparent at birth, if any	Vital statistics process
66	MIF prospective mother A	Known egg donor*	Unknown sperm donor	surrogate	Lesbian couple; eggs from known donor; Sperm from unknown donor; IVF; surrogacy	s.24 donor is not a parent; definition of birth mother s. 29 re surrogacy arrangement s 31 if declaration of parentage is required	Surrogate, subject to preconception surrogacy agreement making prospective father the child's only parent. If no preconception agreement, or if surrogate refuses to relinquish, declaration of parentage	Prospective mothers A and B	Prospective mothers and surrogate file consent to registration of prospective father as child's only parent. If there is no preconception agreement, birth mother is reg. pending ct order. Decl parentage
67	MIF prospective mother A	Unknown egg donor	Known sperm donor*	Surrogate	Infertile lesbian couple; Eggs from unknown egg donor; sperm from known donor; IVF; surrogacy <i>Not available in BC</i>	s.24 donor is not a parent; definition of birth mother s. 29 re surrogacy arrangement s 31 if declaration of parentage is required	Surrogate, subject to preconception surrogacy agreement making prospective father the child's only parent. If no preconception agreement, or if surrogate refuses to relinquish, declaration of parentage	Prospective mothers A and B	Prospective mothers and surrogate file consent to registration of prospective father as child's only parent. If there is no preconception agreement, birth mother is reg. pending ct order. Decl parentage

	Prospective Parent A ¹	Prospective Parent B	Egg Source	Sperm Source	Birth mother ²	Situation	FLA section(s)	Who is Legal 'Mother' at birth	Who is legal Coparent at birth, if any	Vital statistics process
68	MtF prospective mother A	Prospective mother B	Unknown egg donor	Unknown sperm donor	surrogate	Infertile lesbian couple; Eggs from unknown egg donor; sperm from unknown donor; IVF; surrogacy <i>Not available in BC</i>	s.24 donor is not a parent; definition of birth mother s. 29 surrogacy regime S 31 if declaration of parentage is required	Surrogate, subject to preconception surrogacy agreement making prospective father the child's only parent. If no preconception agreement, or if surrogate refuses to relinquish, declaration of parentage	Prospective mothers A and B	Prospective mothers and surrogate file consent to registration of prospective father as child's only parent. If there is no preconception agreement, birth mother is reg. pending ct order. Decl parentage
69	MtF prospective mother A	Prospective mother B	Surrogate	Known sperm donor*	Surrogate	Infertile lesbian couple; Eggs from surrogate; Sperm from known donor; surrogacy	s.24 donor is not a parent; definition of birth mother s. 29 surrogacy regime	Surrogate, subject to preconception surrogacy agreement making prospective father the child's only parent. If no preconception agreement, or if surrogate refuses to relinquish, declaration of parentage	Prospective mothers A and B	Prospective mothers and surrogate file consent to registration of prospective father as child's only parent. If there is no preconception agreement, birth mother is reg. pending ct order. Decl parentage

	Prospective Parent A ¹	Prospective Parent B	Egg Source	Sperm Source	Birth mother ²	Situation	FLA section(s)	Who is Legal 'Mother' at birth	Who is legal Coparent at birth, if any	Vital statistics process
70	Mf prospective mother A	Prospective mother B	Surrogate	Unknown sperm donor	surrogate	Infertile lesbian couple; Eggs from surrogate; Sperm from unknown donor; surrogacy	s.24 donor is not a parent; definition of birth mother 29 re surrogacy regime	Surrogate, subject to preconception surrogacy agreement making prospective father the child's only parent. If no preconception agreement, or if surrogate refuses to relinquish, declaration of parentage	Prospective mothers A and B	Prospective mothers and surrogate file consent to registration of prospective father as child's only parent. If there is no preconception agreement, birth mother is reg. pending ct order. Decl parentage
71	Mf prospective mother A	Prospective father	Known egg donor*	Mf prospective mother (frozen sperm before transition)	Surrogate	Opposite-sex couple; egg from known donor, sperm from prospective mother A, froze sperm before her transition; IVF; Surrogacy	s. 24 egg donor is not parent s. 29 re surrogacy regime s 31 if declaration of parentage required	Surrogate, subject to preconception surrogacy agreement making prospective father the child's only parent. If no preconception agreement, or if surrogate refuses to relinquish, declaration of parentage	Prospective Mf mother and prospective father	Mf prospective mother and father registered as parents subject to consent of surrogate filing consent.
72	Mf prospective mother A	Prospective father	Known egg donor*	Prospective father	Surrogate	Opposite-sex couple; transwoman; Known egg donor; sperm from prospective father; IVF; surrogacy	s.24 donor is not a parent; definition of birth mother s. 29 re surrogacy arrangement s. 31 if declaration of parentage is required	Surrogate, subject to preconception surrogacy agreement making prospective father the child's only parent. If no preconception agreement, or if surrogate refuses to relinquish, declaration of parentage	Mf prospective mother and prospective father	Mf prospective mother and father registered as parents subject to consent of surrogate filing consent.

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Appendix B

	Prospective Parent A ¹	Prospective Parent B	Egg Source	Sperm Source	Birth mother ²	Situation	FLA section(s)	Who is Legal 'Mother' at birth	Who is legal Coparent at birth, if any	Vital statistics process
73	Mif prospective mother A	Prospective father	Known egg donor*	Known sperm donor*	Surrogate	Opposite-sex couple; transwoman; Known egg donor; known sperm donor; IVF; surrogacy	s.24 donor is not a parent; definition of birth mother s. 29 re surrogacy arrangement s. 31 if declaration of parentage is required	Surrogate, subject to preconception surrogacy agreement making prospective father the child's only parent. If no preconception agreement, or if surrogate refuses to relinquish, declaration of parentage	Mf prospective mother and prospective father	Mf prospective mother and father registered as parents subject to consent of surrogate filing consent.
74	Mif prospective mother A	Prospective father	Known egg donor*	Unknown sperm donor	surrogate	Opposite-sex couple; transwoman; Known egg donor; unknown sperm donor; IVF; surrogacy	s.24 donor is not a parent; definition of birth mother s. 29 re surrogacy arrangement s. 31 if declaration of parentage is required	Surrogate, subject to preconception surrogacy agreement making prospective father the child's only parent. If no preconception agreement, or if surrogate refuses to relinquish, declaration of parentage	Mf prospective mother and prospective father	Mf prospective mother and father registered as parents subject to consent of surrogate filing consent.

