

Restoring the Foundation: Why BC's Family Law Must Uphold the Natural Family

Introduction

As a part of the second stage of reviewing and modernizing British Columbia's *Family Law Act*, the Family Policy, Legislation and Transformation Division within the Ministry of Attorney General published a Policy Intentions Paper outlining their intended changes.¹ Chapter 6 of the Paper recommends four changes to parentage, largely based on the notion that parentage should be based on intent rather than biology, in the provincial family law:

1. Align parentage provisions for children conceived using sexual intercourse with provisions for children conceived using assisted reproduction (other than surrogacy).
2. Recognize the parentage of a person whose child was conceived after their death (posthumously) in circumstances where the deceased intended to be and consented to be a parent but has no genetic link to the child.
3. Allow sperm donation by sexual intercourse if there is a pre-conception agreement that says the parties do not intend the donor to be a parent.
4. Gendered language will be replaced with inclusive terms that accurately describe particular roles in conception, birth and parenting.

We respectfully submit that these recommendations, if adopted, would undermine the best interests of children, families, and society.

Family law in British Columbia does need to be modernized and reformed, but not by transitioning towards recognizing parentage based primarily on intent. Instead, the *Family Law Act* should return to rooting parentage in biology and the natural family. Such changes will promote the best interests of the child, the stability of the natural family, and the flourishing of society.

¹ Ministry of Attorney General. (August, 2025). [Phase 2: Care of and Time with Children and Protection from Family Violence - Policy Intentions Paper](#).

The Foundation of the Natural Family

The natural family – a married couple and their biological children – is the foundation on which society itself is built.² The fellowship experienced and the bond established by a husband and wife and their children is called a family.³

The family is formed through fellowship, arising naturally or organically. As demonstrated by its prevalence throughout history and throughout the world, monogamous, heterosexual marriage is the natural venue for sexual intimacy. Marriage best fulfills the human need for companionship, best guarantees relational stability, and best satisfies sexual desires. A natural product of intimacy between a husband and a wife is children. Through nurture, the child is raised by his father and mother with attention to the child's character, well-being, and growth.⁴ The family, ultimately, is where nature and nurture meet in one unit. By nature, the child is connected to his father and mother by a bond of blood, resembling the father and mother in various physical features.⁵

Even today, the natural family is by far the most common family structure for children in British Columbia; sixty percent of all children live in a natural family, 27% in a one-parent family, 5% in a common law, two-parent family, 4% in a married, two-parent stepfamily, and 3% in a common law, two-parent stepfamily.⁶

The natural family is also supported in the Christian thought upon which Western, Canadian, and British Columbian law is founded. According to Christian thought, the family is the first institution in history, dating back to the creation of mankind. Genesis 1:27-28 says that "God created man in His own image; in the image of God He created him; male and female He created them. And God blessed them. And God said to them, 'Be fruitful and multiply and fill the earth.'" God also created the institution of marriage, where "a man shall leave his father and his mother and hold fast to his wife, and they shall become one flesh."⁷ The Lord Jesus, quoting from this passage, explicitly affirms God's design for marriage and family as normative for all cultures and times.⁸ God created the man and woman to be united in a marriage relationship and together to form a complete unit.⁹ After the first man and woman were created, the

² Bavinck, *The Christian Family*, 134.

³ Herman Bavinck, *The Christian Family*, trans. Nelson D. Kloosterman (Grand Rapids, MI: Christian's Library Press, 2012), 112.

⁴ Kuyper, *Pro Rege*, III.17, s.1.

⁵ Kuyper, *Pro Rege*, III.8, s.2.

⁶ Statistics Canada. Table 98-10-0124-01: Census family structure including detailed information on stepfamilies, number of children, average number of children and age of youngest child: Canada, provinces and territories, census metropolitan areas and census agglomerations.

<https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=9810012401>. The table does not break down children how the parents received the children (e.g. sexual intercourse, assisted reproduction, adoption, or foster care).

⁷ [Genesis 2:24](#).

