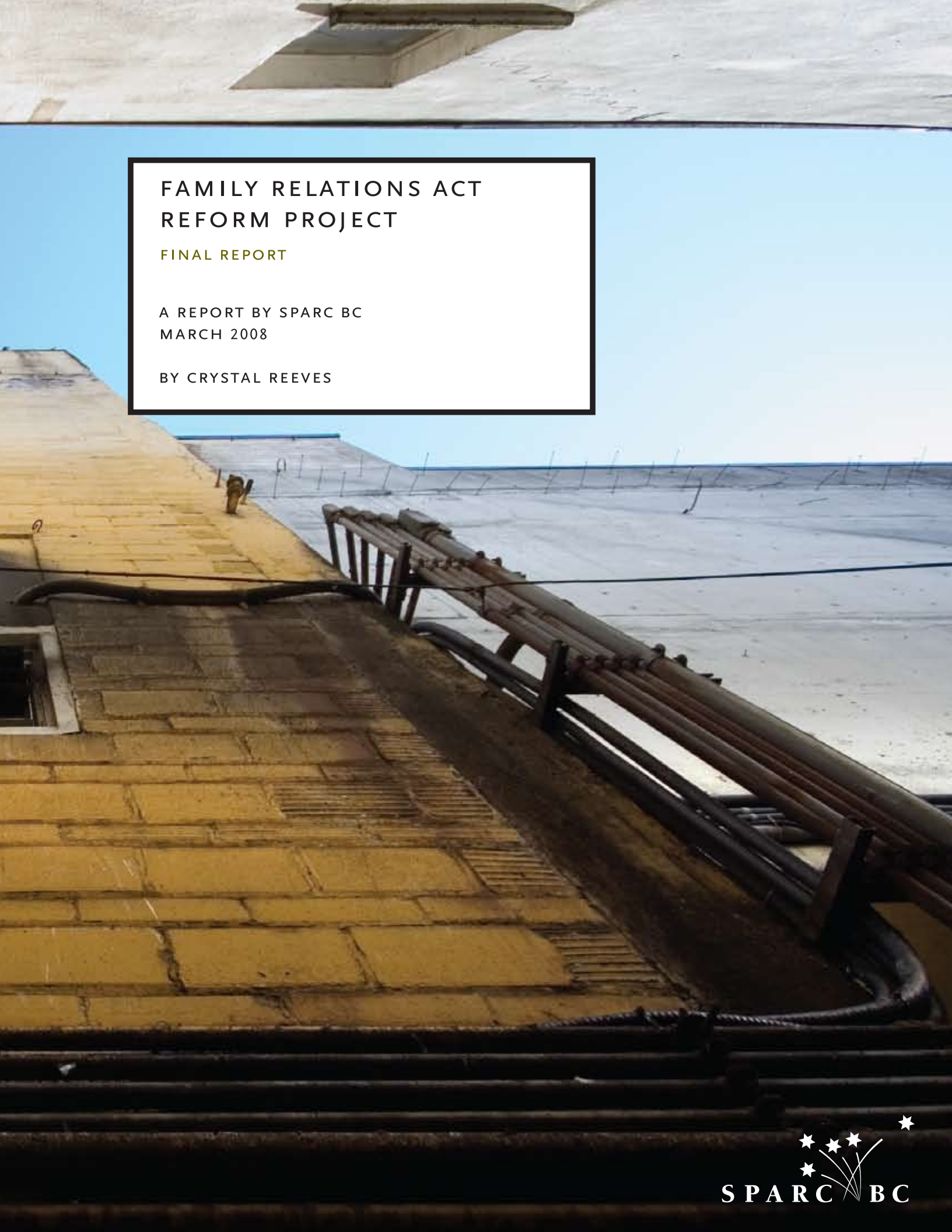

FAMILY RELATIONS ACT REFORM PROJECT

FINAL REPORT

A REPORT BY SPARC BC
MARCH 2008

BY CRYSTAL REEVES

SPARC BC

FAMILY RELATIONS ACT REFORM PROJECT

EXECUTIVE SUMMARY OF THE FINAL REPORT

A REPORT BY SPARC BC
MARCH 2008

BY CRYSTAL REEVES

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The content of the Family relations act reform project would not be possible without the insightful contributions of the members of the fra reform project advisory committee.

SPARC BC would like to specifically thank the following advisory committee members for giving their time and expertise:

Dr. Margaret Wright, Associate Professor, UBC School of Social Work

Shashi Assanand, Executive Director of Vancouver & Lower Mainland
Multicultural Family Support

Zara Suleman, Legal Researcher and Lawyer

Linda Locke, Q.C., Lawyer and Director of Upper Skeena Counseling & Legal Assistance Society

Georgialee Lang, Lawyer, Georgialee Lang & Associates

Jeffrey Peterson, Lawyer, Bishop & Company

Kathryn J. Ferriss, Lawyer, Coordinator of Family Services Initiatives, Legal Services Society

Jill Dempster, Legal Counsel, Civil and Family Law Policy Office, Ministry of the Attorney General

We would also like to thank those individuals and organizations that took the time to participate in the project, sharing their stories, experiences and opinions with us. We would especially like to thank those organizations who helped us set up focus groups for their invaluable assistance.

We would also like to thank the Law Foundation of BC for their generous financial support for the project.

Executive Summary

This executive summary outlines the purpose and goals of the FRA Reform Project, briefly explains our research methodology, and sets out the key themes and recommendations that emerged from the project.

Purpose of the Project

The *Family Relations Act*[1] is the law in BC that deals with separation and other matters related to family breakup, including division of property, division of pensions, guardianship, custody and access, and spousal support. The Ministry of the Attorney General in British Columbia is currently reviewing the FRA in order to consider how it might better reflect some of the societal changes that have taken place since the Act was first enacted, and as part of their overall justice and law reform strategy.

In order to facilitate inclusive and meaningful citizen participation in the province's review of the FRA, the Social Planning and Research Council of BC (SPARC BC) received a grant from the Law Foundation of BC to conduct a process whereby those with lived experience of BC's family justice law, family law advocates and support workers, and representatives from the Family Court Youth Justice committees in the province could share their knowledge, experiences and ideas as to how the FRA could be reformed to better reflect the needs of families in British Columbia.

The goal of SPARC BC's FRA Reform Project was to actively engage citizens in law reform, as expert advisors in the reform process itself. Engaging 'citizens as experts' requires individuals to make a link in their own minds between their lived experiences and knowledge, with their knowledge of the law- in this case the FRA. Through these linkages, citizens can provide us with their assistance and recommendations, and engage in larger process of law reform.

[1] *Family Relations Act*, R.S.B.C. 1996. c3128. [hereinafter the *FRA*]

Method

SPARC BC used a participatory/inquiry based approach in the FRA Reform Project by:

a) providing easy to understand information sheets on eleven FRA reform topics, each of which set out what is in the FRA currently and then outlining some possible reform options;

b) hosting focus groups where those with lived experience were empowered to share their experiences and knowledge, and given the opportunity to link their experiences and knowledge to legal information about the FRA;

c) providing the opportunity for family law advocates and support workers, and members of Family Court Youth Justice committees, to share their knowledge and experiences and link it to legal information about the FRA.

We also used a participatory/inquiry research approach of engaging citizens as experts in writing our report, by emphasizing the voices of citizens in our analysis.

Our first priority was to choose reform topics, and prepare a set of information sheets on each of those topics in order to facilitate the process of linking the knowledge and experiences of all project participants with legal knowledge. The topics and the information sheets drew on the discussion papers posted on the Ministry of the Attorney General web site for the *Family Relations Act* review web-based public consultation.

We chose eleven topics for the information sheets, as they were identified as important family law matters, by the Advisory Committee members, the Project Manager and the Legal Researcher. We also thought that individuals, whether they be those with lived experience, family law advocates and support workers, or FCYJ committee members would

be able to engage with these topics because they were likely to have experience with, or interest in them.

The topics set out in the information sheets are:

- Parenting Agreements
- Family Violence and the FRA
- Considering Children's Best Interests
- Falsely Accusing the Other Parent of Abuse
- Children's Participation
- Access Responsibilities
- Higher Conflict Families and Repeat Litigation
- Giving Parenting Responsibilities to Non-parents
- Defining Parenting Roles and Responsibilities
- Spousal Support
- Cooperative Approaches and the FRA

We then mapped out and found contact information for two hundred and twenty-three family advocacy and support organizations in the province. Each were invited to participate in the project in a number of different ways, including helping us set up focus groups with individuals with lived experience and filling out an online survey. Many organizations throughout the province took part in the project, with twenty-one different organizations helping us set up focus groups and eighty taking part in the online survey.

Focus Groups

Through our focus group discussions, we were able to hear from 146 individuals with lived experience of the family justice system in British Columbia. Each group was able to discuss at least two FRA reform topics in a two to three hour time period. Focus groups were conducted according to the following groupings:

- Individuals self-identifying as female, who have experienced

separation and divorce in BC;
• Individuals self-identifying as male, who have experienced separation and/or divorce in BC;
• Individuals self-identifying as female, who have experienced family violence and experienced separation and/or divorce in BC;
• Groups with a mix of individuals self-identifying as male and individuals self-identifying as female who have experienced separation and/or divorce in BC.

The Survey

Eighty family law advocates and support workers filled out the online survey. The survey consisted of seventy-six questions relating to each of the eleven reform topics. Those who responded to the survey included family law advocates and support workers who work with men, women, women and children experiencing family violence, immigrant families and aboriginal families. Survey respondents came from a variety of rural and urban communities in British Columbia.

Family Court Youth Justice Committees

In addition, Family Court Youth Justice (FCYJ) committees in the province were invited to fill out a question book on each of the eleven FRA reform topics in the project. We received written responses from three Family Court Youth Justice committees.

Key Themes and Recommendations

Four major themes emerged out of the comments and recommendations made by those who participated in this project. Each of the themes are areas where there was not only a substantial amount of feedback and commentary from all types of citizen experts, but also a substantial amount of agreement as to the kinds of reforms that are needed. The four main themes that came out of the project are:

1. Focusing on children
2. Addressing family violence
3. Addressing access responsibilities and enforcement
4. Increasing the use of cooperative approaches and providing adequate supports to parents to use cooperative approaches

1. Focusing on children

One of the major themes to emerge from the analysis was that reforms made to the FRA should continue to ensure the well-being and safety of children in cases where children are affected by separation and divorce. Thus, many citizen experts; including individuals with lived experience, family law advocates and support workers, and Family Court Youth Justice Committees focussed their recommendations on the following topics relating to children:

- children's safety;
- children's best interests;
- how the law can encourage parents to put children first when making decisions relating to separation and divorce;
- when and how to incorporate the views of children and youth in family law matters.

Children and safety

Almost all who participated in this project felt that family violence should be added as a factor to s. 24(1) of the FRA, requiring judges to consider family violence when determining what is in the best interest of the child in deciding guardianship, custody and access arrangements. A majority also felt that the FRA should include a very specific and detailed definition of family violence, including:

- physical abuse, emotional, mental and psychological abuse, spiritual abuse, financial abuse, sexual abuse, verbal abuse, and

parental alienation; and
- a statement that family violence for the purposes of this section would include violence directed at both the spouse and the child.

There was less support for including threats of violence as a factor into s. 24(1) FRA, especially among focus group participants. Some participants expressed concern that this could lead to false allegations of violence, and could penalize parents for a single statement they may have made in the heat of the moment, or if responding to abuse.

An overwhelming majority of family law advocates and support workers, as well as many focus group participants and FCYJC members, also wanted some specific rules added to the FRA that would address the type of relationship a violent parent ought to have with their children. Although most citizen experts agreed there should be some rules, there was less agreement as to what those rules should be. The only rules that a majority of citizen experts agreed on were:

- A rule that a parent cannot be given sole or joint custody of their child if they have been violent toward their spouse or children;
- A rule that conditions must be imposed on a violent parent wanting to spend time with their child.

In terms of conditions that should be imposed, the majority of citizen experts thought a violent parent ought to be required to attend treatment programs, and that there be ongoing monitoring of the situation so that if the violent parent was making the appropriate changes, access arrangements could be adjusted as needed.

Those who disagreed with including family violence as a factor in s. 24(1) of the FRA did so for two reasons: that issues of family violence were already dealt with under the criminal law, and that including this as a factor would increase instances of false allegations of abuse.

With respect to false allegations of abuse, a majority of citizen experts who

took part in the project also recommended that the FRA contain a specific part to address false allegations of abuse. There was almost unanimous agreement that such a part should set out the penalties for making a false allegation of abuse, although there was no concurrent view on the types of penalties that should be included. Some common suggestions as to appropriate penalties included: jail, fines, a public apology, costs orders, and the loss of custody.

In addition, many citizen experts thought that that this part of the FRA should state that an investigation must be conducted in order to determine the validity of the allegations, and that this investigation include a look into the history of the party's relationship. A large number of family law advocates and support workers also thought that there should be a statement in this part of the FRA clearly outlining that there is a difference between malicious false allegations of abuse and allegations made on the basis of an honest and reasonable belief in the existence of child abuse.

Children's Best Interests

A large majority of citizen experts also provided recommendations with respect the best interest of the child test found in s. 24(1) FRA. An overwhelming majority of citizens who engaged in the project thought that the current factors in s. 24(1) should remain, but also wanted to see other factors added to s. 24(1) FRA.

The factors that were agreed upon by the majority of citizens included:

> a) how the child has been cared for in the past by each parent, as long as there was a clear definition about the meaning of 'care' and a statement as to how 'past care' would be assessed;
>
> b) if the parent is involved in any civil or criminal case that would affect the child's safety or well-being;
>
> c) benefits to the child of having a relationship with each person

who wants to have custody, access or guardianship, with the starting point that both parents are beneficial to a child's life except in cases where there is family violence;

d) addictions and mental health issues that would affect the child's safety and well-being.

Many also thought other factors, such as the child's Aboriginal heritage, the child's culture, religious upbringing, ethnicity and language could be added, but only as a secondary set of factors once factors regarding the child's safety and well-being had been assessed.

Encouraging Parents to put their children first during separation and divorce

The majority of citizen experts who took part in the project recommended that parents be required, under the FRA, to take into account their children's best interests when making their own parenting arrangements after separation.

The majority also recommended that the list of factors parents should be required to take into account when determining their children's best interests should be the same list that Judges use in s. 24(1) FRA. However, the majority of citizen experts thought this would only be workable if the factors were provided to parents in language that was easy to understand, and if parents were educated about how this would work by family law advocates and family justice counselors, lawyers, etc.

Incorporating the Views of Children and Youth

The majority of citizen experts, but particularly family law advocates and support workers, recommended that children's views be included when decisions are being made that affect them during separating and divorce. However, there was substantial consensus among all citizen experts that the FRA should give judges flexibility as to when to include children's views

based first on maturity level of the child, and then their age.
The option most favored by the majority of all those who participated in the project was separate legal representation for children, with slightly more support for this option from focus group participants. A large majority of family law advocates and support workers supported the model whereby an independent lawyer or counselor meets with the child or youth to hear their views and provides those views to the judge; while a large majority of focus group participants recommended including children in mediation.

2. Family violence

Family violence was another topic that generated a lot of interest and response from those who participated in the research project. . A large percentage of citizen experts provided recommendations for reforming the FRA in this area, with family law advocates and support workers providing a substantial amount of commentary, in addition to recommendations provided by focus group participants and by Family Court Youth Justice committees.

The recommendations provided by citizens with respect to family violence and the FRA focused on: a) the inclusion of a definition of family violence in the FRA; b) orders for ensuring safety made under the FRA; c) the issue of family violence and children, which has already been covered in the section *Children and Safety*.

A definition of family violence

The majority of citizen experts recommended that a definition of family violence be added to the FRA, on the basis that it would provide clarity and consistency among those working in family law issues.

The majority also wanted the definition to be specific and inclusive of a broad range of types of violence including:

- Physical abuse

- Emotional, mental and psychological abuse
- Spiritual abuse
- Financial abuse
- Sexual abuse
- Verbal abuse
- Neglect
- Forcible confinement
- Attempted violence

A large majority of family law advocates and support workers also recommended that 'threats of violence' be included in the definition of family violence, but there was slightly less support for this among focus groups participants and amongst FCYJ committees. Those who did not want 'threats of violence' included in a definition of family violence in the FRA disagreed on the basis that:

- it would be difficult to prove the existence of threats of violence;
- it could be misused or misinterpreted by the parties if there was not a clear definition of what constitutes a threat.

Since a large number of family law advocates and support workers agreed with including threats of violence in the FRA, and a majority of focus group participants and FCYJ committees agreed if there was a clear definition, the overall recommendation is that a clear definition of 'threats of violence', along with accompanying examples, be included in the FRA.

The majority of citizen experts who participated in the project also recommended that the FRA include a statement that self-protection or protection of others would not constitute violence, given the dynamics at play in relationships where there is violence.

Finally, a majority of family law advocates and support workers, as well as focus group participants, thought that the FRA should include guidance for judges about how to assess family violence when couples are separating or getting a divorce. Under such a section in the FRA, judges would consider not only the types of family violence present in a relationship, but also

consider the following:

- history of violence in the relationship
- patterns of violence
- frequency of the violence
- depth and repetition of the violence in a relationship

A number of citizen experts also recommended that the FRA outline how individuals provide information to judges about the violence they have experienced. Several recommended that a form be used, which could be filled out by the person experiencing family violence with the help of a counselor, family law advocate or lawyer.

Orders for ensuring safety

The majority of citizen experts agreed that the current regime of safety orders available under the FRA requires significant reform.

Most felt that safety orders currently available under the FRA were inadequate for ensuring the safety of those who are experiencing family violence. Almost all agreed with implementing the changes suggested in the FRA and Family Violence information sheet, which included:

- expanding who can apply for a restraining order under the FRA, including those who are dating, those in short term relationships, and between different family members such as parents against adult children, etc;
- having others apply for an order on behalf of another, although the majority thought that this should be limited to a police officer, a counselor, family law advocate or other 'professional';
- giving individuals the ability to apply for a restraining order under the FRA without making any other application under the FRA;
- having family violence included as a factor for judges to consider when making temporary exclusive occupancy orders.

The majority of people who participated in the project also thought that one of the major barriers to the effectiveness of restraining orders made under the FRA was lack of enforcement. Focus group participants, family law advocates and support workers, and FCYJ committees all commented on this issue, and provided recommendations for addressing it. A large number recommended that the FRA, and the order itself, contain a clear directive to police to enforce the order and that the enforcement be automatic. Some also recommended that strict penalties be set out in the FRA for those who breach a restraining order made under the FRA, including mandatory jail time after repeated breaches of the order. They also recommended that the process for obtaining a restraining order be simplified.

3. Addressing access responsibilities and access enforcement

A substantial amount of agreement existed among citizen experts with respect to two issues:

a) ways that the FRA should enforce access orders; and

b) having the FRA provide separate access enforcement remedies for those who fail to exercise access, as well as for those who deny access.

Enforcing access orders

A large majority recommended that the FRA include a list of access enforcement remedies, with the following items being included in the list:

- a warning
- giving make up time to the parent who did not get access
- require parents who deny access to attend a program or service
- require the parent who does not meet the access order to take family counseling and pay for the costs of that counseling
- community service

- using a mediator to work with the parents
- putting new conditions on the original access order
- having the parent who denies access pay the court costs of the parent who has to go to court to gain access
- fines
- jail

Almost everyone rejected the idea of enforcing access by having a police officer take and deliver the child to the access parent. Most disagreed with this because they thought it would be too traumatic for the child.

There was some divergence among those who participated in the project about whether this list should be a sliding scale of enforcement remedies, with more serious consequences each time an order is breached, or whether judges should be able to choose a remedy from the list based on the particulars of each case. The majority of focus group participants who considered this question wanted a sliding scale with an escalation of remedies; the ultimate remedies being jail or the changing of custody. Focus group participants also recommended that the FRA impose more severe remedies after two or three unmerited denials of access. Survey respondents, on the other hand, thought that the FRA should simply contain a list of access enforcement remedies that a judge could choose from, which would fit the circumstances of a particular case. Thus, no clear recommendation can be made either way.

Quite a number of citizen experts also raised the issue of how the FRA could ensure that access orders are enforced. Among the majority of citizen experts who discussed this issue, there was agreement that the FRA, and the access order itself, contain a specific clause stating that access will be enforced. Many wanted the clause to state that it would be a police officer who would enforce the access order.

The final recommendation that the majority agreed upon was that the FRA should give separate enforcement remedies for failure to exercise access as well as for denial of access. Such remedies should be applied in situations

where an access order exists, and where the custodial parent brings an access enforcement application before the courts and a judge finds that the access parent is failing to exercise access.

4. Encouraging cooperative approaches

A large majority of citizen experts recommended that the FRA encourage, and in many cases, require that family mediators and counselors be used to help resolve conflicts arising out of:

a) guardianship, custody and access arrangements;
b) parenting roles and responsibilities;
c) false allegations of abuse;
d) parenting agreements;
e) the misuse of access enforcement applications.

As one way of encouraging cooperative approaches under the FRA with respect to a variety of issues, many who participated in the project reiterated the need for more education, training and counseling to be provided for those experiencing separation and divorce. Most agreed that this would minimize conflict and help parents make their own arrangements without going to court.

A large majority of citizen experts agreed that the FRA should require couples to attend one mandatory mediation session, with shuttle mediation being set out as an option in the FRA for those couples experiencing high conflict.

There was also substantial agreement among citizen experts that those who are experiencing family violence should not be required to participate in a mandatory mediation session with the partner perpetrating the abuse.

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FINAL REPORT

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BY CRYSTAL REEVES

FAMILY RELATIONS ACT REFORM PROJECT
FINAL REPORT

PREPARED BY THE SOCIAL PLANNING AND RESEARCH COUNCIL OF BRITISH COLUMBIA

AUTHOR AND LEGAL RESEARCHER CRYSTAL REEVES
FACILITATORS LEE-ANN RAGAN, CARMEN CONTRERAS
SURVEY DATA ANALYSIS REBECCA SIGGNER
PROJECT MANAGER NANCY HENDERSON
DESIGN & LAYOUT JOANNE CHEUNG
COVER PHOTOGRAPHY DAVID DENOFREO *david.denofreo@gmail.com*

THIS REPORT IS PUBLISHED BY SPARC BC (THE SOCIAL PLANNING AND RESEARCH COUNCIL OF BRITISH COLUMBIA). SPARC BC IS A NON-PARTISAN, INDEPENDENT CHARITABLE ORGANIZATION WHOSE MEMBERS AND BOARD OF DIRECTORS ARE DRAWN FROM ACROSS THE PROVINCE. SINCE 1966, SPARC BC HAS WORKED WITH COMMUNITIES IN BUILDING A JUST AND HEALTHY SOCIETY FOR ALL.

SPARC BC FOCUSES ITS EFFORTS ON THE KEY SOCIAL ISSUES OF INCOME SECURITY, ACCESSIBILITY, AND COMMUNITY DEVELOPMENT. SPARC BC RUNS THE PARKING PERMIT PROGRAM FOR PEOPLE WITH DISABILITIES, AND ALSO DELIVERS RESEARCH & CONSULTING SERVICES. WE ARE ALSO PROUD TO PROVIDE A COMMUNITY DEVELOPMENT EDUCATION PROGRAM THAT OFFERS LOW-COST ASSISTANCE IN BUILDING LOCAL ASSETS TO ADDRESS SOCIAL ISSUES. SPARC BC GRATEFULLY ACKNOWLEDGES THE SUPPORT OF OVER 14,000 MEMBERS AND DONORS, AND THE UNITED WAY OF THE LOWER MAINLAND. MEMBERSHIP IN SPARC BC IS OPEN TO ALL PERSONS WHO SUPPORT THE MISSION AND GOALS OF THE ORGANIZATION.

SOCIAL PLANNING AND RESEARCH
COUNCIL OF BC
201 - 221 EAST 10TH AVENUE
VANCOUVER, BC V5T 4V3
PHONE 604-718-7733
FAX 604-736-8697
EMAIL INFO@SPARC.BC.CA
WEB WWW.SPARC.BC.CA

SPARC BC

THE LAW FOUNDATION OF BRITISH COLUMBIA

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The content of Family Relations Act Reform Project would not be possible without the insightful contributions of the members of the FRA Reform Project Advisory committee. SPARC BC would like to specifically thank the following Advisory committee members for giving their time and expertise:

- Dr. Margaret Wright, Associate Professor, UBC School of Social Work
- Shashi Assanand, Executive Director of Vancouver & Lower Mainland Multicultural Family Support
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We would also like to thank the Law Foundation of BC for their generous financial support for the project.

The views set out in this report are those of project participants and do not necessarily reflect the opinions and views of Advisory committee members or of the Social Planning and Research Council of BC (SPARC BC).

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Appendix 1

Appendix 2

1. Introduction

The *Family Relations Act* (FRA),[1] which was first enacted in 1978, is the law in BC that deals with separation and other matters relating to family breakup, including division of property, division of pensions, guardianship, custody, access and support. Since the FRA was first enacted, the organization of families in BC have changed, as things such as parenting arrangements and the use of collaborative approaches to separation and divorce. In addition, there is increasing awareness of the impacts of family violence on families and children, particularly during separation and divorce. In order to consider how the FRA might better reflect some of these changes, and as part of its overall justice and law reform strategy, the Ministry of the Attorney General in British Columbia is currently reviewing the FRA.

In Chapter One of the Ministry of the Attorney General's web-based consultation papers, *Background and Context for the Family Relations Act Review*, it states that the aim of the review process is to modernize the FRA so as to:

- reflect current social values, as well as family law research and policy developed over the last 25 years;
- support the use of out-of-court dispute resolution processes;
- encourage parents, where appropriate, to work together to reduce the effect of conflict on children;
- minimize the emotional and financial costs of family breakup;
- ensure consistency with observations of the Family Justice Reform Working Group that:
    - the family justice system should be founded on the values of family autonomy, cooperation and the best interests of children,
    - processes to resolve family issues should match the nature of the dispute, be proportionate to what is at stake, and be flexible enough to meet the unique requirements of each case, and
    - the family justice system needs better ways to discover children's best interests and to make them a meaningful part of family justice processes,
    - clarify the law so that it is more understandable and results are more predictable;
    - consolidate the law pertaining to families in one statute, where possible, and improve the organization of the Act; and
    - ensure that public resources are used wisely and efficiently.

1. Family Relations Act, R.S.B.C. 1996. c3128. [hereinafter the FRA]

In order to facilitate inclusive and meaningful citizen participation in the province's review of the FRA, the Social Planning and Research Council of BC (SPARC BC) received a grant from the Law Foundation of BC to conduct a process whereby those with lived experience of BC's family law, as well as family law advocates, support workers and representatives of community organizations could share their knowledge, experiences and ideas as to how the FRA could be reformed to better reflect the needs of families in British Columbia.

Purpose of the SPARC BC FRA Reform Project

One of the primary goals of SPARC BC's FRA Reform Project was to actively engage citizens in law reform, as expert advisors in the reform process itself. This notion of engaging 'citizens as experts' in areas of specialized knowledge has been well documented in other fields such as environmental planning, and reflects the belief that citizen's knowledge and experiences are as essential to democratic decision-making as professional knowledge.[2] Although has been less written about engaging citizens as experts in legal reform initiatives, the rationale and methodologies for engaging citizens as experts are similarly applicable.

Engaging citizens as experts requires individuals to make a link in their own minds between their lived experiences and knowledge and knowledge of the law- in this case the FRA. Through these linkages, citizens can provide us with their assistance and recommendations, and engage in the larger process of law reform. The method for engaging citizens as experts in law reform can be defined in terms of an inquiry/participatory research approach. This approach encourages a process whereby those with professional expertise facilitate learning opportunities for citizens, empowering them to link legal knowledge with their own knowledge and experiences. The focus is on providing an opportunity for sharing knowledge and relating lived experiences, as well as providing an opportunity for expressing feelings, emotions and views.[3]

SPARC BC used a participatory/inquiry based approach in the FRA Reform Project by: a) providing easy to understand educational materials to citizens about the Act and some reform options; b) hosting discussion groups where citizens with lived experience were empowered to share their experiences and knowledge, and given the opportunity to link their experiences and knowledge to legal information about the FRA; c) providing the opportunity for family law advocates and support workers, and members of Family Court

2. For example, see Frank Fischer, Citizens, Experts and the Environment: The Politics of Local Knowledge (Durham: Duke University Press, 2000); John Gastil and Peter Levine, eds., The Deliberative Democracy Handbook: Strategies for Effective Engagement in the 21st Century (San Francisco: Jossey-Bass Publishing, 2005).

3. Frank Fisher, Citizens, Experts and the Environment: The Politics of Local Knowledge (Durham: Duke University Press, 2000), p. 179.

Youth Justice committees, to share their knowledge and experiences and link it to legal information about the FRA. We also used the participatory/inquiry research approach of engaging citizens as experts in writing this report by emphasizing the voices of citizens in our analysis.

Report Outline

There are fifteen chapters in this report, including this one. Chapter two outlines the research methodology for the project. Chapter three focuses on the locations and voices that were included in the project, and highlights some of the choices made by citizen experts with respect to topics. Subsequent chapters consist of analysis of the recommendations made by citizen experts regarding specific aspects of FRA reform. Each of these chapters focuses on particular reform topics. The final chapter sets out the dominant themes and recommendations for FRA reform that emerged in the project.

2. Methodology

Our research method assumed that the best quality information about the proposed reforms could be elicited from participants if they were given opportunities to learn about the FRA, possible reforms that could be made to it, and link that knowledge to their knowledge and lived experience. In order to ensure that the appropriate professional expertise was incorporated into the project, the first step involved setting up an advisory committee that could provide guidance both on family law issues in British Columbia and on our proposed methodology.

2.1. The Advisory committee

The Advisory committee's role was to provide general expertise and guidance in relation to the FRA, and in particular on issues and topics for reform of the FRA and issues pertaining to the research methodology. In order to make the Advisory committee inclusive of different perspectives and experiences, we chose members from different areas of the province and from different backgrounds.

The Advisory committee members include an Aboriginal family law lawyer, a family law lawyer based in Vancouver, another lawyer and child advocate based in Kelowna, a representative from a multicultural family support services organization, a senior duty counsel from Legal Services Society of British Columbia, a professor from the School of Social Work at the University of British Columbia, a family law lawyer with expertise regarding the "best interests of the child test", and a lawyer from the Civil and Family law Policy Office of the Ministry of the Attorney General.

2.2. Materials for the project

We created the following materials for the FRA Reform Project:
the information sheets that we used as public legal education materials;
the online survey for organizations and advocates; and
the Family Court Youth Justice Workbook.

Information sheets

We prepared a series of information sheets in order to facilitate the process of linking participants' knowledge based on lived experience with legal knowledge.

The information sheets drew on the discussion papers posted on the Ministry of the Attorney General web site for *Family Relations Act* Review web-based public consultation.

The web-based discussion papers were posted in three phases:

Phase 1 Topics

- Judicial Separation
- Division of Pensions
- Division of Property

Phase 2 Topics

- Parenting Apart
- Meeting Access Responsibilities
- Children's Participation
- Family Violence

Phase 3 Topics

- Legal Parentage
- Spousal and Parental Support
- Cooperative Approaches to Resolving Disputes
- Definitions and Time Limits
- Relocating Children

SPARC BC did not use a phased approach in our FRA Reform Project because it would have required participants to attend more than one focus group, which could have presented difficulties for participants. In addition, conducting multiple focus groups with the same people in different areas of the province would have been difficult given the timeframe for the project, as well as the high cost of travel and facilitation.

Instead, we chose eleven topics for the information sheets. We focused on these eleven topics because they were identified as important family law matters, based on the experiences of the Advisory committee members, the Project Manager and the Legal Researcher. We thought that individuals would be most able to engage with these topics because they were likely to have experience with, or interest in these topics.

The topics set out in the information sheets are:

- Parenting Agreements
- Family Violence and the FRA
- Considering Children's Best Interests
- Falsely Accusing the Other Parent of Abuse
- Children's Participation
- Access Responsibilities
- Higher Conflict Families and Repeat Litigation
- Giving Parenting Responsibilities to Non-parents
- Defining Parenting Roles and Responsibilities
- Spousal Support
- Cooperative Approaches and the FRA

Information Sheet format

Each information sheet follows roughly the same format:

- It begins with an introductory section, which gives instructions for reading the sheet, sets out what the information sheet is about, and defines the topic area.
- Then it sets out what the FRA says now about the topic (or in some cases a sub-topic).
- Next, it offers some options for changing the FRA. These options are based on questions found in the Ministry of Attorney General's discussion papers, as well as options suggested by members of the Advisory committee, the Project Manager, and the Legal Researcher.

To make the information sheets easy to understand, we took some of the language from legal education materials produced by the Legal Services Society of BC. We focused on reaching a grade eight reading level on the Flesch-Kincaid Grade level index. We also included stories to explain how the FRA works in particular situations, and in some cases, how changes to the FRA might work. We wrote the stories to include different voices and experiences.

The Online Survey

SPARC BC created an online survey for family support organizations and advocates using Survey Monkey, an online survey building and analysis instrument. There were seventy-nine

questions on the survey, organized around the topics in the information sheets. Many of the questions in the survey were the same as the ones used in the focus groups and in the Family Court Youth Justice Workbook.

Family Court Youth Justice committee Question book

Early in the project, it was identified that active Family Court Youth Justice committees (FCYJC) might be valuable sources of information on family law reform.

We sent each of the committees a copy of the information sheets, as well as a question booklet that allowed them to provide written responses on the FRA reform topics.

The questions in the book are a mixture of open-ended questions and rating questions. Many of the questions ask the committees to explain why they would choose certain reforms over others or what they would suggest as a reform on certain matters, based on their experiences with the family court.

2.3. Engaging family advocacy and support organizations in British Columbia: Mapping the organizations

One of our first tasks was to map and find contact information for family service, support and advocacy organizations in the province.

We organized our list around the nine Supreme Court regions: North Vancouver Island, South Vancouver Island, Vancouver Centre, South Fraser, North Fraser, Vancouver Coastal, Kamloops/Kootenay, Okanagan, and Northern.
Within each region, we placed each advocacy and support organization in one of eight different categories: Family Law Clinics, Family Support Services and Centers, Women's Support Services, Aboriginal Family Support Services, Multicultural Family Support Services, Children's Support and Services, LGBT Family Services, and Men's Support Services together with Equal Parenting Advocacy Organizations

Invitations to organizations

Through this mapping exercise, we identified two hundred and twenty-three different family advocacy and support organizations. On February 12, 2007, we sent each organization an email and/or fax which included a flyer describing the *Family Relations Act* Review prepared by the Ministry of Attorney General, and an invitation to be part of SPARC BC's consultation process. We also posted the same information on SPARC BC's website.

On April 11, 2007, we sent an update to the organizations outlining the process for the consultations and giving three options for their involvement. The update asked organizations to consider helping us set up focus groups in their communities, to fill out the online survey, and to express their interest in attending a roundtable discussion—with further information regarding the roundtables to come at a later date.

2.4. The focus groups

We determined that one of the best ways to engage individual community members as experts in the FRA Reform Project process would be to host focus groups in different communities in the province.

Focus groups are often considered the best way to get information when there is a gap in understanding between those who are communicating certain types of technical knowledge and those who have lived experience. In this case, the gap was between legal professionals providing some possibilities for changing the FRA and those who have experienced the effects of the family law system in BC but do not necessarily have the technical expertise to immediately make linkages between them. Focus groups also allow the participants to share ideas, and allow the researcher to gain insights into complicated topics where individual's opinions or attitudes are conditional or where the area of concern relates to multifaceted behaviors and motivations.

The process for organizing focus groups

In order to reach individuals who had experienced the family justice system in BC, and particularly those who had experienced separation, child custody and access issues, family violence and other issues related to the FRA, we asked family advocacy and support organizations to help us host focus groups. Many organizations were willing to do so by handing out or putting up an invitation in their office, or in some cases by contacting previous and existing clients.

Although using family advocacy and support organizations ensured that we had adequate number of individuals with lived experience of the family justice system in BC attend our focus groups, one of the challenges this presented to the project is that it elicited information from more females than males (see Table 1 in Chapter 3 of the report). We hosted four focus groups with family support agencies whose primary clientele are male. We also held seven focus groups where both males and females were recruited to attend, but in these cases, a larger number of females attended over males. Another factor was that a larger number of family support organizations whose primary clientele are female accepted our invitation to help build focus groups. Finally, we did host three focus groups that were exclusive to females who had experienced violence. We made these female-only groups due to concerns for safety of those who attended the group.

The invitations given to family advocacy and support organizations told potential participants what the focus group was about, what would happen at the group, what would happen to the information they shared and other details, such as the provision of a participant allowance. Interested individuals were invited to contact SPARC BC or to relay their interest directly to the family advocacy and support organization's contact person with SPARC BC.

Focus group design

The focus groups had a maximum of 8 to 10 participants and initially were to last two hours. The purpose of limiting the number of people and the time was to give participants an opportunity to learn about the FRA and discuss possible options for changing the FRA, as well as discuss their experiences and recommendations without overburdening participants with a lengthy time commitment. We saw limiting the time as especially important for those who had to arrange childcare or

had other family or work commitments.

We increased the time from two to three hours after participants in several focus groups stated that they would have preferred the focus groups to last up to three hours.

The focus groups started with an introduction to the project, introductions of the participants to each other, and discussion of focus group protocols. The Legal Researcher then provided a brief synopsis of the eleven topics. Each topic was written up on flip-chart paper and taped to the walls prior to the start of the focus group. Participants each received six dots and were asked to put their dots on their topics of choice, with no more than two dots per topic. The topic with the most dots became the first topic discussed. This form of choosing topics is known as a 'dotmocracy' exercise.

Once the first topic had been chosen, participants received the information sheet for that topic and were given the option of reading the sheet on their own or going through it as a group. Many groups chose to read the sheet on their own, as many were familiar with the topics and issues.

The Facilitator then led participants through the topic, highlighting what is in the Family Relations Act currently and what some possible reforms might be, then asking them either what they thought of those possible reforms or if they had their own reforms to suggest. During the discussion, the Legal Researcher was there to answer questions relating to the Act and potential reforms.

The Legal Researcher and Facilitator also gave an opportunity for participants to discuss points from other topic areas, if they were raised in the context of the chosen topic area. Sometimes the Facilitator or Legal Researcher asked a specific question from another topic area if participants brought it up in the context of the topic they were discussing. This acknowledged the fact that despite the need to put the issues into discrete categories, there are many overlapping issues and they cannot be treated in isolation.

Generally, each focus group was able to discuss two topics, although some groups were able to discuss more. Participants were encouraged to take home other information sheets and provide additional feedback via email or fax for any topic not covered to their satisfaction. Very few participants sent in further feedback.

At the end of the session, participants were asked to give some demographic information, as

well as to evaluate the focus group process. They were also given their participant allowance and childcare allowance if childcare support was required.

2.5 Limitations of the Methodology

Every research methodology has its merits as well as its limitations. Using a variety of different methods for gathering feedback and recommendations from different citizen groups and using a participatory/inquiry-based approach as the basis for our research were some of the merits of our overall research methodology.

With respect to the particular methods we chose for our project, all have different advantages and disadvantages. One advantage of conducting focus groups is that it allows the researcher to collect rich comments from individuals in a limited amount of time, as well as allowing for the sharing of ideas among focus group participants. Some of the potential limits of using focus groups to collect data include: short time frames for discussion about a topic; possible group dynamics in which one or two individuals dominate the discussion; potential difficulties linking demographic information to specific comments.

The use of an online survey is advantageous since it allows the researcher to receive an extensive amount of feedback from a large number of individuals, especially in a broad geographic area. One possible limitation of using an online survey is that it assumes that those being asked to fill it out have access to a computer, the internet, as well as the time and capacity to fill it out. People who do not have access to these resources cannot participate in internet survey research. Another possible limitation of using internet surveys is not having control over how people interpret the questions on the survey or understand the material that goes with the survey.

Our final data collection method, the question book for Family Court Youth committees, was a useful method because it allowed the researcher to collect feedback from already established groups, allowing them to use their own processes for engaging in discussion about the issues, and putting forward their opinions and recommendations in written form. A possible limitation of this method is the time required to complete the question book out, as well as the potential challenge of putting forth recommendations as a group if there is little agreement on an issue.

3. The locations and voices

This chapter provides details as to where the focus groups were held and some demographic details with respect to focus group participants. It also provides some details about survey respondents and Family Court Youth Justice committee, who participated in the project.

3.1. Focus groups

We conducted twenty-one focus groups in various regions of the province, with the assistance and support of the following organizations:

1. Campbell River: Campbell River Women's Resource Centre
2. Nanaimo: Nanaimo Men's Resource Centre
3. Victoria: Cridge Centre for the Family
4. Penticton: Penticton and District Community Resources Centre
5. Kelowna: Kelowna Transition Home
6. Salmon Arm: Shuswap Family Resources Centre
7. Surrey: Métis Family Services
8. North Vancouver: North Shore Women's Centre
9. Nelson: Nelson Community Services and Nelson Advocacy Centre
10. Castlegar: Castlegar and District Community Services
11. Sechelt: Sunshine Coast Community Services Society
12. New Westminster and Lower Mainland: Parents Coalition of British Columbia
13. South Surrey/White Rock: South Surrey Women's Services Legal Advocacy Program
14. Burnaby: Vancouver and Lower Mainland Multicultural Family Support Services
15. Burnaby: Vancouver and Lower Mainland Multicultural Family Support Services
16. Kitimat: Kitimat Child Development Centre
17. Hazelton: Upper Skeena Counseling and Legal Assistance Society
18. Prince George: Carrier Sekani Family Services.
19. Vancouver: B.C. Men's Resource Centre.
20. Victoria: Victoria Men's Centre
21. Moberly Lake/Chetwynd: Saulteau Nation Family Services

A total of 146 participants with lived experience took part in the project by attending focus groups.

Focus groups were conducted in the following general groupings:

- Individuals self-identifying as female and who had experienced separation and divorce in BC
- Individuals self-identifying as male and who had experienced separation and/or divorce in BC;
- Individuals self-identifying as female, who had experienced family violence and experienced separation and/or divorce in BC.
- Groups with a mix individuals self-identifying as male and individuals self-identifying as female who had experienced separation and/or divorce in BC.

In order to protect the identity of project participants SPARC BC did not seek certain kinds of personal information from project participants. However, we did ask some demographic information at the end of focus groups, which is provided in the following table.

Question	What is your gender		
	Male	Female	Not Available
Number of Participants	39	107	0
Question	Type of Relationship Before Separation or divorce		
	Married	Common Law	Not Available
Number of Participants	87	33	26
Question	Are you separated or divorced		
	Separated	Divorced	Not Available
Number of Participants	61	51	34
Question	Do you have children		
	Yes	No	Not Available
Number of Participants	121	2	23

An overview of focus group responses

Focus groups were asked to choose, through a "dotmocracy" exercise, the topics that were of most interest to them. Once participants had chosen their topics, we started the focus groups with the topic that had the most dots. Below is a table highlighting which topic areas were of most interest in the 21 focus groups that were conducted.

Table 1: Number of instances when FRA reform topics were selected by focus groups

Topic	First Choice	Second Choice	Third Choice	Fourth Choice
Cooperative approaches	0	3	0	0
Children's Best Interests	11	2	3	0
Children's Participation	0	1	2	1
Spousal Support	1	0	0	1
Access Responsibilities	4	4	0	0
Family Violence and the FRA	2	6	1	0
False Allegations of Abuse	1	2	1	0
High Conflict Families and Repeat Litigation	1	0	0	0
Parenting Roles and Responsibilities	0	1	0	0
Parenting Agreements	0	0	0	1
Giving Parenting Responsibilities to Non-Parents	1	0	0	0

3.2. The Online survey

SPARC BC designed a survey in order to collect data about reforming the FRA from family law advocates and family support workers. On July 16, we sent the survey to those family law advocacy and support organizations identified in our mapping project along with a set of the information sheets, which provided background information.

We initially asked to organizations to complete the survey within three weeks, but later extended the deadline in order to ensure an adequate response rate. All respondents were asked to identify their organization, their role in the organization, as well as to identify the type of clients they primarily serve through their support and advocacy efforts.

An overview of survey respondents

Eighty organizations completed the online survey. The following table categorizes respondents according to the type of client and/or issues that were identified as primary in their work.

Table 2: Categorization of survey respondents

Type of client and/or issue as identified by survey respondent	Number of Survey Respondents
Families experiencing separation and divorce	13
Low income/ poverty law clients	5
Specifically women and children who experience violence in relationships	46
Aboriginal Families	10
Specifically men who are experiencing divorce, separation, family court issues, violence	5
Immigrant and Refugee Families	5
Specifically Children	1

Table 3: Geographic representation of survey respondents

The following table categorizes survey responses according to the geographic area served by the respondent's organization.

Geographical Location	Number of Survey Respondents
Urban	28
Rural and Northern	46
Provincial Organization	6

3.3. The Family Court Youth Justice committee responses

The Family Court Youth Justice committees (FCYJ) are legislated advisory committees designated to report on youth and family matters to the Attorney General. The committees are made up of members of local municipal governments as well as community members who have a professional background and/or interest in family law and youth justice matters.

The committees

We identified nine FCYJCs operating in the province. They are:

1. North Shore Family Court Youth Justice committee, which includes West Vancouver, City of North Vancouver and the District of North Vancouver.
2. Tri-Cities, Anmore, and Belcarra Family Court Youth Justice committee, which includes Coquitlam, Port Coquitlam, Port Moody, Anmore, and Belcarra.
3. New Westminster Family Court Youth Justice committee, which serves New Westminster.
4. Capital Region Family Court Youth Justice committee, which includes Victoria, Colwood, Central Saanich, North Saanich, Saanich, Sidney, Metchosin, View Royal, Langford, Highlands, Sooke, Oak Bay, Esquimalt, and the Capital Regional District.
5. Vancouver Family Court Youth Justice committee, which serves Vancouver.
6. Comox, Courtenay, and Comox-Strathcona Regional District Family Court Youth Justice committee, which serves Comox, Courtenay and surrounding region.

7. South Fraser Family Court Youth Justice committee, which serves Surrey, Delta, White Rock, Langley, and Township of Langley.
8. Smithers Family Court Youth Justice committee, which serves the town of Smithers
9. Richmond Family Court Youth Justice committee, which serves Richmond

We sent each FCYJC an email invitation on March 2, 2007 asking them to participate in our project. On June 12, we sent each FCYJ committee a package containing a copy of the information sheets and a question booklet for them to use to provide written responses on the reform topics. We asked them to return the completed booklet to SPARC BC by September 13, 2007.

We received written responses from three of the FCYJ Cs, with two of those responses only discussing certain topics. The third, although complete, provided only yes or no answers. Due to the limited scope of the written response from the committees, there is not enough of a sample to provide recommendations on many of the reform topics. Therefore, analysis of the recommendations from FCYJ committees will be limited to the topic of family violence.

3.4. Setting out the findings

Chapters 4 to 14 present the views and opinions of those who engaged as citizen experts in the FRA Reform Project. Each of these chapters begins with an analysis of the views and recommendations of participants with lived experience who attended focus groups, followed by an analysis of the opinions and recommendations of family law advocates and support workers who responded to the online survey, and finally, the opinions and recommendations made by Family Court Youth Justice committees, where applicable. Chapter 15 consists of a concluding discussion on the essential themes that emerged from the analysis.

4. Family violence and the FRA

In this chapter, we set out the recommendations provided by citizen experts with respect to the topic of family violence and the FRA. The chapter begins with an analysis of the recommendations made by participants in the focus groups. The second section in the chapter consists of an analysis of the recommendations of family law advocates and support workers who responded to the online survey. The third section features an analysis of the recommendations of Family Court Youth Justice committees who provided responses to the questions outlined in the question book.

4.1. Focus group responses

Under the topic Family violence and the FRA, focus group participants focused on a number of issues including:

- whether a definition of family violence should be included in the FRA;
- how family violence should be defined;
- whether the FRA should include specific rules about the type of contact a violent parent should have with their child(ren);
- how orders for ensuring safety made under the FRA can provide better protection for those experiencing family violence.

Out of a total of twenty-one focus groups, nine focus groups chose family violence and the FRA as a discussion topic. Two focus groups chose family violence as their first topic of discussion, while six focus groups discussed it as their second topic of choice. In one group, family violence was discussed as a third topic of choice.

In addition to those groups that specifically chose family violence as a topic for discussion, focus group participants also discussed family violence under the topic of Children's Best Interests. Children's Best Interests was the topic most often selected by focus group participants, with eleven groups choosing it as their first choice for discussion, two discussing it as their second choice, and three groups discussing it as a third choice. Thus, we were able to hear from a large number of focus group participants about how the FRA can be amended to deal more adequately with family violence and related issues.

In the following section, participant responses to questions about family violence are analyzed. The second section, which deals with family violence and children, brings together

responses of focus group participants who discussed the topic of Family Violence and the FRA and those who considered family violence under the topic of Children's Best Interests. The final section, Family Violence and Orders for Ensuring Safety, sets out the responses of focus group participants who discussed famiy violence and safety orders.

Defining family violence

Focus group participants were first told that the FRA does not currently include a definition of family violence. They were then asked whether the FRA should define family violence, and if so, what should be included in the definition.

The majority of focus group participants who considered this question thought that a definition of family violence should be included in the FRA. Reasons given for including a definition of family violence included increasing safety for women and children, having the courts take family violence more seriously, and mitigating the impact of family violence on children.