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	Prospective Parent A ¹	Prospective Parent B	Egg Source	Sperm Source	Birth mother ²	Situation	FLA section(s)	Who is Legal 'Mother' at birth	Who is legal Coparent at birth, if any	Vital statistics process
75	Mtf prospective mother A	Prospective father	Unknown egg donor	Frozen sperm from Mtf prospective mother	Surrogate	Opposite-sex couple; transwoman; Known egg donor; sperm from transwoman (frozen before transition); IVF; Surrogacy <i>Not available in BC</i>	s.24 donor is a parent since sperm frozen pre-transition by Mtf is to create her own child; definition of birth mother s. 29 re surrogacy arrangement s 31 if declaration of parentage required	Surrogate, subject to preconception surrogacy agreement making prospective father the child's only parent. If no preconception agreement, or if surrogate refuses to relinquish, declaration of parentage	Mtf prospective mother and father registered as parents subject to consent of surrogate filing consent.; otherwise declaration of parentage	n/a
76	Mtf prospective mother A	Prospective father	Unknown egg donor	Prospective father	Surrogate	Opposite-sex couple; transwoman; Known egg donor; sperm from transwoman (frozen before transition); IVF; Surrogacy <i>Not available in BC</i>	n/a	n/a	n/a	n/a
77	Mtf prospective mother A	Prospective father	Unknown egg donor	Known sperm donor*	Surrogate	Opposite-sex couple; transwoman; Known egg donor; known sperm donor; IVF; Surrogacy <i>Not available in BC</i>	n/a	n/a	n/a	n/a

	Prospective Parent A ¹	Prospective Parent B	Egg Source	Sperm Source	Birth mother ²	Situation	FLA section(s)	Who is Legal 'Mother' at birth	Who is legal Coparent at birth, if any	Vital statistics process
78	Mtf prospective mother A	Prospective father	Unknown egg donor	Unknown sperm donor	surrogate	Opposite-sex couple; transwoman; Known egg donor; unknown sperm donor; IVF; Surrogacy Not available in BC	n/a	n/a	n/a	n/a
79	Mtf prospective mother A	Mtf prospective mother B	Surrogate	MtF Prospective mother A	Surrogate	Lesbian couple; transwomen; egg from surrogate; sperm from prospective mother A (frozen pre-transition); IVF; surrogacy	s.24 donor is not a parent; s. 29 re surrogacy arrangement; s. 31 declaration of parentage	Surrogate, subject to preconception surrogacy agreement making prospective mothers the child's only parents. If no pre-conception agreement, or if surrogate refuses to relinquish, declaration of parentage	MtF prospective mothers	Mtf prospective mothers registered as parents subject to consent of surrogate
80	Mtf prospective mother A	Mtf prospective mother B	Surrogate	MtF Prospective mother B	Surrogate	Lesbian couple; transwomen; egg from surrogate; sperm from prospective mother B (frozen pre-transition); IVF; surrogacy	s.24 donor is not a parent; definition of birth mother 29 (3) re agreement that "intended parents" are "parents"	Surrogate, subject to preconception surrogacy agreement making prospective mothers the child's only parent. If no pre-conception agreement, or if surrogate refuses to relinquish, declaration of parentage	MtF prospective mothers	Mtf prospective mothers registered as parents subject to consent of surrogate filing consent.

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	Prospective Parent A ¹	Prospective Parent B	Egg Source	Sperm Source	Birth mother ²	Situation	FLA section(s)	Who is Legal 'Mother' at birth	Who is legal Coparent at birth, if any	Vital statistics process
81	Mtf prospective mother A	Mtf prospective mother B	Known donor*	MtF Prospective mother A	Surrogate	Lesbian couple; transwomen; egg from known donor; sperm from prospective mother B (frozen pre-transition); IVF; surrogacy	s.24 donor is not a parent; definition of birth mother 27(2) surrogate is birth mother unless there is an agreement 29 (3) re agreement that "intended parents" are "parents"	Surrogate, subject to preconception surrogacy agreement making prospective mothers the child's only parent. If no pre-conception agreement, or if surrogate refuses to relinquish, declaration of parentage	MtF prospective mothers	Mtf prospective mothers registered as parents subject to consent of surrogate filing
82	Mtf prospective mother A	Mtf prospective mother B	Known donor *	MtF Prospective mother B	Surrogate	Lesbian couple; transwomen; egg from known donor; sperm from prospective mother B (frozen pre-transition); IVF; surrogacy	s. 24 sperm donor is not parent s. 29 re surrogacy regime s. 31 re dec. parentage	Surrogate, subject to preconception surrogacy agreement making prospective mothers the child's only parent. If no pre-conception agreement, or if surrogate refuses to relinquish, declaration of parentage	MtF prospective mothers	Mtf prospective mothers registered as parents subject to consent of surrogate filing
83	Mtf prospective mother A	Mtf prospective mother A	Unknown donor	Mtf prospective mother A	surrogate	Lesbian couple; both transwomen; egg from unknown donor; IVF; surrogacy <i>Not available in BC</i>	s. 24 sperm donor is not parent s. 29 re surrogacy regime s. 31 re dec. parentage	Surrogate, subject to preconception surrogacy agreement making prospective mother s the child's only parent. If no pre-conception agreement, or if surrogate refuses to relinquish, declaration of parentage	MtF prospective mothers	Mtf prospective mothers registered as parents subject to consent of surrogate filing

	Prospective Parent A ¹	Prospective Parent B	Egg Source	Sperm Source	Birth mother ²	Situation	FLA section(s)	Who is Legal 'Mother' at birth	Who is legal Coparent at birth, if any	Vital statistics process
84	Mtf prospective mother A	Mtf prospective mother B	Unknown donor	Mtf prospective mother B	surrogate	Lesbian couple; both transwomen; egg from unknown donor; sperm frozen by prospective mother B before transition; IVF; surrogacy <i>Not available in BC</i>	s. 24 sperm donor is not parent s. 29 re surrogacy regime s. 31 re dec. parentage	Surrogate, subject to preconception surrogacy agreement making prospective mothers the child's only parent. If no pre-conception agreement, or if surrogate refuses to relinquish, declaration of parentage	Mtf prospective mothers	Mtf prospective mothers registered as parents subject to consent of surrogate filing consent.
85	Mtf prospective mother A	Mtf prospective mother B	known donor*	Known donor*	surrogate	Lesbian couple; both transwomen; egg from known donor; sperm from known donor; IVF; surrogacy	s. 24 sperm and egg donor is not parent s. 29 re surrogacy regime s. 31 re dec. parentage	Surrogate, subject to preconception surrogacy agreement making prospective mothers the child's only parent. If no pre-conception agreement, or if surrogate refuses to relinquish, declaration of parentage	Mtf prospective mothers	Mtf prospective mothers registered as parents subject to consent of surrogate filing consent.
86	Mtf prospective mother A	Mtf prospective mother B	known donor*	Unknown donor	surrogate	Lesbian couple; both transwomen; egg from known donor; sperm from unknown donor; IVF; surrogacy <i>Not available in BC</i>	s. 24 sperm and egg donor is not parent s. 29 re surrogacy regime s. 31 re dec. parentage	Surrogate, subject to preconception surrogacy agreement making prospective mothers the child's only parent. If no pre-conception agreement, or if surrogate refuses to relinquish, declaration of parentage	Mtf prospective mothers	Mtf prospective mothers registered as parents subject to consent of surrogate filing consent.