⁸ [Matthew 19:4-6](#). Jesus quotes from both Genesis 1:27 and Genesis 2:24, and then builds on what is said there by stating, "What therefore God has joined together, let not man separate." While the immediate meaning of this sentence refers to a particular man joined together with a particular woman, it also speaks to the creational norm: what God has joined together (one man and one woman as the design for marriage), let not man separate (by redefining marriage to be other than one man and one woman joined together). See also Abraham Kuyper, *Pro Rege (Volume 2): Living Under Christ's Kingship: The Kingship of Christ in its Operation*, eds. John Kok and Nelson D. Kloosterman, trans. Albert Gootjes (Bellingham, WA: Lexham Press, 2017) III.1, s.3.

⁹ Cornelis Van Dam, *God and Government* (Eugene, OR: Wipf and Stock, 2011), 130.

first recorded command God gave them was to bear children.¹⁰ The blessing of children is also highlighted throughout the Bible.¹¹ It is by forming families that people replenish and increase the human race.¹²

The natural basis of the family and its fundamental importance to the well-being of children are central features of international law. The Universal Declaration of Human Rights (UDHR) states that “the family is the *natural* and *fundamental* group unit of society and is entitled to protection by society and the State” (emphasis added). The principles in the Universal Declaration of Human Rights were further established and built upon in the United Nations Convention on the Rights of the Child (UNCRC). The Preamble to the UNCRC states that parties to the agreement are “convinced that the family, as the *fundamental group* of society and the *natural environment* for the growth and *well-being* of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community” (emphasis added). Article 3 states that “In all actions concerning children, whether undertaken by public or private welfare institutions, courts of law, administrative or legislative bodies, *the best interests of the child shall be a primary consideration*” (emphasis added).¹³

The Benefits of the Natural Family

The ‘best interests of the child’ must be understood in the context of the natural family. British Columbia’s *Family Law Act* has an entire section (section 37) that describes the best interests of the child in the context of guardianship, parenting arrangements, or contact with a child. Unfortunately, Part 3 of the law dealing with parentage makes no mention of the best interests of children.

Three aspects of the natural family – its biological connection to children, its two parents, and the presence of both a mother and a father – all contribute to making the natural family the most likely structure to create positive outcomes for children.

Biological Connection vs Intent

Children who live with their married, biological mother and father are safer, have fewer negative behavioural outcomes, have better mental health and educational outcomes, are less likely to suffer poverty, and are at lower risk of depression, suicide, and abuse.¹⁴ They tend to have higher incomes, higher quality of relationships, enjoy a greater level of social connectedness, and receive more guidance

¹⁰ Wayne Grudem, *Politics According to the Bible* (Grand Rapids, MI: Zondervan, 2010), 245.

¹¹ [Psalm 112:1-2](#), [Ps. 127:3-4](#), [Psalm 128:3-4](#), [Psalm 139:13-16](#).

¹² John Frame, *The Doctrine of the Christian Life* (Phillipsburg, NJ: P&R Publishing Company, 2008), 595.

¹³ “Convention on the Rights of the Child,” *United Nations*, Article 3.

¹⁴ “[Sticking with it](#): Canadian research on how marriage benefits children and adults,” Institute of Marriage and Family Canada, August 2015, 4-6. See also Mark Regnerus, “[How different are the adult children of parents who have same-sex relationships?](#) Findings from the New Family Structures Study,” *Social Science Research* 41, no. 4, (July 2012). Regarding educational outcomes, see also Douglas W. Allen, “[High school graduation rates among children of same-sex households](#),” *Review of Economics of the Household* 11 (Sept. 2013), which explains that children raised in gay and lesbian families were just 65% as likely to graduate compared to children of a married mother and father. In addition, girls struggled even more than boys, with girls living in gay families just 15% as likely to graduate than daughters in opposite sex married homes.

to enable them to thrive in adulthood.¹⁵ Children who do not grow up with their biological father are at least two or three times more likely to suffer poverty, drug abuse, and negative educational, emotional, and behavioural outcomes.