> *Very important to include family violence in the FRA. Women are very embarrassed to say anything. Put in the law to protect women and children.*
>
> *It's the base foundation—if violence is the key issue, then this is the whole root of the relationship and has to be the basis of going forward with access and guardianship.*
>
> *Yes. Why? It has a huge effect on children as research shows—abuse to the child is to abuse a partner in front of the child.*
>
> *Family violence has huge impact for children—they still suffer the most. Also, it* [the definition] *should talk about all the types of the violence.*
>
> *Need to educate people that there is a limit to their actions—that they will not be able to further abuse women.*
>
> *She already separated from husband and badmouthing her and calling her prostitute. Because family violence is not considered an element or consideration—her husbands attitude is it doesn't matter and I don't need to pay any responsibility—nothing to fear because no one can control him—no one can stop him from doing that.* [translation]

However, not everyone agreed. Participants who disagreed with defining family violence in the FRA thought that its inclusion would increase instances of false allegations and would move what they believe is a criminal matter into the family courts.

> *Courts should take violence seriously but also false allegations—I experienced both violence and false allegations. It's not uncommon to have false allegations against the spouse—it's so detrimental to be accused of sexually abusing the child. There was no more discussion after this—they want to win at any cost so said it* [the false allegation] *in front of one of these counselors—we have to nip this in the bud.*
>
> *The FRA has no place for family violence. Violence of any kind is a criminal matter. We already have a law about that so to bring it in to family court is absolutely irresponsible because it adds so much more problems. Any allegation can be made with no substance.*
>
> *Family violence is such a conflict that it should be kept away from family court. Brought in only if proven in criminal court. Should be separate because in family court you can make all kinds of allegations—and with allegations you are excluded from children's lives.*

One participant suggested the following solution for preventing false allegations in family court. They suggested that when family violence is raised in a family court, it should immediately go to an expedited criminal court. The decision in the criminal court would then be used as a basis for determinations made in family court.

It should have to be proven first—if go in for family court and violence allegation is made, stop the proceedings and go to expedited criminal court. Then come back and deal with family court matters based on what happened in criminal determination.

The definition

Those participants who thought that a definition of family violence should be included in the FRA also discussed how it should be defined. Although many suggestions were made for what should be included in the definition, it is clear that the definition should be specific and it should include a number of elements.

> *The definition should be very specific and not be a word or two. It should have a list of questions. Be very specific and give examples because I didn't realize there was spiritual abuse.*
>
> *List out examples that people can understand better. Emotional, mental, threats of abuse—threatening behavior can be very important, verbal abuse by spouse is very cruel.*

Most participants agreed with the list provided in the information sheet, which included

physical abuse, including keeping someone someplace against their will, sexual abuse and sexual assault, mental and emotional abuse, neglect such as refusing food, shelter, clothing and other basics in life, threats of violence and attempted violence. However, they also emphasized the need for the definition to include verbal, financial, and spiritual abuse.

> *Verbal abuse, physical, mental, emotional, child sexual abuse, mental abuse of the child.*
>
> *A form of violence is to say "you fucking cunt" to me.*
>
> *Verbal, mental, spiritual, physical, financial. He's controlling all the money and I get nothing. The term primary caregiver is being brought up against me in the financial discussions.*
>
> *Spiritual—using religion against the other parent. People use their spiritual beliefs and force it on others. He threatened the church would kick me out if I stayed separated.*
>
> *For example, I wanted to go to church and wasn't allowed. There was constant undermining of my spiritual faith.*
>
> *Financial abuse—keeping and using the money as an excuse to call you down.*
>
> *I feel that mental and emotional abuse is more high risk than physical because takes longer to heal and streams into our children—at any age, all members of the family need counseling. Mental evaluation of both partners should be done. All this mental abuse has put so many women and children on drugs for chemical imbalance. My child has absent seizures due to trauma. Parent of the abuser—there should be a full investigation of them. Anything to make a person feel uncomfortable is abuse between partners.*
>
> *Sexual abuse—yes would like it to be included as abuse. Very important to include this in the definition because it affects so much.*

Some participants also suggested that parental alienation, or "badmouthing" you to your children should also be included as a form of abuse.

> *They also should consider that what they are saying about you to the child. Needs to be looked at. Uses the child opinion against me as a form of abuse.*
>
> *Statements of lies about me as a spouse to my child—very confusing to the child.*

Threats of violence and attempted violence

Several focus group participants who wanted a definition of family violence included in the FRA also stated that the definition should include threats of violence and attempted violence.

> *Threats of violence. I've had so much abuse in my life that my head cannot retain it—physical, mental and everything. My husband was very subtle—everything is hidden. You don't go around telling people that you are being abused because you know that everyone will know and you are too ashamed when marriage on the rocks.*
>
> *In order to keep track of threats of violence you have to be on record that threats are there. She should be reported to police or a reliable witness and they should be brought into the case.*
>
> *Veiled threats should be included—I was locked out of house in February with children and no wallet. I was being made to suffer—there are so many varieties of cruelty.*
>
> *Attempted violence: I was in my wheelchair and he trying to get into house late at night and he attempted to choke me. Only his hands were in house—thought it was ludicrous that parole didn't do anything.*

Self protection and the protection of others

Focus group participants were also asked whether a definition of family violence in the FRA should include a statement that the protection of self or the protection of others is *not* family violence. Of those participants who answered this question, most thought that the FRA should include such a statement.

> *Self defense should not be considered violence. The abuse triggers it—it is sacred dance if you wish and it should be taken into account. It takes two and the longer you stay, the depth and time of the abuse increases and you know what's going to happen so you react—you may be first one to react so you get accused of being violent.*
>
> *Abusers are getting smarter—a race to the phone to see who can report first. The men say they women are hysterical. You should be able to defend yourself and children.*
>
> *Could it be included as part of buildup—I felt that what was unfair was that the father of my children had history of abuse and I never took him to court and followed through. He followed through when I did one thing and he looks like a good guy.*

Other considerations

Several participants also wanted the FRA to advise the courts how to treat the following issues with respect to family violence:

- the history of violence in a relationship;
- frequency of violence,
- patterns of violence;
- the depth and repetition of violence in a relationship.

> *Judges look at family violence but should also look at facts of case. I just got off probation for false allegations. My child was hurt by his acquaintance but his history wasn't brought in. I had sole custody until he charged me with abuse—I have a vindictive ex but his past is not looked at.*
>
> *History or pattern of violence should be included. I left 7 years ago and there is nothing we can do with that now. It was long time ago so courts don't deal with it.*
>
> *If Judge would have had to look at criminal case of family violence in my family case, things would have been different. The Judge said abuse shouldn't be worth leaving.*
>
> *He attacked to kill me and they need to consider this—that an incident happened there. Would like the Judge to consider the threat of physical violence that happened in China when deciding what should happen here.*

In discussing how family violence might be defined in the FRA, several focus group participants discussed the need for the FRA to instruct Judges about how to assess family violence in court.

> *I would like to have a Judge see questions filled out about how you have experienced violence.*
>
> *If it had a definition and then you got an outline of what you are going through. You have to sit down and try and explain. They* [Judges] *need to be educated about what is abuse—give Judges the outline and have it translated to the Judges experience.*

Several participants also wanted the FRA to state what should be the consequences for perpetrators of family violence. They suggested jail time, mandatory counseling, and loss of custody as appropriate penalties.

In a family violence case, monetary compensation itself is not sufficient for the suffering she has experienced. Jail, or I think the violence should limit the amount of time that they spend with the children. They need to take a course and counseling because they don't think have problem but they do. Supervised access would be the thing that I would want to see. Someone can see what they are doing.

I would like to see them put them in jail and take anger management course. Otherwise wasting taxpayers money because they just do it to someone else.

Both partners should have to go for a mental evaluation. I would like to see mandatory
counseling.

Family violence and children

As mentioned in the introduction of this section, focus group participants considered issues relating to family violence and children during while discussing two topics: family violence and the FRA, and considering children's best interests. The first part of this section will outline the responses of focus group participants who discussed options included in the Family Violence and FRA information sheet and the second part will set out the responses of those focus group participants who considered the inclusion of family violence in the Best Interest of the Child Test, found in s. 24(1) of the FRA.

Including a set of rules for Judges to follow when deciding the type of relationship that should exist between a violent parent and a child.

Focus group participants who chose to discuss family violence and the FRA were informed that in some places there are rules for Judges to follow when deciding the type of relationship between a violent parent and their children. They were then asked whether they would like these same rules set out in the FRA. The rules that were suggested in the information sheet given to focus group participants were:

1. A rule that a parent cannot be given sole or joint custody of their child if they have been violent toward their spouse or children.
2. A rule that the violent parent must prove to the court that spending time with their child would not be harmful to the child's development
    - Even if the violent parent could prove to the court that they were not a harm to the child, the Judge could still set out rules about the time the parent spends with the child

3. Allowing only supervised contact between a violent parent and their child
4. Placing conditions on the violent parent wanting to spend time with the child.
    - This might include attending a treatment program, not abusing alcohol or drugs, not being a danger to the child, no overnight visits.
5. A rule that Judges cannot give a contact order where the parent has sexually abused a child.

Many participants thought the inclusion of these rules in the FRA would be a good step. Several participants focused their comments on some of the specific rules, stating why they should be included, or in other instances, ways that they could be further refined. In some instances, participants felt that if a parent had taken steps to correct their behavior, they should be allowed to see their children.

> *I would like all five included. But also look at other side—parent has light bulb moment and go thru steps of correcting behavior. We should allow for chance to go through steps and then they can see the child. If it's redeemable and happened a long time ago they shouldn't be punished.*

> *I like rule one and three: Number three because to give violent parent restrictions is very important—any man that harm wife more than one or two times need therapy and help—I don't feel that man like that should be given equal right to child. After proving themselves, it's reasonable to see the child.*

> *It would be breaking the cycle wouldn't it if included number one. Trying to break circle of violence and to consider not having child live with violence.*

> *For number two, I like it for the onus being on them. In some of the section 15's the abusive partner looks really well—they can sell themselves well.*

> *For number two, I think it steps the bar up. Right now there's no burden on them to prove that it* [the abuse] *happens. It raises the bar. There is this x incident and by law their going to have to deal with it.*

> *Yes to two. If the violent parent, how do you prove you're not violent? Rule three not so much because it could be because of false allegations and what if violence is stopped and parenting programs done.*

Some participants thought that supervision was a good idea as stated in rule number three, but wondered who was going to do the supervision and how it would work.

> *My ex would have to be supervised. Number three would depend on the type of violence. If extremely violent then supervised only. It all depends on the level of*

what's going on. Depends on the age of the child—it should be supervised when child doesn't want to go.

Who's going to supervise these visits? They [the other parent] *are going to fight these supervised visits. Who is going to do this supervision—logistically speaking, how would this work?*

Have a third person to supervise the access with no charge. I really think that it is important to have supervised access that would help ensure the child is treated okay and the father acts right.

Of all the rules, participants offered the most discussion on rule number four, which involves the imposition of conditions on the violent parent who wants to spend time with their child. Specifically, participants wanted to see violent parents attend treatment and counseling programs.

It's putting the responsibility on where it lies. The person who has bad behavior has to earn the right to spend time with their children.

Rule 4: This is very important to include conditions. If they are abusive they should go to some kind of thing.

A treatment program directed toward abusive behavior and what goes to it. Learning to not go over people's boundaries. Anger management.

Four should be there—if father living on streets in X and has problem with Crystal Meth and entrenched in their addiction and the child has to be with him. They should not be a danger to the child and there should be no overnights. They should be asked: what are you taking now?

Number four should be on there because I don't want my daughter to be there because it's a danger for her. No smoking or drugs in front of daughter. I drink but not around her.

I'm attending programs, etc. Agree with option four but it can't be a locked in.

Several participants who agreed with the imposition of conditions on a violent parent also thought there should be an ongoing monitoring system for that parent. Such was the suggestion of the two participants below:

This should be a determining factor of whether they should get access: when violent parent has managed one year of supervised access properly, maintaining consistency

for one year and for the full visits and not leaving before end of the visit, then they get access.

Check up with these things in three months to see what is happening.

Although many participants who discussed including this set of rules in the FRA thought that they would be a good addition, there were an almost equal number of participants who thought that there should only be one rule, that a violent parent should not get custody or access of their children.

Would like a rule to say no custody if history of abuse. Access should be zero.

Take away all privileges to child if sexual abuse of the child, heavy trauma or anything done to one parent that diminishes the other parent.

It's a sliding scale—it should go back to the child. Why would they consider it acceptable for a child to spend time with violent parent who abused spouse—it's harmful to the child.

She said in her opinion, there is no use of counseling and workshops because has tendency to abuse again and again. No contact between the abusive partner and the children—going to bring harm and brainwashing to the child. There is too much pressure to the children. [translation]

They should send them to jail. Family violence also affects the children—it changes their values forever because think its okay to be violent. Sending them to jail sends message that this is not okay.

Including the nine factors from New Zealand's family law in the FRA

Focus group participants were also asked if the nine factors Judges in New Zealand use to determine whether a child will be safe with a parent should be added to the FRA. The nine factors are:

1. How serious is the violence and what kind of violence
2. Was the violence recent
3. Did the violence happen often or not very often
4. Is it likely that the parent will be violent again
5. The physical and emotional harm to the child because of the violence
6. Whether the other parent thinks the child will be safe with the violent parent

7. The child's views
8. Any steps the violent parent has taken to stop the violence from happening again
9. Other things the Judge thinks might be important

Although several of the focus group participants who were discussing family violence and the FRA liked the idea of a list of factors for Judges to consider, many did not agree with the entirety of the list. One participant liked the idea of including the other parent's opinion while another participant liked the idea of assessing whether the violent parent has taken any steps to stop the violence.

> *The NZ family law sounds pretty reasonable. Other things that the Judge thinks—this would be based on evidence that would be brought.*
>
> *Value that the other parent has—that your opinions are actually important. Really like the one about the parents' opinions about the child's safety.*
>
> *I like any steps that parent has taken to stop the violence—everyone should deserve a second chance.*

Since one of the factors considered by Judges in New Zealand in determining whether a child will be safe with a parent are the child's views, there was some discussion of how the child's views could be elicited. Several participants who discussed this issue in the context of the inclusion of the New Zealand factors thought that a professional who has experience working with children should interview the child, such as a social worker or a psychologist.

> *Recognize that child witnesses the abuse. Include the child's voice. Have a professional to work with children and find out needs of child—mediator does not have enough experience with children.*
>
> *Tend to forget that children are losing their family too—nobody understands. Have a social worker and not a Judge or mediator. They need to know what the child is saying—even a child who is four years old can be asked.*

A large majority of focus group participants did not want to include the first factor, 'how serious is the violence' because: a) they believed that all violence is serious and therefore, there should be zero tolerance for violence; b) it would be difficult to differentiate between what is serious and not serious.

> *Zero tolerance because how do you gauge the level of violence—how do you make these determinations. I'd like Judge to be directed to consider the pattern and dynamics of violence against women in relationships.*

How do you determine if the violence is serious? What counts as this? When does this have to stop? Should not use this but should use the definition instead.

How serious is the violence? Violence is violence—it hurts everyone.

The other factor in the New Zealand law that participants disagreed with was, 'is the violence recent'. Many believed that there should not be a time limit to the consideration of family violence.

Why should it matter whether the violence was recent? Should there be a time limit? I don't think there should be a time limit.

Was violence recent? When did the victim take a stand? Did violence happen often or not very often? Depends on how often they get caught. I agree with the rest of the 6 out of 9 factors

Cross out recent and how often because there can be trauma from one event

The word recent is very misleading for the Judge.

Those that wanted the history of the violent parent included as one of the nine factors argued that this would be an important indicator of how safe a child would be with a parent, and whether the parent would be prone to violence.

I think that history should be a factor. My understanding of dysfunctional relationships is that if one person is physically abused over and over, and then that one responds, that's the time the abuse is brought up. So bring up a history or pattern of violence or ask, is it a one-time incident.

History of violence—my ex, I grew up with him since grade school and he's a white man. He's considered a redneck and would physically get into fights with Aboriginal men during school and then after school. We start going out and I thought he changed. Then I am pregnant and found out he engaged to another person. He beat me and said not going to be around any more. He tried to make me lose the baby. Custody hearing when our baby was one and I brought up that he was violent during school toward Native people. The Judge gave her to me because he didn't show up. I was lucky that Judge considered his history.

Based on police records. This is not considered at all but should be in family cases, particularly custody and access. It should include call outs.

Family violence and the Best Interest of the Child Test

Focus group participants also considered the question of whether family violence should be specifically added to s. 24(1) of the FRA, as one of the factors Judges would use to determine the best interests of children when deciding guardianship, custody and access arrangements.

The majority of focus group participants who chose Children's Best Interests as a topic wanted to see family violence added as a specific factor in s. 24(1) FRA. Below are some of the comments of participants who wanted to see family violence added as a factor to s. 24(1) FRA.

> *That would break the circle and make the change. The children see the violence and do it in their lives. Break that circle if we do it now—this would lead to happiness and peace.*

> *Residential schools show that white men abuse too. My ex that I am in court with, he is really abusive. He's being charged and going to Criminal Court for assault. He threatened me before that he would take away our son. This does not just happen with Aboriginal people, but middle class people and people who come from wealthy backgrounds.*

In discussing why this factor should be added to s. 24(1) FRA, many participants also suggested what should be included in the definition of family violence for the purposes of s. 24(1). They included physical violence, emotional violence, financial violence, spiritual violence, sexual abuse and verbal abuse. This echoes the definition that was provided by focus group participants who discussed family violence under the specific topic of Family Violence and the FRA.

> *She says that the Judges really need to believe the women when telling the abuse and that they have gone through extensive abuse at hands of the partner. Need to consider that point when give access to father. The Judges seems reluctant to give supervised access and they should be giving this when abusive to the partner. [translation]*

> *I would like it to include this absolutely. Emotional, spiritual, physical. It's beyond me how it is in the best interest of the child to not include that. If don't take into account violence and the overall picture, you cannot take into account the best interest of the child.*

> *I would like each of the terms defined in the FRA and examples. Any Judge who has*

no idea can understand if there are examples for them to see what it means, to make it more clear.

Consider family violence as a factor and also the breakdown of mental health of the spouse. Take this into account: are they in a state in that moment to have access to the kids. This should be a reason for denying the children.

Emotional abuse is very important to consider. What kind of work have the parents done? Have you done anger solutions? Are you taking courses? From my experience, addictions play into family violence. What work has been done to change? Family Violence should include emotional violence. It's a problem before they are being hit. Your life is a journey not a destination so focus on: t his is what I've done and this is what I will do.

Some participants also felt it was important for the Judge to consider a history of violence of the parent when determining the best interest of the child in guardianship, custody and access arrangements. In addition, several participants also wanted drug and alcohol abuse and other addictions added as specific factors to this section of the FRA.

Why doesn't family violence doesn't include drug and alcohol abuse—it should include this.

Family violence has to be included on the list. So should criminal behavior and drug and alcohol addiction.

Although the majority of focus group participants who discussed the topic of Children's Best Interests wanted family violence added as a factor to s. 24(1) FRA, some focus group participants strongly disagreed with family violence being added as a factor. They stated that family violence should be dealt with in criminal court rather than in family proceedings because it could increase the instances of false allegations being made to deny the other parent custody or access of their children.

I think family violence is well enough dealt with in the criminal law. It's a criminal matter not a family matter.

I would modify it a little bit. It should be in the FRA but given that it's not just an allegation and that criminal charges have be laid and proven to be true. It should not be on the basis of allegations. As long as it has been proven to be true under the Criminal Code, because it is damaging to the child.

I think ultimately that we have mechanisms in place to deal with violence period. Two mechanisms: criminal and then child protection mechanism. If in a family case

allegations are made in any form, lets find out what happened. Not a family process where there are no rules or procedures and it is a free for all and where the decision is made by one person.

Very strongly object to family violence and threat of violence being added to the FRA because of false allegations, there's no responsibility attached. It happens all the time. To include in BC would be wrong.

Some participants suggested a differentiation should be made between times when a child has witnessed violence between the parents when deciding whether a parent should have custody and access. Another stated that it is important to consider the type of violence, based on a clear definition of violence, if using it as a factor in s. 24(1) FRA.

Has the child witnessed the violence and are they even aware of it. Should this be a factor whether the kids have witnessed?

Child witnessing the abuse of the parent—this is abuse of children. There are very clear standards there. If there is an allegation of abuse and this has this been investigated by family services, they should make a determination that child abuse is happening.

Violence can be pretty subjective—what kind of violence would affect the child? There's a big difference from kicking a door and physical hitting. As a human, we're susceptible to releasing violence in some way—there would have to be a definition of violence.

Threats of violence and the Best Interest of the Child Test

Focus group participants who chose to discuss Children's Best Interests were also asked if threats of violence should be specifically added to s. 24(1) FRA, making it a factor Judges would need to consider when deciding the best interest of the child in guardianship, custody and access arrangements.

Fewer participants were certain that this should be added. Some participants thought that it should be added since threats of violence are as harmful as actual violence. Several participants related personal experiences of how threats of violence had affected their ability to create a safe environment for their children, emphasizing the need for the inclusion of threats of violence as a specific factor in s. 24(1) FRA.

Yes I think that any previous threats need to be taken into consideration because in my case there was the constant threat to take kids away. Abuse happens on so many levels— because they think if I'm not being beaten up then this is not violence, but violence happens on emotional level.

In my experience, he had access by law for visitation rights. He made death threats and was charged but Judges wouldn't consider. Even when fearful for my children, the Judge wouldn't take into consideration that he was charged and a threat to me, and not the kids. I was not able to use the uttering of death threats. I chose to break the law and refused access until he was of sound mind. He took me to court and Judge ordered me to give him access.

A threat is still abuse. He threatened financial as well. This made me insecure and unstable so the environment for my child was affected.

One person also suggested that threats of violence should also include one parent threatening the other parent of taking the children away.

Would this include flight risk? Threat of violence should include one parent threatening the other parent with taking their children away.

Although a somewhat larger majority of focus group participants thought that threats of violence should be added to s. 24(1) FRA, there were many who thought that caution was required on this issue. Several participants pointed out that a threat may be made in the "heat of the moment", in response to abuse or because of issues with drug and alcohol abuse, and that to penalize a parent for this would be too harsh.

I took the law into own hands because made a threat against him by saying I would hire a hitman. Now I have a rap sheet but it was a snap decision. It didn't have anything to do with my kids and how I care. Nothing that has been said in court has been enforced—he has the right to control me because he is the primary caregiver. I am still being controlled by him even though I have left him. I am just being a visitor.

That's pretty harsh because I was going to be charged against my spouse for assault. My spouse threw it in my face to gain custody of my boy. This would be scary for me. I wrote into the crown to get charges dropped because I was pregnant. I wrote into other places and they dropped the charges as long as I don't get into physical fights with anyone else. If I get into trouble again then it might bring up all those charges.

I think it should matter about the time frame because it was three years ago and I have not had anything wrong with the law since. Should be in a time frame of what you are charged with. Children not there yet so this is significant. My whole life changed when I had my boy and I was not as careless as I used to be. Alcohol was a factor before. Should be in a time frame when considering the charges for best interest of the child before deciding who gets the child.

It's a double-edged sword. I have said and done things in dealing with the abusive relationship that could be perceived as a threat.

There is lack of perfection by caregivers. There is no leeway for caregivers. Criminals get 100 chances but not parents.

Several participants who were concerned about including threats of violence as a factor also discussed the need for clear guidelines with respect to threats of violence. Their recommendations were: clearly define what is meant by threat, evaluate the history of the relationship, and assess whether a threat of violence is a legitimate barrier to the parent caring for their child.

Absolutely not the threat of violence. The process is abused now because the Judge has professed duty to protect child from harm. When case is brought where possibility of harm, then Judge all of sudden has to protect the child from said harm. There is no proof that there is harm, its just hearsay. How do you prove it?

My concern is where it's both ways. It becomes part of criminal court and children in the middle and the court only hears a little bit. We have to be careful and cautious, with clear guidelines and criteria. People come forward that other person is the batterer and it changes the whole picture if family violence is in there.

Family violence and orders for ensuring safety

The final set of questions posed to focus group participants discussing the topic Family Violence and the FRA related to orders for ensuring safety that could be made under the FRA.

Participants were first told that there are different kinds of orders available for those seeking safety from an abusive partner, including restraining orders under the FRA, peace bonds applied for under the criminal law and possibly, temporary exclusive occupancy orders made under the FRA.

The information sheet highlighted that there are two different kinds of restraining orders that can be applied for using the FRA: orders to stop harassment (s. 37 FRA), and orders to prevent contact—including contact with children and contact with a spouse (ss. 38 and 126 FRA respectively). Participants were then told that currently, there is quite a bit of confusion around who can apply for these orders and when. Thus, several options for reforming this area of the FRA were presented.

Restraining orders

The first issue that participants discussed was whether restraining orders made under the FRA should be available to anyone in a domestic or family relationship, including people who are dating or those who are living together as a couple but who do not meet the legal definition of "spouse".

> *Most participants in the focus groups that addressed this issue thought that anyone in a domestic or family relationship should be able to apply for a restraining order under the FRA.*
>
> *Everyone should be able to get restraining order—even in a dating relationship.*
>
> *It should be broadened to include people not considered spouses at the moment. It's hard to get restraining orders right now.*
>
> *I work with young girls who are troubled in a relationship so they should be able to get restraining orders.*
>
> *What if doing the smart thing and just dating and then the other person is out to lunch and you want to break it off. Should have the right* [to get a restraining order].
>
> *What about friends with benefits? What if see this person only couple months and the month they are supposed to be with them, they flip out. I would want this type of relationship included.*
>
> *Children should be able to put restraining order on parents who are abusive.*

However, a few participants did want limits on who should be able to apply for a restraining order under the FRA. One participant suggested that it would be easier for those in a dating relationship to say the relationship is over and therefore, they would not have as much need for a restraining order.

> *She thinks that for the first question, only marriage relationships for restraining orders. For dating relationship easier to say that it is over.* [Translation]
>
> *Not necessarily for the dating but for living together.*

Others applying for restraining orders

Focus group participants were also asked whether the FRA should allow family members to bring applications for restraining orders, even if they are not applying for anything else under the FRA. The majority of focus group participants who considered this question stated that this was a good idea because the safety of the person experiencing violence should be the foremost consideration in family law matters.

> *I think having an option like this is good because it would stop the emotional roller coaster—having a restraining order against them would cool off all the emotional. Gives you space for the court battle.*
>
> *I think so because you should be able to apply for a restraining order at any time. Would also take some pressure off the police.*
>
> *Should apply for restraining order before any other order is issued and get protection right away. Took me three weeks and history with violence was extensive—the ministry was very unhelpful*

Having others apply for restraining orders under the FRA

Focus group participants also considered whether others should be able to apply for restraining orders on behalf of those who are at risked of being abused. Many participants felt that others should be able to apply for orders on another's behalf due to the fact that often the person being abused is too fearful, or they need the support that would come from someone else applying.

> *Yes to option three—speaking for those who are just too scared.*
>
> *It protects them because allows others to stand up to the spouse—deflect the violence directed towards you.*
>
> *I know for myself—I always took his feelings into consideration. I would love to stand up. I would want someone to express their views as an onlooker. I would like to give permission.*
>
> *If they are not going to do it themselves—they might not want to because they are too fearful.*
>
> *Wide open—this takes the onus off the woman and lessens their fear.*

Of those that agreed with the idea that others can apply for a restraining order on behalf of another, most agreed that a police officer or another 'professional' such as a lawyer or family advocate should be the ones to apply. There was less certainty about whether family members should be able to apply. Some thought family members should be able to apply because they are likely to be familiar with the situation, while others thought it might be misused.

> *I think friend or family member, a person having first hand knowledge. Someone with responsibility. The police officer could apply.*
>
> *Parent versus someone else—this could be really abused. Maybe not so much family*
>
> *Don't agree with others applying unless unrelated professional or a cop. Don't want friends or others because women might not be ready to leave.*
>
> *I like the option for police officers to apply for restraining orders for people. People don't follow through so comes a time when law has to step in if wife too fearful.*
>
> *For the second question, other than the victim themselves, it is okay to apply for restraining order for a client. Agency, police, lawyer—the person applying should have some kind of legal knowledge.*
>
> *She agrees that it should be someone with some kind of professional authority for the client—otherwise people will misuse the system. [translation]*
>
> *Family should be able to apply for a restraining order.*
>
> *Not for parents to apply on my behalf because this could be misused*

There were a small number of focus group participants who did not want others to apply for a restraining order on another's behalf for the reason that it should be the decision of the person who is being abused, when they are ready to apply for an order.

> *I want to make the decision. I want to get suggestions from them but not for them to make the decision for me.*
>
> *I fear for my friends but I will let her make decision for themselves. You should respect their choice.*

Temporary exclusive occupancy orders

In the information sheet, it explained that s. 124 of the FRA says that a Judge can order only one spouse to live temporarily in the family home, without the other spouse. These orders are called temporary exclusive occupancy orders.[4]

Participants were told that the FRA does not list family violence as a factor that Judges must consider when deciding which spouse gets to live in the house while they are separated. Participants were then asked whether s. 124 of the FRA should include specific factors, such as violence, to guide a Judge's decision about ordering exclusive occupancy of the family home.

In the five focus groups that considered this question, almost all participants thought that family violence should be added as a factor for Judges to consider when making a decision about a temporary exclusive occupancy order. The comments of two participants who agreed are provided below.

> *Yes. You're giving stability to the child—less emotional roller coasters.*
>
> *This just makes sense. When my daughter takes something from my son with violence, I make her give it back. This should be done on a society level.*

The adequacy of restraining orders made under the FRA

The final set of questions posed to focus group participants who were discussing safety orders and the FRA were: are restraining orders currently made under the FRA adequate for addressing family violence; if they are not, what could be done to restructure them, to make them more effective.

The majority of focus group participants who considered these questions did not believe that restraining orders as they currently exist are adequate for ensuring the safety of those experiencing family violence. The biggest issue identified by participants was the lack of enforcement of restraining orders and the difficulties in obtaining an order.

> *Nice words but it is not reality. You never see violators get punished—he's never been to jail to this day.*

4. s. 124(3) of the FRA specifies that the court may order that one spouse, for a certain period of time, be given exclusive occupancy of the family residence, or that they may use all or part of the personal property at the family residence, to the exclusion of the other spouse.

Family services and the law do not cooperate. They remove him but he comes back and there is a failure to protect. I have a restraining order but despite all that he's told he's a great dad. There is no common sense.

Me and my ex had a mutual restraining order during shuttle mediation. Us and our lawyers had a meeting and in the restraining order, we weren't allowed to talk unless it was about our son and our talk was in a respectful manner without yelling. I think its crap and this happens anyway. I don't know how you could enforce it? Would you call cops every time he calls you name and yells at you? How would this work?

One participant relayed their difficulty in trying to get a restraining order:

She says that she is already separated from her husband and he is continuing to abuse her and canceling her care card even though she has diabetes and depression. The doctor tells her she has no medical coverage. She is legally separated from husband. He brings lots of trouble to her and she has no lawyer to certify the document. They, the government, tell her to stand up and be on her own but there are so many barriers. [translation]

Several suggestions were given as to how restraining orders made under the FRA could be better enforced. The suggestions included everything from having a global enforcement clause on the order, to having strict penalties for breaching an order, to instituting house arrest and bracelet monitoring for those who breach restraining orders.

Clear directions that the police are to enforce them. Police enforcement clause needs to be clearer. Applying for one automatically engages that the police should enforce it. It should not be left for Judges to decide whether it is police enforceable or not. Every restraining order should have this statement on it.

Strict penalties that are clearly stated. Graduated punishment scale stated clearly. Blanket across the board restraining orders. Make it simpler. Less discretion and make it global.

They have to report into counseling and have someone sign off on it. Make it that they have to report to someone right in the restraining order—that they are keeping on it. There's no accountability. It should be on the violent person to have to report in.

Monitoring should be included, with a bracelet.

If crossing the line, an alarm should go off and the police should come.

Should be able to include 'reporting to probation' order—where he or she is. Person with restraining order should have life alert button to set off alarms for police.

Put in monitoring and where have joint restraining order—have video or a third party there if they cross line and break restraining order.

Several participants also found it confusing that there are two different kinds of protection orders that can be applied for: a peace bond in the criminal courts and a restraining order in the family courts. Although differences between each process were outlined to focus group participants, these individuals thought that there should be one process and the application process should be as simple as possible.

Confusing to me that there are two different types of orders. What vest should I go to? Why are the laws set up so that you have to go to two different places to get an order or my 'bullet proof vest'. It should be as easy as possible to get a restraining order. One kind of restraining order and get it as quick as possible.

4.2. Survey responses

The first question asked of survey respondents was whether the FRA should define family violence. Almost all respondents said that the FRA should define family violence. Only 4% of respondents said that it should not, but 2% were unsure.

Table 1: Should the FRA define family violence?

Family Violence	%
Yes	94.0
No	4.0
DK/NA	2.0

All survey respondents who answered yes to the question of whether the FRA should define family violence also indicated what should be included in the definition. The table below summarizes survey participant responses to the question about what should be included.

Table 2: What should the definition of family violence cover?

Definition	%
Physical abuse	100.0
Forcible confinement	100.0
Sexual abuse	100.0
Psychological or emotional abuse	100.0
Neglect, such as refusing food, shelter, clothing, etc.	100.0
Financial abuse	95.7
Threats of violence	93.5
Attempted violence	95.7
Other	34.8

Physical abuse, forcible confinement, sexual abuse, psychological or emotional abuse and neglect were selected at a 100% rate. Additionally, almost all respondents said that the definition should also include financial abuse (96%), threats of violence (94%), and attempted violence (96%). Some also thought that the definition of family violence should cover things such as parental alienation, property damage, isolation, and spiritual abuse.

> *Any behavior the gives rise to a fear for one's safety or well-being. Include threats to remove or harm the children and property damage*
>
> *Combinations of the above as well as isolation, immigration abuse (women think their ex's can have them deported so they aren't physically confined, but mentally. Also canceling sponsorship before permanent residency).*
>
> *Spiritual violence (i.e. not allowed to practice own religion, forced to practice another).*
>
> *Intentional isolation.*
>
> *Yelling, throwing & destroying objects, isolation, censorship, excessive drinking, taking substance, having sex or physical fighting in front of children*

Some respondents also suggested following definitions of family violence provided by other organizations. For example, one respondent suggested that following the definition set out in the Violence Against Women In Relationships (VAWIR)[5] policy would be useful, while

5. http://canada.justice.gc.ca/en/ps/fm/familyvfs.html

another respondent suggested including the RCMP 'E' division policy regarding a 'primary aggressor'.

Self protection and the protection of others

In some places, such as Alberta's family law, there is an explicit statement that family violence does not include self-protection or the protection of others such as children. Survey respondents were asked whether the FRA should include a section stating that the self-protection and the protection of others is not family violence.

While over two thirds of respondents (64%) said that the FRA should say that family violence does not include acts of self-protection or protection of others, 18% of respondents indicated that such a statement should not be in the FRA and another 18% were unsure or did not know.

Table 3: Should the definition of family violence in the FRA say that family violence does not include acts of self-protection or protection of others?

Self Protection and the Protection of Others	%
Yes	64.0
No	18.0
DK/NA	18.0

Family violence and children

In this section, survey respondents were asked to comment on suggestions for how the FRA should deal with family violence and children. Almost all respondents (96%) said that the FRA should include family violence as a factor when deciding what is best for children when making custody, access, and guardianship orders.

Respondents were also asked a series of other questions about what the FRA should say with respect to the type of contact a violent parent ought to have with their children.

- A large majority of respondents (90%) stated that the FRA should say that a violent parent ought not to have custody of their child(ren) unless they are able to prove it is in the best interests of the child(ren).
- There was less certainty among respondents about whether the FRA should allow a violent parent to have access or parenting time with a child(ren). Almost half of respondents (46%) indicated that the FRA should not allow a violent parent to have access or parenting time with the child, while 36% said that it should.
- A large majority of respondents (82%) also thought the FRA should have a rule that allows only supervised contact between a violent parent and their child.
- A large percentage of respondents agreed that the FRA should state that a Judge cannot give a contact order where the parent has sexually abused a child.
- Seventy-six percent of respondents also thought that the FRA should allow a Judge to make any order to protect a child's safety even where the Judge has not been able to determine whether an allegation of violence has been proved, as long as the Judge is satisfied that there is a real risk to the child's safety. Other respondents were unsure if this should be included in the FRA and some rejected this as an option.

Table 4: Family violence and children

Question	Yes	No	DK/NA
Should the FRA include family violence as a factor when deciding what is best for children when making custody, access and guardianship orders?	96.1%	2.0%	2.0%
Should the FRA say that a violent parent ought not to get custody of the children unless that parent can prove it would be in the best interests of the child to do so?	90.2%	3.9%	5.9%
Should the FRA allow a violent parent access or parenting time with the child?	36.0%	46.0%	18.0%
Should the FRA have a rule that allows only supervised contact between a violent parent and their child?	82.4%	7.8%	9.8%
Should the FRA allow a Judge to make any order to protect a child's safety even where the Judge has not been able to determine whether the allegation of violence is proved so long as the Judge is satisfied that there is a real risk to the child's safety?	76.5%	9.8%	13.7%
Should the FRA say that a Judge cannot give a contact order where the parent has sexually abused a child?	88.2%	3.9%	7.8%

Conditions on Access Orders

In another question, survey respondents were asked whether the FRA should require Judges to impose conditions in access orders where a parent has been found to be violent. Most respondents (92%) said that the FRA should have such a requirement.

Table 5: Should the FRA require Judges to impose conditions in access orders on the parent found to have been violent?

Family Violence	%
Yes	91.8
No	0.0
DK/NA	10.2

Respondents were then given space to suggest what types of conditions should be imposed. Many suggestions were made, such as having the violent parent take parenting classes, attend counseling and receive treatment for drug and alcohol abuse if this is an issue.

> *Must receive treatment for violence before access, NOT anger management counseling for violent parent.*
>
> *That the parent attends group counseling for abuse with simultaneously limited access.*
>
> *Anger management or counseling completed to the satisfaction of the counselor.*
>
> *Parent must successfully complete treatment for violence issues.*
>
> *Be clean and sober when having a visit.*
>
> *Prohibit use of alcohol or other intoxicating substances during visits.*

Several respondents thought that periodic assessments must be made to determine whether the conditions that have been imposed are being met or whether the violent parent is complying with the conditions and seeking change.

> *Counseling Assessment every so often (six months) to determine extent of risk and any changes.*
>
> *Assessment and acknowledgement of mental illness when it is obvious to everyone, and a detailed parenting plan that may include supervised visits.*
>
> *That the violent parent be required to take an appropriate program related to abusive partners, and show evidence of completion to the court.*
>
> *Regular review, monitoring of the situation and the impact on the child.*

A large majority of respondents also thought that access with the violent parent should be restricted and supervised. Below are some suggestions that respondents gave with respect to restricting or limiting access with a violent parent.

> *That if the parent is found to be continuing to use violence against the child, the other parent, or any family member, then access will be suspended*
>
> *Ban on overnight visits, even if supervised.*
>
> *That accessing parent cannot have access to children's medical/school or other info to protect the other parent's location.*
>
> *Telephone access only and access monitored.*
>
> *Third party transfer of child.*

Finally, several respondents suggested that a more flexible approach should be taken when imposing conditions on the violent parent.

> *As per question one, sometimes a parent has been violent but still has the capacity to be a good parent if they can keep the focus on meeting the child's needs (versus punishing the other parent through the child). Sometimes being a parent is what motivates an abusive person to seek help or change. Abusive partners with kids are still dads and need support to be good dads, but it serves our society to not automatically excuse them from parental responsibilities. Involvement with their children's counselors or with a parenting instructor may be useful to them, requirements that they not use alcohol or drugs when with their kids, and conditions related to episodic mental illness should be included.*
>
> *As per question 1, blanket rules may create more problems than not, as children need both parents in their lives when the parents have the capacity to focus on and respond to the child's needs. Conditions should depend on the frequency, intensity, duration and cause of the violence (ie) addiction, mental illness, anger or impulse control, etc.*

Family violence, threats of violence and the Best Interest of the Child Test

In the section of the survey that dealt with questions about Children's Best Interests, respondents were asked if family violence and the threat of family violence should be added as factors in s. 24(1) of the FRA. Almost all respondents (91%) felt that family violence should be added to s. 24(1) FRA. Respondents also felt that even the threat of violence

should be included in s. 24(1), as threats also affect children.

Table 7: Should family violence be added as a factor in s. 24(1) of the FRA, in order for a Judge to determine what is in the best interests of a child in deciding custody, access and guardianship?

Responses	Family Violence %	Threat of Family Violence %
Yes	91.3	92.8
No	8.7	7.3

Of those who answered the question as to why family violence and the threat of violence should be added as factors, respondents pointed out witnessing violence can be harmful to a child, and may even perpetuate the cycle of violence. There was also concern that a parent who is violent might also take anger out on the child.

> *History of family violence is critical when considering guardianship but needs to be really scrutinized as sometimes allegations are made based more out of anger than reality. This will be tricky though as what is family violence?...If a parent yells at another on an occasion should they not have access to the children?...alot of variables and pitfalls in this potentially.*
>
> *When there is violence in the family, probably that is the main reason the couple are separating and filing for the divorce. The State has to look at the situation and if the court decides shared parenting, than the abuser is always in contact with the person he abused, and children are caught up in the battle. Working with women, I found that children are held as hostages in family separation cases.*
>
> *Children who grow up in homes were there is domestic violence often are targets of that violence themselves. That violence does not leave just because the parents separate. In fact the violence may not only continue with the children but it may be transferred to them as the other parent may not be accessible to the offending parent.*
>
> *If there is recorded family violence going on this should be added to determine appropriate access. Witnessing violence and living with it is very harmful to a child and the cycle of violence may continue.*
>
> *This is ABSOLUTELY ESSENTIAL. The presence of family violence (including sexual abuse) must be at the centre of any Judge's ruling.*
>
> *The environment in which a child is reared has considerable impact on its future. If the child is from a violent home, the victim of the abuse is more than one person.*

Parents who have a history of violence should have that considered when custody is determined. The parent may not have physically hurt the child per say, but the emotional and psychological injuries are there none the less. The future of the child's ability to be an emotionally healthy person is put in jeopardy.

This seems like a no brainer. Violence has a huge impact on the "best interests", safety, and well being of a child. If the FRA has impact on a Judges decision, it should be that children and the most vulnerable should not be further terrorized/traumatized in the custody, access and guardianship process. Added to this should be TIMELINESS. If violence is identified as an issue then the custody process should not be dragged out so these families are not further traumatized by an inefficient system.

Family violence has such a deep impact on a child, it is necessary to include it when a Judge makes decisions about custody, access and guardianship. As well as possible solutions to help the parents have appropriate education and counseling in order that any given situation could be looked at again and reviewed with an understanding that court orders could be adjusted.

However, several respondents also cautioned that accusations of family violence are not always accurate and making an allegation of family violence can be used as a means of getting custody of child. It was suggested that if family violence is included as a factor in section 24(1) FRA, that there also be serious consequences for those who make false allegations of abuse. There was also a suggestion that Parental Alienation be included in the definition of family violence. One respondent also thought that family violence should be dealt with as a criminal matter and not through the FRA.

Yes [family violence should be added], *but the danger is that the accusation of domestic violence is already being used as a tool to separate fathers from their children. Parental Alienation needs to be included in the definition of violence and it needs to be taken seriously as an act of abuse towards the other parent, but more importantly as an act of abuse towards the child, which needs to trigger serious consequences, i.e. reversal of custody. Also, false accusations of violence need to have serious consequences. Currently few consequences exist for false accusations or perjury in family court, which has allowed the system to degenerate to a system which is renowned for false accusations. To increase the importance of violence as a factor is further stacking the system in favour of the custodial parent if there are no consequences for false accusations or perjury!*

(Unfortunately, you did not include a "maybe" option.) I think it is safe to say that no Judge, no matter how well-intentioned, has any idea what is in the best interest of any child - possibly with the exception of his/her own children. Usually, "family violence" is a code-word for "violence against women", and that is all that would be taken into consideration. Generally, an accusation is sufficient to destroy a father-child relationship, and adding to that will only make matters worse. On the

other hand, if there is proven criminal violence towards the children (most often committed by mothers) then that would rightly be a factor that should be considered.

Survey respondents also discussed whether or not the threat of family violence should be added as a factor in s. 24(1) of the FRA. Many respondents believed that it should be added as a factor since threats of violence are also a form of abuse and just as harmful as actual violence.

Threats of family violence can often be indications of actual violence, including emotional, psychological, and financial abuse. It would also rarely to never be in a child's best interest to be cared for by a parent who is threatening violence in the family.

Yes because violence increases during times of stress - I have had families where women are fleeing emotional or financial violence which becomes physical violence as the issue proceeds. A woman is most likely to be killed by her spouse when she tries to leave.

So many times women say that they are being threatened or have been repeatedly threatened and nothing is done about it. It would be frightening to not have the law on your side.

Threats of violence are part of the psychological abuse that forms part of the overall cycle of violence, and should be treated just as seriously as physical acts of violence that have been committed.

Often there is fear, intimidation, threats which silence victims of family violence. By adding the threat as a factor in s. 24(1), the FRA will identify, label and acknowledge it and by doing so, it will help the family itself to do the same. The family may not be clearly aware of it for not daring to call it by its name.

However, many respondents also thought that caution should be exercised with respect to adding threats of violence as a factor in s. 24(1) FRA. One respondent felt that it should only be considered in extreme cases, while others thought it should be dealt with on a case-by-case basis. Those that wanted it considered on a case-by-case basis provide several reasons including: that such a factor could be used against the victim of the abuse rather than the abuser; there might be times when the threat is perceived rather than real; there are likely underlying issues in each case which require exploration.

Interfering in a parent-child relationship is a serious matter. Mere "threats" are not enough, criminal conviction should first be required.

Threats are often idle and can be a manifestation of frustration, which may or may

not lead to violence. This behavior can be changed.

As long as it is not just a 'perceived' threat and a figment of someone's design.

Sometimes. I would think this should be determined on a case-by-case basis. The risk factors need to be weighed carefully!

Again it needs to be really clear. Since often breaking up parents will say things they would not act on. Threats are serious and if one parent/child is afraid then this needs to be seriously considered.

Several respondents also suggested that if there are threats of violence in the relationship, access should be supervised and the situation monitored. One respondent also suggested that the FRA require mandatory counseling for all when threats of violence are apparent.

I believe that children should have access to both parents regardless of history, otherwise there is a hole left in that child's life. However, in the case of a threat of violence, visits must be regulated and supervised.

The threat of family violence is the responsibility of adults to consider during a holistic process of evaluation of the best interests of a child. Noting a 'threat' does not necessarily indicate that a parent should not interact with their child, but it may add in a note of caution that can be followed up on later, especially if a growing threat becomes evident. Perhaps parent/child interactions could be supervised by a third party or other possibilities considered for certain periods of time if there appears to be a 'threat.'

And the threat or the existence of family violence should be dealt with through mandatory counseling for all involved.

Family violence and orders to ensure safety

In this section of the survey, respondents were asked questions about how the FRA can be amended to deal with family violence through the use of orders for ensuring safety.

Restraining orders

The first set of questions asked respondents to comment upon restraining orders and temporary exclusive occupancy orders made under the FRA. Respondents were first asked whether restraining orders made under the FRA should apply to anyone living in a domestic or family relationship. The majority of respondents (88%) said that restraining orders made

under the FRA should apply to anyone in a family relationship, such as people who are dating or living together.

Respondents were then asked whether others should be able to apply for a restraining order under the FRA on another's behalf and who should be allowed to do this, as well as whether a person should be able to apply for a restraining order under the FRA before making any other application under the FRA.

Over two thirds of respondents said that the FRA should allow others to apply for restraining orders on behalf of those who are at risk of being abused. Respondents specified that some of the other people who should be allowed to apply for restraining orders on behalf of those at risk or being abused could be immediate family members, lawyers, community service workers, or the police. Some also suggested older children of the person being abused.

> *Parents only; absolutely no lawyers, crown counsel or other court functionaries or social workers.*
>
> *Child protection workers, anti-violence workers/advocates*
>
> *Any person who has seen the violence personally or witnessed the effects of the abuse first hand-applied for on behalf of a probably scared individual*
>
> *Counselors, school, legal advocates and parents of the victim. This would have to be with the consent of the victim.*
>
> *Non-offending parent, grandparents, other relatives, agencies with child interests such as MCFD, other concerned parties who are able to present a valid case.*
>
> *Well ... there would have to be some link to the child. Perhaps child advocates as friends of the court for example.*
>
> *A child over 14 and an immediate relative.*

Eighty-nine percent also thought that the FRA should be amended to say that family members can bring applications for restraining orders, even if they are not applying for anything else under the FRA.

Finally, respondents were asked whether s. 124 of the FRA, which deals with temporary exclusive occupancy orders, should include specific factors such as violence to guide a Judge making such an order. A large majority of participants (85%) agreed that s. 124 of the FRA should include factors such as violence to guide Judges when they are making decisions

about temporary exclusive occupancy orders.

Table 8: Family violence and orders for ensuring safety

Question	Yes	No	DK/NA
In order to prevent violence in a domestic or family relationship, should restraining orders made under the FRA be available to anyone who is in a domestic or family relationship, including people who are dating or those who are living together as a couple but who do not meet the legal definition of "spouse"?	87.5%	8.3%	4.2%
Should the FRA be amended to make it clear that family members, such as former spouses, may bring applications for restraining orders, even if they are not applying for anything else under the FRA?	89.1%	2.2%	8.7%
Should the FRA allow others to apply for restraining orders on behalf of those who are at risk of being abused?	68.8%	18.8%	12.5%
Should s. 124 of the FRA include specific factors, such as violence, to guide a Judge's decision about orders for exclusive occupancy of the family home?	85.4%	4.2%	10.4%

Adequacy of restraining orders

Family law advocates and support workers were also asked to give their opinion about the adequacy of restraining orders made under the FRA. While 42% of respondents said that the restraining orders available under the FRA do not address the different kinds of family violence adequately, another 42% of respondents were unsure.