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	Prospective Parent A ¹	Prospective Parent B	Egg Source	Sperm Source	Birth mother ²	Situation	FLA section(s)	Who is Legal 'Mother' at birth	Who is legal Coparent at birth, if any	Vital statistics process
87	Mtf prospective mother A	Mtf prospective mother B	known donor*	Known donor*	surrogate	Lesbian couple; both transwomen; egg from known donor; sperm from known donor; IVF; surrogacy	s. 24 sperm and egg donor is not parent s. 29 re surrogacy regime s. 31 re dec. parentage	Surrogate, subject to preconception surrogacy agreement making prospective mothers the child's only parent. If no pre-conception agreement, or if surrogate refuses to relinquish, declaration of parentage	MtF prospective mothers	Mtf prospective mothers registered as parents subject to consent of surrogate filing
88	Mtf prospective mother A	Mtf prospective mother B	unknown donor	unknown donor	surrogate	Lesbian couple; both transwomen; egg from known donor; sperm from known donor; IVF; surrogacy <i>Not available in BC</i>	n/a	n/a	n/a	n/a
89	Prospective mother A	FtM prospective father	prospective mother	known donor*	Prospective mother	Opposite-sex couple; transman; conception with eggs from prospective mother, sperm from known donor. Prospective mother carries child.	s. 24 sperm donor is not parent	Prospective mother	FtM father	prospective mother and FtM father registered as parents

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	Prospective Parent A ¹	Prospective Parent B	Egg Source	Sperm Source	Birth mother ²	Situation	FLA section(s)	Who is Legal 'Mother' at birth	Who is legal Coparent at birth, if any	Vital statistics process
90	Prospective mother A	FtM prospective father	prospective mother	known donor*	Surrogate	Opposite-sex couple; transman; conception with eggs from prospective mother, sperm from known donor; IVF; surrogacy.	s.24 sperm donor is not a parent mother who is egg donor is not a "donor" s.29 re surrogacy agreement s.31 if declaration of surrogacy is required	Surrogate, subject to preconception surrogacy agreement, then prospective mother	prospective FtM father, and prospective mother if surrogacy agreement	prospective mothers and FtM father registered as parents subject to consent of surrogate filing otherwise s. 31 declaration of parentage is required
91	Prospective mother A	FtM prospective father	prospective mother	Unknown donor	Prospective mother	Opposite-sex couple; transman; conception with eggs from prospective mother, sperm from unknown donor. Prospective mother carries child.	s.24 sperm donor is not a parent mother who is egg donor is not a "donor" s. 27 partner of mother is co=parent if agrees s 31 if declaration of parentage is required	Prospective mother	FtM father	prospective mother and FtM father registered as parents
92	Prospective mother A	FtM prospective father	prospective mother	Unknown donor	surrogate	Opposite-sex couple; transman; conception with eggs from prospective mother, sperm from unknown donor; IVF; surrogacy.	Maternal egg donor is not a "donor" s. 24 sperm donor is not a parent s.29 re surrogacy regime s. 31 if declaration of parentage is required	Surrogate, subject to preconception surrogacy agreement	prospective mother and FtM father if surrogacy agreement	prospective mothers and FtM father registered as parents subject to consent of surrogate filing

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	Prospective Parent A ¹	Prospective Parent B	Egg Source	Sperm Source	Birth mother ²	Situation	FLA section(s)	Who is Legal 'Mother' at birth	Who is legal Coparent at birth, if any	Vital statistics process
93	Prospective mother A	FtM prospective father	FtM frozen eggs	Known donor*	Prospective mother	Opposite sex couple; eggs from FtM (frozen before transition); sperm from known donor; prospective mother carries child	s.24 s.27	Prospective mother	prospective mother and FtM father	prospective mother and FtM father registered as parents
94					surrogate	Opposite sex couple; eggs from FtM (frozen before transition); sperm from known donor; IVF; surrogate carries child	s.24 s.29	Surrogate, subject to preconception surrogacy agreement	prospective mother and FtM father	prospective mothers and FtM father registered as parents subject to consent of surrogate filing consent.
95				Unknown donor	Prospective mother	Opposite sex couple; eggs from FtM (frozen before transition); sperm from unknown donor; prospective mother carries child	s.24 s.27	Prospective mother	prospective mother and FtM father	prospective mother and FtM father registered as parents
96					surrogate	Opposite sex couple; eggs from FtM (frozen before transition); sperm from unknown donor; IVF; surrogate carries child	s.24 s.29	Surrogate, subject to preconception surrogacy agreement	prospective mother and FtM father	prospective mothers and FtM father registered as parents subject to consent of surrogate filing consent.

Making Parents

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	Prospective Parent A ¹	Prospective Parent B	Egg Source	Sperm Source	Birth mother ²	Situation	FLA section(s)	Who is Legal 'Mother' at birth	Who is legal Coparent at birth, if any	Vital statistics process
97	Prospective mother A	FtM prospective father	Known donor*	Known donor*	Prospective mother	Opposite sex couple; transman; eggs from known donor; sperm from known donor; Prospective mother carries child	s.24 s.27	Prospective mother	prospective mother and FtM father	prospective mother and FtM father registered as parents
98					surrogate	Opposite sex couple; transman; eggs from known donor; sperm from known donor; Surrogate carries child	s.24 s.29	Surrogate, subject to preconception surrogacy agreement	prospective mother and FtM father	prospective mothers and FtM father registered as parents subject to consent of surrogate filing consent.
99				Unknown donor	Prospective mother	Opposite sex couple; transman; eggs from known donor; sperm from unknown donor; Prospective mother carries child	s.24 s.27	Prospective mother	prospective mother and FtM father	prospective mother and FtM father registered as parents
100					surrogate	Opposite sex couple; transman; eggs from known donor; sperm from unknown donor; Surrogate carries child	s.24 s.27	Surrogate, subject to preconception surrogacy agreement	prospective mother and FtM father	prospective mothers and FtM father registered as parents subject to consent of surrogate filing consent.