Children who live with unrelated adults have a higher risk of sexual, emotional, physical abuse, hyperactivity, and deviant behaviour.¹⁶ One study demonstrated that “young children who reside in households with an unrelated adult are at nearly 50-fold risk of suffering a fatal inflicted injury, compared with children residing with two biological parents.”¹⁷ Another study found that children separated from one or both biological parents were more likely to suffer poverty, to witness violence, and to live with someone who has a drug or alcohol addiction or becomes incarcerated. These experiences have been linked to poor outcomes for children, including drug abuse and risk of suicide.¹⁸

It is for this reason that British Columbia has a strong screening system for potential adoptive parents. It helps ensure that non-biologically related adults will provide a safe environment for adopted children.¹⁹ The goal of adoption is to provide the child with a stable family that is modelled on the natural family. Even so, adopted children still have a statistically higher risk of behavioural disorders and mental health concerns, about twice that of non-adopted children.²⁰

Intent-based parenthood, on the other hand, deprives children of their natural parents by design. It ensures that adults with financial means can get a biologically unrelated baby without any safety screening. Unlike adoption processes, intent-based parenthood requires no background checks or home studies to ensure the child’s safety and focuses on the desires of adults instead of the best interests of the child.²¹ Society must not promote or facilitate the separation of children from their biological parents by design.²²

Replacing the natural family and biological parentage as the foundation for family law with parental intent would further destabilize family law and weaken families. The natural family best creates stable

¹⁵ Peyton Roth and W. Bradford Wilcox, “[Stronger Families, Safer Neighborhoods](#),” American Enterprise Institute, June 27, 2022.

¹⁶ Pagani, L., Tremblay, R. E., Vitaro, F., Kerr, M., & McDuff, P. (1998). The impact of family transition on the development of delinquency in adolescent boys: A 9-year longitudinal study. *The Journal of Child Psychology and Psychiatry and Allied Disciplines*, 39(4), 489-499; Kerr, D., & Michalski, J. H. (2007). Family structure and children's hyperactivity problems: A longitudinal analysis. *The Canadian Journal of Sociology/Cahiers canadiens de sociologie*, 85- 112.

¹⁷ Patricia G. Schnitzer & Bernard G. Ewigman, “[Child Deaths Resulting from Inflicted Injuries](#): Household Risk Factors and Perpetrator Characteristics,” *Pediatrics* 116, no. 5, November 2005.

¹⁸ Laura Radel and Matthew Bramlett, “[Children in Nonparental Care](#): Findings from the 2011-2012 National Survey of Children’s Health,” *U.S. Department of Health and Human Services*.

¹⁹ Faust, *Them Before Us*, 43.

²⁰ Kathleen Kingsbury, “[Adoptees More Likely to be Troubled](#),” *Time*, May 5, 2008.

²¹ Faust, *Them Before Us*, 83-85. The decision in *M.R.R. v. J.M.* indicates that changes to parentage in Ontario family law were not in the best interests of children but instead focused on the desires of adults: “Although a child would obviously benefit from having a further source of financial support, that approach could undermine **the autonomy of those [adults] seeking to define their family unit** to exclude known sperm donors or surrogates as legal parents, and it could discriminate against **people [i.e. adults] who choose, prior to the child’s conception, to be single parents**” (emphasis added, see para. 149).

²² For more on this, see ARPA Canada’s Respectfully Submitted Policy Reports on In Vitro Fertilization and Surrogacy.

environments in which children can thrive. But because human will is fickle, mere ‘intention’ to become a parent, or a signature on a contract with other ‘intended parents’ (who may not be a spouse or relative), is a weak foundation.

Two Parents vs One or Many Parents

The likely outcome of the proposed changes to British Columbia’s family law will be that a greater number of children will have more than two parents. Currently, only children conceived through sexual intercourse can have up to two parents. The proposed changes allow such children to have up to four parents. Children conceived through assisted reproduction can have up to six parents: an intended mother, an intended father, a birth mother, the spouse of the birth mother, a sperm donor, and an egg donor.