Table 9: Do the restraining orders available under the FRA address the different kinds of family violence adequately (i.e. violence against spouses, violence against children)?

Responses	%
Yes	15.6
No	42.2
DK/NA	42.2

Many family law advocates and support worker who thought that restraining orders made under the FRA were not adequate for ensuring safety were then asked what could be added to the FRA to provide better protection to those experiencing family violence. A variety of suggestions were made including: having an enforcement clause; setting out in the order those place where family violence may occur; having all kinds of family violence considered and not just physical violence; letting all types of family members apply for an order.

> *All restraining orders should assume to have an enforcement clause - restraining orders should automatically include home, the person, as well as finances, employment and contacts of the person.*
>
> *Emotional abuse is often not taken into consideration as often as physical abuse. Often parents who have been abused must have contact with their abuser when it comes to their children and access, which allows the abuse to continue.*
>
> *Restraining orders unfortunately are thought of as a bit of a joke. I don't believe there are many people who would go to the lengths of getting a restraining order put in place if it wasn't necessary. It is difficult to admit violence and it needs to be taken seriously when help is being sought after.*
>
> *For example, adult or mature siblings, adult or mature child against parent, in law parent, grand parent, aunt, uncle, stepparent, grandchild to grandparent, (A variety of relationships in which a person may need protection from another member or members of someone in a family relationship)*
> *Restraining orders should also include members of extended family*

The final question put to survey respondents was whether they had any other suggestions for how restraining orders under the FRA can be structured to ensure the safety of family members experiencing family violence. Many respondents focused their comments on the need for proper enforcement of the restraining orders and the need for more serious penalties when such orders are breached.

Clear enforceability by the RCMP. The offender can be arrested and held in custody, subject to escalating penalty with each occurrence. Should also address contact relating to access.

Restraining orders should be automatically enforceable by the RCMP and other policing services. There should be a tie-in to the criminal justice system database to strengthen the RCMP sense of obligation around this.

Police should be directed on order to enforce it. Should include at-risk parents and children. Should be very specific as to the boundaries/conditions (ie. how far away to stay, etc.)

Real penalties and deterrents when the order is broken.

Violations of the orders should have stiffer penalties. The old saying of "the order is only as good as the paper it is written on" needs to be addressed. Faster response time for the RCMP to enforce orders, and a mandatory jail term for someone who has violated a restraining order for the second time.

4.3. Family Court Youth Justice (FCYJ) committee responses

Below, the recommendations of the three FCYJ committees that provided responses for the FRA project will be outlined with respect to the topic of family violence. Each committee used their own process for providing recommendations on this topic. One committee chose to have one member go through the materials, provide responses and have the committee adopt the recommendations. The other two committees chose to strike a sub-committee, who made recommendations for the larger committee to review. In one case, the FCYJ committee discussed the issues with an Ad-hoc subcommittee member who works closely with the South East Asian population and is a counselor and coordinator of family programs with a Vancouver-based immigrant and refugee serving agency. Their goal was to obtain the perspective of immigrant women who access family law in Vancouver.

As discussed in the methodology chapter, the FCYJ committees were provided with a fill in the blank questionbook, as well as given copies of the information sheets. The questions asked and the options for reform provided were mostly identical to the questions asked of participants with lived experience who attended focus groups and of family law advocates and support workers who responded to the online survey.

Defining family violence

Providing a definition in the FRA

The first question asked of FCYJ committee's was: should the FRA define family violence and why or why not. Two committees agreed that the FRA should definitely define family violence. One committee gave this reasoning as to why a definition should be included:

> *Everyone involved with victims and perpetrators of family violence should be 'on the same page' as to what is family violence (e.g. Ministries, social service providers, etc.).*

The other committee answered both yes and no, stating that family violence should not be defined any different than what is in the criminal code, with violence being defined as the unlawful exercise of physical force. They thought that the term abuse should be defined separately and that it could include violence as part of the definition. This is how they wanted abuse defined:

> *Abuse is the intentional misuse of power that results in physical, psychological, emotional or financial injury to another person.*

How family violence should be defined

When asked what they thought should be included in a definition of family violence, two committee's indicated that all options provided in the questionbook should be included. The options in the book were:

- physical abuse;
- forcible confinement;
- sexual abuse;
- psychological or emotional abuse;
- neglect, such as refusing food, shelter, clothing, etc.;
- financial abuse;
- threats of violence;
- attempted violence.

One committee also mentioned two other items that should be included in the definition, social death (ostrasization) and religious abuse.

The other committee recommended that the definition of family violence should only include physical abuse, reiterating the point that abuse and violence should be separate and non-interchangeable terms.

Self-protection and protection of others

Next, FCYJ committees were asked whether the definition should say that family violence does not include acts of self-protection or protection of others, and why or why not. One committee thought that it should be included, since they thought it was clearly working in Alberta. Another stated that it should be included but treated with caution. They wanted this type of provision clearly and distinctly defined, as well as examples of what self-protection would look like included in the FRA. The other committee did not answer yes or no, but stated that self-protection or protection of others is already a defensible act under the Criminal Code.

Family violence and children

In this section, recommendations are based on the committees responses to questions in the Family Violence and FRA section of the questionbook, as well as from the Children's Best Interests section of the questionbook. All three committee's provided responses to the Family Violence and FRA section, while only two responded to questions about family violence in the Children's Best Interests section of the questionbook.

Family violence and threats of violence as factors to consider when deciding the best Interest of the child when making custody, access and guardianship orders

The first question in the Family Violence and FRA section asked committee's whether the FRA should include family violence as a factor when deciding what is best for children when making custody, access and guardianship orders.

Two committee's answered yes to this question, with one committee stating that this would help ensure the consistency of judicial decisions. The other committee thought it would depend on who the violence is being directed at and whether it was an ongoing factor. They thought that if the violence continues to impact the child after separation and divorce, then family violence should be considered a factor.

In the Children's Best Interest section of the questionbook, both committee's who responded

to this section said that both family violence and threats of violence should be added as factors when considering what is in the best interest of the child in determining custody, access and guardianship. One committee made this statement concerning threats of violence:

> *Yes, if there has been a clear threat made and it is reasonable to believe the threat will be carried out.*

Including other rules in the FRA to help Judges determine if a child should have a relationship with a violent parent

In the *Family Violence and FRA* information sheet, participants were told about some of the rules that exist in other places for helping Judges determine whether a child should have a relationship with a violent parent. These included:

- A rule that a parent cannot be given sole or joint custody of their child if they have been violent toward their spouse or children;
- A rule that the violent parent must prove to the court that spending time with their child would not be harmful to the child's development;
- Allowing only supervised contact between a violent parent and their child;
- Placing conditions on the violent parent wanting to spend time with the child;
- A rule that Judges cannot give a contact order where the parent has sexually abused a child.

The first question in this section of the questionbook asked FCYJ committees if they thought the FRA should add rules to help Judges determine if a child should have a relationship with a violent parent. Two committees answered a definitive yes while another committee did not state specifically whether such rules should be included, instead stating that that family protective services should provide an assessment of the situation and their findings should direct the Judge.

committees were also asked to consider whether the FRA should say that a violent parent ought not to get custody of the children unless that parent can prove it would be in the best interests of the child to do so. Again, two of the committees agreed that the FRA should have this rule. One committee stated the following reason for including such a rule in the FRA:

> *The burden of proof needs to switch from the victim describing why the perpetrator is an unsuitable parent to the perpetrator describing how he is a suitable parent. Currently it is too difficult for the victim to prove the problem with a violent parent, especially if she is unrepresented.*

The other committee disagreed with the inclusion of such a rule in the FRA because the burden of proof needs to be with the parent making the allegation by requesting an assessment through family protective services.

FCYJ committees were then asked if the FRA should allow a violent parent access or parenting time with the child, and to provide reasoning for their answer. One committee thought that the FRA should not allow a violent parent access or parenting time without "proof" they are healed, and that proof should exist over a long period of time. Another committee stated that there should be clear guidelines as to when access would be allowed. They provided the following reasoning:

> *If there is to be access, there needs to be clear guidelines around how this will happen. Currently, orders where the victim is the supervisor are not helpful. Further, the child's mind can be poisoned against the victim by the perpetrator during the visit. This is not helpful for children. Lastly, if access is to happen, the perpetrator should be made to show what he has done to address his violence (i.e. acknowledge it, seek and attend counseling, affirm his desire to parent.)*

The other committee stated that access with a violent parent would depend on who the violence was directed at. They stated:

> *If the children were the victims of violence, then supervised visits only. If there is no evidence of violence or abuse directed towards the children, then access should not be denied.*

Questions five and six in the questionbook asked committees if the FRA should first have a rule that allows only supervised contact between a violent parent and their child; and second if the FRA should require Judges to impose conditions in access orders if a parent is found to have been violent. One committee recommended that a violent parent should only have supervised access and an access order should impose supervision and "no sleepovers" on a violent parent. Another committee made these comments with respect to both supervision and the imposition of conditions on access orders:

> *If the violent parent is actively working on his issues, then yes, supervised access should continue until he is ready for unsupervised access. And by "ready" I mean that he has acknowledged his violence, is seeking counseling, etc.*

The third committee recommended that that supervised contact should be determined using the same process that the Ministry of Child and Family Development use to determine the type of access a violent parent should have. With respect to the imposition of conditions on an access order, the committee thought that a Judge should impose conditions recommended by a social worker who has assessed the situation.

The second last question posed to FCYJ committee's in this section was, should the FRA allow a Judge to make any order to protect a child's safety even where the Judge has not been able to determine whether the allegation of violence is proved, so long as the Judge is satisfied that there is a real risk to the child's safety. In response, two committees agreed that the FRA should allow a Judge to make such an order. One committee stated that it was the job of Judges to protect children, while another stated that:

> *It is better to err on the side of caution, especially because this is a question about protecting children.*

The other FCYJ committee strongly disagreed with allowing a Judge to make any such order for the reasons that Judges are not trained in assessing risks, and that only trained social workers can make such determinations. They went on to state that parents access to their children should not be Judged different because they are going through a divorce.

The final question in this section of the FCYJ committee questionbook asked committees to comment on whether the FRA should say that a Judge cannot give a contact order where the parent has sexually abused a child? All three committees agreed that this should be included, although one committee thought that the MCFD should make the determination, backed by a Judge.

Family violence and orders

The final part in this section of the question book dealt with orders for ensuring safety when there is family violence. Only two committees responded to this section of the questionbook.

Specific questions relating to restraining orders

The first set of questions in this section of the question book dealt with restraining orders made under the FRA. The *Family Violence and the FRA* information sheet provided FCYJ committees with information about different types of restraining orders, which is outlined at the beginning of this chapter or can be accessed in Appendix 1 at the back of this report.

The first question FCYJ committees were asked to respond to was: Should restraining orders made under the FRA be available to anyone in a domestic or family relationship, including people who are dating or those who are living together as a couple but who do not meet the legal definition of "spouse". Both committees who answered this question agreed that the FRA should allow those who don't meet the legal definition of a spouse to apply for restraining orders under the FRA. One committee also suggested the following:

> *There needs to be a way to address the language barrier faced by many people. There needs to be fewer hoops and hurdles.*

The second question asked FCYJ committees whether the FRA should be amended to make it clear that family members, such as former spouses, may bring applications for restraining orders even if they are not applying for anything else under the FRA. Again both committees agreed that this should be allowed. One committee highlighted why it was important for the FRA to be amended in this manner:

> *Yes, definitely. In the mind of victims in Southeast Asian communities, an application for custody may be seen to hinder or hamper their possibility of reconciliation. The application for custody may be seen to imply that you are separated. This could also result in escalated violence.*

Another set of questions posed to FCYJ committees with respect to restraining orders was: should the FRA allow others to apply for restraining orders on behalf of those who are at risk of being abused; and if so, who should be allowed to apply on behalf of others.

One committee thought that the FRA should allow others to apply for a restraining order on behalf of someone else, but it should be limited to family members. The other committee thought this should not be allowed, suggesting that it would difficult to set it up in a way that would help victims of family violence.

General questions relating to restraining orders

In addition to asking FCYJ committee's about specific options for reforming the FRA in the area of restraining orders, this section also asked them to comment on: a) whether restraining orders made under the FRA address family violence adequately; b) what kinds of relief the FRA should provide to make them more adequate; c) what they think could be done to make restraining orders more effective under the FRA.

Both FCYJ committees who responded to these questions thought that restraining orders made under the FRA are currently inadequate. One committee thought that ss. 37 and 38 of the FRA, which relate to orders for harassment, were too restrictive. The other committee thought restraining orders needed to be case specific to deal adequately with the issues. In terms of recommendations for restructuring restraining orders under the FRA to make them more adequate, one committee suggested that they be extended to other family members and relationships, while the other committee suggested the following:

> *They need to be more simply obtained. They need to provide clearer protection. The language barriers needs to be addressed.*

Temporary exclusive occupancy orders

The final question in the Family Violence and the FRA section of the questionbook asked FCYJ committees to comment on temporary exclusive occupancy orders. FCYJ committees were asked if s. 124 of the FRA should include specific factors, such as violence, to guide a Judge's decision about orders for exclusive occupancy of the family home. Both committees agreed that s. 124 FRA should include specific factors such as violence, to guide a Judge's decision with respect to temporary exclusive occupancy orders. However, one committee said this would only be effective if a restraining order was also in place and highlighted the importance of implementation and enforcement of both restraining orders and temporary exclusive occupancy orders.

5. Children's best interests

This topic provided options for reforming section 24(1) of the FRA. Section 24(1) FRA sets out the factors Judges should consider when deciding what is in the best interests of children in determining guardianship, custody and access arrangements. It is often referred to as the Best Interest of the Child Test.

Chapter 4 dealt with whether family violence and threats of family violence should be added as additional factors in s. 24(1) FRA. This chapter considers focus group participants and survey respondents, as to whether other factors should be added to s. 24(1) FRA and what those factors should be. This chapter also sets out whether thier opinions as to whether the FRA should require parents to consider their children's best interests when making their own arrangements, either by considering a list of factors similar to Judges, or whether there should be other factors that parents should be required to consider.

Below, the opinions and recommendations of focus group participants will be discussed, followed by the opinions provided by survey respondents.

5.1. Focus group responses

Considering Children's Best Interests was the topic chosen most often by focus group participants. Eleven out of twenty-one focus groups chose this as their first topic for discussion, two groups discussed it as their second topic of choice and three groups discussed it as their third topic. Thus, there was extensive feedback from participants with lived experience regarding the different options for reforming children's best interests under the FRA.

Part A: Requiring Judges to consider other factors when deciding what is in the best interests of a child when determining guardianship, custody and access

Focus group participants were first told of the six factors that currently exist in the FRA:

- the health and emotional well-being of the child (this includes any special needs for care);
- the views of the child, especially when as the children get older;
- the love, affection and other ties that exist between children and other people;
- education and training for the child;

- the capacity of each parent who wants to exercise custody, access or guardianship;
- the child's financial well-being in cases where there is an issue about care of the child's property.

Focus group participants were then asked if they would like to see other factors added, and if so, what those other factors should be. The majority of focus group participants who considered this topic thought that the current set of factors in s. 24 of the FRA should be left in the Act. The majority also agreed that that there should be other factors added to s. 24, giving further guidance to Judges who are deciding what is in the best interests of children when making determinations about guardianship, custody and access.

Although the majority of participants agreed with the current list of factors, as well as with the idea that other factors should be added, there were some who disagreed with both the current formulation of s. 24 FRA, and with further additions to it. Of those who disagreed, several participants stated that they thought it is difficult enough for parents to determine the best interests of a child, let alone Judges; while others disagreed on the grounds that legislation should not be used to interfere with the role of parents in determining what is best for their children. The participants comments are below:

> *The best interest of the child, there's an entire system developed around the Best Interest of the Child. I have not a bloody clue what this means or what it should mean. No lawyer or Judge knows what it means. It should only fall back on the role of the parent.*

> *We're all getting sucked in. My child is not something to tick off on a list. I don't care how extensive the list is. My child is not about the list. My child is about stubbing his toe in the morning, not about some list that a Judge can tick off. Need to understand that these are our children and that we are their parents. The list is never going to work; we're trying to define the utterly indefinable. No group knows how to say what is in the best interests of a particular child, least of all Judges.*

> *None of these factors are important. Take out the six factors that are there now. It shouldn't be a competition about trying to win the child. As soon as you start adding in other factors, it will be worse.*

Focus group participants who wanted to see other factors added to s. 24 were asked to comment on options provided in the information sheet, as well as to suggest any others not provided for in the list. The options set out in the information sheet came from a variety of sources including: the web-based consultation papers produced by the Civil Law and Policy branch at the Ministry of the Attorney General; suggestions made by the project's advisory

committee members; and from previous reports which recommended reforms to the Best Interests of the Child Test.

The options set out in the information sheet included:

A. How the child has been cared for in the past by the parent;
B. The child's culture;
C. The child's language;
D. Child's religious upbringing;
E. The child's race and ethnic origin;
F. The child's Aboriginal heritage;
G. Benefits to the child of having a relationship with each person who wants to have custody, access or guardianship;
H. If the parent is involved in any civil or criminal case that would affect the child's safety or well-being of the child;
I. The plans that each parent has for the child if they were given custody, access or guardianship of the child

A. How child has been cared for in the past by the parent

Many focus group participants who wanted other factors added to s. 24(1) FRA thought that how a child has been cared for in the past by the parent was an important thing for Judges to consider when determining the best interests of the child. Several indicated that this should be a primary consideration since looking at the past care of the child would help Judges determine how the child might be cared for in the future by each parent.

> *They should look at the history and background of all involved. How the child has been cared for in the past, all of it.*
>
> *This would be the prime above all else. If you know them or others know them; it should be primary above all—the relationship with the children. I do not know how that shouldn't be considered.*
>
> *If parents and extended families can continue being in child's life, there's no need to demonize the parent. How the parent and extended family have cared for the child in the past—anything else shocks the child.*
>
> *He wanted a woman to be a live-in Nanny, then the girlfriend to take care of my son. Now they are engaged and he wants her to raise my son. I want them to look at*

history each has with child, look at affidavits from different people.

Although many focus group participants wanted the inclusion of this factor in s. 24(1), many focus group participants raised questions about how "past care" would be defined.

Some suggested that exercising day to day care and responsibility for the child by the parent should be an important indicator of care, while others pointed out that providing financial support and maintaining the family should be considered just as important a form of care as day to day responsibility.

> *Top one should be included, how the child has been cared for in the past by the parent—the 'before' is important. Who was the primary caregiver should continue in that role.*
>
> *She says that Judges should look at who raised the child since birth and who has taken on the responsibilities. That should be the person who gets the custody.* [translation]
>
> *The child's father didn't even care for child—only came in once separation happened and he became super dad. So first point should definitely be in. The reality was that she was my responsibility, and then that changes. Now it is hard for the one wanting custody and guardianship of the child. A nanny shouldn't be included as a caregiver.*
>
> *I just wanted to say that in my case, if you are the breadwinner, you are around less. Best times I had with my daughter was when mother was not in the scene. Me trying to hang out with my daughter when mother was there—I was always told do it this way or that way. We have different homes and we do things different. If the test was based on this first one, I would not have rated. When I would come home it was a big deal for my daughter. I wouldn't want to put that option* [past care] *in there. They say you were never around but I was told to go and do other things.*
>
> *Agree with K about the value of stay at home mom—we should put a monetary value on that—it's a hell of a job, I'm agreeing with K. But how much value do we put on what the father does—he's working hard out there. Mom's do a great job when home but it cost me a lot of money to provide a great home, the great lifestyle and all the food. I was really young father and decided to do the right thing. I find it ironic—the value put on the father when he is a stay at home dad.*

Other focus group participants wanted to know how past care of a child by each parent would be assessed. Some participants highlighted the danger in relying on the other parent's testimony to determine past care, as this can change with the feelings that each parent has toward one another at the time.

It's important that when I was in mediation with Family Justice Counselor, my ex said what a wonderful job I did with my four-year-old daughter. When ex likes me then I'm doing good job and then when he doesn't like me, he doesn't say anything. This plays an important part.

Not sure if intentional or fall out of society. Get asked questions about who changed diapers, etc. In my particular case, I can adapt to awkward sleep patterns. When my children are up at night, I was up but they are going to assume she helped the children at night—it becomes he said/she said.

Finally, other focus group participants did not want "how the child has been cared for in the past by the parent" included as a factor in s. 24(1) FRA, for the reason that parents should not be penalized for making mistakes, especially if they are willing to make changes in their lives to care for the child.

I don't like statement "how the child was cared for past by the parent". Everyone makes mistakes and can be criticized. I think it should be: this is what I am doing now rather than the past. Past is past and we all makes mistakes. What is happening today? Now child is in position of what's happening now and not the past.

This has been used all the time to give the child the primary caregiver. There is no reason to use this as a measuring stick. If the parent was an absentee parent, and then finds him or herself wanting to reconfigure lives around parenting, this should not held against them.

B. The child's culture; C: The child's language: E: The child's race and ethnic origin

Generally, there was less commentary from focus group participants about the inclusion of these factors in s. 24(1) of the FRA. When comments were made, the factors above were discussed at the same time, which suggests that they are viewed as a similar category of factors.

Of those that did comment upon the inclusion of these factors in s. 24(1) FRA, there was general agreement as to their importance, especially among those who self-identified with a particular culture, language or ethnicity during the discussion.

I find that Judges are quite considerate, this is a place of immigrants and they understand. I find Judges understand and they do consider everything.

Keep language in there. It's good for children to know, if Dad is French or English, children need to talk to them.

I have this history and I want my child be a part of the culture.

Culture is extremely important, it affects every aspect of the child. Two different genetic make-ups so every need is affected. Some children take more to one side than the other in diet and this seriously affects their well-being when feeding genetic food—my son gained a lot of weight because not being fed properly—food is culturally based.

There were two different forms of disagreement with including these factors in s. 24(1) FRA. Some did not want them included at all, suggesting that they could be used as another form of power and control by one parent against the other, while others thought that they should only be considered as secondary factors, after the Judge had focused on other things such as safety, how the child has been cared for in the past, and the ability of each child to be cared for by each person wanting guardianship, custody and access. It should be noted that those who thought these things should be added as a secondary factor did not identify themselves as belonging to a particular cultural or language group, nor to a particular ethnic origin or racial identity.

Again if there are two languages and the mother doesn't know one of them, then this is another way for power and control.

For people who are new immigrants, the community is controlling. She might be shunned because she doesn't want the violence—this should not work against her.

Weight of importance—a primary list of factors and then a secondary list. Not necessarily go with father who is from ethnic background. It depends on how the other factors play out first and then take ethnicity into account.

D. The child's religious upbringing

There was slightly more commentary from various focus group participants as to whether s. 24(1) FRA should include the child's religious upbringing as a factor for Judges to consider when determining the best interest of a child.

Several participants discussed the impact that religious difference had during their separation and divorce, and thus why they would like it included as a factor that Judges would consider.

> *In my situation, religion was the crux of why we split—she is* [religion X] *and raises our kids this way. From what I've researched and found out, children brought up in this religion are at serious risk so I would want it considered.*
>
> *Religious upbringing—it should be considered. They should have it so the child's views about the religion would help in the decision.*
>
> *Religion would almost fall into the same category as culture. They are all quite important when you think of it. Would think that most of it should be on this list.*

Others thought that religious upbringing might be something for Judges to take into consideration in some cases, but not necessarily be applicable in all situations. A few thought that this is something that should not be considered by Judges when they are determining the best interests of children in guardianship, custody and access arrangements.

> *Depends on how the parents feel about their religion.*
>
> *My ex-partner and I—they are his children and he grew up in the catholic church—the children are catholic so that's honored and okay when they are at his house. I don't want the Judge to take it into account though—it should not be used against the person regarding religious upbringing.*
>
> *When old enough it should be the child's decision—should be at the discretion of the parents and not really up to the Judge.*

F. The child's Aboriginal heritage

Another factor on the list of possibilities for inclusion in s. 24(1) FRA was the child's Aboriginal heritage. A large majority of participants thought that this should be included as a factor for Judges to consider, when appropriate. Many participants who agreed with the inclusion of this factor self-identified as being First Nation or Métis, and suggested that having this factor included would ensure that Aboriginal children would learn about their culture and heritage.

> *Take into account Aboriginal heritage and race/ethnic origin. It's the parents responsibility to keep a child in touch with traditions and where they came from—tjeu do not know what they are missing. I grew up in care all my life and had no identity.*
>
> *Culture important because we are losing it. Only one elder left on my reserve and he is 91. It is important and critical to keep this.*

Language and culture and heritage are important. Grandparents helped raise children while parents were out so this part of our culture.

I think they should take into account the child's culture. We're already losing our language, my generation doesn't know it well.

I think it would be good for our children to be put in a home where they speak it [the language] *or in a school where the language is there.*

It's a big thing not just have the band involved but its gotta be bigger than that. Connection with family and the traditions. Child should go back to extended family.

Like that option there. I didn't grow up here so I do not know anyone from my own family.

Judge definitely needs to consider language. From six percent to thirty five percent now know the language. It helps our kids with belonging. Culture, language and spirituality in a tight unity is important.

A few focus group participants either did not agree with the inclusion of the Child's Aboriginal Heritage as a factor in determining the child's best interest under s. 24(1) of the FRA, or thought it should be a secondary factor once other aspects of the children's' best interests have been assessed. One participant discussed their own situation, highlighting how love for their child was more important to them than their child's exposure to their Aboriginal heritage. They suggested that the relationship that the child has with the parent or caretaker is of more importance. Another focus group participant suggested that Aboriginal heritage should be grouped with culture and ethnic origin rather than stand as a separate factor, while another completely discounted this as a factor for consideration.

We have a child who's mixed. Whose culture should we say that the child should be raised in? If mixed culture, it should be stricken to who is the best parent.

I had a person take my child while I was suffering addiction. It was the hands of love that meant most to me rather than culture. If C was wanting to adopt if I can't keep it together and the option is for my child go to X band with strangers rather than my friend because of the color of my child's skin. C is a second mom and it does not matter the color of her skin. What kind of relationship the kids have with individuals is most important.

I think all these should be the same as culture, look at each individual family and what's happening. All these things should be grouped in the same category.

Should not include aboriginal heritage—it's taking up courts time and money—it should not be extending to this. Cultural considerations or race and ethnic origin is better, but not aboriginal heritage.

G. Benefits to the child of having a relationship with each person who wants to have custody, access or guardianship

Another factor suggested for possible inclusion in s. 24(1) FRA was the benefits to the child of having a relationship with each person wanting custody, access or guardianship. This factor also generated considerable discussion among focus group participants, with many participants using the discussion to highlight the need for Judges to consider the importance of both parents being equally involved in a child's life. Many agreed with the inclusion of this factor in s. 24(1) FRA if it meant that Judges would consider both parents as being beneficial to a child's life.

They used to apply the tender years doctrine. There was the assumption that the child is better off with the mother if under seven—they were automatically given to the mother. With no research and no investigation, the Judge thought it was appropriate that she have custody. I was the nurturing parent since day one—for two years the kids were in hell. It took two years and 200,000 dollars to get the kids back with me. She got child support and the family home. This issue really needs to be addressed.

The children should have the influence of both parents until finished high school—this should be on the list.

From my experience the best interest of child means with the mother—this has to be changed so there is more emphasis on being with both parents. Deciding who might be the better parent—it's a difficult evaluation.

For my girls, was it really in their best interest to be with the father? In other ways he was a good father and good man and capable of learning. The best interest of a child is very tough to decide and it changes over the years so that should be considered.

Best interest of the child is to experience both parents as much as possible. There are people who want to see their children as much as possible.

Other focus group participants discussed how including this factor in the s. 24(1) FRA could allow for a greater consideration of the role of the extended family in the child's life, although some participants highlighted a potential danger with considering the benefit of a relationship with extended family, especially when the grandparents haven't been that involved in the child's life in the past.

The benefit of each child in having a relationship with each person—include in this the relationships with extended family.

I have been trying to get my grandkids back for close to five and six years. I can only get visitation rights. I was trying to make a phone call to them and the other grandmother wouldn't let me speak with them. This would be pretty important to me.

I have my grandkids in X and have been trying to have visitation after the parents split up and they were put into care. Now kids want to come back and learn native traditions and live in X. They want to learn their culture but the government won't allow them to come home. They are trying to get information from me about how to teach the kids language, and traditions, and the feast system. I'm trying to get custody so I can teach them these things, so they can learn more about my system.

Access and extended family—was extended family previously involved? In my case they haven't been involved since birth. The role of the extended family should be considred—these poor moms who can't get support financially and emotionally—the husband gets all the support to get more access.

She says that this is a very important point above because it happens quite often—the husband bring all these people and says they have been very connected and this not the truth. The paternal grandparents have not had interest and then suddenly do when they go to court. [translation]

Other focus group participants also thought that the inclusion of this factor in s. 24(1) FRA would allow Judges to take into account children's best interests in blended families.

What about blended families—let's say if they are to be separated by law—what is the best interest of the child then? This is a fear for me—I want them to continue in relationship with stepsiblings once they get separated.

Children should stay together even if from blended families, versus going with the other parent.

They should consider best interests of all the children in a blended family.

H. If the parent is involved in any civil or criminal case that would affect the child's safety or well-being of the child

The majority of participants thought that a Judge should look at whether a parent is involved in a criminal or civil case that would affect the safety and well-being of the child, although most focus group participants focused their comments on a parent's involvement

in a criminal case. Quite a number of participants emphasized the need for the Judges to consider criminal charges and not just cases that have reached the courts, as well as the criminal history of parents, in order to assess whether the child will be safe with the other parent. Several participants shared their personal experience of having their partner facing criminal charges, and how this was affecting their children.

> *How many impaired charges does dad have? Criminal charges should be included and not just cases. It's a problem for my children because of their safety. There is no right to know if they have criminal charges against them after we are separated and divorced. This still impacts the kids.*

> *My problem with my ex is the sexual, verbal, manipulation abuse—nothing I can prove because it's all under the radar. My sister put me in a women's shelter—during the month that I was in, there were others charging him with sexual assault but it never got to court. Criminal charges might have been helpful in my case.*

> *Criminal history: is there a pattern of criminal behavior or involvment police during the separation.*

> *Key words to emphasize: the well being and safety of the child. We are talking about Best Interest of the Child and he is going to criminal court pretty quick. If the Judge doesn't take this into consideration when figuring out custody... I know it depends on what they are going up for but it still needs to be taken into account. He slapped me while holding our child and this is affecting my child. This needs to be looked at, whether it's him or me—I hope that it is the Judge's biggest concern.*

I. The plans that each person has for the child if they were given custody, access or guardianship of the child

The final factor listed as a possibility for addition to s. 24(1) FRA in the Considering Children's Best Interest information sheet was "the plans that each parent has for the child if they were given custody, access or guardianship of the child." Again, a large majority of participants who wanted to see an expanded list of factors for Judges to consider when making a determination of the best interest of the child in custody, access and guardianship arrangements thought this factor should be on the list. Many thought that this would encourage parents to take responsibility for their children during separation and divorce, and put pressure on them to think about their children's well-being and safety.

> *Yes definitely, a plan is a crucial point. Should be asking for financial plan from husbands and if on purpose they are not getting jobs, the pressure will be on them.*

If current lifestyle of either parent contributes to care of the child, each parent should have a plan for the child's safety. What plan is actually going to be given to the Judge in writing—every parent takes responsibility then.

It should be every child's right that there be a plan from the parent—like foster parents. When family breaks up every parent has a plan and its revisited. The children weren't part of the disagreement and should not feel to blame.

I think this last should be the tie breaker. If parents can't get along and unable to deal with each other—whoever presents the best plan wins.

I agree with the plans that each parent has for the children—it's very important because my ex said he would do something for our son outside of court, but then went to court and said that my son didn't have a learning disability; that it was made up and he did not need to provide for him.

Some participants who generally agreed with adding "plans that each parent has for a child" to s. 24(1) FRA, thought it would be important to set out what kinds of things should be included on the list, and that there should be a follow up with parents to ensure the plans are being carried out.

She has point that she doesn't like the part about having a plan from both parents—many times the men have more ability to be expressive and write in a creative way and in a way that appeals to the Judge. No Judge will do follow up and investigate what happens after. [translation]

I would want a detailed plan and then a follow up to see that the plans are being followed.

If I was a Judge, I'd find out what the parent has been doing to help the child with the issues of separation and divorce, and not just plans about sending the child to Astronaut school. What are the practicalities that the parent is planning now to take care of child and things that really cares for the child. What is it that the parent is doing now, saying I understand this is what's happening now and I've set up things for the child today to help them.

When I think of plans, I was thinking of: do they need counseling and has it been followed through.

Some also brought up the issue that circumstances, and therefore plans, may change over time and should be able to be changed.

Other factors suggested by participants

During focus groups where reforms to s. 24(1) FRA were discussed, participants were also encouraged to add any other type of factor they would want a Judge to consider when deciding what is in children's best interests in determining custody, guardianship and access.

Several participants suggested that a Judge should consider stability provided by each parent. Others emphasized the need for a Judge to take a 'holistic approach' to assessing the child's best interests, with a variety of factors included in a determination such as the supports and relationships the child has. One participant thought that a Judge should consider anything a parent has done to try and address issues, such as taking counseling.

> *What about stability of the home? My ex makes a lot of money but he can't give her the stability. I lost daughter for 50 % of time but I had to deal with grandparent being the other caregiver.*
>
> *Mom has custody and is moving every two months and has disorganized life and dad could provide stable home—add 'stability of the home' to the test.*
>
> *All of it should be put in front of you to think about and consider. I would read it all since it affects me—deciding a future for our kids and we should speak to someone.*
>
> *I hope that the Judge would consider all of it. I don't see anything in there. Religious upbringing would be important if you have parents with two different religions. Teach both and then they* [the child] *can make the choice.*
>
> *Have primary factors and then secondary factors. For example, child's training and education needs—this would be secondary. Again this is to do with money but not necessarily with the primary relationship.*
>
> *Courts have to review using all the support the child has. We will die long before our kids—best interest of the child is why we're here. The courts have to look at the whole environment. Look at physical/spiritual environment, native religion. One thing should be review of circumstances and what you can offer to the child and add it up and arrange time.*
>
> *Parents who do counseling and self-improvement, who sought ways of improving themselves and their relationship, who are taking anger management—this should be given positive weight to taking responsibility.*

Several participants also mentioned that it would be helpful to have a factor that specifically stated that a Judge should consider whether a parent is abusing alcohol or drugs.

Part B: Requiring parents to take into account their children's best interests when make parenting arrangements after separation

The final set of options for reform that focus group participants considered under the topic, Considering Children's Best Interests, relate to parents who are making their own arrangements. The first question asked of participants was whether the FRA should require parents to take into account their children's best interests when making parenting arrangements after separation, and if so, what factors should they be required to consider. The list of possible factors provided to participants in this portion of the information were the same as the ones provided under the option for reforming s. 24(1) FRA, requiring Judges to consider a variety of factors in determining a child's best interests.

The majority of participants thought that the FRA should require parents to take into account their children's best interests when making their own arrangements during separation, and that the factors for consideration should be the same as those for Judges. Many thought that this would make things easier if a Judge needed to look at the agreement later on, and that an extensive list would ensure parents took their children's best interests seriously.

> *I think it is an important issue—if more parents were made to sit down and negotiate a settlement and shared parenting and best interest of the child, we wouldn't end up in the predicament we are in.*
>
> *Judges should encourage parents to go home and hammer out an agreement. If both parents have a willingness and are encouraged to negotiate on behalf of a child, they are creating a harmonious situation.*
>
> *So much turmoil for the children. The mental well-being of child after this process of children's best interest and the courts, this is a huge problem. Have families hammer out an agreement.*
>
> *I would have absolutely liked more guidelines about what best interests of children are. Might be a good idea to have both lists* [for Judges and parents] *and the lists probably wouldn't be much different.*
>
> *I would like it included, to have it a law. Things that would set out roles and responsibilities, and what are the entitlements of parents.*
>
> *The factors have to be the same because things are going good now but then break down later on, so should be the same in court.*

Parents should look at the same list if coming to thier own agreement. Have the same list but way plainer English.

Four participants did think that the list should be somewhat different for parents, with two participants wanting flexibility for parents to be able to add things to fit their circumstances, while two participants mentioned that parents should be required to consider things beyond that of Judges, such as the age appropriateness of factors for their child.

There should be standard ones in place and then recommendations added because people have their different situations.

The list of factors should be the same, unless there are special circumstances regarding the child. Illness issues of the child should be included in the list

I think the parents should have to do more than just the list, there should be someone saying what was done. We tried to do mediation through shuttle mediation and they should be able to testify to that. I could see that he wasn't interested in the Best Interest of the Child because we got a booklet about age appropriate access and he did not want to go by that. We both received the booklet and we need to look at what is the Best interest of the Child for X at his age.

Parents should consider age appropriate access. Everything needs to be taken into account. All of it should be taken into account and parents need to be questioned about what they are doing and asked why.

Although there was agreement among participants about having the FRA say that parents should take into account their children's best interests when making their own arrangements, and agreement that the factors be the same as those Judges consider, many participants thought that further education and support would be needed for it to work. Several suggestions were made as to what would help:

Great to have family justice counselors but need more written help—more resources for parents so they are doing it according to the Act

Fill out a legal booklet to reach agreement, because not sure what you're doing. Family Justice Worker is not sufficient to protect you—they wouldn't know what needed to be defined—the factors should be in a workbook.

Would have been helpful to have a list about best interest of the child. I didn't have anyone and called lawline and the lawyer could give me ideas. This list would be helpful for parents.

Need something to reinforce wide knowledge, a guide for you about how to write separation agreement.

Resources for people to do it amicably and legally. More resources because no idea what to do or who to see. Go to counselor, but need to know how to let them know if things aren't going well.

The only reason I got help was because I got into depression and got help through work. You need to be able to speak to someone because you can't talk to family and friends about the steps to go through—it's an accidental journey to get there. What is your first step when you separate and divorce? How do you get that information right away?

I'd like to see more success stories to access, about trying to make this happen when living in two different communities. Which parent do I want to be, day to day or holidays, etc.? How do other people do it with a smile?

Although the majority of participants agreed with adding a section to the FRA requiring parents to consider their children's best interests when making their own arrangements during separation, several participants emphasized that they did not want to see something like this added to the FRA, or if included, it should be optional rather than required. Their main reasons for rejecting this addition to the FRA was there should not be interference from the law for those wanting to work things out themselves.

I think that if two parents are making an agreement, no one should interfere with it. No need to talk about it. It is a non-issue.

Better if no one else is involved

It shouldn't be mandated. Leave them alone to work things out. Have the list just as a resource and not as something you have to do, or you get a little bit more defensive. A resource, but not mandatory.

5.2. Survey responses

In this section, we provide an analysis of the responses to survey questions that relate to the topic of Best Interests of the Child.

Part A: Reforming s. 24(1) FRA, requiring Judges to consider other factors when deciding what is in the best interests of a child when determining guardianship, custody and access

Survey respondents were asked whether the existing factors in s. 24(1) FRA, which Judges consider when determining what is in the best interest of the child in making decisions about custody, access, and guardianship, should remain. Almost all respondents felt the following sections should remain in s.24(1):

- The health and emotional well-being of the child
- The views of the child when appropriate
- The capacity of each parent who wants to exercise custody, access, or guardianship to do so in an adequate way
- The love, affection, and other ties that exist between children and other people, and
- Education and training for the child

Just over three quarters of respondents felt that the child's material well-being in cases where there is an issue about care of the child's property should be left in this section of the FRA.

Table 1: Participant responses to questions about the six factors in s. 24(1) FRA that Judges already consider when determining what is in the best interests of the child when making decisions about custody, access and guardianship

Current Factors in s. 24(1) FRA	%
The health and emotional well-being of the child - this includes any special needs for care and treatment	95.5
The views of the child when appropriate	92.5
The love, affection and other ties that exist between children and other people	89.6
Education and training for the child	86.6
The capacity of each parent who wants to exercise custody, access or guardianship to do so in an adequate way	92.5
The child's material well-being in cases where there is an issue about care of the child's property	77.6

In addition to the agreeing that the current factors remain in s. 24(1) FRA, almost all respondents felt that other factors should also be included s. 24(1). Those respondents who agreed that other factors should be included were then asked what those other factors should be. They were given a list of choices to consider, which are outlined in Table 3.3 below.

Table 2: Participant responses to the question about whether Judges should consider other factors when determining the best interests of a child

Other Factors in s. 24(1)	%
Yes	95.6
No	1.5
DK/NA	2.9

Most respondents said that a parent's involvement in any civil or criminal case that could affect the child's safety or well-being (91%) and how the child has been cared for in the past by the parent (90%) are very important additional factors that should be included. Over two thirds of respondents, 68% and 75% respectively, felt that it is very important to factor in the plans that the parent would have if they were given custody, access, or guardianship of the child and to consider the benefits to the child of having a relationship with each person who wants guardianship, custody and access.

Just over half of the respondents also felt that the child's Aboriginal heritage is very important and should be factored into the Judge's decision. Around half of the respondents felt that it is somewhat important to very important to include factors such as the child's culture, language, religious upbringing, and race or ethnic origin in s. 24(1) FRA.

Table 3: Factors that should also be added to s. 24(1) of the FRA, besides the factors that are currently there

Factors	Not Important	Somewhat Important	Very Important	N/A
How the child has been cared for in the past by the parent	1.5%	8.8%	89.7%	0.0%
The child's culture	4.4%	48.5%	47.1%	0.0%
The child's language	3.0%	53.7%	43.3%	0.0%
Child's religious upbringing	10.3%	54.4%	35.3%	0.0%
The child's race and ethnic origin	7.4%	48.5%	44.1%	0.0%
The child's Aboriginal Heritage	7.4%	39.7%	51.5%	1.5%
Benefits to the child of having a relationship with each person who wants to have custody, access or guardianship	2.9%	22.1%	75.0%	0.0%
If the parent is involved in any civil or criminal case that would affect the child's safety or well-being	1.5%	7.4%	91.2%	0.0%
The plans that each parent for the child if they were given custody, access or guardianship of the child	6.0%	22.4%	68.7%	3.0%

In addition to commenting on the importance of including the set of factors in s. 24(1) FRA, as provided in the survey, respondents were also given space to add any other factors that they wanted to see incorporated.

Two respondents emphasized the need for the factor of parental alienation to be included in the list of factors for Judges to consider when determining the best interests of the child.

> *I am extremely disappointed not to see Parental Alienation (PA) on the above list. PA is abuse of a child and by not including it on the above list it has been reduced to a marginal issue. Parental alienation is one parent who is willing to sacrifice the well being of their child(ren) in order to exact emotional revenge or act out irrational fears on the other parent. It is paramount that the occurrence of Parental Alienation or the lack of it be utilized in assessing the ability to parent. Parental Alienation should trigger an automatic change of custody!*
>
> *If the child were to be a pawn in the relationship should be included, one parent being talked down about in front of the child can be very damaging to the child.*

Others discussed the issue of including Aboriginal heritage, as well as culture, ethnic origin, and religious upbringing as factors. Some respondents emphasized the importance of including these factors in determining what is in the best interest of the child while others expressed concern about these factors being considered since they may not be indicators of who would be the best parent.

Aboriginal culture is of utmost importance when working with children and includes attending potlatches, funeral feasts, wedding feasts and rites of passage gatherings.

> *Even though cultural issues are important, the immediate emotional/physical safety of the child is more important and should be the first concern.*
>
> *Also need to be careful about adding aboriginal heritage to the above list as many are mixed cultures and if the child is from one culture does that necessarily mean that the other parent is not the better parent?*
>
> *These factors are all important but should not be determining factors because they are often used in power plays. (ie religious upbringing can all at once become important when it was never an issue before.) Past performance should be examined before this is used as an issue to determine who has custody or access.*

Other respondents noted that maintaining family relationships with others such as grandparents and siblings, as well as geographic distance between parents, would also be important to consider when determining children's best interests under s. 24(1) FRA.

Finally, several respondents raised the point that the s. 24(1) FRA should specifically include a factor regarding addiction issues, as well as mental health concerns, that would affect the safety and well-being of the children. A number of respondents also emphasized again that violence in the relationship, or history of past abuse should also be included as a factor. For further discussion of including this as a factor, see the discussion in chapter 2: Family Violence and the FRA.

Part B: Requiring parents to consider their children's best interests when making their own arrangements during separation

Respondents were asked whether the FRA should say that parents must take into account their children's best interests when making parenting arrangements during separation and divorce. All but three respondents said that the FRA should say this.

Table 4: Should the FRA say that parents must take into account their children's best interests when making parenting arrangements during separation and divorce?

Responses	%
Yes	95.6
No	1.5
DK/NA	2.9

Those that said yes were then asked what factors parents should have to take into account for deciding their children's best interests when making parenting arrangements.

All but one respondent said that it is very important to take into consideration the health and emotional well being of the child, including any special needs of the child. The vast majority of respondents also felt that it is very important for parents to take into consideration the capacity of each parent who wants to exercise custody, access, or guardianship to do so in an adequate way (87%), how the child has been cared for in the past (85%), and if the parent is involved in any civil or criminal case that would affect the child's safety or well-being (83%).

About three quarters of respondents felt it is very important for parents to factor in the following: the views of the child when appropriate; the love affection, and other ties that

exist between child and other people; the benefits to the child of having a relationship with each person who wants to have custody, access, or guardianship; and the plans that each parent have for the child if they were given custody, access, or guardianship. Just over half of the respondents felt that it is very important for parents to factor in the child's Aboriginal heritage or other cultures. Some respondents also added that parents should factor in any addiction or mental health issues, as well any history of violence.

Table 5: Factors parents should have to take into account when deciding their children's best interests when making their own parenting arrangements

Factors	Should not be included	Somewhat important	Very important	N/A
The health and emotional well-being of the child-this includes any special needs for care and treatment	0.0%	1.5%	98.5%	0.0%
The views of the child when appropriate	1.5%	23.5%	75.0%	0.0%
The love, affection and other ties that exist between children and other people	0.0%	20.6%	77.9%	1.5%
Education and training for the child	1.5%	31.3%	67.2%	0.0%
The capacity of each parent who wants to exercise custody, access or guardianship to do so in an adequate way	1.5%	11.9%	86.6%	0.0%
The child's material well-being in cases where there is an issue about care of the child's property	3.0%	48.5%	47.0%	1.5%
How the child has been cared for in the past by the parent	1.5%	13.2%	85.3%	0.0%
The child's culture	1.5%	45.6%	52.9%	0.0%
The child's language	1.5%	50.0%	48.5%	0.0%
Child's religious upbringing	7.6%	51.5%	40.9%	0.0%

The child's race and ethnic origin	3.0%	54.5%	42.4%	0.0%
The child's Aboriginal Heritage	2.9%	45.6%	51.5%	0.0%
Benefits to the child of having a relationship with each person who wants to have custody, access or guardianship	3.0%	19.4%	77.6%	0.0%
If the parent is involved in any civil or criminal case that would affect the child's safety or well-being	0.0%	17.6%	82.4%	0.0%
The plans that each parent for the child if they were given custody, access or guardianship of the child	1.5%	19.4%	76.1%	3.0%

Respondents were also given space to add any factors that they thought parents should have to take into account for deciding their children's best interests when making parenting arrangements? Respondents provided very few responses to this question, but two respondents suggested that parents should have to consider any mental health or addictions issues that would have a negative impact on their child.

One respondent also used the opportunity to question the inclusion of the factor "Aboriginal heritage of the child", suggesting that this seemed prejudicial.

> *Just a note: why is "Aboriginal heritage" different from "race and ethnic origin"? I am aboriginal and can't see the difference…it feels sort of prejudice that you are pointing us out vs. East Indian, etc.*

Other recommendations

As a final question, family advocates and support workers were asked if there was anything else that the FRA should say that would help Judges decide what is in the best interests of children. Most respondents used this space to emphasize the importance of specific factors already mentioned as options for reforming the FRA with respect to children's best interests or to highlight what they felt was missing from the survey.

The commentary generally fell into five different categories including: a) whether the parents are taking responsibility for communicating in an appropriate way with each other and

their children during separation and divorce; b) the need to take the issue of family violence seriously; c) the importance of giving each parent equal access to their children, through an emphasis on shared parenting; d) a consideration of who will provide a supportive and nurturing environment for the child, which includes the role of non-parents in the child's life; e) the role of Judges in ensuring effective communication is taking place between themselves, between parents, and between other parties; f) negative views of current conceptions of s. 24(1) FRA, as well as options for reforming s. 24(1) FRA.

a) Parents taking responsibility and communicating with each in an appropriate way

> *I believe the adults need to take responsibility for the breakdown of the family and they need to explain to the children what went wrong and that it is not the fault of the children. They need to be able to communicate the plans in a respectful way to the children, and to be emotionally supporting of the children's feelings and needs*

> *Each parent's ability to engage respectfully with the other parent should be considered. It is damaging to children to witness abuse or conflict between parents.*

> *The level of conflict between the parents and/or their emotional maturity to rise above this conflict (ie. when there is obvious animosity, the Judge should ask for a psychological assessment of both parents...). The ability to demonstrate an understanding of what is best for their children rather than simply what is in their own interests*

> *I think that parents need to be made aware that the only relationship that they are now going to have with their ex is because of the children, and, given that, the only thing that should be considered is what is in the best interests of the children. All the personal baggage from the parents should not even be heard by the Judge, as it only muddies the water and becomes a he-said, she-said battle.*

> *For emphasis, Parental Alienation has not been mentioned so far in this survey and I see this as a very serious omission! The prompts that the choices in this survey gives people are the emphasis or lack thereof which guides people in this process! Parental Alienation needs to be specifically mentioned and addressed, both as an indicator of a parent's ability to parent and as a factor in addressing the best interests of children. An alienating parent is clearly choosing to put their own interests ahead of their children and this needs to be used as a red flag for a parent's abilities to truly put their children first*

> *Willingness of parents to engage in family counseling/supports.*

> *Parenting style and past experience and willingness to re educate*

b) Family violence

I have found that if there has been violence in the family, good intentions for change and personal growth are not enough. The safety of the children and parent who has been abused in the past must be paramount and the abuser needs ongoing support, work and supervision. It is helpful to have an advocate present when the abuser parent visits the children until it is totally clear that the possibility of violence is no longer an issue.