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	Prospective Parent A ¹	Prospective Parent B	Egg Source	Sperm Source	Birth mother ²	Situation	FLA section(s)	Who is Legal 'Mother' at birth	Who is legal Coparent at birth, if any	Vital statistics process
101			Unknown donor	Known donor*	Prospective mother	Opposite sex couple; eggs transman; eggs from unknown donor; sperm from known donor; prospective mother carries child <i>Not available in BC</i>	s. 24 s.27	Prospective mother	prospective mother and FtM father	prospective mother and FtM father registered as parents
102			Unknown donor	unknown donor	Prospective mother	Opposite sex couple; eggs transman; eggs from unknown donor; sperm from unknown donor; prospective mother carries child <i>Not available in BC</i>	s. 24 s.27	Prospective mother	prospective mother and FtM father	prospective mother and FtM father registered as parents
103					Surrogate	Opposite sex couple; eggs transman; eggs from unknown donor; sperm from unknown donor; surrogate carries child <i>Not available in BC</i>	s.24 s.29	Surrogate, subject to preconception surrogacy agreement	prospective mother and FtM father	prospective mothers and FtM father registered as parents subject to consent of surrogate filing consent.

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	Prospective Parent A ¹	Prospective Parent B	Egg Source	Sperm Source	Birth mother ²	Situation	FLA section(s)	Who is Legal 'Mother' at birth	Who is legal Coparent at birth, if any	Vital statistics process
104	MtF prospective mother	FtM prospective father	FtM (frozen pre-transition)	MtF (frozen pre-transition)	FtM	An opposite sex trans couple, each of whom has frozen reproductive material before transition. Child is conceived with sperm from MtF; egg from FtM; and is carried by FtM prospective father	FtM prospective father is birth mother s. 27 makes prospective mother co-parent if using own sperm for reproductive project of your own, not a 'donor'	FtM prospective father	prospective mother	MtF prospective mother and FtM prospective father registered as parents
105	MtF prospective mother	FtM prospective father	FtM (frozen pre-transition)	MtF (frozen pre-transition)	Surrogate	An opposite sex trans couple, each of whom has frozen reproductive material before transition. Child is conceived with sperm from MtF; egg from FtM; and is carried by FtM prospective father	Prospective parents are not donors because using material for own reproduction s. 29 re surrogacy; s. 31 if declaration of parentage is required	Surrogate, unless surrogacy agreement	Prospective MtF mother and prospective FtM father, subject to surrogacy agreement	If surrogacy agreement and pre-birth consent, prospective parents are registered

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	Prospective Parent A ¹	Prospective Parent B	Egg Source	Sperm Source	Birth mother ²	Situation	FLA section(s)	Who is Legal 'Mother' at birth	Who is legal Coparent at birth, if any	Vital statistics process
106	Mtf prospective mother	FtM prospective father	FtM (frozen pre-transition)	MtF (frozen pre-transition)	FtM prospective father	Opposite sex trans couple conceiving with their own frozen genetic material; FtM is gestational carrier	FtM father is "birth mother" MtF mother is co-parent: s. 27	Birth mother is prospective father	Prospective mother is co-parent	Both parents registered at birth; transman will be registered as "birth mother"
107	Mtf prospective mother	FtM prospective father	FtM (frozen pre-transition)	MtF (frozen pre-transition)	surrogate	Opposite sex trans couple conceives with own material; surrogate carries child	Prospective parents are not "donors" s. 29 re surrogacy arrangement s. 31 if declaration of parentage is required	Surrogate, subject to preconception surrogacy agreement	Prospective parents, if there is a surrogacy agreement	Provided pre-conception agreement and post-birth consent, prospective parents are registered.
108	Mtf prospective mother	FtM prospective father	FtM (frozen pre-transition)	Known sperm donor*	FtM prospective father	Opposite sex trans couple conceives with eggs from FtM transman, sperm from known donor. Child is carried by FtM prospective father	FtM transman is child's "birth mother" By s. 27 MtF transwoman is co-parent By s. 24 sperm donor not a parent	prospective father is birth mother	Prospective mother is co parent	If dispute, declaration of parentage Both parents are registered at birth; trans man is registered as birth mother
109	Mtf prospective mother	FtM prospective father	FtM (frozen pre-transition)	Known sperm donor*	surrogate	Opposite sex trans couple conceives with eggs from FtM transman, sperm from a known donor. Child is carried by a surrogate	FtM transman is not a 'donor' s. 24 Sperm donor is not a parent s. 29 re surrogacy agreement s. 31 if declaration of parentage is required	Surrogate, subject to preconception surrogacy agreement	Prospective parents, subject to surrogacy agreement	Prospective parents are registered if there is a pre-conception surrogacy agreement and post-birth consent from surrogate

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	Prospective Parent A ¹	Prospective Parent B	Egg Source	Sperm Source	Birth mother ²	Situation	FLA section(s)	Who is Legal 'Mother' at birth	Who is legal Coparent at birth, if any	Vital statistics process
110	Mtf prospective mother	FtM prospective father	FtM (frozen pre-transition)	Unknown sperm donor	Ftm prospective father	Opposite sex trans couple conceives with eggs from FtM transman, sperm from unknown donor. Child is carried by FtM prospective father	FtM transman is child's "birth mother" By s. 27 MtF transwoman is co-parent By s. 24 sperm donor not a parent	FtM prospective father is birth mother	Prospective MtF mother is coparent	Prospective parents are registered at birth. Transman is "birth mother"
111	Mtf prospective mother	FtM prospective father	FtM (frozen pre-transition)	Unknown sperm donor	surrogate	Opposite sex trans couple conceives with eggs from FtM transman, sperm from an unknown donor. Child is carried by a surrogate	FtM transman is not a 'donor' s. 24 Sperm donor is not a parent s. 29 re surrogacy agreement s.31 if declaration of parentage is required	Surrogate, subject to preconception surrogacy agreement	Prospective parents, subject to surrogacy agreement	Prospective parents are registered if there is a pre-conception surrogacy agreement and post-birth consent from surrogate
112	Mtf prospective mother	FtM prospective father	Known egg donor*	Mtf (sperm frozen pre-transition)	Ftm prospective father	Opposite sex trans partners donate material; transman carries child	Parents are not "donors" Transman is "birth mother" s. 27 MtF is co-parent	transman is birth mother	Prospective parents are both parents	Both parents are registered at birth
113	Mtf prospective mother	FtM prospective father	Known egg donor*	Mtf (sperm frozen pre-transition)	surrogate	Opposite sex trans partners are donating sperm; using donor eggs and a surrogate	Sperm donor is not "donor" s. 29 surrogacy regime s. 31 if declaration of parentage is required	Surrogate, subject to preconception surrogacy agreement	Prospective parents, subject to surrogacy agreement	Prospective parents, subject to surrogacy agreement; declaration of parentage is required
114	Mtf prospective mother	FtM prospective father	Known egg donor*	Known donor*	FtM prospective father	Opposite sex trans parents conceive with their own genetic material; use a surrogate	Neither trans parent is a "donor" s. 29 re: surrogacy s. 31 if declaration of parentage is needed	Surrogate, subject to preconception surrogacy agreement	Prospective parents, subject to surrogacy agreement	Prospective parents, subject to surrogacy agreement; declaration of parentage is required