Some advocates claim that more than two parents will benefit the child. After all, there will be more adults to care for the child, and the household will likely be financially better off with the possibility of more than two adults working.

However, we submit that having more than two parents will actually have negative effects on children. While the evidence based on the outcomes for children in multi-parent households is sparse, one case study is the polygamous fundamental Mormon community in Bountiful, BC. In this case, family structures with more than two adults resulted in many harms to children.²³ Indeed, in the *Polygamy Reference*, the Supreme Court of British Columbia found that

Children in polygynous families face higher infant mortality, even controlling for economic status and other relevant variables. They tend to suffer more emotional, behavioural and physical problems, as well as lower educational achievement... Children are also at enhanced risk of psychological and physical abuse and neglect... Another significant harm to children is their exposure to, and potential internalization of, harmful gender stereotypes... Finally, the evidence relating to Bountiful reveals higher rates of teen pregnancy, the movement of young girls between the community and the United States for the purpose of marriage, and poorer educational outcomes.²⁴

Non-polyamorous multi-parent family structures are also less likely to foster the best interests of the child. In multi-parent families in which different parents live apart from one another, children risk the disruption of being shunted from house to house so that each parent gets time with the child.

Children with several parents are also more likely to become the objects of custody and visitation disputes. An analogous situation is that of children with divorced parents, where child outcomes are below those of married parents. Even if all the parents of the child live in the same household, a greater number of parents may increase the number of disputes and send mixed messages about child-rearing, discipline, education, and the health care of the child. The greater the number of biologically unrelated parents that a child has, the less responsibility each parent may feel for the child.

Although the proposed changes to the family law are most likely to lead to a greater number of children in multi-parent families, allowing “sperm donation through sexual intercourse” could increase the

²³ Nicholas Bala, “Why Canada’s Prohibition of Polygamy is Constitutionally Valid and Sound Social Policy” (2009) 25:2 Can J Fam L 165 at 168.

²⁴ Reference Re Section 293 of the Criminal Code of Canada, 2011 BCSC 1588 [Polygamy Reference].

number of single mothers and fatherless households. It would increase the rate at which biological fathers avoid responsibility for their children. The difficulties of single-parent families are well known. Children born to single mothers are more likely to have adverse neonatal outcomes, have poorer academic performance, behavioural problems, poorer mental health, greater conflict with their parent, and diminished interpersonal skills.²⁵ The poverty rate of single-parent families is consistently more than three times higher than that of two-parent families in Canada (32.9% vs 10.3%).²⁶

Children thrive best when they are raised by not one parent, not many parents, but two parents.

Both Mother and Father vs Only Mother(s) or Father(s)

The sex of both parents matters too. Both the mother and the father play a critical role in a child's development that cannot be replaced or replicated by other forms of parenting.²⁷ Men and women have different but complementary parenting styles, correlated to biological differences. As such, there are many areas where fathers and mothers cooperate in raising their children due to their different styles and approaches.²⁸ Children suffer deprivation when removed from their biological mother and/or father.

When a woman conceives a child, an intense bond is developed between the mother and the child. This bond is a natural bond that develops during gestation as the mother's body is continually connected to the child. The child is "pre-wired" to form strong attachment bonds to his or her mother.²⁹ Maternal-fetal attachment (MFA) is the emotional bond between mother and child that begins during pregnancy, extends after birth, and is beneficial to both mother and child.³⁰ After birth, this bond continues during infancy, childhood, adolescence, and adulthood, although the nature of this bond changes in each of these stages of life. The bond may also be affected by the mother's other relationships.³¹

Rhianna relates her experience of growing up without a mother. Although her father loved her and cared for her, she writes, "I never have had a mom's love and affection... I still to this day suffer because

²⁵ Chavda K, Nisarga V. Single Parenting: Impact on Child's Development. *Journal of Indian Association for Child and Adolescent Mental Health*. 2023;19(1):14-20. doi:[10.1177/09731342231179017](https://doi.org/10.1177/09731342231179017); Biblarz, T. J., & Gottainer, G. (2000). Family structure and children's success: A comparison of widowed and divorced single-mother families. *Journal of Marriage and the Family*, 62(2), 533–548. <https://doi.org/10.1111/j.1741-3737.2000.00533.x>; Gruber, J. (2004). Is making divorce easier bad for children? The long-run implications of unilateral divorce. *Journal of Labor Economics*, 22(4), 799-833.