In family violence cases, the best interests of the child would be protected by ensuring that the violent/abusive parent does not get custody or joint custody and does not have access to the child until the non-violent parent is confident about the child's safety.

Since you mentioned "Family Violence" in question 1 of this section, it is crucial that the term be explicitly defined. Does it include "witnessing" violence? What is the difference between violence and abuse? Is emotional abuse a form of violence? What about parental alienation? Denial of access?

Unfortunately women who have been in violent relationships in the past don't suddenly get great self-esteem and stand up for their rights. Laws protect animals better than they do a woman and child who are at risk of being violated. People very seldom lie in these situations and if it is scary enough to report, the report and impending threat needs to be taken seriously.

Looking at domestic violence in the home and the emotional impact of that violence even if the children were not physically harmed. To take into account the emotional health of the children also.

Judges must be learned about the effects of family violence in the family and recognize that witnessing the abuse is as dangerous to the children as is receiving it.

That in any case where there has been violence or the threat of violence, the abuser should automatically have only supervised access to the child/children, and definitely not be give either sole or joint custody. Joint custody with an abuser only leads to further exposure to conflict for the child.

The FRA should have a outline of what happens when family violence occurs. Something badly has to be in place otherwise the children will suffer more than some have now because of family violence occurring. Also, when there is custody and access issues it is harder for a child to access certain services in the community if family violence has occurred. Places do not want to be involved because of the court case. I think the FRA has to be around the safety and well being of the children and not about keeping the parents happy. The children are the ones that need to be protected from violence so that it doesn't keep reoccurring and have them suffering.

As a Stopping the Violence Counselor my experience has been that the abuser -usually the male- exerts control over the woman by threatening to take her children and then drags her through the court system as long as possible. This results in her losing work, sometimes her job, becoming depressed, sometimes giving in and going back to her abuser or deserting her children. Having said that I think the Judge needs to assess if this is an abusive relationship and is this man really interested in his children or controlling his partner.

c) Equal access to both parents

That both parents be considered, especially in cases where the child may be more bonded because one parent has been a primary caregiver regardless of gender (ie: fathers who have been primary caregivers should have rights equal to mothers).

Say that Shared Equal Parenting is presumed, unless there is a very good reason to deviate. True consent or criminal child abuse are the only two good reasons I know of after working with divorced fathers for over 20 years.

A child's right to equal access to both parents and extended family, is very important. The healthy growth of children into adulthood requires a child's access and awareness to all components of their roots, such as mother, father, siblings, grandparents, uncles, aunts, cousins. If this fundamental right is removed from a child by the courts or a single parent, the child will almost certainly suffer from lack of stability and knowledge of where they belong in society.

Custodial parents may not withhold contact from the other parent or grandchildren unless there are demonstrable reasons why such contact would be harmful to the child.

d) Providing a supportive environment for the child, and determining the role of non-parents in the child's life

Which environment will provide the most profoundly child-centered support? Which home will nurture the child's spirit and make the most room for the emergence of the child's individual nature?

I think that Judges have to look at who will be the best parent for the child, also pay attention to any family violence in the family, and look at the family support to the child, his/her neighborhood, friends, school. Not to make a drastic changes in the children lives because its very hard for the child when parents separate anyways. Not to make it too difficult to the child, who is also going through quite a bit of grief, withdrawal and trauma.

There needs to be a safe trusting process for the child to speak and share their fears, needs and wants.

Judges need to find out "WHO DECIDES" for the child in question. The decision may be made by grandparents, religious leader, community leader, etc.

Any possible safeguard against possible intrusions/obstructions from other countries jurisdictions in the case of refugees, immigrants and naturalized Canadians.

The FRA should also stipulate what the parents shouldn't do, for example, gratuitous spending on one hand, buying extravagant gifts, bad mouthing each other ... the FRA should set reasonable limits for both parents to ensure consistency ... for example ... if bed time is 2100 ... then bed time is 2100 for both parents, unless of course there are extenuating or negotiated circumstances.

e) Role of Judges in creating effective communication

I believe Judges have to communicate with parents before, during and after care.

Hopefully in all this, the Judge will be able to assess the parents' values, beliefs, commitments, ideas of parenting in the best interests of children. I do think that wellness and struggles with drugs and alcohol needs to be addressed. I also feel like a Judge has impact on creating a "community of care" around a child and their family. So often one or the other parent feels isolated and/or overwhelmed. It would be nice to create a respectful, caring community around families struggling with custody issues and it could be addressed through the FRA.

f) Negative views towards the current formulation of the best interest of the child test in s. 24(1) FRA or towards options for reforming s. 24(1) FRA.

Judges already routinely receive evidence relating to the special matters set out for consideration in this questionnaire and many other matters as well and they do so with the current s. 24(1). The kind of tinkering which this questionnaire seems to propose would relieve a family court Judge of the burden of exercising jurisprudence and saddle them with a kind of "points system".

The best interest's of children in the Province of British Columbia has some 4,000,000 meanings. Everyone has a different view on what is or is not an important factor. Therefore plain and simple logic tells anyone who is a thinking person that to pass legislation containing that term has absolutely no meaning as each of the legislators who vote on the legislation take it to mean what they think it means and thus it means ultimately nothing.

6. Access responsibilities

In this chapter, we set out the recommendations provided by citizen experts with respect to the topic of access responsibilities and the FRA. The chapter will first set out the recommendations of those with lived experience who attended our focus groups, and then provide the responses of family law advocates and support workers who responded to our online survey.

6.1. Focus group responses

After Children's Best Interests, the topic chosen most often for discussion by focus group participants was Access Responsibilities. Four groups chose access responsibilities as their first choice for discussion, while four groups discussed it as their second choice, meaning a total of eight groups discussed it. A few focus group participants also emailed their comments on this topic after the focus group had taken place.

The information sheet handed out to focus group participants first explained the legal meaning of access in plain language and then discussed the two ways in which parents do not meet their access responsibilities; by one parent denying the other parent access or by one parent failing to use the access they have. They were then told the current penalties that exist for those parents who deny access to the other parent.

The discussion for possibilities of change was broken into three parts: Part A, which provided possible options to enforce access orders; Part B, which was around whether the FRA should contain a part that sets out when it is okay for scheduled access not to go ahead; Part C, which set out the possibility of providing remedies in situations where it was okay for scheduled access not to go ahead. Focus group participants were taken through each part and asked to comment on those possibilities they would like to see, or not see, in the FRA. Focus group participants' comments and suggestions relating to each part are set out below.

Part A: Ways to enforce access orders

In part A, two options were suggested as ways to enforce access orders in the FRA. In addition to these options, participants were also asked whether the FRA should provide separate remedies for access denial, as well as for the failure to exercise access.

Option 1: Keeping s. 128(3) in the FRA

The first option presented to participants was keeping s. 128(3) in the FRA[6]. Section 128(3) FRA sets out that if a parent, without legal excuse, interferes with the custody or access of a child and this causes them to break an access order, they are guilty of an offence. If found guilty they can be fined up to $2000 or put in jail for six months or receive a fine and jail.

There were a few participants who did not want parents to be fined or put in jail for interfering with or denying the other parent access for the reasons that it was too severe a punishment and would only lead to more problems. However, the majority of participants thought that a parent who interferes with or denies access of the other parent should be able to receive a fine or be put in jail, although they were divided as to whether this should be the only penalties available or whether these penalties should be given after a series of other penalties.

Those that wanted to keep s. 128(3) in the FRA exactly as is thought that having the law strongly worded, with fines and jail as penalties, would help ensure denial of access is taken seriously by Judges and by parents denying access.

> *I would like the law strongly worded so Judges have to act on it. There is so much variance between what Judge says and what they do.*
>
> *Section 128(3) should be kept because it doesn't have enough teeth as it is.*
>
> *Put the custodial parent who does not follow the court order in for contempt—jail or fine them so they think a little bit about what they are doing.*
>
> *We should keep section 128(3) to fine and imprison. But ultimately we have acts and sections and it is absolutely meaningless.*

In addition to focus group participants who wanted to keep s. 128(3) in the FRA as is, there were those who wanted to modify it to include other penalties in addition to fines and jail time. They reasoned that different situations required different consequence and that Judges should be given a variety of penalties that they can impose.

> *Have a master list so a Judge could basically choose between a starting point in that scale and make it different for different families.*

6. The penalties for being convicted of an offence under s. 128(3) of the FRA are found in s. 4 of the Offence Act, R.S.B.C. 1996, c. 46. Section 4 of the Offence Act says that a person who is convicted of an offence in British Columbia is liable to a fine of not more than $2000, or to imprisonment for not more than 6 months, or to both, unless an offence provision is provided for in an enactment.

Different consequences for different times.

Have those denying access take some parenting skills so they know how important it is. It is a learning experience too. I'm not saying it should be a big fine but they need to be held accountable.

There should be levels of consequences. Have family group conferences with both sides and decide what the consequences should be for the father: parenting classes, a fine. There should be guidelines for both sides.

Second time would be dressing down and the next would be fine and imprisonment.

Would like to see that access enforcement orders have an automatic penalty once they are breached after so many times.

Although participants were asked to comment upon whether they would like to see s. 128(3) remain in the FRA, quite a number of participants were particularly concerned with how access orders are enforced, or not enforced in many cases. Many participants felt that even if the FRA does have a section that can be used to penalize parents who breach an access order, there needs to be more done to enforce the orders. Several participants suggested that an enforcement clause be put into the orders, or that an enforcement scheme similar to that found in the Family Maintenance Enforcement Program be included in the FRA.

Don't put access into a court order if you are not going to enforce it. It is teasing the parent because they think it will be enforced.

I was involved in one single case where this [s. 128(3) FRA] was used. The mother said I am not giving you the kid but the police said they couldn't do anything.

Ultimately it is effective that it be kept, with some addition that makes it clear to the authorities that they have responsibility to investigate. They [the police] *play the game that this is a civil order. Make an amendment to this section that police have a responsibility to investigate.*

I am dealing with this right now—I've gone back to court every 2 years. It's him who's not complying.

Automatic enforcement is important. Order that both he and I have to follow the order. He doesn't follow but I have to prove what I have done. I can't do anything without him, can't contact him. He is denying everything in the order so I have to go through the process.

There is a need for more family enforcement. Police don't want to be involved in this. What good is this if there is not enforcement?

Enforcement: What would help me is that automatically once you've done everything you can to meet the order, as soon as A through D are done, the matter is taken into court right away and an automatic fine and jail time is given.

Everybody expects that everyone is equal in the court order. Enforce the whole order, don't ignore it. There's no point in making an order if only parts are enforced. AG has said to me to address the injustice by going back to court but I shouldn't have to go to court again.

With this process, I have a piece of paper that is worthless. There is no check system to see how the orders are working. Part of the order should have a clause: "the order is enforced under this act". If you have court order written out, you have your pages but there is no way to enforce it without further legal action. There should be a mandatory, automatic system for seeing if it will be carried out.

This hasn't been mentioned: child maintenance has an enforcement procedure while access does not have an enforcement procedure. I can't express how unfair this is. It gives license to custodial mother to ignore the orders because there's no ramification for them.

Option 2: Including specific enforcement remedies in the FRA

The second option presented to focus group participants was for the FRA to contain specific enforcement remedies. Participants were asked to comment upon whether they thought there should be a list of remedies, as well as provide their opinions on the different enforcement remedies included on page five and six of the Access Responsibilities information sheet, or provide their own suggestions as to remedies. The enforcement remedies in the information sheet were:

- A warning by a Judge
- Giving make up time between the parent who didn't get access and the child
- Requiring the parent who denies access to go to a program or service (e.g. parenting education course)
- Mediation
- Giving the parent who denies access community service
- Having the parent who denies access to paying the costs for having the parents go to court to argue the issue of access
- Having the parent who does not meet the access order take part in family or child

counseling and paying the cost of the counseling
- Having the court make an order for a police officer or other person to take and deliver the child to the parent who has access
- Giving a fine to the person who denies access
- Having a Judge put new conditions on the original access order
- Jail time
- Supervised access

The majority of focus group participants liked the idea of including a list of access enforcement remedies in the FRA, with only one participant suggesting that it would not work. A number of participants thought that all options on the list would be good to include in the FRA and ended their comments there. However, many participants chose to emphasize why certain enforcement remedies in the list were important to include or exclude as a remedy in the FRA.

Two participants disagreed with the inclusion of make up time, one on the basis that it would make it difficult for the custodial parent who may have denied access the first time for a good reason. With respect to ordering a parenting course, one person suggested that if the course was for the custodial parent, then the course content should focus on the effects of denying access.

Several participants suggested that a mediator or advocate should work with parents if there are problems with access after an access order is issued. One participant did say this shouldn't apply in situations where there has been an abusive relationship since there is no trust between parents. Another said that the Judge could order a mediator to evaluate the situation. Other participants highlighted the need for education and support for both parents during separation and divorce, suggesting that this might help them understand their responsibilities. One participant discussed the importance of the parenting after separation while another talked about having an access supervisor or counselor helping the parents work things out.

Some participants echoed the comments made by those who discussed the option of keeping s. 128(3) in the FRA, also wanting a parent who is interfering with or denying access to face jail or other serious consequences, such as removal of their driver's license. Quite a number of participants suggested that a reversal of guardianship or custody should result when there is repeated denial of access. Several participants who liked this option thought that it should be a penalty once other penalties had been imposed and not followed.

Take access away. Give custody to parent who is the provider of more friendly access. If someone is denying access they should be giving custody to the friendlier parent. Access: make a system that parents are caregivers unless proven otherwise. After second warning for denial for access, give custody to the other parent.

Of all the different options on the list, much of the commentary centered on having a Judge order a police officer or other person take and deliver the child to the access parent. Several participants disagreed with having a police officer take and deliver the child because they thought it would be too traumatic and damaging for the child. Others agreed with the idea of the Judge ordering someone to take and deliver the child but thought it should be someone from the Ministry rather than the police.

I don't want the police officer to deliver the child—no, it's too traumatic and damaging to the child and it causes emotional problems.

Police deliver a child to the parent—this would not work and would not be popular.

Does this benefit the children? I don't like this option. I'm not able to see our kid either but it doesn't justify this option. It seems too extreme to the child—it would be very traumatic.

That would be good if it was someone from the ministry because they know what's going on and the transaction goes smoothly.

Two participants commented negatively upon the option of Judges giving a warning to parents who interfere with or deny access. Both stated that they thought warnings were ineffective, especially if there is nothing concrete to follow if the warning is disobeyed.

Eliminate a warning by a Judge. Go straight to action because this is a waste of time. It's normal common sense that there should be consequences—its losing focus on what's important if there are not consequences. We're not here to give money.

Warning from a Judge doesn't do so good. If the Judge is going to give a warning, it should be a three step warning. A second time, give another warning and they have to attend a program—say parenting education when they've denied access for no apparent reason.

Again, a number of participants raised the issue of access needing to be treated in the same manner as family maintenance, with the same type of enforcement mechanisms in place for repeated interferences with or denials of access. Some participants suggested that access and family maintenance be tied together, so that default on access would raise non-payment of maintenance, assuming that the parent being denied access was the payer of family maintenance.

If there's going to be a huge bureaucracy to force payments, then should have bureaucracy to enforce access, if legal means don't work. A third party system would kick in—proactive rather than re-active. Access - make it fair and about getting time with kids.

Why don't we just take the FMEP and put all the enforcement stuff from it into the FRA. All the guidelines and penalties such as no drivers license and garnishee of wages. Have it done by another body.

The relationship is as important as the money. My lawyer told me it used to be that child support and access were tied together. They should not be separate issues.

Providing a sliding scale of access enforcement remedies or a random list

In addition to questions about specific access enforcement remedies that might be included in the FRA, focus group participants were also asked, if a list of access enforcement remedies were included in the FRA, should a Judge be able to choose between different remedies on the list depending upon the circumstances in the case or whether the FRA have a sliding scale of access enforcement remedies.

The majority of focus group participants who thought that a list of access enforcement remedies should be included in the FRA indicated that it should be a sliding scale of remedies, and that there should be a limit to the number of "softer" remedies before more serious penalties, such as jail or reversal of custody, would be given. Several participants provided suggestions as to how a sliding scale might operate.

My suggestion—have an escalating scale. First access denial that is unjustifiable and where it might become an ongoing thing, have a mediator who should have some power to tell you what is expected. The next step will be to lose custody if it happens 2 or 3 times.

Go to parent education course as first option; second, mediation; third, mediation with final warning; then fourth strike—new order.

Third time—something major should happen.

If it's in stages, then it's cut and dried for everyone and it's the same process that every Judge chooses.

Fines or imprisonment should be used as last resort but they should be kept in the Act.

Jail or fines only as a very last resort. Follow other steps that might be put in place, other options before jail and fine. Have a scale that a Judge could choose between.

Separate remedies for access denial, as well as for failure to deny access

One final question posed to focus group participants considering the inclusion of access enforcement remedies in the FRA was: Should there be separate remedies for access denial, as well as for the failure to exercise access in the FRA?

A number of participants chose to comment upon this issue, with most stating that it should apply to both since it would ensure that the parent exercising access takes responsibility. However, they there was little discussion of whether the penalties should be the same for denial of access and the failure to exercise access.

I think it works both ways. Not just access denied but not using access. He should be held more responsible to use his access. He's away a lot and he should spend more time and be held responsible. I don't expect him to just come there just one day a week it's not okay.

Very important for me not to have to change access around. When they don't show, that is something too because I have to rearrange my schedule. It would be nice to have it apply to them.[the access parent]

Men have all the freedom and rights and we have none. We're not taken seriously or believed when we go to court. Somehow the woman is overreacting. There should be a clause that if father hasn't accessed his right, he should not be given the benefit of the doubt when more and more access is applied for and he's saying this time he's going to do well. Penalties should apply to breaches of access.

After not exercising access, they should not retain guardianship.

If they are not coming to exercise the access, it should not put ownership on the custodial parent but on access parent to exercise access.

We should say that it is the responsibility of non-custodial parent to visit. What is the penalty if they don't visit, what is the penalty!?

Should this person be punished for not meeting their access responsibility? I think it should be the same charge as for those who doesn't give access. It's child abuse to not visit the child and it's also abuse when non-custodial parent denies access.

Part B: Setting out times when it is okay for scheduled access to not go ahead

Part B of the Access Responsibilities information sheet suggested that the FRA could follow the example of other jurisdictions, where the family law states when it might be reasonable for a scheduled access not to go ahead. Participants were asked to comment upon whether the FRA should have a section stating when it might be okay for scheduled access to not go ahead, as well as provide some situations where this would be acceptable. Participants were provided with a list of possible situations that could be included in the FRA, as well as asked to suggest their own options.

The situations suggested in the information sheet, starting on page six, included:

- Risk of physical harm to a child;
- Risk of emotional harm to a child;
- Risk of physical harm to the parent who made the decision or who the child lives with;
- Risk of emotional harm to a parent who made the decision, or who the child lives with;
- Reasonable belief that the parent wanting access is intoxicated at time of the visit;
- The access parent is more than one hour late for the visit;
- The child is too ill;
- The access parent is not meeting conditions written in the access order;
- The parent wanting access has failed to show up for other access visits in the last 12 months;
- Access parent indicated to the other parent that they would not be using the access visit this time;
- A court finds that the denial was excusable for the situation

There was considerable discussion about whether something like this should be included in the FRA and how it would work. Many comments were at the general level; stating why such a section should be included in the FRA, or alternatively, why it should not be included or what the difficulties would be in including it. Quite a number of participants expressed their agreement with the FRA setting out situations where it might be legitimate for scheduled access to not go ahead. Two participants stated in particular that having a section such as this in the FRA would benefit custodial parents and children.

Even if one point on this list is missed out it can be harmful to the custodial parent.

All these suggestions will benefit the child and the custodial parent too.

I absolutely think that there should be guidelines because there should be times when I should be able to deny access and this list would give me strength to say that no, he can't have access.

However, a larger majority of participants thought that it would be difficult to prove when denial of access might be legitimate, as well as creating more difficulties for parents having custody or access because they might need to return to court repeatedly for a determination on whether there was a legitimate reason for denying access, or if there should be any remedies for the access parent.

You can't always have proof of why you're denying access. We don't have time to make false allegations.

This would be very hard for women—how do you get affidavits to prove this?

She has seen in her experience, her partner was very physically abusive and the court system is catering to him. The whole responsibility lands in her lap—she has to gather evidence of physical harm. [translation]

She is saying something about that point right now. Even though the mother provides enough evidence that there is physical harm to the child (s. 15 report), it's still in best interest of child to have relationship with non-custodial parent. The court is waiting for child to be killed by the non-custodial parent. Basically if there is enough evidence that there is physical harm to child—access should stop. [translation]

Ex partner of many years denied me access after we broke apart and he wrapped himself around my child emotionally. It was a loyalty issue and created a situation where I couldn't get an enforcement order to see my daughter. It was in her best interest to not to be too involved with him, but my daughter needed to see what it was like to be with him full time. There were consequences for being with dad and now I'm trying to get sole custody. He could go to jail for denying me access so I may not want to enforce access—for her not to have us battling over her. Its nearly impossible for a Judge to assess emotional harm of child when parents are fighting over them.

The remedy of the court order is to go back to court—how many times have we been to court to get another court order!?

Guidelines that if the child is sick, if the parent is an hour late, is intoxicated, it's okay to deny access. Also, we have to look at other hand because there are the parents

that will use anything to deny access. It's a double-edged sword, so a child advocate is so important in family of conflict because everyone has strong feelings that come out.

Even with good intentions, there are parents who will coach a child. It's a two edged thing in families of conflict. This may work for parents who are legitimate and above board and maybe also for older children.

It's hard to prove these things. One time, I didn't' allow him to have access, but then he took our son shopping and then left his son at the mall by himself. How do you prove that there is harm?

You have to go back to court to get access so many times—the whole process is not doable. Use some kind of model to ensure access without going to court. Let's set up agency or use FMEP.

Of those participants who commented on specific situations that may be included in the FRA to state when it might be legitimate to deny access, several wanted physical safety of the child included on the list, as well as illness of the child. Other possibilities suggested by participants as potentially legitimate reasons for denying access were: the plans that children made themselves that would be interrupted if the scheduled access went ahead; if a child advocate or other third party is suspicious of harm to the child if the scheduled access was to go ahead; if a child did not want to spend time with the access parent; whether the parent was in the company of others who may be harmful to the child.

When both parties agree, or the child is sick, then it's okay for access not to go ahead.

Only if parents agree or there is sickness, but only if the child can't be transported.

My daughter misses out on activities because of access visits, so it interferes with her. It should also say that "if appropriate notice is given for when children want to participate in their own life".

Children's activities: make it part of the agreement that parent who has access has to meet the activities.

Add that even though custodial parent takes the child for access, the child refuses to go with the access parent. Right now court doesn't consider the views of the child.

Child should be asked and if he/she doesn't want to go—responsibility should not be on the custodial parent.

Risk of physical or emotional harm by access parent, but also who the parent might

put the child in contact with—such as a current partner who is harmful to the child. The child wants connection but it's not really safe. Also consider other people who the access parent is associated with.

Several participants did not like some of possibilities given in the information sheet that would state when it might be okay for scheduled access to not go ahead. Several thought they were too ambiguous or immeasurable, or would lead to false allegations of abuse or illegitimate denials of access.

Should you have witnesses? You have to have child safety, but why throw it in there—it would temper some of the false allegations if you didn't have these possibilities in there.

Risk of harm to the child—it does not specify what kind of harm though.

In this list from top of page seven, I would like to see strickenm "the emotional harm to parent or the person with whom the child lives" This is not measurable and smacks of parental alienation.

Only extreme situations should allow for denial of access—otherwise it leads to false allegation of abuse. Doctor's reports may help but how can we know it to be true? You would need approval of both parents for those occasions where it's okay to deny access.

How ill is too ill for the child. I'm perfectly capable taking care of an ill child. I would like it to be more specific.

Part C: Remedies in the FRA for when scheduled access does not go ahead

Focus group participants were asked if the FRA should provide remedies to the access parent even in cases where it has been found reasonable for scheduled access to not go ahead and if yes, what those remedies should be.

Participants were given two possible remedies in the information sheet. The first remedy was that the parent who lost access be given other time with the child to make up for the missed access. The second suggested remedy was that the parent who lost access be given money by the other parent for any necessary expenses resulting from the missed access. In addition, participants were asked to suggest any other remedy they thought would be useful for ensuring future access with the child would go ahead as scheduled.

Of those participants who commented on remedies for the access parent, three participants thought that make-up time should not be a remedy, while another mentioned make-up time should not be transferable to other people in the access parent's family.

> *Missed access is just missed access, there should be no make up time. So no make up time for missed access because I can see people lying about it.*
>
> *Access missed is access missed—it's gone and done.*
>
> *It shouldn't be the children who suffer by suddenly having to do makeup time.*
>
> *It shouldn't be transferable to others in his family. It should only be between the parents.*

However, more focus group participants liked the idea of giving make-up time as a remedy for times when scheduled access has not gone ahead for a legitimate reason. Several participants also like the idea of one parent covering the costs of the parent who missed the access, with one suggesting that they also cover the court costs of the access parent if they need to go to court. Finally, it was suggested that the parents be required to make a co-parenting plan or take a specialized course as a remedy, with flexibility given to the Judge to choose what would work in the circumstances.

> *I like options: make up time once it has been assessed; covering the expenses of the access parent when needed; parenting course on the best interest of the child or a specialized course about access.*
>
> *Make up time should be given for denial of access. If having to go to court, person who denies access pays costs of court because the costs are so high.*
>
> *There should be make-up time, especially for holidays.*
>
> *Give three weeks for access to go ahead again: if don't get it, have make up time and also co-parenting plan to raise the children.*

6.2. Survey responses

Family advocates and support workers were also asked a series questions with respect to Access Responsibilities. The questions asked were similar to those asked of focus group participants, although in a survey format.

Part A: Access enforcement

The first set of questions asked advocates and support workers about the different possibilities for enforcing access orders. Respondents were asked: should s. 128(3) should continue to be kept in the FRA, allowing Judges to impose a fine or jail term, or both, on someone who, without legal excuse, interferes with or denies access; whether the FRA should authorize provincial courts to fine or imprison those in contempt of access orders when the access order is made in provincial courts; or if the FRA should have a list of specific access enforcement remedies that Judges can impose when an access order is not complied with.

While more than half of the respondents said yes to keeping s. 128(3) in the FRA, almost a quarter of respondents were unsure about keeping it in. When asked if the FRA should authorize the provincial court to fine or imprison those in contempt of access orders when the access order is made in provincial court, over half of respondents said yes, but over a quarter of respondents were unsure. Almost three quarters of respondents said that the FRA should include specific access enforcement remedies.

Table 1: Participant responses to questions about access responsibilities and the FRA

Question	Yes	No	DK/NA
Should s. 128(3) of the FRA be kept? This section allows the courts to fine or imprison a person who does not follow an access order?	54.2%	23.7%	22.0%
Should the FRA authorize the Provincial court to fine or imprison those in contempt of access orders when the access order is made in provincial court?	54.2%	16.9%	28.8%
Should the FRA include specific access enforcement remedies?	72.9%	11.9%	15.3%

In the next question, survey respondents were asked whether there should be access enforcement remedies provided in the FRA for both access denial, as well as for the failure

to exercise access. Over two thirds of respondents said that there should be remedies for both access denial and failure to exercise access in the FRA. Less than 2% of respondents felt that the remedies should only apply to the failure to exercise access, while only 15 % believed that it should only apply to access denial. This suggests that respondents want to see remedies equally applied to both access denial and failure to exercise access.

Table 2: Do you think that there should be remedies set out in the FRA for access denial as well as for the failure to exercise access?

Access Issues	%
There should be remedies for both access denial and for failure to exercise access	67.8
The remedies should only apply to access denial	15.3
The remedies should only apply to the failure to exercise access	1.7
Don't Know/No Answer	15.3

Respondents were then provided with a list of possible access enforcement remedies that could be included in the FRA, if there was to be such a list. The list is provided in Table 3 below. Over 80% of respondents felt that remedies such as attendance at a program or service, specification of the access order, supervised access, and changing the access order should be included if a list of remedies was to be provided in the FRA. Between 70% and 80% thought that a reprimand by a Judge, mediation between parents, payment of reasonable expenses of the parent who suffered loss of money because an access order is not followed, as well as having a Judge put new access conditions on the original access order should be included on a list of access enforcement remedies. Almost half of the respondents said they would not like to see jail time on the list, but one third were unsure. About 20% of respondents were also unsure if the list should include a fine and counseling, which would be paid for by the parent who did not meet their access responsibilities.

Table 3: If there is a list of access enforcement remedies provided in the FRA, what should be on the list?

Options	It should be on the list of access enforcement remedies	It should not be on the list of access enforcement remedies	I don't know/no answer
A reprimand by a Judge	72.4%	19.0%	8.6%
Attendance at a program or service (e.g. parenting education course)	84.5%	6.9%	8.6%
Community service	52.6%	35.1%	12.3%
The costs for having to bring the issue to court	71.4%	12.5%	16.1%
Counseling (family or child), which would be paid by the parent who did not meet their access responsibilities	63.8%	17.2%	19.0%
Court-ordered taking and delivering of the child to the access parent	63.8%	22.4%	13.8%
A fine	51.9%	27.8%	20.4%
Having a Judge put new access conditions on the original access order	77.6%	10.3%	12.1%
Jail time	25.9%	42.6%	31.5%
Make-up time for the parent who did not get access to spend with the child	69.0%	13.8%	17.2%
Mediation between the parents	77.6%	10.3%	12.1%
Payment of reasonable expenses for the parent who suffered loss of money because the access order was not followed	78.2%	9.1%	12.7%
Specification of the access order	85.5%	3.6%	10.9%
Supervised access	84.5%	8.6%	6.9%
Termination, modification or suspension of spousal support	54.5%	32.7%	12.7%
Changing the access order	82.8%	5.2%	12.1%

Commentary on access enforcement remedies

Family advocates and support workers were also given the opportunity to provide further access enforcement remedies they would like to see included in the FRA, or to comment upon the list that was provided in the survey itself, as outlined in Table 3 above.

Very few family advocates and support workers provided further commentary but those that did highlighted the need for further investigation into why access is being denied, as well as the need for further supports for parents so that underlying issues leading to denial of access can be dealt with. One respondent also suggested that those parents who deny access should lose custody of the child, while another respondent thought that if there was an emphasis on shared parenting in the FRA, issues regarding access and access enforcement would not be so prevalent.

> *We have to be reasonable with throwing someone in jail - they could no longer work to give support payments. Also a reasonable conversation would have to be conducted with the offending parent, maybe the other parent is abusive when they are dropping off children or there are other circumstances that prevent the access. It is difficult to make this black and white without having a way to consider the infractions.*
>
> *With failure to provide access, my guess is that that parent is in need of therapeutic supports. Access denied needs to be addressed because a parent's and child's rights are being compromised. Agreement needs to be reassessed. Access denial merits a reprimand but not exercising access should not be reprimanded—instead the underlying reasons need to be addressed.*
>
> *Mandatory Section 15 type assessment when parental mental illness may be a factor. Look at an immediate response should the orders not be fulfilled—included in this should be the circumstances why they* [the access orders] *were not kept.*
>
> *Change of custody - a parent who denies access without good reason should have to consider that they are not a fit parent if they cannot include the other parent in their child's life.*
>
> *Equal Shared Parenting would render all of this unnecessary. Of course, that would mean no trial/battle and not nearly as much money for lawyers - so it won't happen. Still, it's something to think about.*

A sliding scale or random list of access enforcement remedies

The final question posed to survey respondents in relation to the FRA providing a list of access enforcement remedies was whether a Judge should be able to choose between different remedies depending on the circumstances of each case or whether there should be a sliding scale of remedies that would be applied equally in every case. Over two thirds of respondents said that if a list of access enforcement remedies were set out in the FRA, they would like the Judge to be able to choose between different remedies on the list depending on the circumstances in the case. By comparison, less than one quarter said they would prefer a sliding scale of access enforcement remedies that would apply in every case.

Table 4: If a list of access enforcement remedies were set out in the FRA, should a Judge be able to choose between different remedies on the list depending upon the circumstances in the case OR should the FRA have a sliding scale of access enforcement remedies?

Remedies	%
The Judge should be able to choose between different remedies on the list depending upon the circumstances in the case	69.6
There should sliding scale of access enforcement remedies that would apply in every case	23.2
Don't Know/No Answer	7.1

Part B: Stating times when it might be okay for scheduled access to not go ahead

Family advocates and support workers were also asked whether the FRA should contain a part that sets out when it might be okay for scheduled access to not go ahead. An overwhelming majority of respondents (91%) felt that the FRA should contain such a part.

Table 5: Should the FRA contain a part that sets out when it is okay for scheduled access to not go ahead?

Responses	%
Yes	90.9
No	3.6
DK/NA	5.5

Respondents were then asked if the FRA should also set out situations where it would be permissible for scheduled access to not go ahead. They were provided with a list of possible situations that might be included in the FRA, which can be found in Table 6 below. Except for five respondents, almost all felt that the risk of physical harm to a child is a situation where a scheduled access visit should not go ahead. Likewise, most respondents felt that the visit should not go ahead if there is risk of emotional harm to the child (88%) or if there is reasonable belief that the parent wanting access is intoxicated at the time of the visit (90%).

About 40% of respondents stated that the following are **not** reasons for scheduled access to stop: if the access parent is more than one hour late for the visit or if the access parent has failed to show up for other visits in the past 12 months.

Table 6: What are some situations where it might be okay for a scheduled access visit not to go ahead?

Situations	This situation should not be a reason for scheduled access to not go ahead	This situation should be a reason for scheduled access to not go ahead	I don't know/no answer
Risk of physical harm to a child	8.9%	91.1%	0.0%
Risk of emotional harm to a child	8.9%	87.5%	3.6%
Risk of physical harm to the parent who made the decision or who the child lives with	12.5%	83.9%	3.6%
Risk of emotional harm to a parent who made the decision, or who the child lives with	21.4%	71.4%	7.1%
Reasonable belief that the parent wanting access is intoxicated at time of the visit	10.5%	89.5%	0.0%
The access parent is more than one hour late for the visit	38.6%	47.4%	14.0%
The child is too ill	10.5%	89.5%	0.0%
The access parent is not meeting conditions written in the access order	14.0%	80.7%	5.3%
The parent wanting access has failed to show up for other access visits in the last 12 months	41.1%	48.2%	10.7%
Access parent indicated to the other parent that they would not be using the access visit this time	31.6%	59.6%	8.8%
A court finds that the denial was excusable for the situation	19.3%	61.4%	19.3%

Family advocates and support workers were also given space to provide other situations where it might be okay for scheduled access to not go ahead, or to discuss some of the options set out in the survey, as provided in Table 6 above. Two respondents who answered this question thought that criminal proceedings against the parent seeking access should be added as a situation, while another emphasized a child's exposure to abuse when with the access parent. One participant stated that the emotional harm to a child of having the access parent not show up for the access should be considered, while another thought that plans that a child has made for themselves should be considered.

> *Too often the parent who does not live with the children does not show for their scheduled visits and the emotional ramifications as a result are too great for the child. There must be more punitive consequences for the parent who does not show for a visit with their children.*
>
> *If the child has made other plans should be considered such as a school sporting event, or a sleepover with friends.*

Three respondents thought it was problematic to include in the FRA a statement about when it might be okay for scheduled access to not go ahead, or give specific situations where this should happen. They thought it could raise false allegations, lead to frivolous denials of access, or allow too much government input into peoples lives.

> *Access for parents and children is as much the child's right as the parent's right. We should not punish the child for the right to see their non-custodial parent for frivolous reasons or for reasons of convenience, solely based on the custodial parent's schedule. I am also concerned about number 3 and 4, although these situations, are potentially extremely serious, including them in the legislation will also create another motivation for false allegations, which are already a major problem which is not being dealt with.*
>
> *Come on.... this is a ridiculous intrusion into people's private family lives. Require the courts (and the government) to respect the authority of parents, and keep the courts out of it.*
>
> *Criminal matters, sure, but other than that there is no good reason for the courts to be involved in this. Seriously!*

Part C: Providing remedies for situations where it is okay for scheduled access to not go ahead

Family advocates and support workers were also asked if they thought the FRA should provide remedies even when there is a reasonable excuse for the scheduled access to not go ahead. Respondents were almost evenly split in their response to this question (39% yes and 41% no), with just 2% more believing that there should not be remedies for those times when it has been okay for scheduled access to not go ahead.

Of those respondents who said that the FRA should provide remedies for times when it is reasonable for scheduled access to not go ahead, the majority (92%) stated that the parent who lost access should be given make up time with the child, while only half of respondents thought that the parent who missed the access should be given money by the other parent to cover any expenses incurred from the missed access.

Table 7: Should the FRA provide remedies even when there is a reasonable excuse for the scheduled access not going ahead?

Responses	%
Yes	39.3
No	41.1
DK/NA	19.6

Table 8: What should the remedies be if scheduled access does not go ahead?

Remedies	Yes	No
That the parent who lost access be given other time with the child to make up for the missed access.	92.0%	8.0%
That the parent who lost access be given money by the other parent for necessary expenses resulting from the missed access.	52.2%	47.8%

Again, family advocates were given space to make their own suggestions as to remedies that could be included in the FRA for times when it has been reasonable for scheduled access to not go ahead. Several participants highlighted why it might be good to have compensation or make up time as a remedy, including one respondent who thought that a good remedy would be to give more access time than normally allotted to the parent who was not given access. Other options given were using a mediator, or redoing the access order so that it works for everyone. One respondent highlighted the difficulty with providing remedies.

> *Financial compensation should be based on common sense. ie., illness may be a reasonable cause for a non-custodial parent to forgo access, yet based on timing of communication and other factors, it may still be reasonable for a custodial parent to compensate the non-custodial parent in cases of expensive travel.*
>
> *Other time could be given to make up for the missed access, if it would not drastically inconvenience the parent who had access at the time, or inconvenience the child.*
>
> *Possibly the child who lost the access time with the parent could be given even MORE time than was normally allotted. This may curtail the problem once and for all.*
>
> *Depending on the reason, mediation could help reduce the conflict.*
>
> *Have a third party assigned by the courts monitors the situation. As an objective third party, this may encourage parents to follow the access schedule for fear of reprimand/ punishment by the court following a third party report - this has the potential to reduce the "games people play" between with one another based on emotional and past control issues, or from using children as pawns.*
>
> *Change the access order to something that fits everyone involved.*

Several participants used the space to state that there should never be times when it is okay for scheduled access to not go ahead and that serious penalties should be given to those who deny access.

> *Look - if one parent has scheduled time, then anyone interfering in that is guilty of kidnapping. Do whatever it is we normally do to kidnappers.*
>
> *The only excuse not to utilize access or give access on scheduled visitation is if either parent has a debilitating illness or is dead. What parent would not do everything in their power to see their children, especially when the child is anticipating it.*

Other suggested additions with respect to access responsibilities and the FRA

At the end of the section on Access Responsibilities, survey respondents were asked if there was anything else they would like to comment upon with respect to access and the FRA. Their comments can be organized into four general categories.

The first set of comments related generally to improvements that need to be made to the FRA concerning access responsibilities, including: a) the need for measures to encourage access; b) rigorous enforcement of access orders; c) the need to remove the word access from the FRA and highlight the ability of parents to care for their children; d) the need for Aboriginal parents to be involved in planning access.

The second set of comments emphasized the point that a major issue is a lack of exercising access rather than access denial and discussed the harm that this causes to children. The third set of comments highlighted the need for the FRA to be flexible in its approach to access enforcement, and finally, the last two comments related to the denial of access due to issues of safety.

Improvements Required

> *It is paramount that this section of the FRA be improved. Currently access denial in family court goes relatively unpunished. I would like to see more motivations built into the system to encourage parents to have access, followed by consequences for access denial. Ultimately continued inappropriate access denial should trigger a change of custody. One of the cornerstones of a "good" parent should be their ability to put aside their conflict with the other parent, and to encourage and facilitate contact with their children and the other parent.*
>
> *Again, parents need to see beyond their own conflict and realize that children need access to both parents in a safe and consistent way.*
>
> *Aboriginal people have to be a part of the FRA planning/legislation/procedures etc. This is fair treatment.*
>
> *Yes - get rid of the word 'access'. It sounds like something you might need a hall-monitor pass for. It is demeaning and insulting. Let's be radical here, and assume that parents are capable of parenting until proven otherwise, and stop allowing the courts to usurp parental authority. You do realize that the course you are on infantilizes the entire population, don't you?*

The way it stands right now, nothing is done to a parent who does not follow an access order or a supervision order by the Ministry. Talking to the parent who is not providing the access doesn't solve anything. Strict enforcement must be made, otherwise what good is it to write up an order if there are no repercussions if a person doesn't obey.

Those not exercising access

There needs to be greater acknowledgement that the vast majority of visits are missed by access parents, not the denying of access by the custodial parent. This survey and the general FRA revision takes the stance that it is usually the custodial parent refusing access, which is simply not the case in the vast majority of cases.

Far too often children are disappointed (or worse, emotionally scarred) because a parent does not show for visits. There is, at this point and to my knowledge, little in place to ensure this does not happen.

Flexibility Required

Each situation should be looked at as unique and be acted on as that.

There are so many different circumstances and reasons that access does not happen - the Act needs to be flexible but yet have strong consequences for the offender.

I think the focus needs to be on both parents spending time with their children. If the agreement made is not working for either party, then they should sit down and make another plan that works.

Sadly, I do not think that we can mandate love of a child. In some situations it may even be better if access is eliminated completely. I do not think we should make the system ironclad; common sense needs to prevail at some time. Children are not inanimate objects, they require a sense of being loved.

It's very subjective for the Judge to be able to choose which remedies, given the situation. That is a lot of power. If well laid out, and the expectations are clearly stated to parents, a sliding scale for access remedies may be effective. I can't see leaving a lot of room for ambiguity.

Access and Protection Issues

Access should not even be considered in cases involving family violence.

Parents trying to protect their children should not be penalized for not providing access. We should err on the side of caution. MCFD will not protect children involved in custody and access disputes as long as one parent is found to be capable of protecting the child—capable parents are often unable to do so because of flaws in family court system (ie. failure to take exposure to violence or risk of violence/ emotional abuse into consideration).

7. Children's participation

In this chapter, we set out the recommendations provided by citizen experts with respect to the topic of childrens' participation. The chapter will first set out the recommendations of those with lived experience who attended our focus groups, then provide the responses of family law advocates and support workers who responded to our online survey.

7.1. Focus group responses

In total, four focus groups chose the topic of children's participation, although no group chose it as their first topic for discussion. The comments of these four groups are quite specific as they followed the outline of questions asked in the *Children's Participation* information sheet. In addition, individuals from other focus groups commented on the issue of children's participation while discussing other topics. These comments are also included in the discussion below.

The first two questions answered by focus group participants were of a general nature, asking them to express their opinions about including children's views in family law decisions and processes and to consider circumstances when a child's views might be a determining factor in custody, access and guardianship decisions.

Other questions were more specific, asking participants about possible options for including children's views. The options suggested in the information sheet ranged from mediation to interviews by a Judge.

Considering children's views when a major decision affects them

The first question that was asked of focus group participants was: Should the FRA be amended to require any person making a major decision involving a child to consider the child's views, provided the child is capable of forming views and wants to share them?

Most focus group respondents' comments focused on whether it is appropriate to include children's views when determining family law matters. Participant's opinions were mixed on the issue. Those who disagreed with having children's views included in custody, access and guardianship decisions did so for a number of reasons. Some respondents disagreed based on their own experiences with their children.

My child was pressured so much; my child is seven and is suicidal—he needs to be kept out of it because there is way too much pressure to decide where he lives.

My concern is that my ex has brainwashed my child—our job is to keep them safe and make decisions for them so it shouldn't be up to the kids.

Others felt that children were not ready or able to handle the pressures of voicing their opinions. In one particular focus group, three out of four participants felt that there should not be more participation by children. Instead they thought that the parents should be better prepared to help their children during this time.

It can't be left up to kids because they aren't ready to make the right choices so how would they know what's best for them.

The Court should order counseling with both or one of the parents.

I think for myself it would be okay because my boys are older. If they were younger... well there are two people that are married that decide to separate and divorce and the children have to be looked after. I'm concerned about getting children involved in the process at all—it should be the parents who get counseling, etc. This is what we should do for our children.

Other participants believed strongly that children's views should be included when determining family law matters. Again, some related their experience with their children and suggested ways that children's views could be included, as well as some cautions about doing so.

I just wanted to say that children have rights and parents have responsibilities. A child's rights are set out in the UN Convention on the Rights of the Child but they are not embedded in the FRA.

In my case, the Judge was very upset that my daughter came to court. I was thinking that she should be able to talk to the Judge. The Judge decided to talk to her and got a social worker to talk to the Judge first. But they only listened when it was negative about me as the mother—that's the biased end of it.

My daughter found that she didn't get anywhere staying with me. She said she wanted to continue going back and forth between us. I would have liked someone impartial in the case to be with the child and take them through to be listened to by the Judge.

Many participants felt they couldn't wholly agree or disagree with having children's views included in determining custody, access and guardianship because there were a number of factors that needed to be considered including age, maturity level of the child, and the families circumstances.

> *It depends on maturity level of the child and the circumstances—they could be as young as three.*
>
> *Should really have the child's voices heard, but it should be age appropriate.*
>
> *If children are old enough and want to speak their views, have a counselor talk to them. In my mind, most children don't want separation and divorce. What are the views going to be what will you hear. Help the children with their emotions but it should not be given weight in decision-making.*
>
> *What I found really interesting when I got the kids back—they gave my eldest daughter choice to move back home with me or not. They reach the age of 12 and have the option to move in with relative or stay with foster home.I don't like this because children make wrong choices. A bit higher age would be better. It would be good to up the age.*

Circumstances where children's views should be determinants in deciding custody, access and guardianship under the FRA

A second question was then posed to participants: Under what circumstances could the views of children be the determinant in deciding custody, access or guardianship under the FRA? Several participants agreed that a child's views were important as a determinant in deciding custody, access and guardianship under the FRA, based on their own experiences.

> *My oldest child was abused by his father. His father didn't show up for court but he would have been granted access. My son would have been ill because of it—if a child is always sick, this should be investigated by an advocate. My child was young and the court said a child under three doesn't have the ability to talk, so his opinions weren't taken into account.*
>
> *Whether three or eleven, he could tell me things. If this stuff was told to someone else—if they had an actual counseling session with my child, I might not have gone through the last five years.*

Again, participants were concerned about how the age and maturity of the child might affect their views, suggesting that it might be possible to manipulate the child.

Depending on the level of maturity of the child—far different if older and it also would depend on whether it was absolutely necessary for the case.

My son was coached. When he was thirteen, the pressure was on him as he held the ball of who he is going to live with—but he didn't have the courage to say. There is the danger of the manipulation.

Several participants expressed opinions about making children's views determinative in custody, access and guardianship when there is trauma or violence in the family. Several participants disagreed with including views of the children where there is violence or trauma in the family. For example, one participant stated:

If new to system or if there is family violence and a restraining order, this would leave them [child] out—so it should be waived for a family with violence

However, others thought that children's views could be taken into account when there is violence or trauma in the family. Of those that agreed with the inclusion of children's views where there might be violence and trauma, several suggestions were made about how this might be done. One suggestion was play therapy. Another was third party assessment. For those who wanted third party assessment, it was important to ensure that the third party had training and experience in interviewing/working with children.

Although there is no clear yes or no to the general questions about including children's views, what is clear from the responses is that age and maturity of the child, and the process for gaining the children's views are all important factors that need to be considered if the FRA is reformed to include children's views. The diversity of opinion, and in some cases ambivalence, about including children's views also raises the issue of whether there needs to be flexibility built into the FRA regarding children's views. As one participant stated:

Each child is different—this should be taken into account and no process should be written in stone.

Although many focus group participants found it difficult to give clear recommendations to general questions regarding children's participation, they were able to give clear recommendations about possible processes for involving children under the FRA. This clarity about specific process is partly attributable to participants being asked to give their opinions on the processes for children's participation, even if they disagreed or were unsure of whether children's views should be considered at all in family law matters. The clarity around processes might also be attributable to participants having specific options to consider rather

than a general philosophical question relating to the place and voice of children in society.

Specific options for including children's views

The following sections set out the opinions of focus group participants with respect to the specific processes for including children's views.