	Prospective Parent A ¹	Prospective Parent B	Egg Source	Sperm Source	Birth mother ²	Situation	FLA section(s)	Who is Legal 'Mother' at birth	Who is legal Coparent at birth, if any	Vital statistics process
115	Mtf prospective mother	FtM prospective father	Known egg donor*	Known donor*	surrogate	Opposite sex trans parents conceive with donated egg and sperm; and use surrogate	s. 24 donors are not "parents" s. 29 re surrogacy s. 31 if declaration of parentage is required	Surrogate, subject to preconception surrogacy agreement	Prospective parents, subject to surrogacy agreement	Prospective parents are registered if there is a pre-conception surrogacy agreement and post-birth consent from surrogate
116	Mtf prospective mother	FtM prospective father	Known egg donor*	Unknown donor	Ftm prospective father	Opposite sex trans couple use donors; ftm transman gestates child	Donors are not "parents" FtM transman is "birth mother" s. 27 transman's partner is co-parent	Transman registered as birth mother	Transwoman	Both parents registered at birth
117	Mtf prospective mother	FtM prospective father	Unknown egg donor	MtF (frozen pre-transition)	FtM	An opposite sex trans couple. FtM trans man is able to carry child. Child is conceived with eggs from unknown donor; sperm from Mtf; and is carried by FtM prospective father <i>Not available in B.C.</i>	n/a	n/a	n/a	n/a
118			Unknown egg donor		Surrogate	<i>Not available in B.C.</i>	n/a	n/a	n/a	n/a
119			Unknown egg donor	Known sperm donor*	Ftm prospective father	<i>Not available in B.C.</i>	n/a	n/a	n/a	n/a

XIV. Appendix C—Making More Parents

How many parents is it possible to have under the Family Law Act?

By “parent” in this discussion, we mean “legal parent”. On the birth certificate. Child will have inheritance rights.

Answer: it’s not clear.

Consider these situations:

1. The Queer Quartet

In this family formation, two lesbians, LA and LB, and two gay men, GC and GD, decide to coparent a child. The plan is that the child will be conceived by ART (ie sperm donation) from GC to LA.⁹³

Who are the child’s “parents”, and how does each get to be a parent under the FLA?

Lesbian A	birth mother 27(2)
Lesbian B	Partner of birth mother 27 (3)
Gay dad C	Genetic parent; NOT “donor”; so intended parent 30(1)(b)(i); need pre-conception agreement
Gay dad D	Intended parent s 30(1)(b)(i); need pre-conception agreement

2. The Queer Sextet

This is the same family formation, except none of A,B,C or D is infertile. The four decide that they would like their child to have a parental relationship with the two donors they will need. They discuss this with Donor E, who will donate an egg; and Donor S, who will donate sperm.

Who are the child’s “parents” and how does that come to be under the FLA?

Lesbian A	Birth mother 27(2)
Lesbian B	Partner of birth mother 27(3) unless she opts out
Gay dad C	Intended parent 30(1)(b)(i); need pre-conception agreement
Gay dad D	Intended parent 30(1)(b)(i); need pre-conception agreement
Donor E	Donor 30(1)(b)(ii); need pre-conception agreement
Donor S	Donor 30(1)(b)(ii); need pre-conception agreement

93 One of the writers has had exactly this scenario. The child involved is now 13.

3. The Queer Quintet

In this example, Lesbian A is the birth mother, with sperm from Gay Dad C and an egg donated by Donor E. The four queer parents – Lesbians A and B, Gay men C and D, and Donor E – all intend to form a family to raise the child.

Lesbian A	Birth mother 27(2)
Lesbian B	Partner of birth mother 27(3) unless she opts out
Gay dad C	Genetic parent; NOT “donor”; so intended parent 30(1)(b)(i); need pre-conception agreement
Gay dad D	Intended parent s 30(1)(b)(i); need pre-conception agreement
Donor E	Donor 30(1)(b)(ii); need pre-conception agreement

4. TransLations: a Trans Family

In this example, an opposite-sex transgender couple want to create a family with two gay men. The FtM will carry the child, with sperm from Gay Dad C.

FtM (can carry child; has frozen eggs)	Social father is “birth mother”; therefore parent under 27(2)
MtF	Parent by virtue of 27(3) unless he opts out
Gay dad C	Intended parent s 30(1)(b)(i); need pre-conception agreement
Gay dad D	Intended parent s 30(1)(b)(i); need pre-conception agreement

5. And a surrogate

In this scenario, the four gay parents are all infertile, and neither of the lesbians can carry a child. So they have to rely on a surrogate, an egg donor, and a sperm donor. All of them intend to be parents of the child. The surrogate’s parent doesn’t want to have a role.

Surrogate	Birth mother, (subject to agreement: s. 29)
Surrogate’s partner	Partner of birth mother 27(3) unless she opts out
Lesbian A	Intended parent s 30(1)(b)(i) with pre-conception agreement
Lesbian B	Intended parent s 30(1)(b)(i) with pre-conception agreement
Gay dad C	Intended parent s 30(1)(b)(i) with pre-conception agreement
Gay dad D	Intended parent s 30(1)(b)(i) with pre-conception agreement
Donor E	Donor s 30(1)(b)(ii) with pre-conception agreement
Donor S	Donor s 30(1)(b)(ii) with pre-conception agreement

6. Opposite sex family; father has prostate cancer; freezes sperm; ART

‘wife’	“Birth mother” s 27(2)
‘husband’	Not a donor because sperm is his own; parent by s 27(3) unless he opts out

XV. Appendix D—Model Order of Declaration of Surrogacy



NO. _____
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA



BETWEEN:

_____ and _____

AND:

HER MAJESTY, THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA,
THE MINISTRY OF ATTORNEY GENERAL OF BRITISH COLUMBIA, and THE CHIEF
EXECUTIVE OFFICER OF THE BRITISH COLUMBIA VITAL STATISTICS AGENCY

RESPONDENTS

ORDER

BEFORE) THE HONOURABLE) _____, THE _____
) _____)
) _____) DAY OF _____

THE APPLICATION of the Petitioners coming on for hearing this day at Vancouver, B.C.;
AND ON hearing _____ counsel for the Petitioners; AND ON no one
appearing on behalf of Her Majesty, the Queen in Right of the Province of British Columbia, The
Ministry of Attorney General of British Columbia, and The Chief Executive Officer of the
British Columbia Vital Statistics Agency, although duly served; AND ON reading the Affidavit
of _____, sworn _____, and the Affidavit of _____
sworn _____; AND ON the submissions of counsel; AND ON Her Majesty, the Queen in
Right of the Province of British Columbia, The Ministry of Attorney General of British
Columbia and The Chief Executive Officer of the British Columbia Vital Statistics Agency,
neither consenting, nor opposing the Petition:

THIS COURT DECLARES AND ORDERS that:

1. The Petitioners, [REDACTED] and [REDACTED], are the parents of [REDACTED] and [REDACTED] (" [REDACTED] ").
2. The Chief Executive Officer of the British Columbia Vital Statistics Agency shall amend the Registration of the Birth of [REDACTED] to provide that the Petitioners, [REDACTED] and [REDACTED], are the parents of [REDACTED] and [REDACTED].
3. This file shall be sealed.
4. Each party shall bear their own costs.