²⁶ Table 11-10-0018-01. (2023). Statistics Canada.

<https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1110001801&pickMembers%5B0%5D=1.154&pickMembers%5B1%5D=3.3&pickMembers%5B2%5D=4.1&cubeTimeFrame.startYear=2000&cubeTimeFrame.endYear=2023&referencePeriods=20000101%2C20230101>

²⁷ Jenet Erickson, "[Why Moms and Dads Both Matter in Marriage](#)," *Public Discourse*, May 18, 2015. See also Ilanit Gordon et al., "[Oxytocin and the Development of Parenting in Humans](#)," *Biological Psychiatry* 68, no. 4 (August 2010).

²⁸ Rodd Stein, "[How Parenting Styles Differ Between Dads and Moms](#)," *Westchester Health Pediatrics*. See also James Lopez, "[Gender Matters](#)," *Them Before Us*, May 3, 2017.

²⁹ Marcus Agnafors, "[The harm argument against surrogacy revisited](#): Two versions not to forget," *Medicine, Health Care and Philosophy* 17, No. 3 (2014), 360-361.

³⁰ Agnafors, "The harm argument against surrogacy revisited," 360-361.

³¹ Kathreim Macedo da Rosa et al., "[Maternal-fetal attachment and perceived parental bonds of pregnant women](#)," *Early Human Development* 154 (March 2021).

of that abandonment feeling. I often would wonder why every other kid had a close relationship with their mom, but not me.”³²

Present fathers, compared to absent fathers, increase their daughters’ chance of success in school, work, and relationships, and an active father reduces his daughter’s risk of engaging in risky sexual behaviour.³³ Studies from the U.S. indicate that children raised without a father account for 63% of teen suicides, 85% of behaviour disorder patients, and 85% of young prison inmates. When a child is missing their father, risk of violent behaviour also increases. Fathers cannot be replaced.³⁴ In British Columbia, twenty-seven percent of children live in a single-parent home, and four out of every five of these children do not have a father at home.³⁵

Maggie, raised in a single-parent home, explained what it was like to grow up without a father: “I constantly felt unloved, unworthy and abandoned. I craved a father figure and protection. This led to me seeking out unhealthy and abusive relationships with men who simply didn’t care about me.”³⁶

And yet, British Columbia proposes to abandon sexed terms in the *Family Law Act*, failing to recognize mothers and fathers as distinct and important people in their children’s lives. The Policy Intentions Paper recommends removing the terms “mother” and “father” from the act. Such changes stem from an ideological commitment to deny that the family is the basic social unit of society, rooted in creation and human nature, and not merely a product of human invention. Rather, this ideology wishes to transcend biology and assert that families are products of human will and design – your family is what you want it to be and comes into existence the way you choose. Instead, the *Family Law Act* should retain the sexed language of father and mother and gendered pronouns.

The Problems with Recent and Proposed Changes to British Columbia Family Law

Rather than promoting the natural family in family law and thereby placing children in the best conditions to flourish, British Columbia’s family law is drifting from this basis. This departure is present in the 2011 update to British Columbia’s family law as well as the government’s proposed changes to parentage law.

³² “[Rhianna](#) – I never have had a mom’s love and affection,” Them Before Us, July 5, 2018.

³³ Linda Nielsen, “[How Dads Affect Their Daughters into Adulthood](#),” Institute for Family Studies, June 3, 2014. See also Danielle J. DelPriore, Gabriel L. Schlomer, and Bruce J. Ellis, “Impact of fathers on parental monitoring of daughters and their affiliation with sexually promiscuous peers: A genetically and environmentally controlled sibling study,” *Developmental Psychology* 53, no. 7 (July 2017): 1330-1343.