A. Including children in mediation when parents are separating or getting a divorce

Many focus group participants felt that including children in mediation would be a good idea, with one participant suggesting that some type of organization be set up that does nothing but act on behalf of the child in family law matters. Below are some of the comments of focus group participants who believed that children should be included in mediation:

> *Children as young as three years old can be involved—they can choose and decide. Take power away from parents and give to the child.*

> *I am all for children in mediation because it can be age appropriate. There is no problem sitting down with a small child so they should be included. Mediation regardless of age but have different process for taking their views into consideration.*

Some participants thought that including children in mediation would depend on the age and maturity level of the child, which is captured by the statement of one focus group participant below:

> *Children in mediation: it's a good idea depending on age of the child and maturity of the child. Also, how long they have been with the other parent? Mediation with children should be at the beginning of the process, immediately upon separation.*

Other participants thought that the decision to include children in mediation should be left with the parents. Several participants thought that parents should 'do' mediation and then decide if their child(ren) should be part of mediation. Of those who disagreed with including children in mediation, their reasons include an increase in the anxiety of the child, taking power away from parents, and it being too hard on the child thier reasons captured in the statements provided below:

> *Don't agree with involving child at all because they see and hear things, and it's so hard for them already. It may heighten their anxiety.*

I don't know. My children went through a lot of emotional stuff as it is. I don't think they know what they want. Me and their dad had to communicate with each other and come up with what we thought was best. Kids have to have boundaries and be told what to do... it's too much power for young kids.

Finally, two participants stated explicitly that children should not be included in mediation when there is family violence.

B. Providing children's statements to decision-makers

Participants were asked what they thought about the option of providing children's statements to decision-makers. Participants were told about the pilot project being held in Kelowna, British Columbia to include children's views in family law matters. In the pilot project, an independent lawyer or counselor meets with the child or young person to hear their views. The person doing the interview is chosen from a roster of volunteers who have received a training course.

At the beginning of the interview, the interviewer explains the reason why they are meeting with the child or young person. The interviewer then asks the child if they would like to be interviewed and if yes, writes down exactly what the child says. The interviews are done with the agreement of the parents, who pay for the interviewer or who receive legal aid to pay for the interviewer. The interviewer provides a written statement of the child's views to the Judge or master making the decisions about custody and access.

The majority of focus group participants who considered this option were skeptical of this approach.

They should not be allowed to do this, especially not lawyers. I think it would be intimidating.

What is the person's experience? Is there a third party witness there to make sure the child isn't influenced? I'm concerned about bias as there is already enough of it out there.

Elders should be involved. These other people don't know the families and haven't gone to court with the families.

Two participants were positive about the option of children being interviewed by a volunteer and their statements being provided to decision-makers in custody and access cases. One of

the participants reasoned that this would be less intimidating than if a Judge interviewed the child.

> *In regards to including children's voices during separation and divorce I prefer option #2. This includes the child being interviewed by a volunteer in order to obtain a statement of the child's views. I think that being interviewed by a Judge would be too intimidating for a child.*

C. Child fills out a Form

Focus group participants were also asked whether they thought children should be notified of a major decision affecting them via a form, and whether children should fill out the form in order to express their views. It was explained that this is a system used in Scotland, where children can get publicly funded legal assistance to fill out the form, and where the Scottish Child Law Centre can refer the child to a lawyer if they need help to fill out the form. Participants were also provided a copy of the form used in Scotland.

Most participants did not like this option, feeling that it would not suit children because: it would likely increase children's anxiety: it seemed difficult to understand; and in the words of one participant, seemed cruel.

> *It would heighten the anxiety and pressure on the child—this would happen if filling out a form.*
>
> *I don't like the idea of a form. Having a kid in a bedroom trying to fill out a form—it seems cruel.*
>
> *I find this form really bad—who would understand this?*
>
> *A form is a form and doesn't take into account differences for different children.*

Some participants thought that a form might work but would be dependent on the age of the child, as well as the maturity level of the child. Others thought it would be useful since it would provide written evidence later on.

> *The child form—it depends on whether the child would understand that. My daughter, she is eleven and is very grown up; she's very mature. But there are also other kids that wouldn't understand this—it just depends on the child's maturity.*

Based on maturity rather than age—I have a fourtenn year old but he is more like a nine year old and it could be a problem if it was the child's age.

What about a formal statement—my daughter was really freaking out and we needed to look at what we are going to do. Get someone independent of the family and give my daughter time to write out what they feel—a written statement and then child can say yes, I wrote that and I mean that.

Written statement from a child is good because you can get it on paper and they do not have to talk to someone... But this would need to be done with age appropriations.

One participant suggested ways that the form could be made more useful:

I'm not opposed to a form but should be totally kid friendly, with pictures and with stories—it needs to be sensitive.

D. Children and Legal Representation

Another option that was considered by focus group participants was whether separate legal representation would be an effective way to ensure children's voices are heard in decisions that affect them. Participants were told about different types of legal representation for children including: lawyers who argue the best interest of the children which may or may not include children's views; lawyers who represent children as clients in court and present their views; lawyers who work for the court and get the children's views to help the court make decisions.

A large majority of focus group participants who discussed children's participation thought that separate legal representation for children would be a good idea. Below are responses of those participants who would like to see separate legal representation for children in British Columbia.

I would like to see lawyers who go to argue the best interests of the child—they may not take views of the child but what is in their best interest.

It should be a lawyer who argues best interest of the child— it's not necessary for the child to have their own lawyer for normal separation or basic court things but if there is violence—one of the parents should have the option to have a lawyer for the child if the child is a victim of the violence.

Children have to have an advocate to intersect between these two parents.

When separation happens, the mother and father bringing in separate lawyer. We should include the children—anything that needs to include a separate lawyer and for complex situations.

A few participants did not think that separate legal representation was needed for a child and preferred to see a different process for including children's voices.

E. Ontario's multidisciplinary approach (i.e. social workers and lawyers working together) regarding disputed custody and access cases

A small percentage of focus group participants provided opinions on this question. What was clear from those that did give their opinion was that they did not want to see a social worker involved in providing the children's views.

I do not want a social worker involved in the case but someone impartial.

I wouldn't want a social worker. I would want someone else involved: a school counselor, a Judge, a lawyer.

I would want a Child psychologist—it's important to have someone involved and that's not the Ministry.

F. Having a less competitive trial process

In this case, focus group participants were asked whether they thought a less adversarial trial format for children's cases would help to hear children's voices in family disputes and whether they would support the introduction of the Australian Children's Cases model in British Columbia. Several participants used this opportunity to point out that they didn't think children should be involved in the family court process, even if it is set up to be less adversarial.

I don't really think they should be involved in the whole process. It's a bit nerve wracking for a child to be there. We should not use this model.

It would put the kids in a funny spot. We want to protect kids from emotional problems so it should not be in front of children because it's not healthy.

The kids have already gone through enough and it's emotionally damaging to be with the parents in court. Kids should be kept separate from the process as much as possible.

> *Not a court process because when the kids are older, court isn't going to matter anyway and kid will do what they want to do. There is no point in getting the kid to court.*

Some participants thought there would be some value to the model, believing it to be a better environment for children. However, one person thought it should not be used in cases where there is family violence. In that situation, they suggested a mediator might be more appropriate.

In discussing this option for including children's views, participants also brought up some other models for involving children in family law disputes. One participant suggested that a healing circle that included children, parents and others might be a good way to include children. Another suggestion was to have a panel or advisory group make decisions involving children, rather than just a Judge. The participant who made this suggestion provided a description of how this would work, which is set out below.

> *Why should one person make the decision? Why not a panel or an advisory committee? Why not present documents and evidence and not just a Judge. If I was a Judge and had to decide what happens to a seven year old boy—how do you decide things like that. This is kind of a big decision for one person so it should be more of a three-person panel and you could put in for an application, take it to the panel, the panel decides and then Judge okays the decision. The panel is not made up of the parents and not just a social worker either. They would be like a jury and there could be one psychologist, one social worker, someone who is just a good parent. What if Judge makes wrong decision on their own—how is the Judge accountable, does he get disbarred?*

G. Judicial interviews

A final question asked of focus group participants was whether the FRA should be amended to set out a discretionary power for Judges to interview children in order to determine their views? Most participants were quite clear that Judges were not the best person to interview a child, or if they did conduct an interview; a support person should also be part of the interview. They felt that Judges did not have the proper training to interview children and that a Judge would be too intimidating for the child. Many participants who considered this option thought that if Judges or others were going to interview the children, they should receive special training.

I don't like this idea—they are not trained. It's too much pressure on a child.

It might be intimidating for a child.

Judges are not qualified to question children—my Judge actually said this.

I like a social worker instead because Judges don't know how to do this. For my son—if he has a thirty word conversation, I do not understand so how would a Judge understand? Judgment may be made incorrect because the child might say daddy is hitting me when he's not, and then my butt is kicked.

We should require Judges to have special training—anyone who interviews a child should have training

I'm not too sure about a Judge interviewing children. If a support worker was with the Judge so that Judge will know better the point where the child is coming from—I'd like a support person with the child.

A Judge doesn't understand. For family matters there should be specific training and a person to be with Judge—somebody that's not case sensitive.

7.2. Survey responses

Survey respondents were also asked to provide their views regarding children's participation during family separation and divorce. The questions ranged from general questions about whether children's views should be a determining factor in custody and access disputes, to questions regarding specific options for including children's views. This section of the survey starts with some of the general questions about including children's views and then asks them to comment on specific options for including children's views. For many questions, there is a table provided which sets out the percentage of respondents of who agreed with the question, the percentage that disagreed with the question, and the percentage which did not know or provided no answer to the question. For some questions, survey respondents were given space to provide commentary on the specific options for including children's views.

General questions

Respondents were first asked if the FRA should be amended to say that any person making a major decision involving a child should consider the child's view, provided the child is capable of forming views and to wants to share them. The vast majority (87%) said that this

amendment should be made to the FRA.

Table 1: Should the FRA be amended to say that any person making a major decision involving a child to consider the child's views provided the child is capable of forming views and wants to share them?

Children's views	%
Yes	87.3
No	6.4
DK/NA	6.4

Respondents were then asked if the views of children should ever be the determining factor in custody, access, and guardianship decisions made under the FRA. Just under three quarters of respondents thought this should be the case. Those who answered yes were asked; under what circumstances should the views of children be the determinant of deciding custody, access, and guardianship under the FRA?

The vast majority (80%) said that the children's views should be the determinant when the child has reached a certain maturity level. About two thirds of respondents also felt that the child's views can be the determinant when the child has reached a certain age or when one parent has been violent towards the child or the other parent.

Table 2: Should the views of children ever be the determining factor in custody, access or guardianship decisions made under the FRA?

Children's Views	%
Yes	73.0
No	20.6
DK/NA	6.4

Table 3: Circumstances under which the views of children should be the determinant in deciding custody, access or guardianship

Children's Views	%
When the child has reached a certain age	60.9
When the child has reached a certain maturity level	80.4
When one parent has been violent towards the child or toward the other spouse	67.4

While over two thirds of respondents felt that filing an application for custody, access, or guardianship under the FRA should automatically trigger a child's right to have his/her views considered, 14% of respondents were unsure of whether this should be the case and 18% said that this should not be the case.

Respondents who did feel that filing an application for custody, access, or guardianship should automatically trigger a child's right to have his or her views considered were asked when the child's right to express their views should be triggered.

- Half of the respondents said this should happen when parents file an application under the FRA, while just under half said before mediation between the parents is attempted.
- Only 7% of respondents said the child's views should be expressed when a trial is scheduled.
- Two thirds of those who felt that getting the child's views should be automatically triggered thought that the best practice for getting the child's views was through interviews, where children's responses are recorded.
- Some respondents added that the interviews should take place in multiple settings there was disagreement over whether the parents should be present or not. Some respondents also suggested observation periods or play therapy assessments.

Table 4: Should the filing of an application for custody, access or guardianship under the FRA automatically trigger a child's right to have his or her views considered?

Responses	%
Yes	68.3
No	17.5
DK/NA	14.3

Table 5: Conditions under which the child's right to express their views should be triggered

Conditions	%
When parents file an application under the FRA	50.0
Before mediation between the parents is attempted	43.2
When a trial is scheduled	6.8

Table 6: Practices that would be helpful for getting the child's views

Practices	%
Fill-in-the-blank court forms for children	2.1
Interviews with children, where their responses are recorded	63.8
Written reports or assessments	4.3
Other	29.8

Specific ways for including children's voices

Survey respondents were asked a number of questions about ways children's views could be included when their parents are separating. The vast majority of respondents (86%) said they would like to see an independent lawyer or counselor meet with a child or young person to hear their views in family law matters. Three quarters of respondents also said that the FRA should be amended to give Judges a discretionary power to interview children to determine their views. Two thirds of respondents said children should be notified of a major decision affecting them in family law matters via a form.

Two thirds of respondents also thought that separate legal representation for children is a good way to ensure that children's voices are heard. Although close to half of respondents said that the FRA should allow the courts to allocate the costs of the children's representation between the parties and to recover the costs from the parties, one third of respondents were unsure about this. Almost half of the respondents said that they would not like to see children included in mediation sessions when parents are separating or getting a divorce.

Table 7: Options for getting children's views

Questions regarding getting the children's views when parents are separating and/or getting a divorce	Yes	No	I don't know/ No answer
Would you like to see children included in mediation sessions when parents are separating or getting a divorce?	31.7%	47.6%	20.6%
Would you like to see an independent lawyer or counselor meet with a child or young person to hear their views in family law matters?	85.7%	6.3%	7.9%
Do you think children should be notified of a major decision affecting them in family law matters via a form such as the F-9 form used in Scotland (see form at the back of the Children's Participation Information Sheet)?	63.5%	14.3%	22.2%
Is separate legal representation for children a good way to ensure children's voices are heard in decisions that affect them in family law disputes?	65.1%	14.3%	20.6%
If children did have legal representation in family court, should the FRA allow the courts to allocate the costs of the children's representation between the parties or to recover the costs from the parties?	42.9%	23.8%	33.3%
Should the FRA be amended to give Judges a discretionary power to interview children to determine their views?	73.0%	12.7%	14.3%

Children and mediation

Survey respondents were first asked if they had experience involving children in family mediations. Less than a third of respondents have had this experience.

Respondents were then asked to relay their experiences. In the comments below, advocates/ support workers describe some of the ways they have involved children in mediation.

> *Children have been included as active participants, as individuals interviewed alone, and as active participants in a counseling and/or mediation process*
>
> *The children were made to feel safe and were given a clear understanding that their views were important and that the adults needed to hear how the family situation has affected them.*
>
> *They were involved in sessions and given time to express their views to parents without interruptions.*
>
> *I manage a residential counseling program. Much of our work involves mediation to a certain degree. I certainly believe that asking for input from all family is very honoring and inclusive to the process.*

Respondents were then asked what worked in these situations and what did not. Many respondents said it is important to recognize that the breakdown of a family has a significant impact on the children involved. Below are some suggestions from respondents about what works and what does not work with respect to involving children in mediation.

> *What worked: Use of art as a way to create safety for the child, and allow the child to tell you what is important to them without asking leading questions.*
>
> *What worked: clear guidelines as to responsibility, strong chairperson, inclusivity (all family/extended information from supports/advocates). Safety of the client must be the ultimate goal.*
>
> *What works: Respect, a chance to heard (or not) and a clear explanation, prior to the session, as to the intent of the process. What doesn't work: vague explanations around process and "pushing" the child to speak.*
>
> *Prefer the child to have a separate support person from the mediator...also families seem more comfortable in their homes when doing the work.*
>
> *What worked: all involved having an individual session before a group session. What did not work: asking children questions in front of parents.*

What worked: clear guidelines at the beginning. Allowing them [the child] *to speak or not at their comfort. Providing other means for including child (written, etc). Asking direct questions of both parent/child so that the blame is not on the child but also allowing open ended discussion as needed. Explaining very clearly that the process is not about who is right/wrong but simply trying to work things out so everyone can live with the end result.*

Using Ontario's multidisciplinary approach (i.e. social workers and lawyers working together) regarding disputed custody and access cases

Respondents were asked what they think about the current approach used in Ontario to ensure the voices of children are included in disputed custody and access cases. This approach involves social workers and lawyers working together. Over three quarters of respondents said they would like to see this approach used in British Columbia. Only 5% of respondents said they would not like to see this approach used in British Columbia, but 16% were unsure if this approach would work here.

Table 8: What do you think of Ontario's approach of having social workers and lawyers working together to ensure the voices of children are included in disputed custody and access cases?

Responses	%
I would like to see a similar approach used in BC	78.7
I do not think this approach would be helpful	4.9
I don't know if this approach would work	16.4

A less adversarial trial format (The Children's Case Model)

Respondents were also asked if a less adversarial trial format for cases involving children would help to ensure children's voices are heard in family law disputes. Almost all (93%) respondents said this less adversarial trial format would help. Many felt this would help because they find the courtroom to be an intimidating setting, although some pointed out that the nature of trials is adversarial, so the location does not matter.

Many respondents were concerned that because of the adversarial nature of trials, children can in fact be harmed emotionally if they are allowed to participate. They also pointed out that children can be easily manipulated and that it is unfair to put children in the position of choosing one parent over another.

Table 9: Would a less adversarial trial format for cases involving children help ensure children's voices are heard in family law disputes?

Responses	%
Yes	93.4
No	6.6

With respect to a less adversarial trial format for involving children, respondents were specifically asked if they would support the Australian Children's Cases model to be introduced in British Columbia. Although information links were provided in the survey, and the model was briefly explained in the information guide to the survey, most respondents did not appear to be familiar enough with this model to comment. Over two thirds of respondents said they did not know if they would support the introduction of this model to British Columbia.

Table 10: Would you support the introduction of the Australian Children's Cases model in British Columbia?

Responses	%
Yes	29.0
No	1.6
DK/NA	69.4

In addition, survey respondents were asked to add further comments with respect to the adversarial nature of trial proceedings and involving children in family law processes. Below are some of the comments of advocates/support workers who answered this question.

> *The courtroom is an intimidating place to be. Perhaps a less stressful place would be good for all concerned when making decisions on behalf of family break down.*

> *Too formal a court proceeding would be confusing for most children. Something that is slightly more casual would make children feel more comfortable in expressing their views.*

> *Just the courtroom is in itself intimidating. These people are often not criminals and the process could be done in a room with a round table...a less formal structure would increase the comfort level of all parties.*

Having a less adversarial trial format could be helpful as it is not likely in the child's best interest to participate in an adversarial process concerning their parents and family circumstances - it could be extremely traumatic. However, a more informal process is not necessarily in the child's best interest either, as it could be an easier way for one parent to exercise power and control over the other parent and the child.

A few survey respondents did express concern about asking for children's views in the courts, even with a less adversarial court process. One participant thought that there should be safeguards for children who might be exposed to manipulation by parents during the process or for families where there is violence. Another participant thought that it would not matter if a less adversarial format was provided, since trials are about winning and losing. They suggested scrapping the trial system for family law matters altogether.

It is sometimes very difficult for children to understand what is going on. There is always the danger of parents priming the children before court to get their point of view heard. There should be a safeguards for children who are or may be exposed to such coercions.

Trials are always adversarial, by definition. If you throw children into this then they will only be harmed, and it really doesn't matter if you paint the courtroom walls a pleasanter colour or encourage everyone to be pleasant. The reality is, one parent will walk out a winner and the other will walk out a loser/visitor. There is no way to make that "less adversarial" unless you scrap it completely. Scrapping it is a really good idea and would benefit children more than any of this "parenting plan" stuff.

Finally, survey respondents were asked if there was anything else they would like to add with respect to children's participation. The following comments below highlight that many advocates and support workers think that including children's voices is important, but it has to be done in a way that does not further 'traumatize' or 'oppress' the child, and done by those who have been trained properly.

The danger, as mentioned before, is that with an increased involvement of children in the process they become children in the middle of their parent's conflict. This is potentially very confusing for the children and frequently puts them in the position of having to, or feeling as if they have to, choose one of their parents over the other. Any model involving children needs to address this real danger and protect them from being thrust into the middle of the conflict.

I worry that if children's voices are heard in family law disputes that it will cause more abuse - parents will push harder to have their children want to live with them (from the benign "no chores" to threatening them or their other parent if they do not tell the courts they want to live with them). Even with the child's representation, I think it needs to be an independent body of child counselors/social workers/lawyers in a team format who ensure that the child is not being abused and has their words heard without making them party to the proceedings.

The primary goal and operating principal when it comes to the inclusion of children in the process is empowerment. Decisions about whether to include children in any capacity should be informed by the question, "Will this empower the child? Or will this oppress them further?

Children who are in the home are party to the events that occur on a daily basis. With the view of the child included, this gives a more detailed and rounded depictment [sic] *of what should be considered when determining custody and access. It allows the Judge to be more informed and can make the best decision for all parties involved. There is another point that I have not seen in this questionnaire - what protects the child if she/he is threatened by the parent regarding testimony?*

This is a very adult process...children most often are loyal, confused and shaken by break ups in whatever they know best. Children's participation needs to be done with great respect and care for the child. The person who is representing or listening to a child's voice needs to be very skilled, and show great care for children and their family situations

A third party, certified interpreter/translator is needed to assess correct (culturally accurate) views of the child, in case the child does not speak English well enough

It is a delicate matter. On the one hand the voices of the children need to be heard, but on the other hand, they don't need to be exposed to all the dirty laundry. Disputes are often ugly and personal, so a child's involvement should center around them feeling like their voices are being heard and still protect them from ugliness of how their parents may be behaving.

8. Cooperative approaches and the FRA

In this chapter, we set out the recommendations provided by citizen experts with respect to the topic of cooperative approaches and the FRA. The chapter will first set out the recommendations of those with lived experience who attended our focus groups, and then provide the responses of family law advocates and support workers who responded to our online survey.

8.1. Focus group responses

A total of three focus groups chose to discuss the topic Cooperative Approaches and the FRA, using the *Cooperative Approaches* information sheet as a guide. In addition to those groups who chose to discuss cooperative approaches as a specific topic, some participants made comments regarding cooperative approaches in the discussion of other topics. Such comments are incorporated into the following analysis, especially those responses that directly pertain to the options for change provided in the Cooperative Approaches information sheet.

Encouraging cooperative approaches

Focus groups that chose to discuss the topic of cooperative approaches were first asked whether they thought the FRA should encourage cooperative or collaborative approaches to resolve family law matters in British Columbia. They were also asked if they thought there should be any exceptions to the use of a cooperative approach.

In answer to this question, a number of focus group participants emphasized the need for there to be counseling and supports provided by a third party to those couples separating or getting a divorce.

> *The legal system tries to make it as complicated as possible. Bring in support services to help co-parenting.*
>
> *I think the problem is that the system is focused on going to court in the first place. We should be starting with 50/50 parenting and should go to mediation and counseling. It's an open forum for accusations because you're divorcing and not getting along already.*
>
> *Should always be third party within that separation to help them walk through it.*

With mom and dad separating, it's always about the best interest of the child. He always say they should be with him and I say that same thing. We should have third party there to help us see it for what it is and not what want it to be.

Number one: I'm not sure that they can work it out themselves. Not sure that this is possible without a third party. How can agree whether or not they will need to go to court.

A few participants also suggested that cooperative approaches should not be used, or would likely be unsuccessful, in cases where there was family violence and high conflict.

It should not be used if it's a really abusive case. Mediation happened twice but was a real problem in my case.

There should be counseling/ support for high conflict families. When there is proven violence, there's not going to be shared parenting.

Some participants emphasized the need for the FRA to include a presumption of shared-parenting, which they thought would increase the likelihood of cooperation between parents when dealing with matters related to children. One participant discussed the option of parallel parenting, something they had read about happening in England. They described parallel parenting as the Judge clearly setting out what each parent does, but with both parents being involved in the child's life. They thought this would be particularly useful where there was high conflict.

The law should say that there is a presumption of shared parenting, with development of parenting agreements and plans. There should also be support to deal with emotional issues.

I think there needs to be a presumption of shared parenting. First, parents need to see a counselor for approaches, then there needs to be a presumption of shared parenting—the FRA needs to say clearly that there is a presumption of shared parenting. It's not about who gets custody and who doesn't. It would help parents to know that they have fundamental responsibilities to their children and to each other.

Has anyone heard of parallel parenting? It's not really a new thing but in high conflict situations under parallel parenting, there is no such thing as custody and access. The Judge sets out clearly who does what and that both parents will have the child in their life. It's called parallel parenting and I recommend it. It's from England and is at the top of my list for collaboration when high conflict is prevalent. We should back up and include it from beginning as a method to prevent conflict.

Finally, one participant was quite critical of the family law system, suggesting that it is difficult for those separating or getting a divorce to extricate themselves from long term involvement with the courts or to explore other options outside the formal legal system.

> *The justice system is a giant, inefficient industry designed to perpetuate it's own existence and maximize it's own profits. Once a person becomes part of the system, it is very difficult to extricate yourself from it, with all of the built-in potential for case review and variation of circumstances and no real 'clean' break being established (and as long is there is no clean break then the lawyers are the benefactors). Any proposed changes should have the aim of establishing as clean a break as possible and reducing the potential for long term involvement with the legal system.*

Specific questions

Once focus group participants had covered the general question of cooperative approaches and the FRA, they were asked to consider more specific options for reform.

Focus group participants were given three possible options for reform in the information sheet on cooperative approaches and the FRA.

- Option 1 suggested that the FRA could require lawyers to tell their clients about options for resolving their disputes outside the courts and provided examples of how this might work, based on the laws in other jurisdictions.
- Option 2 suggested that the FRA could encourage parents to reach agreement about matters relating to children and offered some examples as to what parents might be encouraged to agree on, based on family law in Australia.
- Option 3 for encouraging cooperative approaches under the FRA suggested that the FRA require parents to attend one mediation session before going to court. Under this option, it was also explained that shuttle mediation might be a possibility for certain cases where face-to-face mediation would not be appropriate. Participants were also told that there might be cases where mediation should not be required; for example, in cases where there is family violence.

Option 1: Requiring lawyers to tell their clients about options for resolving the family law matters outside the courts

Focus group participants were asked two questions: 1) Should the FRA require lawyers to tell their clients about options other than court for resolving family law matters; and 2) Should the FRA require lawyers to tell the courts that they have done so if the matters do go to court?

Many focus group participants agreed that lawyers in British Columbia should be required to tell their clients about options other than going to court to resolve family law matters. Those that agreed with this idea also thought that lawyers should have to inform the court that they have done so.

However, other focus group participants thought there should be less emphasis on using lawyers in family law matters since lawyers can sometimes promote conflict rather than cooperation. One participant suggested that each person separating or getting a divorce would be provided with an information package that would set out rights and options, rather than being dependent on different lawyers to discuss the options.

> *Lawyers can promote conflict or they can prolong the process to their own financial benefit. The laws are so complicated that the average person cannot begin to devote the time and energy required to represent themselves if they are also embroiled in the emotional turmoil and stress of marital breakdown. People going thru a divorce are generally stressed out and very vulnerable to their emotions. A lawyer should be responsible for de-escalating the situation, but the onus on them for this responsibility represents a conflict of interest.*
>
> *Justice has become unaffordable for the average person. Any attempt at change should reduce the involvement with, or the need to employ a lawyer.*
>
> *Collaborative law suggests that there will be a 'team approach' to the resolution of the conflict; to bring about the most efficient and cost-effective and mutually beneficial solution to the parties of a marriage breakdown. The collaborative law initiative, although perhaps a good idea with honorable intent, is a joke as it stands right now. Both my wife and I had lawyers that claimed that they were trained as collaborative law lawyers and yet they made no mention of using that training to our benefit to try to gain resolution. In fact, when our side suggested going to mediation to bring resolution to the case the lawyer from her side insisted on being part of the mediation process. This same lawyer did go to mediation under similar circumstances with a friend of mine and the mediation amounted to nothing with both lawyers sitting in the room promoting not mediation, but the interests of their clients (after all that is what they are paid to do). Collaborative law as it stands presently, amounts to*

nothing more than a feeding frenzy for the professional vultures that are hungry to get their hands on the couple's assets.

I do agree that if we leave it to lawyers to talk about the options, this will be misused. There should be an information package that goes to someone when they are separating so everyone knows their rights and options. Everyone should get the same information.

Option 2: Encouraging parents to take a cooperative approach when dealing with matters relating to their children

Here, focus group participants were told that in Australia, family law encourages cooperation between parents who are separating or getting a divorce by stating that parents should be encouraged to:

- Agree on matters relating to children
- Take responsibility for parenting arrangements and for resolving their parenting conflicts
- Use the courts as a last resort in resolving issues
- Lessen present and future conflict by using an agreement
- To take into account the best interests of their children when making their own arrangements

Participants were asked whether the FRA should encourage parents to take a cooperative approach on matters relating to children by proving a similar list. A number of participants thought that such a list would be helpful; however, they did not comment on the specific items on the list.

A large number of participants did want the FRA to emphasize the need for training and counseling for parents so they could take a more cooperative approach to matters relating to their children when separating.

I'd like to see more parent training for both parents to do the right thing, to do the best thing for the child from start to finish. My separation was ugly—I couldn't deal with it anymore. You've got the ministry and the police and her family and her friends and your family, and finances, etc. I'd like to see more there for both parents.

Any family that is separating has to do the parenting after separation course—make it mandatory that they do "caught in the middle" and other courses.

Make programs mandatory to help deal with issues, anger, collaboration. If this was funded, then there would be a lot less violence and abuse. Let's put in an information package.

Should make these [referring to courses] *available to people right away and calm the situation down right away.*

Six years ago I went on the internet and found wonderful information and it was from Australia. Why are we not as active as that? Why are we so far behind? When I took some of the stuff to the lawyers, they said they would not look at this— that the Judge only goes by what it says in our law.

Other participants wanted to see parenting plans required under the FRA, and the financial resources provided so that any parent could make a parenting plan or attend mediation. One participant also thought it would be good to have information about how other parents were able to work things out.

In the interest of the children, as soon as a divorce is underway, there should be urgency to help children. Make it mandatory that lawyers refer parents to mediator, who helps make a parenting plan. That person [the mediator] *should not be a lawyer. A parenting plan should be required and the person should be able to say that one parent does not want to make a parenting plan to the Judge if they need to go to court.*

Whatever process is started, parenting plans and mediation should not be just for those who can afford it.

Two participants highlighted the need for ongoing protection for parents to be able to use the legal system, especially when a collaborative approach may be inappropriate. One participant mentioned that parents should not have to work to reach agreement where there is family violence; while another thought it was important for parents to be able to have a lawyer inform them of their rights and still have the option of turning to the courts, even if cooperation is being encouraged under the FRA.

I'm against having to work out issues if there is family violence. If it has failed in the past, then I do not agree with the parties having to agree. Parenting coordinators would be good as they have expertise so the next step would be a parenting coordinator if parents can't agree.

I think that parents should be encouraged to agree but there still has to be guidelines to protect the parents. When going through separation or divorce you do things, or your self-esteem may be at a spot where you're not always making the best decisions. If you go to court, the lawyer will have a guideline that protects parent on long-term basis.

Option 3: Mandatory mediation

The final set of questions asked for focus group participants related to mandatory mediation and the FRA. Focus group participants were asked three questions: 1) Should the FRA require couples separating or getting a divorce to attend one mandatory mediation session before going to court? 2) What do they think of shuttle mediation in cases where face-to-face mediation may not be appropriate? 3) Are there any situations where mandatory mediation should be waived for a couple, regardless of whether it is face-to-face or shuttle mediation?

The majority of focus group participants thought that the FRA should require mandatory mediation before couples who are separating go to court. However, several of these participants thought that one session was not enough and that anywhere between three and five sessions should be mandatory since it often takes more than one session to get an agreement in place.

I think there should be more than one mandatory mediation session. Three to five would be reasonable. I think this would be good.

There should be mediation until the issues are resolved. Make it open and ongoing and appropriate to the situation. One mediation would be the initiation stage and more sessions would be determined on a case-by-case basis after that.

If something is disputed, there should be mediation with no exceptions.

I like the idea of mandatory mediation before they ever go down the court road. I like the information centre and pamphlet where people can go and get advice. I was getting legal counsel from a men's divorce centre—I learned something about how lawyers are doing what they do and I learned about mediation. Have a collaborative approach where no lawyers are involved and where you have counseling. Typically, the courts manage to disintegrate the family.

I'm very much in agreement with mediation. Lawyers right off the bat are adversarial. In my personal circumstances— it's nice to say lets go for mediation but why would I agree to so much for my kids when I can get twice as much from the courts. There's no encouragement, there's nothing to promote co-operation. Make mediation mandatory and make as many sessions as they want and have the lawyers only dealing

with paper work. One lawyer for paperwork, and then have parties go to mediation.

I think its good idea that the couple has to attend one mediation session. They are no longer on a friendly basis once they see their lawyers. Maybe they can keep friendly interaction going with mediation. We wrote up our own agreement and went to one lawyer to have the agreement written up and raised the kids together. We had no law to do it this way or that way - it was more loose. Ideally it should be this way and lawyers should be trained to take a cooperative approach.

Several participants suggested that maybe shuttle mediation could be used when there is family violence or the issue of false allegations, although one participant was unsure whether mediation would be effective in these types of cases. One participant thought that if shuttle mediation was used in cases where there was family violence and children, it would need to be handled sensitively since outcomes of mediation would affect the children.

We need to find ways to have parents mediate, even if there are false allegations—maybe shuttle mediation would work. If it's a false allegation, as soon as an allegation is made, investigate it and find out if it's false and tell the person who is helping to make a parenting plan about it.

I agree with all three of the suggestions presented. In the case of abusive and controlling relationships the idea of "shuttle mediation" could be a good one, it would be safer for the woman, but likely not effective.

Quite a number of participants disagreed with any mediation, including shuttle mediation, being required when there is family violence because of the power imbalances between the parties, the lack of trust between parties, and because it would create too much pressure for the person experiencing violence.

Attend one mediation session before court, except in cases of family violence. There should not even shuttle mediation in those cases because of the power imbalance. I've seen it happen and the Judge/lawyers pressure the woman and ruin her process.

I would like it if there was someone to help mediate the situation and an entity that could help the parties, but not in abusive situations. In abusive situations there is no room for a cooperative approach because there's no trust.

8.2. Survey responses

In the first series of questions, survey respondents were asked identical questions to focus group participants. These questions were:

> 1) Should the FRA encourage cooperative or collaborative approaches for resolving family law matters?
> 2) Should the FRA require lawyers to tell their clients about options other than the courts for resolving matters related to separation and divorce?
> 3) Should the FRA require lawyers to inform the court that they have told their clients about other options for resolving their disputes?
> 4) Should the FRA say that parents should be encouraged to take a cooperative approach when deciding matters related to their children, like family law in Australia?

Almost all respondents said that the FRA should encourage cooperative or collaborative approaches to resolving family law matters (92%). Many (90%) also said that the FRA should require lawyers to tell their clients about options other than the courts for resolving matters relating to separation and divorce. Over 80% of respondents said that if lawyers tell their clients about other options for resolving disputes, the FRA should also require lawyers to inform the courts that they have apprised their clients of these options. Most respondents (88%) also wanted the FRA to say that parents should be encouraged to take a cooperative approach when deciding matters relating to their children.

Table 1: Encouraging cooperative approaches

Question	Yes	No	I don't know/ No answer
Do you think the FRA should encourage cooperative or collaborative approaches for resolving family law matters?	92.3%	7.7%	0.0%
Should the FRA require lawyers to tell their clients about options other than the courts for resolving matters related to separation and divorce?	90.4%	3.8%	5.8%
Should the FRA require lawyers to inform the court that they have told their clients about other options for resolving their disputes?	80.8%	11.5%	7.7%
Do you think that the FRA should say that parents should be encouraged to take a cooperative approach when deciding matters related to their children, as in the Australian Family Law?	88.2%	7.8%	3.9%

Respondents were also given space to make further suggestions for including options in the FRA to encourage cooperative approaches. Although very few respondents had further comments to make about different options, the majority of respondents who did comment felt that none of the options listed in the survey would be appropriate in cases where there is family violence. One respondent also highlighted the need for all involved in making decisions for Aboriginal people should learn about Aboriginal culture.

Encouraging cooperative approaches in matters relating to Children

Respondents were then asked to rate the importance of including specific statements in the FRA in order to encourage parents to take a cooperative approach when dealing with matters relating to children. Most respondents (90%) said that it is very important for the FRA to say that parents should take into account the best interests of the children when they make their own arrangements. Less than two thirds of respondents said that it is very important that FRA says that the courts should be used as a last resort.

Table 2: Which options would you like to see included in the FRA to encourage cooperative approaches to separation, divorce and associated issues?

Options	Not important	Somewhat important	Very important
Use the courts as a last resort in resolving issues	5.9%	33.3%	60.8%
To lessen present and future conflict by using an agreement	2.0%	23.5%	74.5%
Agree on matters relating to children	3.9%	13.7%	82.4%
Take responsibility for parenting arrangements and for resolving their parenting conflicts	4.0%	12.0%	84.0%
To take into account the best interests of their children when making their own arrangements.	4.0%	6.0%	90.0%

Mandatory mediation

Just over two thirds of respondents said that they think the FRA should require couples who are separating or divorcing to attend one mediation session before going to court when there are issues to be resolved, although 68% of respondents said that there are situations where the requirement to attend mediation sessions should be waived for the couple. Respondents provided examples of when the mediation should be waived, which will be set out below table 3. Three quarters of respondents said that they like the idea of shuttle mediation for cases were face-to-face mediation might not be appropriate.

Table 3: Mandatory mediation

Questions	Yes	No	I don't know/ No answer
Do you think the FRA should require couples who are separating or getting a divorce to attend one mediation session before going to court when there are issues to be resolved?	66.7%	27.5%	5.9%
Do you like the idea of shuttle mediation for cases where face-to-face mediation might not be appropriate?	74.5%	13.7	11.8%
Are there any situations where the requirement to attend a mediation session, whether it is face-to-face or shuttle mediation, should be waived for the couple?	68.0%	20.0%	12.0%

Respondents were also given space to state their opinion about when the requirement for mandatory mediation, whether it be face-to-face or shuttle mediation, should be waived. Several respondants suggested that mediation should be waived when one party sabotages the mediation process or when the parties are so conflictual that mediation would not be a useful approach.

> *Mediation should move to binding arbitration when mediation becomes sabotaged by one party.*
>
> *Whenever one of them feels that mediation is a ridiculous waste of time, which it usually is because the courts will give any mother a much better deal than she could possibly get in mediation, and the lawyers know it.*
>
> *Mediation should not be used when it is obvious that they are not going to agree to anything, where family violence has occurred, a power imbalance occurs and there is fear of the other person.*
>
> *When there is a lot of anger and hatred towards the other spouse.*

An overwhelming number of survey respondents also thought that the requirement for mandatory mediation should be absolutely waived when there is family violence for the following reasons.

Whenever a party is avoiding it - a number of women won't say, "I'm afraid of him and I don't want to mediate with him".

If the other parent has been violent to the other or to the child and seeing that parent would be too difficult to face

If there is violence, intimidation, threats...if one is being terrorized by the other. If there are huge power and control issues, threats to children.

Where there are reports of domestic abuse, the power imbalance between the two parties is too extreme to use mediation.

Several respondents suggested that this could be assessed through an interview with the parties or when one person desperately wants to avoid mediation or is fearful of meeting with the other person.

Mediation should be proceeded by an intake interview to assess suitability, if there are allegations of abuse or violence or if one or the other parent exhibits aggression, controlling or extreme behaviours in the initial interview or reports having done so within the last year.

A few respondents also thought that the requirement to mediate may be waived in cases where one party is emotionally or mentally incapable of representing themselves in the mediation process. Finally, several respondents thought that the requirement to mediate could be waived if the parents are able to reach an agreement in regards to the best interest of the children, through the use of a parenting plan.

Final thoughts on the use of Cooperative Approaches to resolve family law matters

The last two questions posed to survey respondents were: 1) are there any other exceptions that should limit the use of a cooperative approach to family law matters? 2) did they have anything further to add with respect to cooperative approaches and the FRA?

In response to the question about exceptions to the use of cooperative approaches, most survey respondents reiterated the points that a cooperative approach should not be used when there is family violence, mental instability that would render one party incapable of representing themselves, or if the parties were so conflictual that mediation would be a waste of time and resources. Below are some of their comments as to when cooperative approaches should be limited:

These approaches are never appropriate where there is violence or abuse. The threat and fear of harm and the inherent imbalance of power put the woman at a severe disadvantage.

The threshold of the mediators assessment should be that the two parties are able to participate on equal footing or that the process can assure that equal footing can be achieved within the mediation process. When one or the other party has contempt or complete disregard for the process.

Where one parent is making unfounded accusations toward the other parent. Where there may be mental instability.

When there are power dynamics, capacity issues, violence history.

When there is a high incidence of violence or mental instability that would render the process unapproachable.

When communication has irrevocably broken down or one parent is emotionally or mentally incapable of participating.

One respondent also suggested that the parties should always have access to a lawyer or mediator.

Always should have the option of having a lawyer/advocate

With respect to the final question posed to respondents, where they were asked to add any other suggestion or opinion about cooperative approaches and the FRA, several suggested that as long as the family law system is based on an adversarial approach it will be difficult to use cooperative approaches. Others highlighted the need for proper supports to be put in place to help parents get counseling, complete agreements and work through the issues of family break up.

As long as family court is entrenched in an adversarial approach family issues will be become exacerbated and generally made worse

Cooperation is great, when divorced couples manage to do it. However, one has to wonder why they got divorced if they were so great at cooperating. Generally, people divorce because they do not like/trust each other. Putting those people through a trial is like dousing a fire with gasoline. Putting them at risk of losing their children to the hostile other parent is torturous cruelty. The system is insane, really! Scrap it and start again with Equal Shared Parenting.

Ensure there is help for the parents in completing the agreements and that this help is available in a timely manner.

Again, measures that reduce or minimize emotions need to be found and implemented. Mediation, for example, is only effective if emotions can be managed.

I love the idea of cooperative, collaborative approaches but we need to look at the root and systemic causes to these issues. The system needs to address healing and community wellness and culture for this to take seed.

Make this information/service available to a community before there is a definite application for divorce/separation.

Finally, a number of family advocates and support workers again emphasized that cooperative approaches should not be required when there is family violence.

The problem with cooperative approaches is that there are huge problems with it currently. I've had women given legal advice that wasn't true by a family justice counselor (fortunately she took my advice and talked to a lawyer who confirmed my suspicions). I also see a lot of women who go through it and try to just "do what he says" so he'll stop being so abusive - the abuse doesn't stop and continues at access drop offs.

Awareness of the context of the relationship and the dynamics of power or control cannot be mitigated by exposing the individuals to an objective and neutral process. The process must have the capacity to recognize when cooperative approaches are not possible. In the case of one cooperative parent and one who is not, the parent should not be seen to have 'failed' if the other party does not engage in the process.

Just that when violence or the threat of violence is present cooperative approaches do not work. They may appear to be working when all parties are present but when a power imbalance exists between partners it will hamper carrying out the agreement.

No pressure to mediate when one partner has concerns for their or their children's safety.

9. Falsely accusing the other parent of abuse

In this chapter, we set out the recommendations provided by citizen experts with respect to the topic of falsely accusing the other parents of abuse. The chapter will first set out the recommendations of those with lived experience who participated in a focus group, and then provide the responses of family law advocates and support workers who responded to our online survey.

9.1. Focus group responses

The topic Falsely Accusing the Other Parent of Abuse, which was also referred to simply as False Allegations of Abuse, was chosen as a topic for discussion by four focus groups. One focus group chose it as their first choice for discussion, while two groups discussed it as their second choice, and one group discussed it as a third choice. In addition to those groups who chose it as a topic, meaning that they went through the information sheet regarding false allegations with the facilitator, there were other participants who brought up the topic of false allegations while discussing other subjects. This chapter incorporates the comments of both types of participants.

In our project, the issue of false allegations refers to the situation where one parent falsely accuses the other parent of abusing their children, even though they know it is not true. Focus group participants were told that this was different from situations where there is real abuse of a child by a parent and the other parent reports it, or where one parent honestly and reasonably believes that the child is being abused by the parent, but it is later determined that it is not true.

The *False Allegations of Abuse information sheet* then set out the current penalties in the criminal and civil law for those who make false allegations of abuse.

Criminal law penalties

The information sheet told participants that if one parent falsely accuses the other parent of abuse knowing that the accusation is not true, and they are found to be lying to the police and the court, they can be charged under the *Criminal Code of Canada*[7] with perjury, obstructing justice, or mischief.

7 *Criminal Code*, R.S.C. 1985, c. C-46, ss. 137, 139, 140

A parent who knowingly makes a false allegation of abuse against the other parent could also be charged with making a false report that a child is need of protection. Under section 14 of the *Child, Family and Community Service Act*,[8] a person who makes a false report that a child is in need of protection can be fined up to $10,000, be put in jail for up to 6 months or both.

Civil law penalties

The parent who has been falsely accused can also ask a Judge to find the other parent in contempt of the court. If the Judge finds that there is no evidence of abuse, based on expert reports, and that the parent intentionally lied, the Judge can give the parent a fine or put them in jail or both.

The falsely accused parent could also try and get money from the other parent by suing them in court. This means they would have to go to court and prove to a Judge that the parent who made the false claim of abuse purposely lied about it and that this harmed the falsely accused parent.

A Judge can also order the parent who lied about the abuse to pay the other parents legal costs, if it is found the accusations of abuse are not true.

The adequacy of existing criminal and civil penalties

Focus group participants were asked whether they believed the existing criminal and civil penalties outlined in the information sheet are adequate to address the situation where one parent falsely accuses the other parent of abusing their children in custody and access disputes. In considering these options, a number of participants first discussed the impact false allegations have on both the falsely accused and on children. Below are some of their views.

> *Courts should take violence seriously and false allegations—I experienced both. It's not uncommon to have false allegations against the spouse—it's so detrimental to be accused of sexually abusing the child. There was no more discussion after this, they want to win at any cost so they said it in front of one of these counselors. We have to nip this in the bud.*
>
> *Now that my husband is in jail the ministry is coming after me based on false allegations of abuse against me—it's based on hearsay.*

8. *Child, Family and Community Service Act*, R.S.B.C. 1996, c. 46, s. 14.

Facing the allegation made my child insecure—it's so bad emotionally for the child.

We should be taking punitive actions—shouldn't this woman go to jail for destroying all our lives? Going to jail is my recommendation. It's the fact that no one wanted to get involved—my impression of social services is they rule the process and there's no common sense.

I agree with X but would add two things. It's not just about children but also about a tool used regularly in court. It's a leveraging and devastating tool used to get what you want and to win and to crush. Anybody that is falsely accusing someone is abusing the child themselves and putting the child through a process when they are innocent—putting them through that process is one of worst kinds of abuse.

There were no criminal charges laid—it was a custody case and Judge says there was some abuse but they don't really know, and now I have to see my child under supervision. When a human being is finished a process like that, they have nothing because it's such a horrible accusation and it took years to talk about the issue. Once you're accused, you're done in. Family law is not working.

Of those who responded to the question of the adequacy of existing penalties, several participations thought that it might be useful to continue to have these options to address false allegations but wondered when they had been used, or how one would be able to prove that the accusations were false.

It's a nice idea—it's pretty hard to prove that someone maliciously accused. The concept is good but proving it is difficult.

It's amazing how many stories have been heard. Its pretty hard because it's one person's word against the other and it's guilty until proven innocent. When there are children involved, and allegation of abuse needs to be looked upon and investigated but if it's false, how do you prove that?

I've never heard of the other parent being charged for falsely accusing. The social workers, if there are false accusations, don't have the skill to know and the child will be interrogated until they say something. In my case my daughter was questioned for four hours nonstop. She was four and shook her head saying no.

Providing a mechanism in the FRA for addressing false allegations of child abuse

Many focus group participants who chose to discuss false allegations of abuse thought that the FRA should have a part that addresses false allegations. One participant thought that it should be included so one would need to turn to other 'systems', while another suggested that the penalty options in the FRA should parallel those found in the Criminal Code for perjury, mischief and obstructing justice.

A few participants thought that any section in the FRA addressing false allegations of abuse should relate not only to allegations of abusing children, but also to false allegations of abusing a partner.

Paying the entire legal costs of the falsely accused parent

Focus group participants were then asked whether the FRA should state; that when a Judge finds one parent has falsely accused another parent of the abuse of their children, the parent who made the false allegation should pay the legal costs of the accused parent. If participants agreed this should happen, they were asked whether the parent making the false allegation should have to pay the entire legal costs of the falsely accused parent or only part of their costs.

Of those participants who answered this question, one participant thought that the parent making the false allegation should be required to pay the costs of the accused parent, while another participant thought that jail and a fine would be more appropriate, since the consequences should be clear. A third participant highlighted the need for restitution:

> *Because it's an emotional thing for the parents who might lose their kid, the parent who has been falsely accused should be paid some money by the accuser they should be paid restitution.*

Other penalties for false allegations of abuse in the FRA

Lastly, focus group participants were asked if there should be any other penalties in the FRA for a parent who knowingly makes a false allegation of abuse of their children in custody and access disputes.

Although most participants did not have any further recommendations as to penalties for false allegations of abuse, quite a number of participants recommended that the FRA also address the issue of multiple unproven false allegations, the issue of history between the parties, and issues of evidence. Of those who did recommend further penalties, it was suggested that if the parent making the false allegations is the custodial parent, the custody should change to the falsely accused parent once the allegation is determined to be false, or the falsely accused parent should get extra time with the child. Another suggestion was a public apology, such as suggested by these participants:

> *There should be an apology to me and to the public, saying, 'I lied'.*
>
> *An apology is important because it sticks. The other day I talked to my son's mother and she accused me of falling off the wagon. I had a witness that said I wasn't, but that really affected me. She should be told to stop the slander.*

Several participants wanted the Act to set a limit of the number of times one parent can falsely accuse the other parent of abusing their children before the issue would be addressed by the courts. Some thought that a person should be charged after the first time a false allegation is made and proven to be false, while another thought the falsely accusing parent should have a psychiatric evaluation after the 5th or 6th time a false allegation is made and proven to be false.