BY THE COURT

APPROVED AS TO FORM:

[REDACTED]

[REDACTED]
Counsel for the Petitioners

[REDACTED]

Counsel for Her Majesty, the Queen in Right of the Province of British Columbia, The Ministry of Attorney General of British Columbia and The Chief Executive Officer of the British Columbia Vital Statistics Agency

Certified a true copy according to the records of the Supreme Court at Vancouver, B.C.

This [REDACTED] day of [REDACTED], 20 [REDACTED]

XVI. Appendix E—Registration of Live Birth Form



Vital Statistics Agency

REGISTRATION OF LIVE BIRTH
This is the permanent record of your child's birth and legal name.

DOCUMENT CONTROL NUMBER

REGISTRATION NUMBER (Office use only)

Please PRINT and use blue or black ink when completing the form. Corrections should be crossed out and initialed. Do not use pencil or white-out.

CHILD'S INFORMATION	Name: FIRST NAME MIDDLE NAME(S) SURNAME SEX OF CHILD	
	Date of Birth: MONTH (First 3 letters) DAY YEAR	KIND OF BIRTH <input type="checkbox"/> Single <input type="checkbox"/> Twin <input type="checkbox"/> Triplet <input type="checkbox"/> 4+ BIRTH ORDER: IF MULTIPLE, STATE WHETHER THIS CHILD WAS BORN <input type="checkbox"/> 1st <input type="checkbox"/> 2nd <input type="checkbox"/> 3rd <input type="checkbox"/> 4+
	Time of Birth: 24 HOUR CLOCK hh : mm	HOSPITAL BIRTH? <input type="checkbox"/> Yes <input type="checkbox"/> No NAME OF HOSPITAL CITY, TOWN OR OTHER PLACE (BY NAME)
	Place of Birth in BC: If birth did not occur in hospital give exact location where birth occurred (include postal code) CHILD'S PERSONAL HEALTH NUMBER	
	Children ever born to this mother (including this birth) Number of Liveborn _____ Number of Stillborn (after 20 weeks of pregnancy) _____ Are parents married to each other? <input type="checkbox"/> Yes <input type="checkbox"/> No If the parents are not married to each other state whether mother is: <input type="checkbox"/> Never married <input type="checkbox"/> Married <input type="checkbox"/> Widowed <input type="checkbox"/> Divorced <input type="checkbox"/> Separated <input type="checkbox"/> Other _____ FULL NAME OF ATTENDING PHYSICIAN OR MIDWIFE	
	Attending Physician/Midwife: _____	
MOTHER'S INFORMATION	Name: FIRST NAME MIDDLE NAME(S) MAIDEN SURNAME (MANDATORY FIELD: NAME ON BIRTH OR CHANGE OF NAME CERTIFICATE) CURRENT LEGAL SURNAME	
	Date of Birth: MONTH (First 3 letters) DAY YEAR	CITY OF BIRTH PROVINCE OF BIRTH COUNTRY OF BIRTH
	AGE AT TIME OF THIS BIRTH BC RESIDENT? <input type="checkbox"/> Yes <input type="checkbox"/> No	PERSONAL HEALTH NUMBER (CARECARD NUMBER) ABORIGINAL? <input type="checkbox"/> Yes <input type="checkbox"/> No DO YOU LIVE ON A RESERVE? <input type="checkbox"/> Yes <input type="checkbox"/> No
	USUAL RESIDENCE STREET CITY PROVINCE/STATE COUNTRY POSTAL CODE PHONE NUMBER () -	
	COMPLETE MAILING ADDRESS (If different than above give Post Office or Rural Route address) City, Province, State, Country, Postal Code PHONE NUMBER () -	
	I certify that the foregoing is true and correct to the best of my knowledge and belief. MONTH (First 3 letters) DAY YEAR X _____ Date Signed Signature of Mother*	
MOTHER'S DECLARATION REGARDING FATHER	MOTHER MUST CHECK THIS BOX IF THE FATHER IS NOT BEING REGISTERED BELOW	
	I AM THE MOTHER OF THIS CHILD AND DO SOLEMNLY DECLARE THAT: <input type="checkbox"/> THE FATHER IS INCAPABLE OR NOT PRESENT IN COUNTRY (contact Vital Statistics to discuss options) OR THE FATHER IS UNACKNOWLEDGED BY THE MOTHER OR THE FATHER IS UNKNOWN BY THE MOTHER OR THE FATHER REFUSED TO ACKNOWLEDGE THE CHILD.	
FATHER'S OR CO-PARENT'S INFORMATION	Name: FIRST NAME MIDDLE NAME(S) SURNAME (NAME ON BIRTH OR CHANGE OF NAME CERTIFICATE) SEX OF CO-PARENT CERTIFICATE	
	Date of Birth: MONTH (First 3 letters) DAY YEAR	CITY OF BIRTH PROVINCE OF BIRTH COUNTRY OF BIRTH
	AGE AT TIME OF THIS BIRTH BC RESIDENT? <input type="checkbox"/> Yes <input type="checkbox"/> No	PERSONAL HEALTH NUMBER (CARECARD NUMBER) ABORIGINAL? <input type="checkbox"/> Yes <input type="checkbox"/> No DO YOU LIVE ON A RESERVE? <input type="checkbox"/> Yes <input type="checkbox"/> No
	IF THIS SECTION IS COMPLETED THEN SELECT ONE AND ONLY ONE OF A) OR B) A) <input type="checkbox"/> I AM THE FATHER OF THIS CHILD. OR B) <input type="checkbox"/> I AM NOT THE FATHER OF THIS CHILD BUT HAVE AGREED TO BE REGISTERED AS THE CO-PARENT OF THIS CHILD. (IF CO-PARENT BOX IS CHECKED, MOTHER MUST CHECK THE MOTHER'S DECLARATION REGARDING FATHER)	
	I certify that the foregoing is true and correct to the best of my knowledge and belief. MONTH (First 3 letters) DAY YEAR X _____ Date Signed Signature of Father or Co-Parent** ** A co-parent is defined as a person who is in a spousal relationship with the mother of the child at the time of the child's birth, but is not the father of the child. The mother and co-parent have agreed to be the parents of the child.	
	This is a legal document. The information as provided on this document will be used to register your child's birth.	