³⁴ “[Research and Statistics](#),” Rochester Area Fatherhood Network. See also Kevin Roberts, “[Sorry Libs, You Can’t Replace Dads With Government](#),” The Heritage Foundation, June 21, 2022. And see Sara McLanahan, Laura Tach, and Daniel Schneider, “[The Causal Effects of Father Absence](#),” *Annual Review of Sociology* 39 (July 2013): 399-427.

³⁵ Statistics Canada. Table 98-10-0124-01: Census family structure including detailed information on stepfamilies, number of children, average number of children and age of youngest child: Canada, provinces and territories, census metropolitan areas and census agglomerations. <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=9810012401>. See also Jamil Jivani, “[A good dad can do more for kids than any government program](#),” *National Post*, June 17, 2022.

³⁶ “[Maggie](#) – I’ll never fully heal from having an absent father and being raised by a single mother,” Them Before Us, May 27, 2019.

Intentional Parentage vs Biological Parentage

British Columbia's 2011 family law update rewrote family law in light of emerging reproductive technologies. The law began to recognize parentage based on contracts when assisted reproduction is used to conceive a child. For example, a pre-conception agreement is required in a surrogacy arrangement to clarify that the birth mother will not be the legal mother of the child, and that the intended parents will be the legal parents. Pre-conception agreements may also be used to recognize that an intended mother, an intended father, a birth mother, the spouse of the birth mother, a sperm donor, and an egg donor may all be the parents of a child. In such arrangements, intention – set forth through written agreement – rather than biology determines legal parentage.

The proposed changes to the *Family Law Act* further depart from the promotion of the natural family. Pre-conception agreements could allow children born naturally without assisted reproduction to have up to four parents. "Sperm donation by sexual intercourse" would also be permitted if a pre-conception agreement is signed.

These changes turn family law in the wrong direction. The natural foundation for parentage is not a contract or agreement. It is unavoidably biology. No amount of papers and signatures can create parents and conceive children. Children are conceived through a biological connection, the fertilization of a mother's egg by a father's sperm. It is this biological connection – not intentional arrangement – that should be the basis for family law.

But even if it were *possible* for children to be conceived through contract and without biological connection, that would still not be *desirable*. Children aren't commodities to be haggled over or produced through contract. The recognition that people (and perhaps especially children) should not be bought and sold, owned and disowned, is the foundation for our country's abolition of slavery, our prohibition of prostitution, and our prohibition on the commercialization of gametes in the *Assisted Human Reproduction Act*. Family duties are deeper and more complex than business dealings or contractual obligations.³⁷ And, as presented above, children who are raised by their biological parents are more likely to flourish than children raised by their non-biological parents. Family law policy shouldn't encourage more children to be separated from their natural parents.

Unmarried Parents vs Married Parents

The recent and proposed changes also enable more unmarried adults to be awarded parentage, purposely depriving a child of the benefit of living within a married household with one father and one mother.

One of the stated reasons for extending intentional and contractual parentage in the British Columbia Law Institute's report was to account for polyamorous relationships.³⁸ In 2021, a judge declared the third member of a polyamorous throuple to be a parent of the child born to the other two members. In the judge's opinion, there was a gap in the *Family Law Act* because it failed to recognize polyamorous

³⁷ Morse, *Love & Economics*, 269.

³⁸ British Columbia Law Institute. (2024). https://www.bcli.org/wp-content/uploads/2024-07-25_BCLI-Report-on-Parentage_FINAL-FORMATTED.pdf

relationships. The judge's decision aimed to rectify this supposed gap, as does the recommendation that any four people can contract to become the parents of a child.³⁹

One reason why the *Family Law Act* does not recognize all members of a polyamorous relationship to be the parent of a child is that polygamy is illegal. Recognizing multiple parents would create confusion in our legal system, where polyamory is, in effect, legally recognized in one area (parentage) but not in another area (marriage).