> *There should be a limit. I've been accused falsely twelve different times and each time it has been disproven by the Ministry of Children and Family Services. Social workers have given her a warning for doing it because it is emotionally harming the children.*
>
> *If making knowingly false allegations, a warning should go out for next time.*
>
> *Knowingly, falsely accusing another parent is about revenge and control. The first time it happens should be the time when the penalties kick in.*
>
> *The law should have them do a psychiatric evaluation after fifth or sixth time, or something like that. Also, automatically take the custody from the parent who is doing the falsely accusing and give custody to the parent being accused after it is found to be false so many times*
>
> *The consequences should be denied access to their child, as a punishment. Also limit to their custodial obligations to their child. If they are capable of that* [false allegations]*, then can do much worse to their child. It's not about gender—whoever it is, they should be in supervised access.*

Several participants emphasized the importance of looking at the history between the two parents when considering allegations of abuse.

> *Judges look at family violence but do not look at the facts of the case. I just got off probation for false allegations. I had sole custody until he charged me with abuse. He's a vindictive ex and the past is not looked at.*

> *My husband accused me of assaulting him. Investigate more about what I did and how. He reported me when I wasn't home, saying that I assaulted him. He should be punished—jail, fines, probation, community service, emotional damages. I'm going through so much because of this lie. He has been abusive so many years, but he makes one phone call and they are believing him.*

> *They should consider false allegations as abuse—they should look at the history of false allegations.*

Finally, a few participants discussed the need for the parent making the allegation of abuse to provide real evidence to support the claim, as well as the need for lawyers to be held accountable for when they know an accusation is false but proceed anyway. One suggestion was for the FRA to require lawyers to advise their clients of the ramifications of falsely accusing the other parent of child abuse and the penalties they would face.

> *A lot of times allegations are laid in court that are false—her point is that right now a person lays an allegation and even though they lay the allegation I have to prove my innocence. The person who is laying allegations should provide enough evidence to the court that it has happened. Her ex husband made an allegation against her that she was going to poison her own son. The onus should be on him to provide evidence that she was going to poison her son.* [translation]

> *What I desire is the Act to be changed to require: that accusers must be duly diligent in ensuring that accusations are valid; that they will have to have made a reasonable effort to determine the validity of accusations prior to making them; that the Court system will NOT act on the basis of unfounded accusations that have not been investigated fully and fairly by the accuser, by the police, and by the Social Workers vested with the responsibility of making such investigations; that any person making an accusation, without having been duly diligent, should suffer consequences.*

> *Part of it is lawyers who use false allegations as a strategy to get them* [the other parent] *custody—they exaggerate it to win the case. Lawyers are using these opportunities to help the interest of their client. They should be barred from practicing law and should be suable. There should be an independent body who investigates these lawyers so they will be absolutely careful about what they are doing.*

It's the responsibility of lawyers to ensure they are not swearing knowingly false affidavits. When a false allegation is proven to be false, then the lawyer is on the hook for it.

Parental Alienation and False Allegations: There should be severe penalties for parental alienation and for making frivolous charges, and it should be the responsibility of legal counsel to point out the penalties for making such accusations or charges, such as a denial of child access or custody.

9.2. Survey responses

Like focus group participants, family advocates and support workers were asked: whether they thought existing criminal and civil penalties were adequate for addressing false allegations of abuse, if the FRA should state that the parent who makes the false allegation should pay the legal costs of the other parent, and if the parent making the false allegation should pay the entirety of the accused parents legal costs or just part of the costs.

Half of the respondents were unsure if existing criminal and civil penalties are adequate to address a situation where one parent is falsely accused of abuse of their child in custody or access disputes. This may be due to respondents not having enough familiarity with existing penalties or needing more information about the existing criminal and civil penalties. Almost three quarters of respondents said that the FRA should set out that when a Judge finds one parent has falsely accused another parent of the abuse of their children, the parent who made the false allegation should pay the legal costs of the accused parent.

Table 1: Penalties for falsely accusing the other parent of abusing their child

Question	Yes	No	I don't know/ No answer
Are existing criminal and civil penalties discussed in Part A of the Information Sheet (Page 4-5) adequate to address the situation where one parent falsely accuses another parent of abusing their children in custody and access disputes?	30.6%	18.4%	51.0%
Should the FRA set out that when a Judge finds one parent has falsely accused another parent of the abuse of their children, the parent who made the false allegation should pay the legal costs of the accused parent?	71.4%	16.3%	12.2%
If costs are ordered, should the person who made the false allegation pay the entire legal costs of the falsely accused parent?	59.2%	22.4%	18.4%
If costs are ordered, should the person who made the false allegation pay only part of the legal costs of the falsely accused parent?	12.5%	66.7%	20.8%

Survey respondents were also given space to suggest any other penalties they thought should exist for a parent who knowingly makes a false allegation of abuse against another parent in custody and access disputes. Many of the respondents emphasized the need for the penalties to be the same as those used in the criminal courts for perjury, including fines and jail time. Other suggested loss of custody, publishing of a public apology, mandatory parenting class, counseling, community service hours and a permanent record. Two respondents thought that they should be sued for slander or libel, while one suggested fraud charges be brought. One respondent thought that no penalties should be enforced as it makes everything "more ugly".

When asked if there was anything else they would like to add with respect to how the FRA should deal with false allegations of abuse, quite a number of respondents emphasized the need for there to be differentiation between those times when a parent knowingly and

maliciously makes a false allegation and times when a parent makes an allegation because they reasonably believe that their child is being abused, but after an investigation it is found either not to be true or there was not enough evidence to find the other parent guilty of abuse.

> *Knowingly is different than being found to have made false statements…if the evidence is not strong enough it does not mean that it did not happen.*
>
> *Well … it would depend on the severity of the false allegation—the standard ought to be reasonable. If it can be shown to be unreasonable, then it would depend.*
>
> *I worry that false allegations are not as cut and dry as the AG and others believe. In most instances deliberate false accusations stem out of mental health issues, cultural issues or other barriers. The reason for the false allegation needs to be clarified before applying a penalty.*
>
> *We should not just be assuming that the allegations is false but trying to do in-depth assessment of where the allegation coming from, and the ministry should be involved.*
>
> *An allegation should only be deemed to be false if the direct specific information is negated by concrete evidence and not if the person has only failed to make their case.*
>
> *My concern is about making this black and white. A parent may sincerely believe that abuse has taken place, yet it cannot be proved.*
>
> *False allegations are a difficult marker in that the "evidence" is not always cut and dried or straightforward. Sometimes the police may not have evidence (ie as in the vast vast majority of the sexual abuse disclosures I have heard where the crown does not proceed with charges because it is the child's word against the word of the adult and there is not enough evidence to convict) but the allegation would not be considered "false" by those well connected to the child. This happens in physically and emotionally abusive situations as well where either the Ministry for Child and Family Development says that the mother has the responsibility to not send a child into a situation the mother may feel is dangerous to the child, but MCFD may not be willing to investigate based on her word alone because of the dispute (common), and police again cannot gather enough evidence for the crown to proceed with conviction (often happens with abuse to the woman as well). In these situations the parent seeking legitimate protection for their children or raising legitimate concerns could be determined to be "falsely" accusing and castigated further.*
>
> *Knowingly yes* [there should be a penalty] *my concern is that the accused person be found not guilty due to lack of evidence and they could really be abusive. It would have to be proven that the person willfully accused, knowing that no violence occurred.*

Other respondents used the space to state that false allegations need to be taken more seriously by the family justice system. There were several suggestions for creating deterrents or supports when parents are in conflict during the separation and divorce, as well as the need to put limits on the number of times false allegations can be made by the same parent, particularly if it is obvious that they are being made maliciously or due to other factors such as mental health issues.

> *This needs to be taken extremely seriously, as the lack of current consequences have completely undermined the family justice system. Serious penalties need to be applied to stop false allegations, as this is a tactic frequently used to separate fathers from their children,*

> *Why, is something actually going to change? Someone is actually going to be held to account for a false accusation? It's never happened before, but I guess there is always a first time.*

> *When people are hurting they automatically want to hurt other people, this is human nature. Perhaps this all should be discussed immediately upon trying to help feuding parents.*

> *Review access orders and go back to mediation.*

> *Having deterrents in place to prevent false allegations of abuse*

> *If the children are of an age they should be interviewed by highly trained and skilled people to establish their understanding of what is happening to them.*

> *Common sense sometimes seems to be the missing factor (ie. when a parent is not permitted into the court without a sheriff present, appears to many to be mentally unstable, the parent represents themselves, and can continue to bring motions forward tying up the courts and the other parent's time seemingly without repercussion.) Limits to this would seem very appropriate.*

10. Spousal support

In this chapter, we set out the recommendations provided by citizen experts with respect to the topic of spousal support. The chapter will first set out the recommendations of those with lived experience who participated in a focus group, and then provide the responses of family law advocates and support workers who responded to our online survey.

10.1. Focus group responses

Two focus groups chose to discuss spousal support as a topic, with one group choosing it as their first priority for discussion and one focus group choosing it as a fourth priority for discussion. One person also wrote in responses to this topic via email.

Besides the focus groups that chose this as a topic for discussion, no individuals from other focus groups commented on spousal support while discussing other topics. This was likely due to there being less overlap between issues relating to spousal support and issues brought up in other topic areas. Also, it may be the case that many focus group participants did not have personal lived experience with spousal support, since comments to this effect were made in several focus groups during the choosing of topics for discussion.

Although there was limited discussion of spousal support by focus group participants, many participants indicated they would have liked the opportunity to discuss child support and were disappointed that it was not part of the Ministry's review, at this time, nor a part of SPARC BC's project.

Part A: Reasons for spousal support

For those focus groups that chose to discuss this as a topic, the information sheet *Spousal Support* outlined that when a couple's marriage or relationship ends, the FRA requires spouses to be able to support themselves, unless there are certain reasons why they cannot. Section 89(1) of the FRA sets out reasons why one spouse may need to provide spousal support to the other spouse.[9] These reasons include:

9. Section 89(1) of the *FRA* specifically provides that a spouse is responsible and liable for the support and maintenance of the other spouse, based on the following reasons: the role of each spouse in their family;
an express or implied agreement between the spouses that one has the responsibility to support and maintain the other; custodial obligations respecting a child; the ability and capacity of, and reasonable efforts made by either or both spouses to support themselves; economic circumstances.

- The role of each spouse in the family
- An agreement the spouses made that one spouse would be responsible to support and maintain the other
- The ability of either spouse to support themselves
- The economic situation of the spouses

Participants were then told that if a couple cannot reach agreement, then they can ask a Judge to decide about spousal support. A Judge can make this decision based on three reasons and none of the reasons are given more weight than another by the Judge. The three reasons are:

- Compensation
- Financial need
- One spouse agreed to support the other spouse

Participants were then asked whether they thought spouses should be entitled to spousal support for so many reasons, as outlined in the FRA.

Very few participants from the two focus groups answered this question. Of those that did, they thought that there should be a variety of reasons for giving spousal support because it would take into account different circumstances. One focus group participant also mentioned that cultural circumstances should be taken into account when determining spousal support.

Another participant thought that a Judge should not consider previous agreements made regarding spousal support, nor should they consider implied agreements. They thought both should be considered null and void, as in the case of other contracts in law.

Option 1: Spousal support advisory guidelines draft

Participants asked what they thought of the option of having the *Spousal Support Advisory Guidelines Draft* created by the federal government, used alongside or put into the FRA. Only one participant commented on this option for reform, stating that they thought that there should be specific guidelines with respect to each case rather than a general set of guidelines.

Option 2: Compensation model and then financial need

Focus group participants were then asked whether spousal support should be decided first on the basis of the compensation model and then on the basis of financial need. Several more participants provided commentary on this question, with the majority highlighting financial need as more important because it would protect the family, and because it recognizes that both spouses likely work outside the home.

> *Financial need should be most important and not necessarily compensation.*
>
> *Financial need because times have changed and it's not like it used to be since both spouses may work outside the home.*

One participant suggested that the refusal to continue sponsorship for immigration by one spouse be ordered when assessing financial need.

> *My husband refuses to sponsor me for immigration. As part of financial need, I would like that in there. I can't work, so this support should be provided.*

Other participants thought that compensation should be considered first since it would allow the spouse to be provided for based on what they put into the family and how this might have created financial disadvantage for them in relation to the other spouse.

> *She likes the compensation model—because it is a big part of what happens. She likes this because she put all her life for family, children and husband and doesn't think about herself. They pocket money for family. She was really deep hurt after family broke down—her husband made many tricks to hurt her again.* [translation]
>
> *There should be compensation for physical and mental abuse. They don't follow through the order to pay and they still don't want to pay.*
>
> *She said that she had a very similar experience. He sponsored her to come to Canada but didn't allow her to work, didn't give her support. Now she is suffering from physical illness and can't get a job for sure so she thinks that they should include this—she should get compensation. Now he retires but says there is no money to pay for spousal support and he is trying to hide his financial situation. His lifestyle now is proof that he has money somewhere other than in X.* [translation]
>
> *She thinks it is very important for the Judge to handle this kind of situation - when he is trying to hide away financial situation and not meeting the responsibility for spousal support— they should enforce them to do the responsibility and pay the compensation.* [translation]

Option 3: Reasons for being Entitled to spousal support

The final option under part A suggested that some of the reasons for providing spousal support could be taken out of the FRA, and instead give only one reason priority. Participants were asked which reasons, from those set out below should be kept in the FRA.

- To compensate for spouse's roles in their relationship
- To compensate for the role played by a spouse, but only if their role caused them financial disadvantage
- To lessen a spouse's financial need in all cases, even if it is not caused by the relationship or the relationship ending
- To lessen a spouse's financial need only in certain cases, such as a disability or illness

Participants were also asked whether one of the reasons should be more important than another for determining whether a spouse get spousal support. One participant thought that all reasons for support should be in the FRA to meet the circumstances in different families. A larger number of participants thought that compensation should continue to be kept in the FRA for a variety of reasons.

> *I think that compensation is most important for me. If my husband didn't give me any hardship then I could work and make my own. I don't care to receive support but because he didn't take responsibility, that gives me hardship. It's of secondary importance for the other factors* [to be included for spousal support].

> *Compensation should be given to the spouse when a person is hiding property, but give less and less as time goes on. Punish him for not being honest.*

> *Amount of time that a person is married is factored in—this is a good guideline. If children involved. it's a completely different thing because she's taking responsibility for them.*

Another participant thought that compensation for a spouse who stepped out of the workforce should be very limited.

> *In the case of a spouse stepping out of the work-force from an established career, then I would suggest that the support be awarded for one year or less and that it be terminated when the career has been resumed for more than six months (the typical probation period for most jobs).*

Several focus group participants commented on disability as a reason for spousal support, with one participant stating that disability should be a reason for support, especially with children involved. Another thought that disability could be a reason to give spousal support but that this would need to be independently evaluated and evaluated on an ongoing basis. They also thought that if the support payor became disabled, all support payments to the spouse should cease. Several other participants thought paying support based on disability should be conditional, based upon whether the disability was caused by the spouse or whether the disabled spouse was the one choosing to leave.

> *Yes, if there is a disability they should get spousal support, especially if children are involved.*
>
> *If a supported spouse is claiming disability they should have to qualify at their own expense by means of a functional capacity audit and an independent medical examiner providing substantiation of the claim and ongoing evaluations on a regular basis. If they qualify then they should be allowed to claim the full amount of spousal support that would have been paid normally and the disability payment and subsequent monitoring should be the responsibility of the CPP program or the disability insurance program of the company that the supporting spouse works for. If the spouse who is obligated to pay support becomes disabled then his obligation to pay should be suspended immediately and the support payments should come from the disability insurance program and be adjusted accordingly.*
>
> *Yeah, but then consider the reason for the just cause for the separation. I don't want her to leave but she leaves me and she is disabled—so I should not be responsible to pay support.*
>
> *It has nothing to do with the spouse unless they are crippled by spouse. This can be abused, because why shouldn't they look for a full time job.*

Part B: Spousal support continuing after the death of support spouse

Participants were then told that currently the FRA does not say whether a child or spousal support order should continue after the spouse paying support dies. The Spousal Support information sheet then suggested some of the advantages and disadvantages to continuing to take spousal support from the support payor's estate, once they have died.

Focus group participants were then asked whether they thought it would be useful to include a provision in the FRA that clearly allows Judges to make support orders binding on the estate of the spousal support payor. Several focus group participants thought that the

FRA should have such a provision since the spouse and children might continue to need the support, and because they considered it the payor's ongoing responsibility.

> *I think that if payor dies, the money still should go to the spouse and then the spouse could say what would happen to the money. They can get it back to the children—this should continue regardless of the age of the children.*
>
> *If the support is still available, they should pay support after they have died—it is their responsibility. They could plan it very well that if they die the government has to give money from the estate they owned to the woman.*

Others thought it depended on the circumstances involved, including whether smaller children were involved or whether the payor spouse was with a new family.

> *It would depend on the age of the children—once children leave home, the spousal support should stop if the children are older.*
>
> *Spousal support should stay until children are eighteen—the age of the kids matters.*
>
> *In the case where you are alone, and the ex spouse dies and has children—the whole estate should go to the family. But if the ex-spouse starts a new family, then the support should not go to that original family.*

Others disagreed with the idea of having spousal support continue after the payor dies. One participant wrote of their experience with spousal support and how having such a section in the FRA might have impacted them negatively.

> *This simply takes away the motivation to accumulate an estate. Why should there be an expectation of continued support or compensation for support from the estate? Who is available to represent the dead persons interests in this case? Recognize that there needs to be a reasonable period of re-building after a marital breakdown,—make each party responsible for that re-building process to the extent that they are capable, but beyond that make each party responsible for their own lives. My experience was a case in point. I was assessed one year of support for every year of marriage (22 years obligation in total). If support would have been binding on my estate—if I was to have died after the first year of divorce then my entire estate would have been given to her. What would be the purpose of any kind of a split of assets? I had to fight for a 50/50 split which cost both of us dearly. The other part of the problem is that there is too much game-playing (deception) with the present law. My former wife maintained a separate residence although she was virtually living with her new boyfriend. By doing this she was able to continue to receive support payments (it was worth whatever she paid for in the 'bedroom' in her friend's home). In the meantime she went on all expense paid (at my expense) holidays with her*

> *boyfriend to Mexico and who knows where else. I continued to work 60 hours per week virtually enslaved to her. So in this case if I would have died the support would have been automatically awarded through the estate with no questions asked about her marital status or any other possible future considerations that may have altered the need for support and/or generated a change of circumstance (and nobody to represent and protect my interests in these matters). This just represents another way of the legal system having access to the proceeds of the estate and another bone of contention to fight over in the courts. Also, with the estate becoming part of the entrenched support payments I would have been worth more dead than alive. Kind of like having a bounty placed on your head.*

The last question posed to focus group participants was, if Judges are allowed to make support orders binding on a payor's estate, should the FRA include a way to balance the competing interests of a spousal support recipient and other beneficiaries with a right to the payor's estate. The participants were then provided with possible ways that competing interests might be balanced, which are provided below:

- Limit the time that a support order can bind the payor's estate
- Make a binding support order subject to change if relief is later awarded out of the payor's estate to other beneficiaries under the *Wills Variation Act* [10]
- Allow the personal representative of the payor's estate to apply to vary a support order
- Other options

Three focus group participants commented on this question, with one stating that the person getting support should continue to get it regardless, with another suggesting that the spouse should come first before children or others since they may continue to care for the children. The other participant thought the decision should be made based on who has the greatest need to the payor's estate.

10. *Wills Variation Act,* R.S.B.C. 1996, c. 490.

10.2. Survey responses

Part A: Reasons for spousal support

Questions posed to family law advocates and support workers about spousal support were identical to the options presented to focus group participants for comment. In response to questions about the reasons for spousal support, almost half thought it was not a problem that spouses were entitled to spousal support for a variety of reasons. However, almost half of the survey respondents seemed to be unfamiliar with the *Spousal Support Advisory Guidelines Draft* developed to go along with the *Federal Divorce Act* draft guidelines. Over a third of the respondents were unsure if spousal support should be decided on the basis of a compensation model first and then on the basis of financial need, with those having an opinion about it being split between a yes or no.

Table 1: Participant responses to questions about spousal support

Questions	Yes	No	I don't know/No answer
Do you think it is a problem that spouses are entitled to spousal support for so many different reasons – e.g., to compensate for the advantages and disadvantages of the relationship; to lessen financial "need", etc.?	26.5%	49.0%	24.5%
Do you think about the Spousal Support Advisory Guidelines Draft developed to go along with the federal Divorce Act are useful?	46.9%	8.2%	44.9%
If you thought Spousal Support Advisory Guidelines Draft were useful, do you think they should be kept as guidelines to go along with the FRA or become part of the FRA, which would make them into provincial law?	48.9%	8.5%	42.6%
Do you think spousal support should be decided on the basis of a compensation model first and then on the basis of financial need?	31.3%	33.3%	35.4%

Respondents were then asked to rate the importance of different reasons for providing spousal support, if the FRA was to continue to have a list of reasons. Half of the respondents felt that it is very important that spousal support be given to compensate for spousal contributions to the relationship. More than half of the respondents disagreed with the notion that there are no reasons that spousal support should be given.

Table 2: Reasons to continue spousal support

Reason	Not important	Somewhat important	Very important
Spousal support should be given to compensate for spousal contributions to the relationship (e.g., their role in the relationship)	6.5%	41.3%	52.2%
Spousal support should only be given if the spouse's role negatively affected their ability to financially support themselves	20.5%	50.0%	29.5%
Spousal support should be given regardless of whether or not the spouse's role in the relationship negatively affected their ability to financially support themselves	31.8%	40.9%	27.3%
Spousal support should be given to lessen spousal need	15.6%	37.8%	46.7%
Spousal support should be given in all cases, even if the need is not caused by the relationship or its breakdown	54.8%	21.4%	23.8%
Spousal support should only be given in exceptional circumstances (e.g., disability; serious illness)	53.3%	33.3%	13.3%
There are no reasons that spousal support should be given	76.9%	12.8%	10.3%

Survey respondents were also given space to suggest other reasons for providing spousal support. There were various responses given including poverty of the spouse, abuse and cruelty, and the response that:

> *No one should receive spousal support given our modern welfare state. Nobody starves. Nobody needs spousal support.*

Part B: Spousal support on a payor's estate

Respondents were then asked what they thought of having a provision in the FRA that would allow Judges to make support orders binding on a payor's estate. Almost two thirds of respondents said they would like the FRA to include such a provision. Half of the respondents also agreed that the FRA should include a way to balance competing interests between a spousal support recipient and other beneficiaries of the estate, if a Judge was allowed to make a support order binding on the payor's estate.

Table 3: Continuance of spousal support after the death of spousal support payor

Questions	Yes	No	I don't know/ No answer
Do you think it would be useful to include a provision in the FRA that clearly allows Judges to make support orders binding on the estate of the spousal support payor?	60.4%	12.5%	27.1%
If Judges are allowed to make support orders binding on a payor's estate, should the FRA include a way to balance the competing interests of a spousal support recipient and other beneficiaries with a right to the payor's estate?	52.2%	13.0%	34.8%

Survey respondents were then asked how the FRA could balance the competing interests of the spouse receiving support and other beneficiaries with a right to the support payor's estate. In each case, only half of respondents thought the options were somewhat important for balancing the interests to the support payor's estate.

Table 4: Balancing interests to the support payor's estate in the FRA

Option	Not important	Somewhat important	Very important
Limit the time that a support order can bind the payor's estate	13.2%	47.4%	39.5%
Make a binding support order subject to change if relief is later awarded out of the payor's estate to other beneficiaries under the *Wills Variation Act*	10.8%	51.4%	37.8%
Allow the personal representative of the payor's estate to apply to vary a support order	10.5%	50.0%	39.5%

Family law advocates and support workers who responded to the survey were also asked to provide any further recommendations or comments with respect to spousal support and the FRA.

There were very few comments provided, especially in comparison to other topics where advocates and support workers provided extensive commentary. Of those that did comment on this topic, two did not like the idea of providing spousal support except in exceptional circumstances or as a one time payment. One respondent commented that there should be a time limit to the payment of spousal support, while another thought that the law should be clearer about cases where the person receiving support remarries or enters into a relationship with someone else. There was one respondent who thought that spousal support should always be given to meet the needs of the spouse who has the children.

Generally speaking I do not support spousal support. Having a relationship with someone does not, nor should it, entitle someone to a "lifestyle they have become accustomed to". In exceptional circumstances, such as a disability or major contributions to the other spouse's career or education, a time limited spousal support arrangement may be deemed fair but not for an extended period. Contributions to the marriage, or such circumstances as disability, may be better dealt with in a one-time settlement. I would favour a settlement which aids in creating independence rather than one which creates dependency.

Spousal support laws are un clear when the person receiving the support is living in a new common-law relationship and being supported in that relationship financially) (and reserving support from an ex husband)

I think in cases where the Judge finds spousal support necessary due the role of the one spouse, I believe the support should have a time limit attached. In that time frame, the spouse receiving the support has the opportunity to enhance their financial situation.

Spousal support should always be there to support to fill the need with the spouse and the child

11. Higher conflict families and repeat litigation

In this chapter, we set out the recommendations provided by citizen experts with respect to the topic of higher conflict families and repeat litigation. The chapter will first set out the recommendations of those with lived experience who participated in a focus group. The second section reports on the survey responses provided by family law advocates and support workers.

11.1. Focus group responses

Only one focus group chose to discuss higher conflict families and repeat litigation as a topic, with little to no commentary provided by participants who chose to discuss other topics. Thus, the scope of the feedback on this topic area from those with lived experience is limited to a few participants.

In the *Higher Conflict Families* information sheet, information was provided to focus group participants about how some people misuse access enforcement applications to require the other parent to go to court multiple times over trivial or unmeritorious complaints. Focus group participants were then told about the meaning and operation of mandatory leave requirements.

Option 1: Imposing a mandatory leave requirement

Focus group participants were asked two related questions:

1. Should the FRA include a provision that would permit the court to impose a leave requirement (including on its own motion) on litigants who bring unmeritorious or trivial complaints in family law cases?
2. If yes, should the leave requirement be automatically triggered after two access enforcement applications are found to be either unsubstantiated or too trivial to warrant a sanction by the court?

In response, several participants stated that they thought the court should be able to impose a leave requirement. One participant agreed that a mandatory leave requirement should be automatically triggered after two unsubstantiated or trivial access enforcement applications while another thought that it should occur after three. The second participant also thought

that something further should be done to deal with the issue.

> *Adding a Mandatory Leave Requirement is a positive change to the FRA, although I think that it should occur after TWO unnecessary access enforcement applications.*

> *They are doing it to break you down. Put a limit on it and have them pay some fees. If it happens three times, the Judge could make a mandatory leave requirement. It still has to go somewhere but move it beyond the Judges.*

Option 2: Giving Judges the option to make costs orders when parents use the courts improperly

The second option suggested to focus group participants was for the FRA to give Judges the option of making a costs order when parents use the courts to bring unsubstantiated or trivial access enforcement applications. The Judge could order that the parent bringing the bad faith access enforcement application pay the full or partial legal costs of the other parent.

Although most focus group participants who considered this question thought that the Judge should be able to impose a sanction on parents who misuse access enforcement applications, only a few thought that ordering costs would be effective.

> *It's a scary thing, she is the one that loses. Should he have to pay your court costs? He should have to pay it all.*

> *I also agree with giving Judges the option to make cost orders. Hopefully this would serve as a deterrent.*

Many other participants did not think ordering costs, on its own, would achieve anything, especially if the parent misusing the access enforcement application had no money. Many suggested that the parent misuing the application be ordered to take a course, lose visitation, or that there would be a list of things a Judge could impose, depending on the situation.

> *If he brings it three times it should be a cost to him; but what if he has no money and the costs don't matter. What if they have legal aid and can't pay their own costs?*

> *I'm torn. From my situation, he went bankrupt and didn't have to pay a dime. Instead of financial penalties you need to be given a reprimand. Three times and that's it. Criminal charges should be given because it was inhumane how I was treated.*

Go beyond costs. I'm still suffering depression from this. They should bring criminal charges and then he'd have a record, and when the Judge checks him out it shows harassment through the courts. Jail would be great—he shoud be charged because money doesn't work.

Would he go to jail or do community service? He should pay the cost of the court every time and also he should get jail; Or he should donate to domestic violent centres. It makes me really tired when I have to go to court so many times—it breaks you to get custody because of the issues.

How much can a person take? They need to become more humane. They should have to take a court ordered course, a human relationships course, anger management course, or family violence course. Jail is too much—maybe pay spousal and child support—it would depend on the circumstances.

Have them go do a course or change a visitation. Have court workers to work with the situation. Get a call with social services. We take all these courses and the ex doesn't have to do anything—it's tormenting. Have a list of options since each case is different.

11.2. Survey responses

Imposing a leave requirement on repeat litigants

Just like focus group participants, family law advocates and support workers were asked whether the FRA should have a provision that would allow a court to impose a leave requirement on litigants who bring unmeritorious or trivial complaints in family law cases. Less than two thirds of respondents said that the FRA should allo a court to impose a mandatory leave requirement on repeat litigants. Over one third of respondents said they were unsure, and a small percentage said the FRA should not allow a court to impose a mandatory leave requirement.

Table 1: Imposing a leave requirement on repeat litigants

Responses	%
Yes	60.0
No	6.0
DK/NA	34.0

Survey respondents were then asked, if a court could impose a leave requirement when should this be triggered? Over half of the respondents who said a leave requirement should be imposed felt that this should happen after two access enforcement applications are found to be either unsubstantiated or too trivial to warrant a sanction by the court. A quarter of respondents said this should happen after one trivial or unmeritorious access enforcement application.

Table 2: Automatic triggering of a leave requirement

When should a leave requirement be triggered?	%
After one access enforcement application is found to be either unsubstantiated or too trivial to warrant a sanction by the court	25.8
After two access enforcement applications are found to be either unsubstantiated or too trivial to warrant a sanction by the court	51.6
After three or more access enforcement applications are found to be either unsubstantiated or too trivial to warrant a sanction by the court	9.7
Other	12.9

Addressing access enforcement applications brought in bad faith

Family law advocates and support workers were asked: beyond allowing a court to impose a mandatory leave requirement, should the FRA deal with access enforcement applications brought in bad faith and if so, how? Almost three quarters of respondents said that the FRA should address access enforcement applications brought in bad faith, although 10% of respondents said that the FRA should not. About one fifth of respondents were unsure.

Table 3: Should the FRA address access enforcement applications brought in bad faith

Answer	%
Yes	60.0
No	6.0
DK/NA	34.0

Many respondents who agreed that the FRA should address access enforcement applications brought in bad faith thought this should happen through a costs order (81%). Almost 70% of respondents also said that a warning from the Judge would be a way of addressing such applications. Less than half of respondents said that a fine would be appropriate.

Table 4: How should the FRA address access applications brought in bad faith?

Options for addressing bad faith applications	%
A warning by the Judge	69.4
Community Service	27.8
A fine	44.4
A jail term	5.6
Require the person who brought the application in bad faith to pay the other parent's costs for coming to court	80.6
Other	13.9

Family law advocates and support workers were also given space to make other suggestions as to how the FRA could address access enforcement applications brought in bad faith. Two respondents recommended that there be a sliding scale of penalties, dependent on how many times an access enforcement application is brought in bad faith. Another recommended that the definition of 'bad faith' be clearly defined in the FRA and mutually understood under the FRA.

Other recommendations

Finally, survey respondents were asked if they had any other recommendations for resolving or preventing access disputes in higher-conflict families, resulting from trivial or unmeritous access enforcement applications. Many respondents highlighted the need for counseling, courses and mediation, to be offered to parents to help them deal with emotions and resolve issues.

> *Binding arbitration supported by counselors who work with the underlying emotional issues. Currently we have a legal intellectual system that stresses positions and ignores the underlying emotions. Of course things get worse in such a system.*
>
> *Sit with the mother and father and other extended family members to make good sound decisions.*
>
> *Again, people will engage in this less if they are managing their emotions. Why not find ways to do this rather than imposing consequences—which is the law enforcement, usual way of responding to undesirable human behavior.*
>
> *A support program should exist, with counselors and mediators available to work through the issues with divorced parents.*
>
> *More parental education and mediation services for both parties.*

One respondent thought that in addition to the supports mentioned above, the risk or history of family violence should be considered with custody and access. Another respondant thought that access should be denied, and courses and counseling should be ordered by a Judge.

> *Consider family violence history or risk of family violence when considering custody and access. Have more specific access agreements and parenting coordinators, or other alternative measures to court, that parents are accountable to.*
>
> *Suspend access for a period of time and enforce counseling, anger management, mediation in the interim, with a report to the courts when it is felt access is now in the best interests of the child.*

Several respondents thought that there should be alternatives to the current system to deal with high conflict families. One respondent suggested a separate court for high conflict families, while another thought bad faith access enforcement applications should become an offence under the FRA. A third respondent thought that there should be people who specialize in dealing with high conflict families. Another respondent recommended equal

shared parenting as a way to prevent or reduce conflict.

> *A separate court for families where violence or higher conflict is a precipitating factor.*
>
> *Have people who specialize in high conflict families, to help them [*the parents] *deal with the issue about best interests of the child*
>
> *There wouldn't be any access disputes if we had Equal Shared Parenting. That's good a "resolution" for the problem, isn't it?*

Another recommendation was to not only allow the ordering of costs, but also educate parents about what would happen if they misuse access enforcement applications. This respondent also thought there should be more legal aid if the costs orders are extended to provincial court.

> *If Judges were to be allowed to order costs in the case of an access enforcement application without reason, very clear information would have to be made available so that people are aware of the law and how it would be applied. Perhaps a financial penalty would only be levied after a certain number (2?) of unreasonable applications. Perhaps getting costs could also be extended to Provincial Court, but with more resources for legal aid, etc.*

Finally, one respondent highlighted the need for caution regarding the term 'bad faith' when dealing with access enforcement applications.

> *The problem with "unmeritous" or "bad faith" —I worry that abuse will continue against children because parents will be too afraid to bring forward something that might be without merit, or a Judge to interpret a genuine concern as acting in bad faith.*

12. Giving parenting responsibilities to non-parents

In this chapter, we set out the recommendations provided by citizen experts with respect to the topic of giving parenting responsibilities to non-parents. The chapter will first set out the recommendations of those with lived experience who attended our focus groups, and then provide the responses of family law advocates and support workers who responded to our online survey.

12.1. Focus group responses

Only one focus group chose this topic as their first discussion priority. Using the information sheet entitled *Giving Parenting Responsibilities to Non-Parents*, participants were told about the important role of non-parent adults in children's lives. Non-parents were described as grandparents, relatives, and close family friends who do not have guardianship or custody of a child. The information sheet then outlined how non-parents can be given parenting responsibilities under the FRA. The first way is for a non-parent to apply for custody of the child under s. 35 of the FRA,[11] which states any person can make an application to the court to have custody of a child. The second way is for parents to appoint a non-parent to be their child's guardian in their will.

Focus group participants were informed of some options for reforming the FRA with respect to giving parenting responsibilities to non-parents. It should be noted that several of the recommendations provided by the focus group participants did not relate to the specific options for reform provided in the *Giving Parenting Responsibilities to Non-Parents* information sheet. Many of their recommendations related better to other topics and have been included elsewhere. Thus, there are limited recommendations for this area of FRA reform from those with lived experience of family law in British Columbia.

Option A: Making it easier for people to appoint a testamentary guardian

It was explained to participants that many parents often do not make a will because: a) they do not think about it; b) they do not have property and so think that a will is not needed; c) because they cannot afford the time and expense of creating a will. If a will is not created,

11. Section 35 (1) of the *FRA* specifies that a court may order that one or more persons may exercise custody over a child or have access to the child, if an application is made. This is subject to s. 35(3), which states that if a person has not received notice of a proceeding or has not been given an opportunity to be heard in the proceeding, custody must not be granted to that person. Under s. 35(1.1) it states that a person who can apply for and receive custody of a child under s. 35 (1) includes parents, grandparents, other relatives of the child and persons who are not relatives of the child.

this means that parents may not have appointed a testamentary guardian. As one option for helping parents appoint a testamentary guardian, participants were asked if the FRA should allow parents to appoint a testamentary guardian using a simple form that they write-up, date and sign.

Two participants in the focus group that considered the topic, giving parenting responsibilities to non-parents, related how important it would be for them to appoint a testamentary guardian for their child. However no one in the group commented specifically on the option of using a simple form. The comments of these two participants are included below:

> *This is a situation I am in—the court granted sole custody to me. I was granted custody because he didn't show up. I was asked about the situation and then they handed sole custody to me. I would like to be able to say who should take care of him in my will now that I have sole custody. I would like to say that he should be with my parents if I pass away.*
>
> *She is a mother of twins. If anything happens to her, we are saying they should automatically go to the father, but if it goes in a will then she can say who looks after them.*

Option B. Allowing non-parents who are already guardians to appoint a guardian in their will

The information sheet then explained that currently in British Columbia, only a parent can appoint a non-parent to be their child's guardian in their will. In other places in Canada, they allow a non-parent who is already a child's guardian to appoint a testamentary guardian. For example, if a grandparent was a child's guardian, they could not directly appoint a testamentary guardian for the child in their will, should they pass away. Participants were then asked whether the FRA should also allow non-parents who are already guardians to appoint a guardian in their will. No participants chose to answer this question.

Option C. Standby guardianship

The information sheet also explained the option of standby guardianship, which is when a guardian, often the parent, and non-parent act as joint guardians during the lifetime of the appointing guardian. The non-parent then continues as a guardian after the appointing

guardian dies. Focus group participants were asked whether the FRA should allow a guardian to appoint a non-parent as a standby guardian. A few participants raised issues that might arise with biological parents, who might be overlooked if a non-parent was appointed a standby guardian. One of the participants commented:

> *I believe in the rights of the biological parent too, even when someone is given sole custody and that's usually the mother. Sometimes there is no issue with the fathers parenting, it's because of the behaviours at the time. I believe in the will of the parent too, if they ask someone else to take care, we should understand that. I also think decisions are made out of spite. Parents should be able to contest the will, but there should also be an assessment of whether the non-parent is able to take care of a child. I don't like the child to be taken from their community and who they are familiar with.*

Option D: Temporary guardianship

Temporary guardianship was described as the situation when one parent appoints a person to act as a substitute guardian for their children. This would be used when the parent was going to be away for a short-term period of time or if the parent was incapable of acting as their child's guardian for a temporary period.

Focus groups were then asked whether the FRA should specifically provide authority for a guardian to appoint a temporary guardian, and if yes, should there be any restrictions on when a temporary guardian may be appointed. Most participants in the focus group thought that the FRA should provide authority to a guardian to appoint a temporary guardian, with one participant discussing it in terms of her own situation:

> *I would like to have temporary guardianship—I am going to go to school down south and I would like to turn the care of my daughter over to my mother and not the child's father while I'm away.*

However, participants also raised cautions about giving temporary guardianship to non-parents as well as suggesting some restrictions to the appointment of a temporary guardian. Below is the comment of one participant who suggested some cautions and restrictions.

> *Best interest of the child is important. I would not like to see my child placed with the father and fathers family—its not who my child is. If I was to give child in my will I would want that to stand. Wills can be contested so it would be important that there is a transitional period between six months to a year of visitation—even for that person with temporary guardianship.*

In addition, one person said that children ought to have a voice in the appointing of a temporary guardian.

12.2. Survey responses

The options and questions given to survey respondents for reforming the FRA in relation to giving parenting responsibilities to non-parents were similar to the options presented to focus group participants.

Option A: Making it easier for people to appoint a testamentary guardian

The first question asked of survey respondents was how the FRA should allow parents or another guardian to appoint a testamentary guardian for their children. Over three quarters of respondents said a simple form would do.

In addition, family law advocates and support workers were given space to suggest ways to make appointing a testamentary guardian easier. Only two people responded, one suggesting that the process be kept simple and the other wanting the form to be like a contract that would outline terms and conditions.

Table 1: How should the FRA allow parents or another guardian to appoint a testamentary guardian for their children?

Testamentary Guardianship	%
A simple form	77.4
A will	32.1
Other	3.8

Option B. Allowing non-parents who are already guardians to appoint a guardian in their will

It was explained to survey respondents, through the *Giving Parenting Responsibilities to Non-Parents* information sheet, that the FRA does not currently allow a non-parent who is already acting as a child's guardian to appoint a testamentary guardian. Survey respondents

were asked if the FRA should allow this.

As shown in Table 2, almost two thirds of respondents said that a guardian who is not a parent should be able to appoint a testamentary guardian for when the non-parent guardian dies, but one third were unsure.

Option C. Standby guardianship

Family law advocates and support workers were also asked about the option of a current guardian appointing a standby guardian. Over two thirds of respondents said that the FRA should allow a current guardian to appoint a standby guardian. One third of respondents said that if the FRA does allow for a standby guardian, it should be restricted to situations where there is only a sole guardian and not joint guardianship. However a third of respondents did not know or were unsure of what the restrictions should be.

Table 2: Testamentary guardians and standby guardianship

Options	Yes	No	I don't know/No answer
Should a guardian who is not a parent be able to appoint a testamentary guardian (that is, a person who will become a child's guardian when the non-parent guardian dies)?	60.7%	7.1%	32.1%
Should the FRA allow a guardian to appoint a "standby guardian", who will assume joint guardianship during the lifetime of the appointing guardian and continue as guardian after the appointing guardian's death?	67.9%	3.6%	28.6%
If the FRA does allow for standby guardianship, should it be restricted to situations where there is only a sole guardian of the children and not joint guardianship?	36.4%	27.3%	36.4%

The information sheet explained that standby guardianship might not be appropriate in all cases. Thus, the survey proposed that there be conditions which would activate or trigger

the use of standby guardianship. Respondents were asked to comment upon some proposed conditions that would trigger standby guardianship, as well as given space in the survey to make their own suggestions.

Virtually all respondents selected the death of the child's guardian parent (94%) and the mental incapacity of the child's guardian (92%) as triggers for standby guardianship. Slightly fewer respondents (80%) said the physical incapacity of the child's parent guardian should be a trigger.

Table 3: Triggers for standby guardianship

Types of triggers	%
Death of the guardian of the child	94.0
Mental incapacity of the guardian of the child	92.0
Physical incapacity of the guardian of the child	80.0
Other	16.0

Of those respondents who provided further suggestions regarding the triggers for standby guardianship, one respondent made the point that an adult in a wheel chair is capable, with assistance, to care for a child. This suggests that physical capacity be defined if included as a trigger. Other respondents suggested the following items as triggers for standby guardianship:

> *Illness, emergencies or business that require the guardian to be absent for a period of time.*
>
> *If a parent's lifestyle issues prohibit caring for a child.*
>
> *Addiction or evidence of abuse or neglect.*
>
> *Financial resources of the guardian of the child.*

One respondent thought that standby guardianship should only be used when there is no immediate family who can care for the child.

Option D: Temporary guardianship

The final set of questions posed to survey respondents was with respect to the option of allowing temporary guardianship under the FRA. The *Giving Parenting Responsibilities to Non-Parents* information sheet provided respondents information about the meaning and use of temporary guardianship.

The first question asked family law advocates and support workers with respect to temporary guardianship was whether the FRA should provide the authority for a guardian parent to appoint a temporary guardian. Over two thirds of survey respondents agreed that the FRA should specifically provide the authority to appoint testamentary guardians. About one third thought that if the FRA does allow a parent to appoint a temporary guardian, there should be restrictions on when they may be appointed; another third thought there should be no restrictions; while the last third were unsure about imposing restrictions.

Table 4: Temporary guardianship

Question	Yes	No	I don't know/No answer
Should the FRA specifically provide authority for a guardian to appoint a "temporary guardian"?	69.8%	3.8%	26.4%
If the FRA does allow a parent to appoint a temporary guardian, should there be any restriction on when a temporary guardian may be appointed?	38.5%	32.7%	28.8%

Family law advocates and support workers were also given space to suggest some restrictions for when a temporary guardian may be appointed under the FRA. Several respondents thought that there temporary guardianship should not be used for extended vacations, recreation, or for convenience. Others recommended that non-parents should only be appointed as temporary guardians if the other parent was not able or willing to take on guardianship, or if the appointing parent had sole custody. Finally, several respondents thought that temporary guardianship should be restricted if there are safety issues with the temporary guardian. Respondents suggested that:

There should be a safety assessment of the temporary person.

When the temporary guardian is involved with child protection, it is ensured that a criminal check and other safety measures have been adhered to.

Continuity of care needs to be considered.

If there is any history of family violence with the temporary guardian, it should follow the same criteria as determining guardianship.

Finally, survey respondents were asked if there was anything else they would like to add with respect to giving parenting responsibilities to non-parents. A number of respondents provided comments. Two thought that a child's views should be taken into account, another thought that maternal or paternal grandparents should be considered first when considering guardianship, while another thought the other parent should be consulted in the decision. Another respondent suggested that appointing a non-parent guardian should be left to the parent wanting to make the appointment. Finally, one respondent provided this recommendation with respect to giving parenting responsibilities to non-parents.

Non-parents have to be culturally sound, traditionally sound, caring, sensitive, loving, giving, honoring, and powerful, courageous people.

13. Defining parenting roles and responsibilities

In this chapter, we set out the recommendations provided by citizen experts with respect to the topic of defining parenting roles and responsibilities. The chapter will first set out the recommendations of those with lived experience who participated in a focus group. The responses of family law advocates and support workers who responded to our online survey are presented in the second section.

13.1. Focus group responses

Only one focus group chose to discuss the topic of parenting roles and responsibilities, choosing it as their second topic of choice for discussion. In addition to this focus group, other participants made recommendations pertaining to the topic of parenting roles and responsibilities while discussing other topics. Their recommendations are also included in this section, wherever relevant.

The *Parenting Roles and Responsibilities* information sheet, which was provided to the focus group that chose this as a topic for discussion, covered three areas. First, it explained some of the legal terms used to describe parenting roles and responsibilities. Second, the sheet explained what the FRA currently says about parenting roles and responsibilities and finally, it suggested some ideas for reform.

Defining the terms used to describe parenting roles and responsibilities

The terms currently used to describe parenting roles and responsibilities, are guardianship, custody and access. Although all these terms are used, the FRA only defines guardianship (both guardianship of the child and guardianship of the child's property) and not custody or access. Since there is no definition of custody currently in the FRA, Judges have had to define it through case-law.

The use of both guardianship and custody in British Columbia's family law has led to confusion since both refer to caring for a child. Guardianship refers to: who is responsible for the child's long-term emotional, physical and psychological well-being. It sometimes refers to responsibility of the child's property; and it includes decision-making and day-to-day care for the child. Custody refers to who the child lives with on a day-to-day basis; who exercises

day-to-day care of the child, as well as the person responsible for making decisions that affect the child's well-being in the long-term.

A number of options were suggested in the information sheet to make this area of law clearer.

- The first option was to choose either the term guardianship or custody and use only that term;
- The second option was to have detailed definitions of guardianship, custody and access provided in the FRA;
- The third option was to replace the terms custody and access with other terms such as shared parenting or parenting time with parenting responsibilities.

Participants were asked to recommend which option they preferred. Two participants recommended the second option, wanting to keep the terms guardianship, custody and access, but having them clearly defined in the FRA.

Another participant recommended replacing custody and access with the term 'parenting time'. Other participants from the focus group also recommended replacing the terms custody and access, but wanted to see the term 'shared parenting' or 'equal parenting' used. One participant suggested that there be this statement in the FRA: "there will be equal, fifty-fifty parenting when parents cannot agree." Below are the comments and recommendations of some participants who wanted the terms custody and access replaced with shared parenting or equal parenting:

> *Forget these other terms—it's the wrong direction to go with custody and access, especially for those who want to go on with parenting after divorce*
>
> *The term should be equal and shared parenting, it should be fifty-fifty. Fifty-fifty doesn't necessarily happen but it* [the law] *must say that. It may not be able to be equal, fifty percent parenting sometimes but should still say that on paper. The order will likely not change a great deal. In my case, I thought it was very reasonable to take weekend access, go for a while and then change it later. I agreed and should never have, because it never changes. Nothing to argue over when the first order says equal and fifty-fifty parenting.*
>
> *Two people can't agree and that's why they are divorcing; can they really agree about doing shared parenting? In my case, the children were never there when the children were supposed to be. I really cared about being in my children's lives—I have this opinion because I didn't have shared parenting, I had access. When you're not equal,*

you have something to fight over. If you start at middle, with fifty-fifty, there's nothing to fight over.

Providing a list of parenting roles and responsibilities in the FRA

The fourth option for reform suggested in the *Parenting Roles and Responsibilities* information sheet was to have a list of parenting roles and responsibilities included in the FRA. The information sheet then described how a list of parenting roles and responsibilities might be used in the FRA; with parents using the list as a guide to make their own parenting arrangements, or a Judge using the list to determine the parent's roles and responsibilities if they cannot agree on parenting arrangements on their own.

The information sheet then suggested a list of parenting roles and responsibilities that could be included in the FRA, set out below:

- The powers, responsibilities and authority that each parent has by law
- Who the child should live with
- The amount of time a child spends with another person
- How much communication a child has with another person
- That the parents are responsible for:
    - Nurturing a child's physical, emotional and psychological development
    - Making sure the child has basic necessities (ex: shelter, food, etc)
    - Making day-to-day decisions about the child's care and well-being
    - Making decisions about a child's education
    - Making decisions about a child's cultural upbringing
    - Making decisions about a child's linguistic upbringing
    - Making decisions about a child's religious upbringing
    - Appointing a guardian for a child in case a parent dies
    - Consenting to health treatment for the child
    - Identifying and advancing all of a child's legal and financial interests

Participants were first asked whether they agreed with having a list of parenting roles and responsibilities set out in the FRA. They were then asked to recommend what should be on the list, if they agreed that the FRA should include such a list.