XVII. Appendix F—Family Law Act, Part 3, Parentage

Division 1 — General Matters

Interpretation

20(1) In this Part:

“**assisted reproduction**” means a method of conceiving a child other than by sexual intercourse;

“**birth mother**” means the person who gives birth to, or is delivered of, a child, regardless of whether her human reproductive material was used in the child’s conception;

“**donor**” means a person who, for the purposes of assisted reproduction other than for the person’s own reproductive use, provides

- (a) his or her own human reproductive material, from which a child is conceived, or
- (b) an embryo created through the use of his or her human reproductive material;

“**embryo**” means a human organism during the first 56 days of its development following fertilization or creation, excluding any time during which its development has been suspended, and includes any cell derived from such an organism that is used for the purpose of creating a human being;

“**human reproductive material**” means a sperm, an ovum or another human cell or human gene, and includes a part of any of them;

“**intended parent**” or “**intended parents**” means a person who intends, or 2 persons who are married or in a marriage-like relationship who intend, to be a parent of a child and, for that purpose, the person makes or the 2 persons make an agreement with another person before the child is conceived that

- (a) the other person will be the birth mother of a child conceived through assisted reproduction, and
- (b) the person, or the 2 persons, will be the child’s parent or parents on the child’s birth, regardless of whether that person’s or those persons’ human reproductive material was used in the child’s conception.

(2) A child born as a result of assisted reproduction is deemed to have been conceived on the day the human reproductive material or embryo was implanted in the birth mother.

Void and voidable marriages

21(1) For the purposes of this Part, if

- (a) 2 persons go through a form of marriage to each other, with at least one of them doing so in good faith,
- (b) the 2 persons live together during the marriage, and
- (c) the marriage is void,

the 2 persons are deemed to have been married during the period they were living together, and the marriage is deemed to have ended when the persons stopped living together.

(2) For the purposes of this Part, if a voidable marriage is declared a nullity, the persons who went through the form of marriage are deemed to be married until the date of the declaratory order of nullity.

Effect of Part

22 This Part does not affect a disposition of property under an enactment or instrument before the date this section comes into force.

Division 2 — Determining Parentage

Parentage to be determined by this Part

23(1) For all purposes of the law of British Columbia,

- (a) a person is the child of his or her parents,
- (b) a child's parent is the person determined under this Part to be the child's parent, and
- (c) the relationship of parent and child and kindred relationships flowing from that relationship must be as determined under this Part.

(2) For the purposes of an instrument or enactment that refers to a person, described in terms of his or her relationship to another person by birth, blood or marriage, the reference must be read as a reference to, and read to include, a person who comes within the description because of the relationship of parent and child as determined under this Part.

Donor not automatically parent

24(1) If a child is born as a result of assisted reproduction, a donor who provided human reproductive material or an embryo for the assisted reproduction of the child

- (a) is not, by reason only of the donation, the child's parent,
- (b) may not be declared by a court, by reason only of the donation, to be the child's parent, and
- (c) is the child's parent only if determined, under this Part, to be the child's parent.

(2) For the purposes of an instrument or enactment that refers to a person, described in terms of his or her relationship to another person by birth, blood or marriage, the reference must not be read as a reference to, nor read to include, a person who is a donor unless the person comes within the description because of the relationship of parent and child as determined under this Part.

Parentage if adoption

25 If a child is adopted, sections 26 to 30 of this Act do not apply and the child's parents are as set out in the *Adoption Act*.

Parentage if no assisted reproduction

26(1) On the birth of a child not born as a result of assisted reproduction, the child's parents are the birth mother and the child's biological father.

(2) For the purposes of this section, a male person is presumed, unless the contrary is proved or subsection (3) applies, to be a child's biological father in any of the following circumstances:

- (a) he was married to the child's birth mother on the day of the child's birth;
- (b) he was married to the child's birth mother and, within 300 days before the child's birth, the marriage was ended
 - (i) by his death,
 - (ii) by a judgment of divorce, or
 - (iii) as referred to in section 21 [*void and voidable marriages*];
- (c) he married the child's birth mother after the child's birth and acknowledges that he is the father;
- (d) he was living with the child's birth mother in a marriage-like relationship within 300 days before, or on the day of, the child's birth;
- (e) he, along with the child's birth mother, has acknowledged that he is the child's father by having signed a statement under section 3 of the *Vital Statistics Act*;
- (f) he has acknowledged that he is the child's father by having signed an agreement under section 20 of the *Child Paternity and Support Act*, R.S.B.C. 1979, c. 49.

(3) If more than one person may be presumed to be a child's biological father, no presumption of paternity may be made.

Parentage if assisted reproduction

27(1) This section applies if

- (a) a child is conceived through assisted reproduction, regardless of who provided the human reproductive material or embryo used for the assisted reproduction, and
- (b) section 29 [*parentage if surrogacy arrangement*] does not apply.

(2) On the birth of a child born as a result of assisted reproduction in the circumstances described in subsection (1), the child's birth mother is the child's parent.

(3) Subject to section 28 [*parentage if assisted reproduction after death*], in addition to the child's birth mother, a person who was married to, or in a marriage-like relationship with, the child's birth mother when the child was conceived is also the child's parent unless there is proof that, before the child was conceived, the person

- (a) did not consent to be the child's parent, or
- (b) withdrew the consent to be the child's parent.

Parentage if assisted reproduction after death

28(1) This section applies if

- (a) a child is conceived through assisted reproduction,
- (b) the person who provided the human reproductive material or embryo used in the child's conception
 - (i) did so for that person's own reproductive use, and
 - (ii) died before the child's conception, and
- (c) there is proof that the person
 - (i) gave written consent to the use of the human reproductive material or embryo, after that person's death, by a person who was married to, or in a marriage-like relationship with, the deceased person when that person died,
 - (ii) gave written consent to be the parent of a child conceived after the person's death, and
 - (iii) did not withdraw the consent referred to in subparagraph (i) or (ii) before the person's death.

(2) On the birth of a child born as a result of assisted reproduction in the circumstances described in subsection (1), the child's parents are

- (a) the deceased person, and
- (b) regardless of whether he or she also provided human reproductive material or the embryo used for the assisted reproduction, the person who was married to, or in a marriage-like relationship with, the deceased person when that person died.

Parentage if surrogacy arrangement

29(1) In this section, "surrogate" means a birth mother who is a party to an agreement described in subsection (2).

(2) This section applies if,

- (a) before a child is conceived through assisted reproduction, a written agreement is made between a potential surrogate and an intended parent or the intended parents, and
- (b) the agreement provides that the potential surrogate will be the birth mother of a child conceived through assisted reproduction and that, on the child's birth,
 - (i) the surrogate will not be a parent of the child,
 - (ii) the surrogate will surrender the child to the intended parent or intended parents, and

- (iii) the intended parent or intended parents will be the child's parent or parents.