The Policy Intentions Paper also recommends allowing "sperm donation by sexual intercourse" in the name of "more reproductive choice" if all parties sign on to a pre-conception agreement. The language used here implies that this would simply allow what is legal in one area (sperm donation) to be allowed in another legal area (sexual intercourse). It allows, on the condition that there is a written contract, for a (married or unmarried) man to have sex with a married woman (or a single woman, a woman in a common-law relationship, or a woman in a lesbian relationship) so that the husband and wife can conceive a child. The third party would give up his claim to be a legal parent (as, without such a written agreement, he could be named as the father in the case of a parentage dispute), and the husband and wife would become the legal parents.

But allowing "sperm donation by sexual intercourse" again undermines the nature, the foundational social unit of society. The bonds that hold it together are monogamous, heterosexual, lifelong marriage and the biological connection to the ensuing children. Social trends and legal reforms have weakened those bonds. Recognizing "sperm donation by sexual intercourse" would further undermine natural marriage and, by extension, the natural family by encouraging sex and the conception of children outside of marriage. If infertile couples wish to have a child, they may adopt or foster one of the many children in the child welfare system, children who desperately need a stable, loving home.

Conclusion

Of course, children do not experience positive outcomes in every case where they live with their biological mother and father. Likewise, children can fare well when they grow up in an alternative family structure. There are also times when single parenting or adoption is unavoidable due to various circumstances. But the fact that there are exceptions does not negate the reality that children have the *best chance* of stability and positive outcomes when raised by a married, biological mother and father. Intentionally causing a child to lose his or her biological father or mother or allowing many people to claim to be parents of a child through bad public policy is not in the best interests of the child.⁴⁰ Law and public policy ought to be geared towards the best interests of the child by promoting the natural family.

In light of these realities, we recommend the following principles for family law in British Columbia against the government's recent proposals:

1. British Columbia should indeed align parentage provisions for children conceived using sexual intercourse with provisions for children conceived using assisted reproduction. However, it should do so by universally connecting parentage to biology rather than intent, with an exception for adoption. In both conception through sexual intercourse and assisted reproduction, the mother should be the one whose egg was used to conceive the child, and the

³⁹ British Columbia Birth Registration No 2018-XX-XX5815, 2021 BCSC 767 [Birth Registration Case]

⁴⁰ Faust, *Them Before Us*, 25.

father should be the one whose sperm was used to conceive the child. The current family law presumption that the biological mother is the birth mother and the biological father is the spouse of the birth mother, unless otherwise contested, should remain in place for children conceived without assisted reproduction. Determining parentage through biology would preclude "sperm donation by sexual intercourse" with a pre-conception agreement.

2. Except in instances of adoption, the *Family Law Act* should clarify that a child can have a maximum of two legal parents at one time to reflect the natural family structure and the biological reality that every child only ever has one biological mother and one biological father.
3. Any non-biologically related adults who wish to become the legal parent of a child ought to go through an adoption process to prioritize the child's well-being over the desires of adults.
4. Gendered language should be retained in the *Family Law Act* to recognize the importance of both a mother and a father in children's lives.

Respectfully submitted,



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Appendix: Draft Legislative Changes to *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;

"biological father" means the person by whose sperm the child was conceived;

"biological mother" means the person by whose ovum the child was conceived;

"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 sperm or ovum ~~human reproductive material~~, from which a child is conceived, or

(b) an embryo created through the use of his or her sperm or ovum ~~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 the person's 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 the person's 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 is, by reason only of the donation, the child's parent.~~

~~(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 the person's 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) On the birth of a child born as a result of assisted reproduction, the child's parents are the biological mother and the child's biological father.

(2) For greater certainty, a donor who provided the sperm, ovum, or embryo for the assisted reproduction of the child is, by reason only of the donation, the child's parent.

~~(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 the person 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 the intended parent's or parents' 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 the surrogate 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.~~