None of the focus group participants who considered this topic wanted the FRA to have a

list of parenting roles and responsibilities. Two participants thought that there could be a general statement regarding parenting roles and responsibilities but that having a list would be too restrictive. Others thought that having a list would lead to more conflict between parents, or would make the law too complicated.

> *If you become a parent, you love your child. It's complicated when you're driven away. The key factor is that there is no one parent better than the other. Parenting roles don't change much after the divorce. they are the same as they were in the marriage.*
>
> *There should be no list of roles and responsibilities because you can't define who is the better parent.*
>
> *I believe that by adding more terms and redefining roles—these are traditional archaic judgments that the court system is putting on families. Parents have to be given the right to care for their children.*
>
> *In defining parenting roles you are going against the children's best interest because this is where ongoing conflict starts, and ongoing conflict is harmful to children. All this would increase the animosity between parents.*
>
> *Most of the parameters attached to parenting roles and responsibilities are bogging it down and removing the focus on what is best for the child. Strike all of these points as the parameters. Go with equal and shared parenting and leave it at that. This doesn't begin with these changes. More of these little paragraphs just bogs it down.*

Finally, one participant suggested that instead of providing a list of roles and responsibilities, that the law start with the term 'shared parenting' and then have a list of situations that would oppose shared parenting, such as family violence.

13.2. Survey Responses

Family law advocates and support workers were also provided with the *Parenting Roles and Responsibilities* information sheet, which described the options for reforming the FRA in this area they were asked similar questions to focus group participants.

Choosing terms to describe parenting roles and responsibilities in the FRA

The first question posed to family law advocates and support workers in the survey was: what terms should be used in the FRA to describe parenting roles and responsibilities when parents separate or divorce?

Most respondents (85%) recommended that the term custody be used to describe parents' roles and responsibilities upon separation and divorce, while 76% stated that access should be used. Respondents were less likely to select terms including guardian, guardian of the person, and guardian of the estate.

Table 1: Which terms should the FRA use to describe parents roles and responsibilities upon separation and divorce?

Options	Yes	No	I don't know/No Answer
Guardianship	70.0%	17.5%	12.5%
Guardian	57.1%	22.9%	20.0%
Guardian of the person	48.6%	31.4%	20.0%
Guardian of the estate	50.0%	28.9%	21.1%
Custody	85.4%	4.2%	10.4%
Access	76.1%	10.9%	13.0%

Respondents were also given space to suggest other terms that could be used in the FRA to describe parenting roles and responsibilities upon separation. Suggestions included parenting time, parent/mother/father, primary care-giver, and joint custody.

Parenting roles and responsibilities reform options

Survey respondents were then asked to give their opinion on various options for reforming the FRA with respect to parenting roles and responsibilities, as set out in Table 2 below.

Most respondents (83%) said that the FRA should include detailed definitions for terms used to describe parenting roles and responsibilities in the FRA. Many respondents (87%) also stated that the FRA should have a list of parenting roles and responsibilities that Judges could use to determine the roles and responsibilities of each parent upon separation and divorce. Only one third of respondents thought that the FRA should replace words like custody and access if the Divorce Act continues to use these terms. Almost 80% of respondents said that the FRA should use definitions for terms that are consistent with the definitions used in the federal Divorce Act, but almost one fifth of respondents were unsure about this.

Table 2: Parenting roles and responsibilities reform options

Question	Yes	No	I don't know/No answer
Do you think that including detailed definitions in the FRA for words used to describe parenting roles and responsibilities would help people resolve disputes?	83.0%	9.4%	7.5%
Should the FRA replace the words "custody" and "access" with other terms, if the Divorce Act continues to use "custody" and "access"?	23.1%	67.3%	9.6%
If the term custody is included in the FRA, should the definition of custody in the FRA parallel the definition of custody in the federal Divorce Act?	79.2%	3.8%	17.0%
Should the FRA have a list of parenting roles and responsibilities in it that Judges use to determine the roles and responsibilities of each parent upon separation and divorce?	86.8%	1.9%	11.3%

A list of parenting roles and responsibilities

Assuming there was to be a list or parenting roles and responsibilities included in the FRA, survey respondents were asked what should be included in the list. This list would be used to determine the roles and responsibilities of each parent upon separation. According to Table 3, almost all respondents thought the list should include the powers, responsibilities and authority that each parent has by law (96%). In addition, most survey respondents thought that that the list should say parents are responsible for consenting to health treatment for the child (90%), and for making day-to-day decisions about the child's care and well-being (92%). Only two thirds (65%) of respondents thought that the list should include how much communication a child has with another person.

Table 3: If the FRA was to set out a list of parenting roles and responsibilities, what should be included on the list?

Items to be included on the list	%
The powers, responsibilities and authority that each parent has by law	96.2
Who the child should live with	88.5
The amount of time a child spends with another person	76.9
How much communication a child has with another person	65.4
That parents or a parent are responsible for nurturing a child's physical, emotional and psychological development	86.5
That parents or a parent are responsible for making sure the child has basic necessities (ex: shelter, food, etc)	88.5
That parents or a parent are responsible for making day-to-day decisions about the child's care and well-being	92.3
That parents or a parent are responsible for making decisions about a child's education	88.5
That parents or a parent are responsible for making decisions about a child's cultural upbringing	84.6
That parents or a parent are responsible for making decisions about a child's linguistic upbringing	80.8
That parents or a parent are responsible for making decisions about a child's religious upbringing	75.0
That parents or a parent are responsible for appointing a guardian for a child in case a parent dies	86.5
That parents or a parent are responsible for consenting to health treatment for the child	90.4
That parents or a parent are responsible for identifying and advancing all of a child's legal and financial interests	84.6

Three most important issues relating to parents' roles and responsibilities

Family law advocates and support workers were also asked to describe what they thought were the three most important issues relating to parents' roles and responsibilities and parenting arrangements. Almost all survey respondents answered this question, with most issues fitting into one of four categories:

- Child's well-being, including: providing for the physical, emotional and psychological well-being of the child, safety of the child, provision of health, education, financial support, emotional support, nurturing of the child, best interest of the child, child's living environment, providing basic necessities, putting the child first in decisions, and recreation for the child.
- Custody, access and residence, including: who the child lives with, primary residence, time spent with each parent, access, time spent with others, day to day care, major decision-making power, and holiday and vacation-sharing.
- Parental assistance, including: assistance to parents to understand the FRA, accommodating the other parent, parents working collaboratively, parental communication, counseling, helping Aboriginal parents clearly understand the FRA, powers and responsibilities that each parent has, accountability for parents, mutual understanding, access to counseling, cooperation but also safety needs met, education and training for parents.
- Culture, including: giving child access to their roots and extended family, cultural upbringing and the issue that an Aboriginal child has to stay within their Aboriginal extended families.

Other issues that were raised by only one or two survey respondents included family violence, too much interference into families from the courts and the law, dead-beat parents, step-parents who promote hostility, and inclusion of the child's views.

Three measures for effectively resolving the issues relating to parenting roles and responsibilities.

Survey respondents were also given space to suggest ways for resolving some of the issues identified in the previous section. Again, the responses of family law advocates and support workers can be grouped into several categories.

Counseling and Assistance to Parents

This category, which had the most responses from family law advocates and support workers, included suggestions revolving around counseling and assistance to parents. This category included such things as: Counseling and support combined with third party involvement if necessary, education, family counseling, anger management, positive recognition for parents, support programs to teach how to focus on the child, pre-divorce separation classes and workshops, education to build new lives while keeping parenting responsibilities, and support programs should exist for families in crisis, going through divorce, or with risk factors, and community resources.

Cooperative Approaches

This category of responses was provided by a large number of survey respondents includes the following suggestions: non-adversarial approaches, mediation, parenting plans, mediations specifically around the best needs of children, asking parents to agree, or having a Judge decide basic parenting arrangements, equal shared parenting, follow through on agreed upon issues, supportive advocacy, binding arbitration, approaches that help parents manage their emotions--anger, resentment, fear, conflict resolution.

Providing Clarity in the FRA about Parenting Roles and Responsibilities and Parenting Arrangements

This was another set of responses provided by respondents and included suggestions such as: having clear measures written into the FRA, clear and concise legal definitions, define custody and access with a variety of options for the courts to implement when things go off track, and detailed parental responsibility lists.

Legal Options

The suggestions that can be categorized under this heading include: Education for Judges regarding developmental needs and issues, court orders, jail, attachment measures, 'Best Practices' guidelines for Judges regarding children's needs, fines, enforcement, sanctions, contracts and court applications.

Children's Participation

Several survey respondents also made suggestions regarding 'children's participation', suggesting it might help resolve issues relating to parenting roles and responsibilities. Suggestions within this category include: getting children's input, interviews with children, hearing the child's views by an independent counselor;,respecting the child wishes, talking to the child and not keeping them in the dark and not putting the child in the middle of the

conflict between both parents.

Family Violence

Another category of suggestions for resolving issues relating to parenting roles and responsibilities can be categorized under family violence. The suggestions made with respect to this category include: looking at the history if violence has occurred, giving no access to a violent or abusive parent (similar to the Arizona model) and inclusion of violence issues as a factor in making decisions regarding access and custody.

There were several other suggestions made in the survey for resolving issues related to parenting roles and responsibilities which did not fit into any of the above categories. The suggestions included: having parents coming to a middle ground, having an assumption that children should be with the mother, judging parents who are on welfare or who are working-poor based on their merits as parents and not based on socio-economic status, having Aboriginal advocates understand the FRA, listening to the voice of the parent that does the majority of the care giving.

Other recommendations

The final question in the *Parenting Roles and Responsibilities* section of the survey asked family law advocates and support workers if there were any other issues related to parents' roles and responsibilities and parenting arrangements that they would like to raise. Below are some of the comments that were made in this section of the survey, many of which were critical of the current family justice system, FRA, and the survey itself.

> *There are no questions here about Equal Shared Parenting. Why is that? Not enough lawyers in favor of it?*
>
> *We need to take divorce/ separation out of the court system. We need to think outside of the FRA box. Unfortunately, I don't think this will happen because this survey is driven by those in the legal system. How can an emotional event be solved by legal solutions? It won't be.*
>
> *If a parent is or has been abused or threatened, the likelihood of issues being resolved without threats or violent acts is not likely.*
>
> *Joint custody should be the initial baseline with which to begin parenting roles after separation. If this is not attainable immediately, then mediation and counseling could*

be considered. Unfortunately at this time there is so much animosity generated by the legal procedure that common sense is lost by all parties including the system that is given so much authority over the children who need their parents and extended families.

This is all grey. As a parent, I feel I need to have flexibility, have an idea of fairness, communicate as much as possible given power and control issues. The reality is that the systems we have in place often do not support parents in creating a workable relationship with one another. Root causes of parenting discord, shifting ideas of parenting "well" and cultural issues all create a challenge for the FRA to be instrumental in change.

I don't think there is one blanket for ALL families.

14. Parenting agreements

In this chapter, we set out the recommendations provided by citizen experts with respect to the topic of parenting agreements. The chapter will first set out the recommendations of those with lived experience who participated in a focus group. The second section consists of the responses of family law advocates and support workers who responded to our online survey.

14.1. Focus group responses

This topic was discussed by only one focus group, who chose it as their fourth priority for discussion. There were also some focus group participants who shared their experiences of using parenting agreements, or discussed recommendations in this area while discussing other topics. Their comments are included in this section, where relevant.

Focus group participants were provided with the *Parenting Agreements* information sheet which first described what parenting agreements are, and the options for making parenting agreements in British Columbia. The sheet then indicated that the FRA does not currently require parents to make parenting agreements or parenting plans, nor contain any rules about how to make them. Finally the information sheet set out some possibilities for change.

The first question posed to participants in the one focus group that discussed parenting agreements as a topic was: Would parenting plans (agreements) make it easier for parents to agree on parenting arrangements? Only one participant in that focus group chose to comment on this question, suggesting that having a parenting plan would make it easier to come to agreement.

However there were also some comments about the usefulness of parenting plans/agreements from participants who commented upon parenting agreements while discussing other topics. Several of these participants thought that parenting plans/agreements were a useful tool, but that they required a couple to work through it. Some also thought they had the potential to be ignored by one parent, causing problems after the agreement is signed.

> *I think it needs to be filed so there is already something in place and it can be looked at. If they don't follow through on what they promise, they can't apply again and there should be a separate process where they have to go to the Judge without me, and work it out with Judge before dragging me back to court. The Judge should be vestigate it.*

I think if you are able to work it out—that's great. I would get into the cooperative approach but it doesn't work unless you have time to work it through.

Participants in the focus group that chose to discuss parenting agreements were then asked to provide their views on different possibilities for FRA reform in the area of parenting agreements, as provided in the information sheet. Participants were asked if the FRA should require parents who are separating or getting a divorce to make parenting plans or whether parenting plans should be made optional. They were also asked whether the FRA should require lawyers or other advisors to inform parents about how they can make a parenting plan.

With respect to making parenting plans required or optional under the FRA, only one participant commented, stating that they would not want to see parenting plans required under the FRA.

Although no one directly answered the question of whether the FRA should require lawyers or other advisors to inform parents about how to make a parenting plan/agreement, a few focus group participants did say that they thought someone should be involved in the process.

There should be someone involved in making the agreements because parents may not know their options and rights.

We went to counseling—it was difficult to come to a cooperative approach—you have to own it rather than projecting it. It's hard to come to cooperation, to come to agreement.

14.2. Survey responses

Unlike focus group participants, survey respondents provided a lot of feedback regarding parenting agreements/plans and the FRA. In the survey, family law advocates and support workers were asked a number of questions, many of them similar to the questions posed to focus group participants. In order to guide them, respondents were given the *Parenting Agreement* information sheet. Table 1 below outlines the first set of questions that were posed to survey respondents.

Table 1: Participant responses to questions about parenting plans

Question	Yes	No	I don't know/ No answer
Do you think parenting plans would make it easier for parents to agree on parenting arrangements when separating or getting a divorce?	84.7%	9.7%	5.6%
Do you think that parenting plans would result in parenting arrangements that better meet children's needs?	84.5%	8.5%	7.0%
Do you think parenting-time guidelines would help parents in B.C. arrange custody and access when they are separating or getting a divorce?	83.3%	4.2%	12.5%

When asked if they felt parenting plans would make it easier for parents to agree on parenting arrangements when separating or getting a divorce, 85% of respondents answered 'yes'. The vast majority of respondents (85%) also felt that parenting plans would result in parenting arrangements that better meet the needs of the children. Respondents (83%) also felt that parenting-time guidelines would also help parents arrange custody and access.

Making parenting plans required or optional under the FRA

When asked if separating or divorcing parents should be required to make parenting plans, over half of respondents felt that parenting plans should be required, but 41% said that parenting plans should be optional. Only 3% of respondents said that parenting plans should never be required.

Table 2: Parenting plans required or optional under the FRA

Option	%
Parenting plans should be required	56.3
Parenting plans should be optional	40.9
Parenting plans should never be required	2.8

Requiring certain items to be in parenting plans or having a list of options that parents choose from in the FRA.

About half of the respondents said that the FRA should require certain items to be covered on all parenting plans, but just under half said the FRA should have a list of items which parents can choose from when making a parenting plan.

Table 3: Requiring certain items to be in parenting plans or having a list of options that parents choose from in the FRA

Options	%
The FRA should require certain items to be covered in all parenting plans in BC	50.7
The FRA should have a list of items which parents can choose from when making a parenting plan	49.3

Family law advocates and support workers were also given space in the survey to suggest items they would like included in a parenting plan, if a list of items was going to be included in the FRA. First a number of respondents highlighted the fact that parenting plans should be child-centered, adhere to the best interest of the child and also give children input into the plan. Their suggestions are set out below.

> *The child's input should be considered: children need to be informed and prepared for changes in their schedule. Vacation, weekend, sporting activities should be included, as children need to keep a consistent schedule, there should be plans for the children in case they need to change their schedule.*

Where the child lives, the child having a voice in decision making, visitation schedule for the child, ensuring the child's needs are met physically and emotionally

Anything related to promoting the health, safety and well-being of the child.

A high percentage of family law advocates and support workers mentioned education as an item to be included on the list. They also suggested a variety of other items such as vacations, primary residence, financial obligations, communication between parents, leisure activities, etc. The number of items suggested by advocates and support workers indicates that the FRA should provide a broad-ranging list of items for parenting plans. Below are just some of the recommendations that were made.

Education, communication, time spent with each parent, living space, agreements on how to deal with conflicts.

In regards to question three, my answer was both should be mandatory and a list should include education plans, clearly defined access time for both parents, including vacations and holidays, home base for the child, also money issues such as medical dental plans, RESPs, and support payments, also access to school and dental/medical records and personal information.

Education plans for the child, vacation and holiday time spent with each parent, where the child lives, how future disagreements about the child will be dealt with, how information will be shared by the parents, how decisions will be made in regards to children after separation and divorce, details about how the parent's will care for their child's well-being, financial security, health, emotional needs, etc.

Education plans, safety plans, plans for respite or alternative caregiver arrangements if needed, residence, vacation holiday time.

Education plans, religious plans, holiday/vacation time, who is responsible for extra things financially (ie clothes, sports, school trips etc.), child residence, medical plans (if necessary ie. child with diabetes or down syndrome).

A large number of survey respondents also wanted parenting time, geographical location and relationships with other people included in the list of items for parenting plans under the FRA.

Proviso that both parent stay in the city where the child lives.

Time spent with the child, who can access child (extended family), rules regarding travel, current and future education plans, custody arrangements.

Where the child lives: e.g. have two homes or one home and spending time with the other parent. Health plan if need be. Education plan. Agreement on taking or not taking the child out of the town, city or country and to specific countries.

Access to relatives and grandparents in their own community

Special needs, shared parenting outlining where child sleeps and when, specified access including when and where, ability to contact by phone or email, vacation and holiday time, ability to leave jurisdiction, vacation and holiday plans, contact with extended families, relationship with new spouses

Access times, where child lives, education plans, vacation plans, access by grandparents and other extended family, agreements specific to a child's disabilities, day care arrangements, financial arrangements

Where the child lives, vacation, times spent with each parent, health and medical needs, time spent with grandparents

Visits with extended family members i.e. grandparents, aunts, uncles, cousins, etc.

Some also wanted parenting plans to deal with communication between parents, as well as what happens when parents are in conflict.

What happens when a parent would like to move? Clear, concrete ideas of safety plans for child and parents around heated discussions, arguments, potential violence, clarity around what happens if the plan is not adhered to by one or the other parent.

All the things you mentioned in the example, plus a plan of how parents in conflict will be accountable to their children.

Living arrangements contact with "other" parent visitation educational plans recreational plans vacation & holiday time religious observance contact with extended family plan for treating one another with respect and consideration--spell it out, folks!

Parental decision-making, parental communications (issues to be discussed at regular points, perhaps with a mediator so that both parents are informing each other and listening to each other).

Requiring lawyers and advisors to inform parents about how they can make a parenting plan

Respondents were also asked whether the FRA should require lawyers and other advisors to inform parents about how they can make a parenting plan. Over two thirds of respondents said that the FRA should require lawyers and other advisors to be involved in the creation of the parenting plan.

Table 4: Should the FRA require lawyers and other advisors to inform parents about how they can make a parenting plan?

Responses	%
Yes	66.7
No	15.3
Don't Know /No Answer	18.1

Other recommendations

The final question in the section on parenting agreements asked survey respondents to make any other comments or recommendations with respect to parenting agreements and the FRA.

Several respondents mentioned that there needs to be something in the FRA to deal with situations where parenting plans are not followed, or when changes need to be made, as well as the requirement that plans be in writing.

> *Mandatory parenting plans should also have automatic consequences for non compliance, [such as denial of access] should trigger specific pre-stated consequences*
>
> *What are consequences if agreements are not met? A contingency plan for when changes must be made, communication skills and conflict resolution, or support made available.*
>
> *They should somehow be enforceable. If not enforceable, then one parent may not live up to their end of the agreement time and time again, and it could be used as another way of controlling the relationship.*

You could have a clause in place that if a parenting plan is not being followed, that something must then take place within a given time period (i.e. consultation of both parents with a Ministry worker, counselor, or lawyer to redraft the parenting plan).

If parents have a plan from the beginning, then many pitfalls can be avoided. I have seen many families that started with an amicable agreement that was not written down, and now they are battling it out through the kids when things start to go wrong.

Many survey respondents also stressed the need for appropriate supports to help parents create parenting plans. Many wanted to see advocates and counselors help parents with a plan, as well as easy to understand instructions. Several respondents expressed concern with the parents using a lawyer when creating their parenting plan.

Someone needs to assist both parents with what is realistic and manageable for all involved.

I would like an advocate who understands the FRA to assist the parents when filling out FRA forms. Many Aboriginal parents do not have any idea what they are signing because they do not comprehend the Act.

We need to make filling out these plans easily understood by parents and that help be made available to parent's should they have difficulty agreeing on issues.

I think there should be front line workers who work with or are involved with the family instead of lawyers.

Community based support services are much better suited to providing assistance to parents developing parent agreements than lawyers. Combining emotional support with practical assistance.

I'm not sure a lawyer needs to be required. At the very least, a support/advocate must be involved to ensure a fair and equitable arrangement according to each person's strengths.

The only concern with not having a lawyer present is the possibility of power imbalance between the parents and one parent feeling "obligated" to consent to whatever the other wants due to fear, guilt, etc.

Mandatory counseling for the entire family on how to effectively deal with separation or divorce.

Another main area of concern emphasized by many survey respondents was the use of parenting plans where there is family violence. Many respondents stated that those

experiencing family violence should not being required to make parenting plans with an abusive partner because the process could be misused by the abusive partner, or the person experiencing violence might agree to things due to fear.

> *I don't have strong feelings about the issue of parenting plans except in cases where relationship violence is present. Trying to create one would be dangerous to the woman and not likely reflect the best interests of the child(ren).*
>
> *My concern with parenting agreements is that they must be able to be challenged - a number of women fleeing violence will agree to just about anything in the hopes that he'll become reasonable once legalities are sorted out. Men in these situations then exploit this and further victimize the women.*
>
> *In situations where there is violence or an imbalance of power, parenting agreements will not be appropriate*
>
> *What happens if family violence is an issue; then how does a parenting agreement help?*
>
> *There needs to be exceptions when women have experienced violence. With my case load, a parenting plan might put the woman at risk.*
>
> *Very difficult to negotiate plans with abusive ex's.*
>
> *Where violence was the precipitator to divorce or separation parenting plans or any other plans are likely to fail.*
>
> *Agreements work only in cases in which both parents have the child's needs in the foreground. This is often not the case in an abusive relationship where one parent uses the child to get back at the other parent. They don't work when the woman is in such fear that she is afraid to speak up.*

Some respondents did think a parenting plan should be mandatory if there was relationship violence, with support of the courts or others to ensure that the power imbalance between the parties was minimized.

> *I think if there is violence in the relationship (e.g. domestic violence) the parenting plan should be mandatory. This should be a service offered through the courts so the process works for people*
>
> *Domestic violence needs to be taken into account when plans are made. People are needed to help facilitate the making of these plans when domestic violence is involved. If there has been domestic violence parenting agreements should be mandatory so there is less opportunity for the aggressor to victimize the victim using the children.*

A history of abuse by one parent against the other should be considered a deterrent to developing a parenting plan, unless the abused parent is supported in some manner, as a power imbalance makes it unlikely that a truly equitable plan can be developed.

Several respondents also highlighted the need for the plans to be as equal as possible, with clear guidelines as to the roles and responsibilities of each parent.

I think the guidelines for child support should be made more clear. I think the focus should be on shared access and shared custody, and the guidelines should encourage both parents to spend equal time with their children without so much emphasis on child support. The cost of raising each child should be divided between both parents equally.

Parenting Plans should be up to the parents to decide. If they cannot then the courts would impose an equal parenting plan.

The plans should be made as equal as possible for the child's sake.

Finally, a large number of respondents thought flexibility and resources are needed for the development of parenting plans.

Flexibility. The process to make parenting plans needs to make sense to that particular family, it needs to be tailored to their circumstances, and above all needs to be easy to understand and create, not a pile of paperwork full of legalese.

I would like to encourage Aboriginal parents to exercise their right as to how all concerns of their child is to be handled.

I don't see it as "one size fits all". I think there should be some required and some optional parts to the agreements.

Parents who are able to negotiate this without assistance would perhaps be encouraged to share their stories of how they were able to do this with someone, so others can benefit from their maturity. Everyone should have a plan with some built-in flexibility depending upon the degree of hostility/dysfunction that exists in the relationship. Examples, models, stories of successful outcomes could be very helpful to those struggling with this task.

A check-list (tips or reminder) written in plain/simple English & if possible the same document translated into Chinese, Punjabi, Korean, Farsi, Arabic, Spanish, etc. (translation can be available on-line)

Children's developmental needs should be taken into account and plans may change over time depending on developmental needs.

Parenting plans should be subject to review no less than three years after the initial agreement so that constraints set out in the emotional aftermath of separation or divorce can be relaxed or firmed up.

15. Conclusion

There are four major themes emerging out of the recommendations made by those who participated in this project. Each of the themes are areas where there was not only a substantial amount of feedback and commentary from all types of citizen experts, but also a substantial amount of agreement as to the kinds of reforms that are needed. The four main themes that came out of the project are:

1. Focusing on children
2. Addressing family violence
3. Addressing access responsibilities and enforcement
4. Increasing the use of cooperative approaches and providing adequate supports to parents to use cooperative approaches

15.1. Focusing on children

One of the major themes to emerge from the analysis was that reforms made to the FRA should continue to ensure the well-being and safety of children in cases where children are affected by separation and divorce. Thus, many citizen experts, including individuals with lived experience, family law advocates and support workers and Family Court Youth Justice (FCYJ) committees focussed their recommendations on the following topics relating to children:

- children's safety;
- children's best interests;
- how the law can encourage parents to put children first when making decisions relating to separation and divorce;
- when and how to incorporate the views of children and youth in family law matters.

Children and safety

Almost all who participated in this project felt that family violence should be added as a factor to s. 24(1) of the FRA to require Judges to consider family violence when determining what is in the best interest of the child in deciding guardianship, custody and access arrangements. A majority also felt that the FRA should include a very specific and detailed definition of family violence, including:

- physical abuse, emotional, mental and psychological abuse, spiritual abuse, financial abuse, sexual abuse, verbal abuse, parental alienation; and
- a statement that family violence for the purposes of this section would include violence directed at both the spouse and the child.

There was less support for including threats of violence as a factor into s.24(1) FRA, especially among focus group participants. Some participants expressed concern that this could lead to false allegations of violence, and could penalize parents for a single statement they may have made in the heat of the moment, or if responding to abuse.

An overwhelming majority of family law advocates and support workers, as well as many focus group participants and FCYJ committee members, also wanted some specific rules added to the FRA that would address the type of relationship a violent parent ought to have with their children. Although most citizen experts agreed there should be some rules, there was less agreement as to what those rules should be. The only rules that a majority of citizen experts agreed on were:

- A rule that a parent cannot be given sole or joint custody of their child if they have been violent toward their spouse or children;
- A rule that conditions must be imposed on a violent parent wanting to spend time with their child.

In terms of conditions that should be imposed, the majority of citizen experts thought a violent parent ought to be required to attend treatment programs, and that there should be ongoing monitoring of the situation so that if the violent parent was making changes, access arrangements could adjusted as needed.

Those who disagreed with including family violence as a factor in s. 24(1) of the FRA did so for two reasons: 1) that issues of family violence were already dealt with under the criminal law; 2) including this as a factor would increase instances of false allegations of abuse. With respect to false allegations of abuse, a majority of citizen experts who took part in the project also recommended that the FRA contain a specific part to address false allegations of abuse.

There was almost unanimous agreement that such a part should set out the penalties for making a false allegation of abuse, although there was no concurrent view on the types of penalties that should be included. Some common suggestions as to appropriate penalties

included: jail, fines, a public apology, costs orders, and the loss of custody.

In addition, many citizen experts thought that that this part of the FRA should state that an investigation must be conducted in order to determine the validity of the allegations, and that this investigation include a look into the history of the parties relationship. A large number of family law advocates and support workers also thought that there should be a statement in this part of the FRA clearly outlining that there is a difference between malicious false allegations of abuse and allegations made on the basis of an honest and reasonable belief in the existence of child abuse.

Based on these conclusions, it is reasonable to advance the following four recommendations for FRA reform.

Recommendations

1. Add family violence as a factor to s. 24(1) FRA, include a specific and detailed definition of what constitutes family violence.

2. Add some specific rules to the FRA, which would guide Judges in their determination about the type of relationship a violent parent ought to have with their child(ren). One of these rules should be that a violent parent should not have custody of the child.

3. Impose conditions on a violent parent wanting to spend time with the child, one of which would be the requirement to attend treatment/counselling, with the caveat that the order would be revisited six months after it was made to determine if changes were needed.

4. Include a part in the FRA that addresses malicious false allegations of abuse, which would include:
- a list of possible penalties for making a false allegation; and
- a section ordering an investigation into the history of the parties relationship;
- a section that clearly states that those cases where false allegations are made knowingly and maliciously will be treated differently from cases where there is an honest and reasonable belief that abuse is taking place.

Children's Best Interests

A large majority of citizen experts also provided recommendations with respect the best interest of the child test found in s. 24(1) FRA. An overwhelming majority of citizens who engaged in the project thought that the current factors in s. 24(1) should remain, but also wanted to see other factors added to s. 24(1) FRA.

The factors which a majority agreed should be included were:

a) how the child has been cared for in the past by each parent, as long as there was a clear definition about the meaning of 'care' and a statement as to how 'past care' would be assessed;
b) if the parent is involved in any civil or criminal case that would affect the child's safety or well-being, although the main focus relates to criminal cases
c) benefits to the child of having a relationship with each person who wants to have custody, access or guardianship, with the starting point that both parents are beneficial to a child's life except in cases where there is family violence;
addictions and mental health issues that would affect the child's safety and well-being.

Many also thought other factors such as the child's Aboriginal heritage, the child's culture, religious upbringing, ethnicity and language could be added, but only as a secondary set of factors once factors regarding the child's safety and well-being had been assessed.

Based on these conclusions, it is reasonable to advance the following two recommendations for FRA reform.

Recommendations

5. Keep the factors that are currently in s. 24(1) of the FRA.

6. Add additional factors to s. 24(1) of the FRA, including:

    a) how the child has been cared for in the past by each parent, with a clear definition of 'care' and a clear statement of how 'past care' will be assessed;
    b) is the parent involved in any civil or criminal case that would affect the child's safety or well-being;
    c) what are the benefits to the child of having a relationship with each person who wants to have custody, access or guardianship, with a statement that both parents are equally beneficial to a child's life except in cases where there is family violence;
    d) are there addictions and mental health issues that would affect the child's safety and well-being

Encouraging Parents to put their children first during separation and divorce

The majority of citizen experts who took part in the project recommended that parents be required, under the FRA, to take into account their children's best interests when making their own parenting arrangements after separation.

The majority also recommended that the list of factors parents should be required to take into account when determining their children's best interests should be the same list that Judges use in s. 24(1). However, the majority of citizen experts thought this would only be workable if the factors were provided to parents in language that is easy to understand, and if parents were educated about how this would work by family law advocates, family justice counselors, lawyers, etc.

One recommendation for FRA reform regarding parenting arrangements and children's best interest is stated in the text box below.

Recommendation

7. Include a section in the FRA that would require parents to consider their children's best interests when making their own arrangements after separation. This would mean that parents would be required to consider the same list of factors that Judges consider in s. 24(1) FRA, but they would be set out in language that is easy to understand.

Incorporating the Views of Children and Youth

The majority of citizen experts, particularly family law advocates and support workers, recommended that children's views be included when decisions are being made that affect them during separating and divorce. However, there was substantial consensus among all project participants that the FRA should give Judges flexibility as to when to include children's views based first on maturity level of the child, and then their age.

The option most favoured by the majority of all those who participated in the project was separate legal representation for children, with slightly more support for this option from focus group participants. A large majority of family law advocates and support workers supported the model whereby an independent lawyer or counselor meets with the child or youth to hear their views and provides those views to the Judge; while a large majority of focus group participants recommended including children in mediation.

Based on these conclusions, the following two recommendations are provided.

Recommendations

8. Incorporate the views of children and youth when decisions are being made about matters that affect them during separation and divorce, but give Judges discretion to not include their views based first on the child's maturity level, then age.

9. Provide options in the FRA for including the views of children and youth. Some of the options should include:

- separate legal representation for children and youth in some cases;
- including children in mediation where appropriate; and
- having a model whereby an independent counselor or lawyer interviews the child or youth and provides the views to the Judge or mediator.

15.2. Family violence

Family violence was another topic that generated a lot of interest and response from those who participated in the research project. A large percentage of citizen experts provided recommendations for reforming the FRA in this area, with family law advocates and support workers providing a substantial amount of commentary on this issue, in addition to recommendations provided by focus group participants and by Family Court Youth Justice committees.

The recommendations provided by citizens with respect to family violence and the FRA focused on: a) the inclusion of a definition of family violence in the FRA; b) orders for ensuring safety made under the FRA; c) the issue of family violence and children, which has already been covered in the section 15.1.

A definition of family violence

The majority of citizen experts recommended that a definition of family violence be added to the FRA, on the basis that it would provide clarity and consistency among those working in

family law issues.

The majority also wanted the definition to be specific and inclusive of a broad range of types of violence including:

- Physical abuse
- Emotional, mental and psychological abuse
- Spiritual abuse
- Financial abuse
- Sexual abuse
- Verbal abuse
- Neglect
- Forcible confinement
- Attempted violence

A large majority of family law advocates and support workers also recommended that 'threats of violence' be included in the definition of family violence, but there was slightly less support for this among focus groups participants or amongst FCYJ committees. Those who did not want 'threats of violence' included in a definition of family violence in the FRA disagreed on the basis that:

- it would be difficult to prove the existence of threats of violence; and/or
- it could be misused or misinterpreted by the parties if there was not a clear definition of what constitutes a threat.

Thus, citizen experts recommended that a clear definition of 'threats of violence', along with accompanying examples, be included in the FRA.

The majority of project participants also recommended that the FRA include a statement that self-protection or protection of others would not constitute violence, given the dynamics at play in relationships where there is violence.

Finally, a majority of family law advocates and support workers, and focus group participants thought that the FRA should include guidance for Judges about how to assess family violence when couples are separating or getting a divorce. Under such a section in the FRA, Judges would consider not only the types of family violence present in a relationship, but also consider the following:

- history of violence in the relationship
- patterns of violence
- frequency of the violence
- depth and repetition of the violence in a relationship

A number of citizen experts also recommended that the FRA outline how individuals provide information to Judges about the violence they have experienced. Several recommended that a form be used, which could be filled out by the person experiencing family violence with the help of a counselor, family law advocate or lawyer.

The following four recommendations are based on the conclusions presented above.

Recommendations

10. Include a definition of family violence in the FRA and make the definition specific and inclusive of a broad range of items including: physical abuse, forcible confinement, sexual abuse, psychological or emotional abuse, neglect such as refusing food, shelter, clothing, etc., financial abuse, threats of violence, attempted violence.

11. Include threats of violence in the definition of family violence in the FRA, but only with a clear definition of what constitutes a threat in situations of family violence. Include examples in this definition of a threat.

12. Unclude a statement in the FRA that self- protection and protection of others is not family violence.

13. Include a section in the FRA that provides guidance to Judges about how to assess family violence in a relationship

Orders for ensuring safety

The majority of citizen experts agreed that the current regime of safety orders available under the FRA requires significant reform.

Most felt that safety orders currently available under the FRA were inadequate for ensuring the safety of those who are experiencing family violence. Almost all agreed with implementing the changes suggested in the *FRA and Family Violence* information sheet, which included:

- expanding who can apply for a restraining order under the FRA, including those who are dating, those in short term relationships, and between different family members such as parents against adult children, etc;
- having others apply for an order on behalf of another, although the majority thought that this should be limited to a police officer, a counselor, family law advocate or other 'professional';
- giving individuals the ability to apply for a restraining order under the FRA without making any other application under the FRA;
- having family violence included as a factor for Judges to consider when making temporary exclusive occupancy orders.

The majority of people who participated in the project also thought that one of the major barriers to the effectiveness of restraining orders made under the FRA was lack of enforcement. Focus group participants, family law advocates and support workers, and Family Court Youth Justice committees all commented on this issue, and provided recommendations for addressing it. A large number recommended that the FRA, and the order itself, contain a clear directive to police to enforce the order and that the enforcement be automatic. Some also recommended that strict penalties be set out in the FRA for those who breach a restraining order made under the FRA including mandatory jail time after repeated breaches of the order.

They also recommended that the process for obtaining a restraining order be simplified.

The text box below contains the recommendations for reforming the FRA based on the aforementioned conclusions.

Recommendations

14. Reform the FRA to allow those who are different types of relationship to apply for restraining orders. This would include those who are dating, those in short-term relationships, and encompass other types of family relationships.

15. Reform the FRA to allow a police officer, lawyer, counselor or family law advocates to apply for a restraining order on another person's behalf.

16. Reform the FRA to allow individuals to apply for a restraining order without having to make any other application under the FRA.

17. Require Judges to consider family violence when making temporary exclusive occupancy orders under section 124 of the FRA.

18. Have a section in the FRA, and provide on the order, a clear statement that restraining orders made under the FRA are to be automatically enforced by the police.

19. Provide strict penalties in the FRA for those who breach restraining orders.

20. Simplify the process for applying for a restraining order under the FRA.

15.3. Addressing access responsibilities and access enforcement

A substantial amount of agreement existed among citizen experts with respect to two issues related to access responsibilites and enforcement. There was agreement about: a) ways that the FRA should enforce access orders; b) having the FRA provide separate access enforcement remedies for those who fail to exercise access, as well as for those who deny access.

Enforcing access orders

A large majority recommended that the FRA include a list of access enforcement remedies, with the following items being included in the list:

- a warning
- giving make up time to the parent who did not get access
- require parents who deny access to attend a program or service
- require the parent who does not meet the access order to take family counseling and pay for the costs of that counseling
- community service
- using a mediator to work with the parents
- putting new conditions on the original access order
- having the parent who denies access pay the court costs of the parent who has to go to court to gain access
- fines
- jail

Almost everyone rejected the idea of enforcing access by having a police officer take and deliver the child to the access parent. Most disagreed with this because they thought it would be too traumatic for the child.

There was some divergence among those who participated in the project about whether this list should be a sliding scale of enforcement remedies, with more serious consequences each time an order is breached, or whether Judges should be able to choose a remedy from the list based on the particulars of each case. The majority of focus group participants who considered this question wanted a sliding scale with an escalation of remedies; the ultimate remedies being jail or the changing of custody. Focus group participants also recommended that the FRA impose more severe remedies after two or three unmerited denials of access. Survey respondents, on the other hand, thought that the FRA should simply contain a list of access enforcement remedies that a Judge could choose from, which would fit the circumstances of a particular case. Thus, no clear recommendation can be made either way.

Quite a number of citizen experts also raised the issue of how the FRA could ensure that access orders are enforced. Among the majority of citizen experts who discussed this issue, there was agreement that the FRA, and the access order itself, contain a specific clause stating that access will be enforced. Many wanted the clause to state that it would be a police officer who would enforce the access order.

The final recommendation that the majority agreed upon was that the FRA should state that there will be separate remedies for failure to exercise access as well as for denial of access. Such remedies should be applied in situations where an access order exists, and where the

custodial parent brings an access enforcement application before the courts and a Judge finds that the access parent is failing to exercise access.

Recommendations

21. Include a list of access enforcement remedies in the FRA, which includes a variety of remedies, except the remedy that a court order a person such as a police officer to pick up the child and take them to the access parent.

22. Include an access order enforcement clause in the FRA and on the access order which states that a police officer will enforce an access order.

23. Include separate remedies for parents who fail to exercise access, as well as for those who deny access.

15.4. Encouraging cooperative approaches

A large majority of citizen experts recommended that the FRA encourage, and in many cases, require that family mediators and counselors be used to help resolve conflicts arising out of:

a) guardianship, custody and access arrangements;
b) parenting roles and responsibilities;
c) false allegations of abuse;
d) parenting agreements;
e) the misuse of access enforcement applications.

As one way of encouraging cooperative approaches under the FRA, many who participated in the project, in their discussion of various topics, reiterated the need for more education, training and counseling to be provided for those experiencing separation and divorce. Most agreed that this would minimize conflict and help parents make their own arrangements without going to court.

A large majority of citizen experts agreed that the FRA should require couples to attend one mandatory mediation session, with shuttle mediation being set out as an option in the FRA

for those couples experiencing high conflict.

There was also substantial agreement among citizen experts that those who are experiencing family violence should not be required to participate in a mandatory mediation session with the partner perpetrating the abuse.

Recommendations

24. The FRA should clearly state that mediation and family counseling are options that a Judge can order when there are disputes regarding: guardianship, custody and access arrangements, parenting roles and responsibilities, false allegations of abuse, parenting agreements, and the misuse of access enforcement applications.

25. That more training, education and counseling supports be provided so couples experiencing separation and divorce can use a cooperative approach to resolving family law matters, and couples ordered by the courts to attend a program can do so.

26. The FRA should state that all couples who are separating must attend one mandatory mediation session, except where there is family violence.

APPENDIX ONE

Family Law Innovations Project

INFORMATION SHEET

Parenting Agreements

This information sheet has been created to help you answer questions about how the Family Relations Act (**FRA**) might encourage parents to make arrangements after they have separated and divorce.

The information sheet will:

- Tell you what parenting agreements are
- Tell you about parenting agreements and the FRA
- Give some suggestions on how the FRA could encourage parents to make their own agreements

What are Parenting Agreements?

After separation and divorce, most parents are able to agree on how they will continue to take care of their children.

If parents are able to reach an agreement about parenting, they have **four** options:

1. They can work things out verbally and choose not to put their parenting or separation agreements in writing
    - Having a separation agreement is not needed legally in BC
2. The can choose to make a written parenting or separation agreement, but **not** file it in a court
3. They can write down their agreement and file it with the court.
    - This agreement is a contract and parents can put what they would like in the agreement.
    - By filing it with the court, you can have a judge look at it later if there are problems

4. They can have the written agreement made into a consent order
    - This means the parents go to a judge, who confirms the agreement in a court

If parents choose to have a written agreement, there are two types of agreements where they can write down the parenting arrangements:

- They can have a separate parenting agreement; or
- They can include a parenting agreement in their separation agreement.
- A separation agreement also includes other things such as how property and money will be divided.

What does the FRA say about Parenting Agreements?

Currently, parents are **not** required to make parenting agreements and the FRA has no rules about how to make them.

Discussion of Possibilities for Change

A. Requiring parents to make parenting plans

What are Parenting Plans?

Parenting plans are agreements that set out how parents will continue with their responsibilities now that they are separated or divorced. They usually include:

- details about how the parents will care for their children's well being, financial security, and other needs after separation and divorce
- which parent will take care of these things
- how decisions will be made in regards to children after separation and divorce
- how future disagreements about the children will be dealt with
- how information will be shared by the parents

In some other places, the law requires separating or divorcing couples to make parenting plans.

- These plans set out where the child will live, decision-making between parents, and the way the disputes will be resolved.
- If parents cannot agree about the parenting plan, a judge will make one for them.

B. Making parenting plans optional

In Australia, the law makes parenting plans optional, but gives options for what can be included in a plan.

C. Requiring advisors to discuss parenting plans with couples

In Australia, the law also requires lawyers, and other advisors to inform parents that they can make a parenting plan and how they can get help to do this.

Some studies have shown that it is important for parents to be informed about how to create a parenting plan, and provide services to help them develop it.

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For more information contact:
Crystal Reeves
Legal Researcher
SPARC BC
creeves@sparc.bc.ca
(604) 718-7738

Family Law Innovations Project

INFORMATION SHEET

Family Violence and the FRA

This information sheet has been created to help you answer questions about how the Family Relations Act (**FRA**) might deal with family violence during or after parents separate and divorce.

The information sheet will:

- Discuss the issue of family violence, especially as it relates to separation and divorce
- Tell you about what the FRA says about family violence
- Give some suggestions on how the FRA could be changed

Family Violence

Family violence is considered to be any form of physical, sexual, emotional or mental abuse that occurs in family relationships.

Both men and women have reported experiencing family violence, although women experience violence more often than men, and the nature and the outcomes of violence are much harsher for women than for men.

Children are affected by family violence.

- Children are at a greater risk of being physically hurt, either because violence is directed toward them or because they get in the way of their parents.
- Children also experience mental and emotional harm. They may suffer from depression, anxiety, hyperactivity, aggression and other problems.
- Boys who are exposed to family violence are more likely to become batterers when they grow up.

It is important to understand that there are different levels and patterns of family violence, ranging from less serious incidents happening one time to very serious and ongoing patterns of violence.

Family Violence during Separation and Divorce

Family violence does not necessarily stop when a couple's relationship ends. In fact, the violence may start or get worse when a couple separates or is getting a divorce.

A 2005 survey, which looked at violence after separation and how this affected contact with children, found that:

- 27% of spouses who had broken up and had children under 18 reported physical or sexual assault in the previous five years.
- Twice as many abused spouses, as compared to non-abused spouses, reported that their ex-spouse had no contact with their children.

What the FRA Says about Family Violence and Some suggestions for Change

This section is separated into three parts. Each part will set out what is in the FRA now and some suggestions for changing the FRA for each issue

- **Part A: Defining Family Violence in the FRA**
- **Part B: Family Violence and Children**
- **Part C: The FRA and Orders for Keeping family members safe**

Part A: Is there a definition of family violence in the FRA?

Currently, there is **no** definition of family violence in the FRA.

Possibilities for Change

One possibility for change is to include a definition of family violence in the FRA. BC's Family Justice Reform working group has suggested that a definition of family violence be included in the FRA.

Most definitions of violence include:

- Physical abuse, including keeping someone someplace against their will
- Sexual abuse and sexual assault

Other definitions also include:

- Mental and emotional abuse
- Neglect, such as refusing food, shelter, clothing and other basics in life
- Threats of violence
- Attempted violence

Alberta's family law includes a definition of family violence.

Some places also say what isn't considered violence. For example, in Alberta's family law it says that if you are protecting yourself or protecting another person, you are not being violent.

One reason for having a definition of family violence in the FRA is that families going through separation and divorce, judges, lawyers, and others will know exactly the is meant by family violence in the law. This could help people make decisions because the law would be clearer.

Part B. Family Violence and Children

There is **no** section in the FRA that tells judges that they **must** consider family violence as a factor when considering what is best for children when making decisions about custody, access or guardianship.

Even thought no section in the FRA requires judges to consider family violence, judges still can and do consider it when deciding what is best for children.

Possibilities for Change

1. Including family violence as a factor when deciding what is best for children when making custody, access and guardianship orders.

One suggestion is to include family violence as a factor that judges **must** consider when deciding what is in the best interests of children.

Other provinces and territories, and other countries, include family violence as a factor that judge must consider when deciding what is best for a child.

If family violence was included as a factor, it would mean that:

- a judge would look at whether a parent is/has been violent toward their spouse or their child; **and**
- The judge would **have to** take this into account in deciding whether the parent should have guardianship, custody or access.

Another information sheet, *Children's Best Interests*, talks about violence as a factor when deciding what is best for children in custody and access orders.

2. Should the FRA have other rules that help judges determine if a child should have a relationship with a violent parent?

In some places, there are rules for judges to follow when deciding the relationship between a violent parent and their children. These include:

1. A rule that a parent cannot be given sole or joint custody of their child if they have been violent toward their spouse or children.
2. A rule that the violent parent must prove to the court that spending time with their child would not be harmful to the child's development
    - Even if the violent parent could prove to the court that they were not a harm to the child, the judge could still set out rules about the time the parent spends with the child
3. Allowing only supervised contact between a violent parent and their child
4. Placing conditions on the violent parent wanting to spend time with the child.
    - This might include attending a treatment program, not abusing alcohol or drugs, not being a danger to the child, no overnight visits.
5. A rule that judges cannot give a contact order where the parent has sexually abused a child.

In New Zealand's family law, it says that a judge cannot allow a parent to take care of their children everyday unless they believe the child will be safe. There

are 9 factors the judge must think about in deciding whether the child will be safe. The 9 factors are:

- How serious is the violence and what kind of violence
- Was the violence recent
- Did the violence happen often or not very often
- Is it likely that the parent will be violent again
- The physical and emotional harm to the child because of the violence
- Whether the other parent thinks the child will be safe with the violence parent
- The child's views
- Any steps the violent parent has taken to stop the violence from happening again
- Other things the judge thinks might be important

Part C. The FRA and Orders for keeping family members safe

The FRA sets out how a person can get an order from a judge to protect herself or himself from their spouse or partner who is abusing them or threatening them.

There are **two** types of orders that judges can make under the FRA.

1. Restraining Orders
2. Making an Order that only one spouse temporarily lives in the family home

1. Restraining Orders

Example

Ray and Margaret have been married for 7 years. They have two daughters, Samantha and Emma. Ray is abusive towards Margaret and has threatened her to prevent her from leaving him. Despite the threats, Margaret has separated from Ray and gone to a transition home with her two daughters. However, she is very scared of Ray and thinks he may find her at the transition home, or wherever she goes after she leaves the transition home. She has discussed her fears with the lawyer working at the transition home. They have decided to apply to Family court for a restraining order against Ray, asking the judge to write down that Ray must stay away from Margaret and the girls,

and that he cannot email or phone them, or bother Margaret at work. If Ray bothers them, Margaret can call the police and they can arrest Ray.