(3) On the birth of a child born as a result of assisted reproduction in the circumstances described in subsection (2), a person who is an intended parent under the agreement is the child's parent if all of the following conditions are met:

- (a) before the child is conceived, no party to the agreement withdraws from the agreement;
- (b) after the child's birth,
 - (i) the surrogate gives written consent to surrender the child to an intended parent or the intended parents, and
 - (ii) an intended parent or the intended parents take the child into his or her, or their, care.

(4) For the purposes of the consent required under subsection (3)(b)(i), the Supreme Court may waive the consent if the surrogate

- (a) is deceased or incapable of giving consent, or
- (b) cannot be located after reasonable efforts to locate her have been made.

(5) If an intended parent dies, or the intended parents die, after the child is conceived, the deceased intended parent is, or intended parents are, the child's parent or parents if the surrogate gives written consent to surrender the child to the personal representative or other person acting in the place of the deceased intended parent or intended parents.

(6) An agreement under subsection (2) to act as a surrogate or to surrender a child is not consent for the purposes of subsection (3)(b)(i) or (5), but may be used as evidence of the parties' intentions with respect to the child's parentage if a dispute arises after the child's birth.

(7) Despite subsection (2)(a), the child's parents are the deceased person and the intended parent if

- (a) the circumstances set out in section 28(1) [*parentage if assisted reproduction after death*] apply,
- (b) before a child is conceived through assisted reproduction, a written agreement is made between a potential surrogate and a person who was married to, or in a marriage-like relationship, with the deceased person, and
- (c) subsections (2)(b) and (3)(a) and (b) apply.

Parentage if other arrangement

30(1) This section applies if there is a written agreement that

- (a) is made before a child is conceived through assisted reproduction,
- (b) is made between
 - (i) an intended parent or the intended parents and a potential birth mother who agrees to be a parent together with the intended parent or intended parents, or
 - (ii) the potential birth mother, a person who is married to or in a marriage-like relationship with the potential birth mother, and a donor who agrees to be a parent together with the potential birth mother and a person married to or in a marriage-like relationship with the potential birth mother, and
- (c) provides that
 - (i) the potential birth mother will be the birth mother of a child conceived through assisted reproduction, and
 - (ii) on the child's birth, the parties to the agreement will be the parents of the child.

(2) On the birth of a child born as a result of assisted reproduction in the circumstances described in subsection (1), the child's parents are the parties to the agreement.

(3) If an agreement described in subsection (1) is made but, before a child is conceived, a party withdraws from the agreement or dies, the agreement is deemed to be revoked.

Orders declaring parentage

31(1) Subject to subsection (5), if there is a dispute or any uncertainty as to whether a person is or is not a parent under this Part, either of the following, on application, may make an order declaring whether a person is a child's parent:

- (a) the Supreme Court;
- (b) if such an order is necessary to determine another family law dispute over which the Provincial Court has jurisdiction, the Provincial Court.

(2) If an application is made under subsection (1), the following persons must be served with notice of the application:

- (a) the child, if the child is 16 years of age or older;
- (b) each guardian of the child;
- (c) each adult person with whom the child usually resides and who generally has care of the child;
- (d) each person, known to the applicant, who claims or is alleged to be a parent of the child;
- (e) any other person to whom the court considers it appropriate to provide notice, including a child under 16 years of age.

(3) To the extent possible, an order under this section must give effect to the rules respecting the determination of parentage set out under this Part.

(4) The court may make an order under this section despite the death of the child or person who is the subject of the application, or both.

(5) An application may not be made respecting a child who has been adopted.

New evidence

32(1) This section applies if evidence becomes available that was not available at the time an application for a declaration of parentage under section 31 [*orders declaring parentage*] was heard.

(2) On application, a court may confirm or set aside an order made under section 31, or make a new order under that section.

(3) The setting aside of an order under subsection (2) of this section does not affect

- (a) rights or duties that have already been exercised, or
- (b) property interests that have already been distributed.

Parentage tests

33(1) In this section, "**parentage tests**" are tests used to identify inheritable characteristics, and include

- (a) human leukocyte antigen tests,
- (b) tests of the deoxyribonucleic acid (DNA), and
- (c) any other test the court considers appropriate.

(2) On application by a party to a proceeding under this Part,

- (a) the Supreme Court, or
- (b) if necessary for the purposes of making an order under section 31 [*orders declaring parentage*], the Provincial Court,

may order a person, including a child, to have a tissue sample or blood sample, or both, taken by a medical practitioner or other qualified person for the purpose of conducting parentage tests.

(3) An order under subsection (2) of this section may require a party to pay all or part of the cost of the parentage tests.

(4) If a person named in an order under subsection (2) of this section fails to comply with the order, the court may draw from that failure any inference that the court considers appropriate.

Division 3 — Orders Made Outside British Columbia

Definitions

34 In this Division:

“**extraprovincial declaratory order**” means an order of an extraprovincial tribunal that declares whether a person is a child’s parent;

“**extraprovincial tribunal**” means a court or tribunal, outside British Columbia, having authority to make orders declaring whether a person is a child’s parent.

Recognition of Canadian extraprovincial declaratory orders

35(1) Subject to subsection (3), a court must recognize an extraprovincial declaratory order made in Canada.

(2) On recognition by a court, an extraprovincial declaratory order made in Canada has the same effect as if it were an order made under section 31 [*orders declaring parentage*].

(3) A court may decline to recognize an extraprovincial declaratory order made in Canada and make an order under section 31, if

- (a) evidence becomes available that was not available during the proceeding at which the extraprovincial declaratory order was made, or
- (b) the court is satisfied that the extraprovincial declaratory order was obtained by fraud or duress.

Recognition of non-Canadian extraprovincial declaratory orders

36(1) Subject to subsection (3), a court must recognize an extraprovincial declaratory order made outside Canada if, at the time the extraprovincial declaratory order or the application for the order was made, the child or at least one of the child’s parents

- (a) was habitually resident in the jurisdiction of the extraprovincial tribunal, or
- (b) had a real and substantial connection with the jurisdiction of the extraprovincial tribunal.

(2) On recognition by a court, an extraprovincial declaratory order made outside Canada has the same effect as if it were an order made under section 31 [*orders declaring parentage*].

(3) A court may decline to recognize an extraprovincial declaratory order made outside Canada and make an order under section 31, if

- (a) evidence becomes available that was not available during the proceeding at which the extraprovincial declaratory order was made,
- (b) the court is satisfied that the extraprovincial declaratory order was obtained by fraud or duress, or
- (c) the extraprovincial declaratory order is contrary to public policy.