There are **two** different kinds of restraining orders that a person can get using the FRA.

Orders to Stop Harassment

Under section 37 of the FRA, a judge can order that your spouse or partner cannot molest, annoy, harass or communicate with you or your children if the children are in your custody.

- This would mean they would not be allowed to show up where you live, go to your work, phone you, email you, send letters, or try to contact you through other people.

There is a lot of confusion about who can get this kind of order.

- Some argue that only a parent who is applying for custody, access or guardianship can ask a judge for this kind of order.
- It is unclear whether a person who is dating could ask for this kind of order or if it is limited to spouses.
- Others question whether a person can apply for this order if their spouse has been violent to them or if it is limited to cases where the spouse has been violent to their children.

Orders to Prevent Contact

Contact with Children

- Under section 38 of the FRA, a judge can make an order that prohibits a spouse or partner from entering a place where their child resides or from contacting or trying to contact their child, or the person who has custody or access to the child.
- A judge can **only** make this kind of order if they are also making a custody order at the same time or if a custody order or separation agreement is already filed with the court.

Contact between spouses

- Under section 126 of the FRA, a judge can order that a person cannot enter a place where the other person is living
- This order only applies to separated spouses. They do not have to have children.

Suggestions for changing what the FRA says about Restraining Orders

Option 1

One suggestion is for the FRA to allow anyone in a domestic or family relationship to apply for a restraining order.

- This would mean that people who are dating or who are living together could apply, even if they are not legally considered to be spouses.

Option 2

Another suggestion is that people should be allowed to apply for a restraining order, even if they are not applying for any other order under the FRA.

- For example, they could apply for a restraining order even if they were not applying for a custody order from a judge.

Option 3

Another suggestion is to allow others to apply for orders on behalf of those who are at risk of being abused.

In Canada, there are many different things a judge can put into a restraining order to try and ensure the safety of the family and make sure the violent spouse or parent follows the order.

- **What are some things that you think should be included?**

2. Orders that only one spouse can temporarily live in the home

Section 124 of the FRA says that a judge can order that only one spouse lives temporarily in the family house without the other spouse.

- These are called temporary exclusive occupancy orders.

This type of order may help prevent future violence from happening inside the home, but the order cannot prevent the violent person from approaching a spouse outside the home.

The FRA does not list family violence as a factor that a judge must consider when deciding which spouse gets to live in the house while they are separated.

In family law cases in BC, judges have decided that one spouse must show that it is impossible for the other spouse to live in the home with them while they are separated. The spouse can show that this is impossible by telling the judge about how the other spouse is violent.

Including Family Violence as a Factor in Deciding Temporary Exclusive Occupancy of the Family Home

In other places in Canada, family violence is listed as a factor that judges must consider when deciding who should get to live in the family house when spouses separate.

If one person has been violent toward their spouse, the judge could order that the violent spouse leave the house.

This type of order does not guarantee safety, but could be used with a restraining order to prevent the violent spouse from coming near the house.

What do you think of listing family violence as a factor that judges must consider when deciding who should get to live in the family home?

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For more information contact:
Crystal Reeves
Legal Researcher
SPARC BC
creeves@sparc.bc.ca
(604) 718-7738

SPARC BC

Family Law Innovations Project

INFORMATION SHEET

Considering Children's Best Interests

This information sheet has been created to help you answer questions about how the Family Relations Act (**FRA**) should deal with the best interests of children when parents separate and divorce.

The information sheet is separated into two parts:

- **Part A** discusses the best interests of the child when parents cannot agree and must go to court. This means a judge must decide what is in the best interests of the child when deciding custody and access arrangements.
- **Part B** discusses the best interest of the child when parents make their own agreements without going to court.

A. When a Judge must decide what is in the Best Interest of the Child

What is "best interests of the child"?

The idea that decisions must be made in the best interest of children is a very important legal principle in family law in BC and in Canada.

What is in the best interests of children is specific to each case, but most people think it is in the bests interests of the child to have both parents involved in the child's lives, except when there is a history of family violence or where the conduct of one parent is harming the child.

Judges have to make decisions about what is best for children in a family:

- When the parent's relationship breaks down; **and**
- The parents cannot reach an agreement about the time each parent spends with the child and about who makes decisions affecting the child (these are called custody and access arrangements).

Judges set out their decisions in a court order, which the parents have to follow.

Best Interests of the Child in the FRA

Section 24 of the FRA is the part that talks about children's best interests.

What does section 24 say?

In section 24, it says that judges who are making decisions about the child's best interests **must** take into account a number of factors. Section 24 is often called the **best interest of the child test**.

The factors that judges must consider are:

- The health and emotional well-being of the child - this includes any special needs for care
- The views of the child, especially when as the children get older
- The love, affection and other ties that exist between children and other people
- Education and training for the child
- The capacity of each parent who wants to exercise custody, access or guardianship to do so in an adequate way
- The child's financial well-being in cases where there is an issue about care of the child's property

Discussion of Possibilities for Change

The following discussion suggests what judges could consider in deciding what is in the best interests of children.

1. Include Family Violence as a factor for judges to consider when deciding the best interests of the child.

Right now, the FRA does not list family violence as a factor in considering the child's best interests.

- This doesn't mean that judges do not already consider family violence when deciding what is best for children. It just means that the FRA does **not require** judges to consider family violence as a factor.

Other provinces and territories and other countries do include family violence as a factor in their family law for determining what is best for a child.

If family violence was included as a factor, it would mean that:

- A judge would look at whether a parent is/has been violent toward their spouse or their child; **and**

- The judge would **have to** take this into account in deciding whether the parent should have guardianship, custody or access to the child.

2. Including the Threat of Violence as a factor for judges to consider when deciding what is best for a child.

There is evidence that when a parent continues to **threaten** violence against a spouse or their child, it is actually as harmful as committing violence.

One suggestion to deal with the harm is to include the **threat of violence** as a factor for deciding what is in the best interests of the child.

This would mean that a judge would:

- Look at whether a parent is continuing to threaten their spouse or the child with violence, based on evidence the parents bring to court; **and**
- Have to consider this in deciding whether the parent should have guardianship, custody or access.

3. Including other factors for a judge to consider when deciding what is best for a child?

Another suggestion for changing the FRA is expanding the list of factors that a judge must consider when deciding what is in the best interests of a child.

Remember, there are already six factors in the FRA that judges **must** consider when deciding what is in the best interests of the child. These are in section 24 of the FRA.

- The child's health and emotional well-being, including special needs
- The child's views, especially when the child is older
- The love, affection and similar ties between the child and other people
- The child's education and training needs
- The capacity of each parent who wants to exercise custody, access or guardianship to do so in an adequate way
- The child's material well-being in cases where there is an issue about care of the child's property

Below are some other factors that **could** also be added to the list. In your experience, do you think it would be good to idea to add some of the factors listed below in Section 24 of the FRA?

- How the child has been cared for in the past by the parent
- The child's culture
- The child's language

- Child's religious upbringing
- The child's race and ethnic origin
- The child's Aboriginal Heritage
- Benefits to the child of having a relationship with each person who wants to have custody, access or guardianship
- If the parent is involved in any civil or criminal case that would affect the child's safety or well-being
- The plans that each parent for the child if they were given custody, access or guardianship of the child

There might be some other factors that you think judges should consider in deciding what is best for a child. In your experience, what factors do you think would be important?

B. Requiring Parents to consider their child's best interests when making their own agreements

Remember, the factors in section 24 of the FRA are things judges **have** to consider when deciding what is in the best interests of the child.

As you probably know, many parents do not go to court, either because they are able to make their own agreements with each other, or because they do not know if they should go to court or sometimes, because they cannot afford a lawyer.

If parents are able to reach an agreement about parenting, they have **four** options:

1. They can work things out verbally and choose not to put their parenting or separation agreements in writing
    - Having a separation agreement is not needed legally in BC
2. The can choose to make a written parenting or separation agreement, but not file it in a court
3. They can write down their agreement and file it with the court.
    - This agreement is a contract and parents can put what they would like in the agreement.
    - By filing it with the court, you can have a judge look at it later if there are problems
4. They can have the written agreement made into a consent order

- This means the parents go to a judge, who confirms the agreement in a court

What the FRA currently says about Best Interests of the Child when Parents make their own arrangements

Ideally, most parents will consider their child's best interests when making their own parenting arrangements.

But, the FRA does not say that parents **must** consider the best interest of their child when they make their own parenting arrangements.

Discussion of Possibilities for Change

1. Require parents to consider their child's best interests when making their own arrangements about custody and access.

This could be done by requiring parents to consider the same factors that judges have to when deciding what is in the best interest of the child.

- These are the factors currently listed in section 24 of the FRA; or
- It could include other factors not currently listed.

These factors would really serve as a guideline for parents; setting out things they need to think about in regards to their child when making their own arrangements.

Remember, there are six factors listed in section 24 of the FRA.

- The child's health and emotional well-being, including special needs
- The child's views, especially when the child is older than 12
- The love, affection and similar ties between the child and other people
- The child's education and training needs
- The capacity of each parent who wants to exercise custody, access or guardianship to do so in an adequate way
- The child's material well-being in cases where there is an issue about care of the child's property

Below are some other factors that could also be included in the list:

- How the child has been cared for in the past by the parent
- The child's culture
- The child's language
- Child's religious upbringing

- The child's race and ethnic origin
- The child's Aboriginal Heritage
- The ability of the person who may be granted guardianship, custody and access to be able to care for the child in a good way
- Benefits to the child of having a relationship with each person who wants to have custody, access or guardianship
- If the parent is involved in any civil or criminal case that would affect the child's safety or well-being
- The plans that each parent for the child if they were given custody, access or guardianship of the child

There might be some other factors that you think judges should consider in deciding what is best for a child.

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For more information contact:
Crystal Reeves
Legal Researcher
SPARC BC
creeves@sparc.bc.ca
(604) 718-7738

SPARC BC

Family Law Innovations Project

INFORMATION SHEET

Falsely Accusing the Other Parent of Abuse

This information sheet has been created to help you answer questions about whether the Family Relations Act (**FRA**) should say something about what should happen when one parent falsely accuses another parent of abusing their children.

The information sheet will:

- Discuss some situations where one parent accuses the other parent of abuse in custody and access disputes, and tell you what the current penalties are for falsely accusing a parent of abuse.
- Tell you what the FRA says now about false accusations of abuse
- Discuss whether the FRA should deal with false allegations of abuse and what the FRA could say about it

When One Parent Accuses the other Parent of Abuse

Since the law requires people who reasonably believe a child is being abused to report the abuse quickly, a parent who believes the other parent is abusing their children has a duty to report it.

Sometimes when parents are separating getting a divorce, or are already separated or divorced, a parent will accuse the other parent of abusing their children, reporting them to the police or to social services.

There are usually three types of situations where one parent accuses the other parent of abusing their children.

1. When there really is abuse and there is evidence to prove the abuse

Example

Benjie and Malaya have been divorced for two years. Malaya has custody of their two girls Myra and Imee, but Benjie gets the girls on weekends. Recently, Myra told Malaya that her father sleeps in her bed at night when she is there on weekends and that and that he "touches her." Malaya asked her older daughter Imee if she noticed anything and Imee says it is true that her father sleeps with Myra. Imee says she doesn't want Myra to visit their father any more. Malaya has called social services to report Benjie, and also contacted the police. Benjie is being investigated, and the police and the social worker believe that Benjie is sexually abusing Myra and that he should be charged.

In some cases, there is good evidence to prove that the other parent is abusive.

- The parent who reports the abuse has done their legal duty and the abusive parent should not get custody of the children.
- This would not be a false allegation of abuse because it could be proven in a court.
- It is up to a judge to decide whether the evidence proves that the abuse happened.

2. When one parent suspects the other parent has abused the children but they are not sure or they do not have any real proof of abuse.

Example

Kevin and Sandra have are separated. Sandra has custody of their five-year-old son Malcolm. Malcolm spends time with Kevin every second weekend. Kevin is worried that Sandra may be abusing Malcolm because Malcolm sometimes has bruises when he comes to visit and he has lost quite a bit of weight. He has asked Sandra about this, but she says that Malcolm just plays rough with other boys and doesn't have time to eat because he is too busy playing. Kevin has decided to report Sandy to Social Services because he is worried about Malcolm's safety.

In this case, the parent may tell another person, like a lawyer or social worker that they think the other parent is abusing the children.

The parent may think there is abuse because they have misunderstood something that happened with the children, or because they really believe that the other parent is abusive.

In this case, there might be no abuse and the parent is falsely accused, or it could mean that there was abuse, but that there is not enough evidence to prove the abuse.

3. One parent lies about the other parent, saying they abuse the children even if they know it isn't true.

Example

Albert and Hoshanna have three children. Albert is very angry that he wasn't able to get custody of the kids. He has decided to report Hoshanna for child abuse because he believes that this way, the court will give him custody of the kids and Hoshanna may have to go to jail.

In this case, the parent knows that the other parent has never abused the children but accuses them anyway.

Once the accusation is made, the accused parent will be investigated and some people will believe that the parent is abusive, even if it is not true.

The accusation of abuse may prevent the accused parent getting, or continuing to have, custody, access or guardianship of their children.

Recent research has shown that in most custody and access disputes, one parent falsely accuses another parent of abuse because of a misunderstanding and not because one parent lies on purpose about the other parent.

What Happens to Parents who falsely accuse the other parent of abusing their children?

In BC, if one parent falsely accuses the other parent of abuse, knowing that the accusation is not true and lying to the police and the court, they can be charged under the Criminal Code with mischief, obstructing justice, or not telling the truth to the court.

Also, a person who makes a false report that a child is in need of protection can be fined up to $10,000, be put in jail for up to 6 months or both.

The parent who has been falsely accused can also bring a lawsuit against the parent who lied about the abuse.

- They can ask a judge to find the other parent in contempt of the court.
- If the judge finds that there is no evidence of abuse, based on expert reports, and that the parent intentionally lied, the judge can give the parent a fine or put them in jail or both.

The falsely accused parent could also try and get money from the other parent by taking them to court. This means they would have to go to court and prove to a judge that the parent who made the false claim lied on purpose.

The judge could also order the parent who lied about the abuse to pay the other parents legal costs, if accusations of abuse are not true.

What does the FRA say about Parents Who Falsely Accuse Other Parents in Child Custody and Access Cases?

Right now the FRA does not have a section that states exactly what should happen when a parent falsely accuses another parent of abusing their children.

Suggestions for Change

A. Continuing to use the Criminal Code, contempt of court and damages to punish parents who intentionally make false accusations of abuse.

The current penalties in the Criminal Code for making false statements, and the right of the falsely accused parent to apply to a judge for a contempt of court order or to apply for damages, might already be good ways to punish a parent who falsely accuse the other parent.

B. Including a section in the FRA to deal with Parents who falsely accuse the other parent of Abuse

In Australia's family law, there is a specific section that tells judges that they can order the parent who falsely accuses the other parent to pay the other parents legal costs.

- The law says that the judge must be satisfied that the other parent lied about the other parent being abusive.

A section like this could be put into the FRA or there might be some other way that the FRA could deal will false allegations of abuse.

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For more information contact:
Crystal Reeves
Legal Researcher
SPARC BC
creeves@sparc.bc.ca
(604) 718-7738

Family Law Innovations Project

INFORMATION SHEET

Children's Participation

This information sheet has been created to help you answer questions about the how the Family Relations Act (**FRA**) might include children in the family law process.

The information sheet will:

- Explain what "voice of the child" means
- tell you what the FRA says about the voice of the child
- Discuss possibilities for change

What is the Voice of the Child

In family law, giving children a voice means listening to and involving children and young people in decision-making when their parents' separate and divorce.

There are two important reasons for including children in decision-making:

- One is to ensure that children have information about what is happening and that they feel valued and cared for during and after separation and divorce.
- The other reason is to make sure judges to get the best information possible to make decisions about what is best for the child

Giving children a voice might mean asking the child his or her opinion about who they live with, how they feel about the separation and divorce, about spending time with their parents, where they want to live and go to school, if there has been abuse in the family, as well as other things.

Including children in decision-making when parents are separating or getting a divorce is often called including the "voice of the child"

Voice of the Child in the FRA

The FRA includes the voice of the child in two different ways.

A. Section 24 directly discusses getting the views of the child
B. Section 15 of the FRA, which gives courts the power to ask for a family report, says that the report **may** include the views of a child.

- These sections in the FRA **only** apply to situations where parents go to court to ask a judge to decide the parenting arrangements.
- The FRA does not require parents to consider their child's views when they make there own arrangements.

A. Section in the FRA dealing directly with voice of the child

Section 24(1)(b):

- Says that when judges are deciding who has custody, access and guardianship, they must take into account what is best for the child.
- One of the factors they need to consider, if it is appropriate, is the child's views on these matters.
- Remember, the judge may decide it is not appropriate to consider the child's views in certain cases, so that means that the child's views will not be taken into account.

There is no section in the FRA that says a child's opinion should be the most important factor for deciding who will get custody, access or guardianship. It is only one of the factors that **may** be considered by a judge.

B. Getting Children's Views Indirectly through S. 15 Reports

Currently, children's' voices are most often heard indirectly through reports made under s. 15 of the FRA.

What are s. 15 reports?

If parents go to court, because they cannot come to agreement about matters in their divorce or separation, the judge may ask a family justice counselor, social worker or another person approved by the court to look into family matters and report back to the court.

There are two kinds of reports that can be made:

- a brief report that gets the views of the child on a particular issue, such as who they would like to live with, etc; or
- a full custody and access report, which is a longer report about custody and access but which asks for the child's views

In BC it is only judges who can decide whether there should be a section 15 report or not.

Family Justice Services staff from the government cannot make suggestions about when it would be the best way to get the child's views.

Discussion: How Could Children and Young People's Voices be included during Separation and Divorce

1. Including Children in Mediation

In BC right now, children and young people are **not** included in mediation done by family justice counselors when parents separate and divorce.

In other places, children and youth are included in mediation. This is often done by interviewing the children separately from the parents and then including the children's views in the mediation sessions between the parents.

The province is planning a pilot project to include children in mediation. The pilot project will mean involving children in mediation or having a mediator interview the child and present the child's views at the mediation with the parents.

2. Providing Children's Statements to Decision-Makers

In 2005-2006, a pilot project was held in Kelowna, BC. The goal to include children's voices in family law matters.

An independent lawyer or counselor meets with the child or young person to hear their views

- The person doing the interview is chosen from a roster of volunteers, who have received a training course

- The interviewer explains at the beginning of the interview the reason why they are meeting with the child or young person
- The interviewer then asks the child if they would like to be interviewed, and if yes, writes down exactly what the child says

The interviews are done with the agreement of the parents, who pay for the interviewer or who receive legal aid to pay for the interviewer

The interviewer provides the child's views, in a written statement, to the judge or master making the decisions about custody and access.

3. The child fills out a form

In Scotland, when parents file an application to separate or get a divorce, their children are notified via the F-9 form.

This form not only gives notice to the child that a major decision affecting them will be taking place, it also gives the child a chance to express his or her views.

- A copy of the form is attached at the back of this sheet.

In Scotland, the family law says that if a child fills out the F-9 form and wants to express their views, the Judge cannot issue an order without giving the child a chance to give their views and the judge giving weight to the child's views.

Scottish children can get publicly funded legal assistance to help fill out the F-9 form. If a child does not know how to find a lawyer, the Scottish Child Law Centre can refer the child to a lawyer.

4. Having Separate legal representation for children

There are generally three ways that a lawyer can represent children's views in the courts.

- A friend of the court: this lawyer works for the court and get's the children's views to help the court in making its decisions
- Lawyers who go to court only to argue what is in the best interests of the child. This may include the views of the child but it may not in some cases
- Where the lawyer is hired for the child, where the child gives instructions to the lawyer and the lawyer acts on those instructions

Currently in the FRA, it says that the Attorney General can appoint a lawyer as a family advocate to represent the interests and welfare of the child. However, the program is not currently funded.

Also, children in BC can hire their own lawyer to represent their interests, but they or their parents would have to pay for it themselves.

In some places, the law requires that children have legal representation of some kind, which is publicly funded.

New Zealand

The law says that a lawyer must be appointed in divorce hearings where there are issues about the day to day care of children.

In Australia

The law says that if the parents come to court to resolve issues about their separation or divorce, and one of the issues is determining what is best for the children, the court can:

- Appoint a lawyer to represent what is best for the child; or
- Find an independent lawyer to represent the child's interests.

Ontario

In Ontario, the Ontario Office of the Children's Lawyer employs social workers and lawyers to work together in child custody and access cases.

- The OCL either provides a lawyer for the child in these cases or the lawyer and social worker prepare a report.

5. Having a less competitive trial process

One suggestion for involving children in trial proceedings is to create a more child-friendly court process. This has been tried in Australia with the Children's Case model.

What is the format of the Children's Case model?

- The judge is more active in the process, determining what the issues should be and the way evidence should be given. This is different than lawyers deciding what issues they bring to court.

- The focus is on finding solutions for the future
- It is informal.
- For example, the judge and lawyers might sit at a conference table.
- Lawyers, the parents, the judge and others can all talk to one another
- The judge can decide on different issues during the hearing rather than waiting to the end
- A family consultant (a mediator) is there to help the parents and children

6. Having judges interview children

Some judges do interview children in family law cases in BC, but there is nothing in the FRA that says anything about this.

In other places in Canada, the law gives judges the authority to interview children, if they think it is necessary.

- Some people think that a judge interviewing a child is good, because it allows the child to give his or her opinion about things when their parents are divorcing.
- Others believe that a judge may not be used to interviewing children and will not interpret their answers correctly. They also think it might be intimidating for children.

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For more information contact:
Crystal Reeves
Legal Researcher
SPARC BC
creeves@sparc.bc.ca
(604) 718-7738

SPARC BC

Family Law Innovations Project

INFORMATION SHEET

Access Responsibilities

This information sheet has been created to help you answer questions about how the Family Relations Act (**FRA**) can help ensure that parents meet their access responsibilities.

The information sheet will:

- Tell you what access responsibilities are
- Tell you what the FRA says now about access responsibilities and access enforcement
- Discuss possibilities for change

What is Access?

When parents separate, if the child lives with one parent and that parent is responsible for the child's day-to-day care the parent is considered to have custody of the child.

The child usually spends time with the other parent, even if the child does not live with them. The time that the child spends with this parent is called access.

Below are few examples of custody and access arrangements that parents can make.

Example 1: Prasad and Asha

Prasad and Asha separated two years ago. They decided that they will care for their son Ranjit together. Both parents will be responsible for the day to day care of Ranjit and for making major decisions affecting him. Ranjit will live half time with his mother Asha and half time with his father Prasad.

This would mean:

- Prasad and Asha share custody of their son Ranjit since he lives with each parent half of the time and each parent is equally responsible for Ranjit's day-to-day care.

- They would also have joint guardianship, since both parents are involved in making decisions affecting Ranjit.
- Since both Prasad and Asha share custody, there is no access parent.

Example 2: Jim and Mary

Jim and Mary decide that their daughter, Jennifer, will live with Mary and she will have responsibility to care for Jennifer on a day to day basis. They have also decided that Jim will be involved in major decisions affecting Jennifer (ex: education) and that Jennifer will visit Jim after school two days and week and on Sundays.

This would mean:

- Mary would have sole custody of Jennifer since Jennifer lives with her and she cares for Jennifer everyday.
- Jim and Mary would share guardianship since both are involved in making decisions for Jennifer.
- Jim would be considered the access parent, because Jennifer spends time with Jim but does not live with Jim.

Ways to Arrange Access

To sort out access:

1. Parents can make their own agreement about how much time a child spends with each parent; or
2. If parents can't agree, get a court order from a judge which sets out the amount of time the child spends with each parent.

If parents make their own agreements, they can:

- Simply agree and move forward with their parenting arrangements
- They can write down who has custody and who has access of the child and, if they want to, file the written agreement with the court.
- They can write down their arrangements and ask a judge to put what they have agreed to in a court order. This order is called a consent order.

When Parents Do Not Meet Their Access Responsibilities

Two ways parents do not meet their Access Responsibilities

A parent may break an access agreement made between the parents, or an access order made by the court, in two ways.

1. When one parent denies the other parent access.

- This happens when the parent with whom the child lives prevents the other parent from spending time with the child

2. When one parent fails to use the access they have

- This happens when the parent, who the child does not live with, does not show up for a scheduled visit or only shows up some of the time

When parents do **not** meet their access responsibilities, either by ignoring the agreements they have made or by ignoring a court order, a number of things happen:

- The children lose time with that parent
- The child's relationship with their parents may suffer
- It costs money since parents have to make new plans
- It often causes conflict between the parents

If parents do not meet their access responsibilities, they can either work out a solution themselves, which is usually the case, or they can go to court.

Those parents that go to court over not meeting access responsibilities are often fighting about other things as well, and access is not really the reason.

- It is when the parents go to court that the rules in the FRA become important

Enforcing Access Responsibilities

As mentioned, parents can either make their own agreement about access or if they cannot agree, go to court and ask a judge to make an order about access.

If parents make their own agreement, it only becomes an order that a court can enforce if:

- The parents write it down and they ask a court to make it into a consent order; or
- If the parents file the written agreement under s.121 or 122 of the FRA.

Currently, if a parent breaks an access order in BC and the parents cannot work out a solution themselves, the other parent has two legal choices:

1. **Parents can make an application to the court under s. 128(3) of the FRA**

   Section 128(3) says that:

   - when a parent, without a legal excuse, interferes with the custody or access of a child, and this interference means they break an access order made under the FRA, they are guilty of an Offence
   - If found guilty, the parent can be fined up to $2000 or be put in jail for six months or be both fined and put in jail

2. **Parents can start civil contempt proceedings against the parent who did not follow the access order**

   - This means that a parent is asking a Judge of the Supreme Court of BC to find the other parent (who did not meet the access order by denying the other parent access) guilty of contempt for breaking an access order from the Supreme Court.
   - Those who have an access order from a provincial court cannot use this.

   What happens if the judge finds that parent guilty of contempt?

   - The parent who did not follow the access order can be given a fine or be put in jail or both.

Starting civil contempt proceedings against another parent is considered a serious step by the courts.

The Court of Appeal in BC has determined that a parent should not be found guilty of contempt when it is the first time that they have broken the access order[1]

1 Halas v. Halas (1998), 56 B.C.L.R. (3d) 110 (C.A.)

There are some problems with giving a parent a fine or sending them to jail:

- The parent who starts a case against other parent has to prove, beyond a reasonable doubt, that the other parent has not followed the access order. This is often hard to do.
- It may not be in the best interest of the child to have one parent fined or put in jail. Meeting the best interest of the child is a main principle of family law in BC.

Even though these are two ways a parent could enforce and access order if they cannot work things out themselves, you should know that not very many parents have used section 128(3) of the FRA or have started contempt proceedings against the other parent to make them follow an access order.

Discussion of Possibilities for Change

A. Ways to enforce access orders.

Here are some options for changing the way the FRA could enforce access:

One Option

Keep section 128(3) in the FRA. This would mean that parents could be fined or put in jail for not meeting their access responsibilities.

Second Option

Put some specific rules in the FRA for enforcing access orders.

- For example, in other places in Canada, and in other parts of the world, the law includes specific things that can be done when parents do not meet their access responsibilities.
- These are often called **enforcement remedies**.

Some access enforcement remedies include:

- A warning by a judge
- Giving make up time between the parent who didn't get access and the child

- Requiring the parent who denies access to go to a program or service (e.g. parenting education course)
- mediation
- Giving the parent who denies access community service
- Having the parent who denies access to paying the costs for having the parents go to court to argue the issue of access
- Having the parent who does not meet the access order take part in family or child counseling and paying the cost of the counseling
- Having the court make an order for a police officer or other person to take and deliver the child to the parent who has access
- Giving a fine to the person who denies access
- Having a judge put new conditions on the original access order
- Jail time
- Supervised access

If a list of enforcement remedies were put into the FRA, one option would be to simply list them and allow a judge to choose the enforcement remedy from the list and apply it to the case

Another option would be a build up of more serious remedies each time the parent doesn't follow an access order.

- For example, the first time an access order is not followed a parent could get a warning. The second time the order was not followed they would get counseling, the third time community service, then a fine, etc.

B. Should the FRA contain a part that sets out times when it is okay for scheduled access to not go ahead?

There is nothing in the FRA that states when it might be reasonable for a scheduled access time **not** to go ahead.

In some places in Canada, the law does allow for times when it might be okay for a scheduled access time **not** to go ahead.

The FRA could have a list of situations where it might be okay for a parent to decide that a child's access with the other parent should not go ahead. They might include:

- risk of physical harm to a child

- risk of emotional harm to a child
- risk of physical harm to the parent who made the decision or, who the child lives with
- risk of emotional harm to a parent who made the decision or, who the child lives with
- reasonable belief that the access parent is intoxicated at time of the visit
- the access parent is more than one hour late for the visit
- the child is too ill
- the access parent is not meeting conditions written in the access order
- the access parent has failed to show up for other access visits in the last 12 months
- access parent indicated to the other parent that they would not be using the access visit this time

C. Should the FRA allow judges to order remedies in situations where they find it is okay that scheduled access did not go ahead?

In other places such as Alberta, once the judge agrees that it was okay that the access did not take place on a day it should have, the judge can still order:

- that the parent who lost access be given other time with the child to make up for the missed access;
- that the parent who lost access be given money by other parent for necessary expenses resulting from the missed access;
- other things that would be useful for ensuring future access with the child goes ahead as scheduled.

Example: When it might be okay for scheduled access not to take place and how a parent could be compensated for missed access in certain circumstances.

Barbara and Leanne separated after 2 years of marriage. They have one son, Fenton, who lives with Barbara. Barbara and Leanne had trouble agreeing how often Fenton could spend time with Leanne so a judge ordered that Leanne could have access with Fenton every Saturday. Two months ago, Fenton became ill on a Friday night and Barbara cancelled the access on Saturday. This was the third time this year that Barbara had cancelled access, so Leanne went to court.

The judge decided that in this case canceling the access was okay, because Fenton was ill. However, the judge ordered that the next week, Fenton would be with Leanne on Saturday and Sunday to make up for the missed access.

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For more information contact:
Crystal Reeves
Legal Researcher
SPARC BC
creeves@sparc.bc.ca
(604) 718-7738

Family Law Innovations Project

INFORMATION SHEET

Higher Conflict Families and Repeat Litigation

This information sheet has been created to help you answer questions about how the Family Relations Act (**FRA**) might deal with families who go to court many times, even after they have been separated and divorced.

The information sheet will:

- Discuss the issue of higher conflict families and repeat litigation
- Tell you what the FRA says now about the issue high conflict families who go to court many times
- Discuss some possibilities for change

The Issue of repeat litigation

Example

Gordon and Illana have been divorced for two years. They have three sons between 7-10 years of age. Illana has custody of all three boys and they live with her. The boys stay with Gordon 2 weekends a month.

The divorce was very difficult and Gordon and Illana went to court over many issues because they could not agree on who would get custody of the boys, what would happen to their vacation property in Mexico, how often Gordon's parents would get to visit the boys, etc.

The fighting has continued since the divorce, and Gordon has applied to the court 4 times in the last two years, saying that Illana refuses to let him see the boys on the weekends they are scheduled to visit. Each time, a judge has found that Illana has not refused to let Gordon see the boys but that in fact, Gordon has failed to show up for visits, or has shown up 8 hours late and other plans have been made. A judge has not found a valid reason for Gordon's application against Illana any of the times they have been made.

Illana's is getting tired of having to go to court all the time over Gordon's visits with the boys. She doesn't want to have to deal with Gordon any more, but doesn't know what to do.

Sometimes people like Gordon and Illana go to court again and again to deal with disputes between one another.

- Going to court many times is often called repeat litigation.

This can go on for years after separation and divorce has taken place. Often the parents are not going to court to deal with serious issues but rather to harass and embarrass one another. This generally leads to even greater conflict between the parents.

Disputes over access to children is one of the issues that parents use to go to court over and over again.

Why do some parents use the issue of access to go to court many times?

When one parent believes that the other parent has not followed an access order (called a breach of access order), they can apply to go to court so that a judge can hear about the breach.

- The parent does this by making an access enforcement application
- The parent making the access enforcement application usually wants the judge to give the other parent a penalty (usually a fine) for not meeting their access responsibilities.

Sometimes the other parent has breached the access order and a judge should make a decision about it.

But what some parents do is make access enforcement applications every time there is a small dispute between the parents, which forces the other parent to go to court.

- Doing this is often a way to bother and control the other parent.

Often, the judge does not find any good reason for the access enforcement application and dismisses the case from court without doing anything.

How does the FRA deal with parents going to court over and over again about disputes, even after they are separated and divorced

Currently, there is nothing in the FRA that says what should happen when a parent uses access enforcement applications improperly, either by:

- Using it to deal with small disputes in court; **or**
- Using it to bother the other parent.

The only thing that can prevent the parents from continuing to go to court for no real reason is if:

- One parent applies to court under the *Supreme Court Act*; **and**
- Asks a judge to decide whether the other parent is using the access enforcement application for no valid reason

If a judge decides this is happening, he can make an order that the parent bringing the applications to court cannot start another legal proceeding without special permission from a judge.

The only person who can ask a judge to decide whether a parent is improperly using the courts is the other parent.

- This means that they will have to go to court again.
- This brings more cost and takes more time, so it can be hard for many people to do.

Discussion of Possibilities for Change

1. Mandatory Leave Requirement

Mandatory leave of the court means that a person **must** get the permission of a court before they can do something.

In some places, the law says that when a parent brings an access enforcement application to the court and a judge decides it was unnecessary, the court can order that the parent cannot make another access order enforcement application without getting the permission in a court.

In other places, the law says a parent must get permission from a court for further access enforcement applications after they have made **TWO** unnecessary access enforcement applications.

2. Giving judges the option to make costs orders when parents use the courts improperly

One way to discourage parents who return to court over and over again by mis-using access enforcement applications is for judges to give costs orders.

A cost order is where a judge makes one party pay for the costs of going to court. The judge may order the person to pay:

- Their own costs and total costs of the other parent for coming to court, or
- Their own costs and part of the costs of the other parent
- Costs include such things as lawyers' fees, costs for filing forms, etc.

This would mean that if one parent makes an access enforcement application to the court and the judge finds there was no reason to give a penalty to the other parent, the judge can order that the parent who made the application has to pay the costs of both parents.

You should know that right now, you can only get costs in the Supreme Court and not the Provincial Court in BC. So this option would only apply to the Supreme Court at the moment.

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For more information contact:
Crystal Reeves
Legal Researcher
SPARC BC
creeves@sparc.bc.ca
(604) 718-7738

SPARC BC

Family Law Innovations Project

INFORMATION SHEET

Giving Parenting Responsibilities to Non-Parents

This information sheet has been created to help you answer questions about how the Family Relations Act (**FRA**) can give non-parents parenting responsibilities.

The information sheet will:

- Tell you about the role of non-parents in children's lives
- Tell you what the FRA says about giving non parents parenting responsibilities
- Discuss possibilities for change

The Role of Non-Parents in Children's lives

Parents are not the only people involved in caring for their children. Grandparents, aunts, uncles and others play an important role in children's lives, often looking after them when parents aren't able to, and in some cases, being the child's primary caregivers.

In cases where a relative or close family friend has been a primary caregiver of the child, the separation and divorce of the parents can result in the end of the children's relationship with the relative or close family friend.

- This may cause the child to lose the love and stability that this person was giving to them, especially when the parents are not able to look after the children in a good way.

Giving Non-Parents Parenting Responsibilities under the FRA

1. Making an Application for Custody of a Child

Under s. 35 of the FRA, any person can make an application to the court to have custody of a child.

- Besides parents, this includes grandparents, other relatives, and people who are not relatives.
- If the court gives custody to a non-parent, such as a grandparent, it means the child will live with that person and they will be responsible for the child's care and well being.
- The Courts are reluctant to give custody to non-parents, unless there is a very good reason.
    - The decision will be made based on what is best for the child. Courts have ruled that parents have the right to raise their children unless there is a clear reason why they cannot.

2. Parents appointing Non-parents as guardians in their will

A parent can appoint another person to act as their child's guardian in their will. This would mean that if the parent dies, the appointed person would become the guardian of the child.

- The person appointed as a guardian in the parent's will is called **testamentary guardian.**
- This would mean that if the parent dies, that person would be responsible for making decisions regarding the child.
- The person appointed in the will can either be the child's other parent or someone who is **not** the parent of the child.
- This is for children that are younger than 19

If a parent wants a non-parent to act as their children's guardian while the parent is still **alive**, they have to go to court and ask a judge to appoint the non-parent as a guardian.

Discussion of Possibilities for Change

The discussion below focuses on some changes that could be made to the FRA about guardianship and non-parents, either through a will or when the parent is still alive.

A. Making it easier for people to appoint a testamentary guardian

Many people do not make a will, either because they do not think about it, they don't have property and think that a will is not needed, or because they cannot afford the time and expense.

If parents have not made a will, they may **not** have appointed a guardian for their children in case they should pass away.

In the United Kingdom, the law allows a parent or other guardian to appoint a testamentary guardian in a simple form, without having to make a will.

- The document or form would have to be written or filled in, signed and dated.

B. Allowing non-parents who are already guardians to appoint a guardian in their will.

Example

Josiah is 8 years old and lives with his grandmother. Josiah's mother passed away 3 years ago and in her will she appointed her mother, Candace, to act as Josiah's guardian until he becomes an adult. Candace is now 70 and is worried that she might die before Josiah reaches 19. Candace would like to appoint her other daughter, Josiah's aunt, as Josiah's guardian in her will just in case she should die before Josiah becomes an adult.

Currently in BC, only a parent can appoint a non-parent to be their child's guardian in their will.

In other places in Canada they do allow a non-parent, such as a grandparent, who is already a child's guardian to appoint a testamentary guardian.

C. Standby Guardianship

Standby guardianship would allow a parent who is terminally ill to appoint a non-parent to be their child's guardian, even though the parent is still alive.

- In other places, standby guardianship is used when a parent is terminally ill and death is expected.
- This would allow a non-parent to care for the child if the parent was not able due to the effects of the terminal illness. Eventually, the non-parent will take over as the guardian once the parent passes away.
- Standby guardianship allows both the parent and non-parent to be responsible for the child at the same time (joint guardianship). It is believed that this is less disruptive for the child and provides a bridging time between parent and standby guardian.

An example of how standby guardianship might work?

John has been divorced for 8 years. He is a single parent who has sole custody and guardianship of his two sons, Kwe and Tobey. John has cancer and isn't expected to live beyond the next 8 months. John has a good friend Dale, and would like to Dale be the guardian of Kwe and Tobey if he should pass away. John has stated this in his will.

In a month, John is scheduled for cancer treatments, which will make it very difficult for him to take care of the boys. The doctor's have also told John that he may not make it out of the hospital alive. John would like to appoint Dale as the boy's standby guardian starting in a couple of weeks. That way Dale can take care of the boys and make any decisions that might affect them while John is in hospital.

D. Temporary Guardianship

Temporary guardianship is when a parent appoints a person to act as a substitute guardian for their children.

- It would be used when the parent was going to be away for a short-term period of time or if the parent was incapable of acting as their child's guardian for a temporary period.

When could temporary guardianship be used?

Maria is a single mother who has sole guardianship of her children Alejandro and Camila, who are 13 and 15 years old. Maria is originally from El Salvador, but has lived in Vancouver for 15 years and is now a permanent resident. She needs to return to El Salvador for her sister's funeral, to arrange for the care of her sister's two children, and to sort out what to do with her sister's small piece of land. She will be gone for two months, but is not bringing her children because they would miss too much school and it would be difficult to do everything that needs to be done and take care of her children.

Maria would like her friend Sherri to take care of the children and act as Alejandro and Camila's temporary guardian while she is away in case there is a medical emergency or a school function requiring the permission of a guardian.

The Difference between Temporary Guardianship and Standby Guardianship

Temporary guardianship is different than standby guardianship.

- With standby guardianship, it is expected that the standby guardian will eventually replace the parent because the parent is dying; while
- With temporary guardianship, the parent is not expected to pass away, and only appoints a guardian for a short term absence or incapacity

It would be important to remember that if a person was able to appoint a temporary guardian, it should be because it is in the best interests of the child and not simply because it is convenient for the parent.

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For more information contact:
Crystal Reeves
Legal Researcher
SPARC BC
creeves@sparc.bc.ca
(604) 718-7738

Family Law Innovations Project

INFORMATION SHEET

Defining Parenting Roles and Responsibilities

This information sheet has been created to help you answer questions about how the Family Relations Act (**FRA**) should define the roles and responsibilities of parents.

The information sheet will:

- Explain the terms used to describe Parenting roles and responsibilities
- Tell you what the FRA says now about parenting roles and responsibilities
- Discuss possibilities for change

Words (or terms) used to describe parenting roles and responsibilities after separation and divorce?

Right now, three words are used to describe parenting roles and responsibilities in BC's family law:

- Guardianship
- Custody
- Access

A. What does Guardianship mean?

There are two types of guardianship defined in the FRA:

Guardian of the child:

- When a person is the guardian of the child, it means he or she is responsible for the children's long-term emotional, physical and psychological well-being.

Guardian of the child's property:

- This is where a person is in charge of the child's property
- It is called "guardian of the child's estate"
- It means the person is responsible for protecting and managing the child's financial and legal affairs.

Because the meaning of guardianship is confusing in many cases, judges have defined guardianship to help us understand what it means.

How have judges' defined guardianship?

- The person who is the guardian is responsible for the raising the child and they have the right to make decisions about the child's care.
- This means the parent is responsible for the well being of children over the long-term and also means that a person has physical, day-to-day care, of the children.

When parents are married, they both act as their child's guardian, and guardian of their child's property. When they separate or divorce, it must be decided if one or both parents will act as their children's guardians, and the guardian's of their property.

B. What does custody mean?

There is no definition of custody in the FRA, so judges have defined what it means.

- There are **three** parts to the definition of custody:

1. The person who the child lives with on a day to day basis
2. The person who has the day to day care of the child
3. The person who is responsible for making decisions that affect child's well-being in the long-term
    - For example, this person would make decisions about the education of the child, the healthcare of the child, the religion of the child.

When parents separate or divorce, one parent can have sole custody of the child or the parents can share joint custody.

Other people, including relatives and family friends, can also apply to the court to have custody of the child. But, unless the court finds that the parents are not fit to care for the child, they generally prefer to give custody to parents.

Sole Custody

This is where the child lives with only one parent and the parent is responsible for the care of the child.

Joint custody

There are different types of joint custody arrangements. Some examples of joint custody include:

- The child lives equal amounts of time with both parents
- The child mostly lives with one parent but both parents take responsibility for the child and make major decisions about the child together.

C. What does Access mean?

When a child lives with one parent, the child usually spends time with the other parent.

- This is called access.

When the child is spending time with the access parent, the access parent is in charge of the physical care of the child.

- For example, if James is spending time with his father Brian, Brian can choose what James eats, how early he goes to bed and decide whether he can go the playground after dinner. However, Brian wouldn't be able to make a major decision, like changing James's school.

What the FRA Says Now About Guardianship, Custody and Access

The FRA only provides a general definition of guardianship of the child and guardianship of the child's property.

The FRA does **not** define custody or access, or provide a list of responsibilities for a custodial parent or a parent with access.

Discussion of Possibilities for Change

Choosing Between Existing Words

Currently, there is lots of confusion about the difference between having custody and being a guardian because both refer generally to being in charge of the well being of a child over time.

1. One suggestion is to use one word, either custody OR guardianship, to talk about who is in charge of the well being of the child.
    - Right now both terms are used in family law and it is confusing. It might be less confusing to use one term in the FRA.
2. Another suggestion is to replace the term "guardian of person" with "custody" and "guardian of the child's estate" with "guardian of child's property."

How would this work?

Chen and Zhu are getting a divorce. They have a son, Wei. They have decided that Wei will live with Zhu, and she will be his primary caregiver. Chen will visit with Wei every second Saturday. Since Chen's mother left Wei some money for attending college, Chen and Zhu have agreed that both of them will be responsible for making decisions about Wei's money and other financial issues, but not about other issues.

If the FRA was changed in this way, Zhu would have custody of Wei, Chen would have access, and both Zhu and Chen would be guardians of Wei's property.

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2. Providing detailed definitions

Another option is to keep the terms guardianship, custody and access but provide detailed definitions of each.

3. Should the terms 'custody' and 'access' be replaced altogether?

Some people don't like using the words "custody and "access" because it makes it seem like there is one parent who is a winner (the person with custody) and one parent is a loser (the person without custody).

Other people do like the terms because they say the word 'custody' reflects the fact that in many cases, both during the relationship and after separation and divorce, one parent is the primary care-giver and the other is not. Therefore, they don't equally share parenting responsibilities.

First Option

Keep "custody and access."

Second Option

One change might be to use the terms "shared parenting" to describe custody and access.

Third Option

Another suggestion is to use "parenting time" together with "parental responsibility"

- Parenting time would be used to describe the time that a child spends in each parents care and with other people.
- Parenting responsibilities would describe who has responsibility for the child's day-to-day care.

There might also be other terms that, in your experience, would be better for describing parenting roles and responsibilities of parents when they separate and divorce.

4. Providing a list of parenting roles and responsibilities

In some places, parent's roles and responsibilities are set out in the family law legislation.

In other places, there is a general statement about roles and responsibilities because it is believed that a list is too strict and that a list wouldn't capture all roles and responsibilities of parents.

How Could A List of Parenting Roles and Responsibilities Be Used?

If the FRA had a list of roles and responsibilities, it could work in two ways:

- If parents were able to agree on their own parenting arrangements, they could use the list as a guide
- If the parents were not able to agree on parenting arrangements, they would go to court and a judge would determine the roles and responsibilities of the parents using the list.

The list could include:

- The powers, responsibilities and authority that each parent has by law
- Who the child should live with
- The amount of time a child spends with another person
- How much communication a child has with another person

The list could also state that parents are responsible for:

- Nurturing a child's physical, emotional and psychological development
- Making sure the child has basic necessities (ex: shelter, food, etc)
- Making day-to-day decisions about the child's care and well-being
- Making decisions about a child's education
- Making decisions about a child's cultural upbringing
- Making decisions about a child's linguistic upbringing
- Making decisions about a child's religious upbringing
- Appointing a guardian for a child in case a parent dies
- Consenting to health treatment for the child
- Identifying and advancing all of a child's legal and financial interests

There could be other items added to the list. Would a list be good idea? If there were a list, what would you like to see on it?

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For more information contact:
Crystal Reeves
Legal Researcher
SPARC BC
creeves@sparc.bc.ca
(604) 718-7738

SPARC BC

Family Law Innovations Project

INFORMATION SHEET

Spousal Support Information Sheet

This information sheet has been created to help you answer questions about how the Family Relations Act (**FRA**) should deal with spousal support.

The information sheet is separated into two parts:

- **Part A** will discuss reasons why a spouse can receive spousal support in BC
- **Part B** will discuss whether spousal support should continue once the person paying support dies.

Part A: Reasons for Giving Spousal Support in BC

In BC, each spouse is required to support the other spouse financially when:

- The spouses are married
- The spouses are not married but have lived together for more than two years

When a couples marriage or relationship ends, the FRA requires spouses to be able to support themselves, unless there are certain reasons why they cannot support themselves.

Section 89(1) of the FRA sets out reasons why one spouse may need to provide spousal support to the other spouse. These reasons include:

- The role of each spouse in the family
- An agreement the spouses made, that one spouse would be responsible to support and maintain the other
- The ability of either spouse to support themselves
- The economic situation of the spouses

Making your own agreements about spousal support

Spouses who are separating or getting a divorce can make their own agreements about spousal support. This means that they can decide who will pay spousal support, how much should be paid and how long the support should last without going to court.

Asking a Judge to decide Spousal Support

If the spouses cannot agree, they may ask a judge to decide spousal support. By asking a judge, the spouses have less control over who should pay support, how much support should be paid and how long the support should last.

- Under the FRA, married couples must apply to court within 2 years of getting a divorce if they can't agree about spousal support.
- Couples who are not married, but who have lived together for 2 years, must apply to court within 1 year after separating if they can't agree about spousal support.

If the couple asks a judge to decide about spousal support the judge will:

- First consider whether one spouse should get spousal support
- Then decide how much the support will be and how long it will last.

Three Reasons Judges Use for deciding whether a spouse should receive spousal support?

To decide whether a spouse should get spousal support in BC, a judge can use **three** different reasons. Each of the reasons are equally good and no reason is given more weight than the other.

Reason 1: Compensation

This is the idea that the spouse who spent more time caring for the home and the children during the relationship may need spousal support.

A judge can decide they should get support because:

- They are at a disadvantage for getting paid work because they were not able to build their career and skills during the relationship, **and**

- Their staying home allowed the other spouse to build their skills and focus on their career, which may give that spouse a better ability to earn an income after the relationship ends.

Reason 2: Financial Need

This is the idea that a spouse should get spousal support because he or she is in financial need.

Financial need may be a result of being in the relationship or because the relationship ends, but in some cases the spouse could have financial need because of something else such as a disability or a serious illness.

When a judge decides financial need, they can base their decision on whether one spouse makes much less money that the other spouse. But the support amount does not necessarily have to equal the amount of financial need.

Reason 3: One Spouse Agreed to Support and Maintain the other Spouse

This is the idea that spouses may have made a stated agreement, or implied with their words or actions, that one spouse would support and maintain the other spouse.

In this case, the judge will look at whether such an agreement was made or implied by the spouses' words or actions. If the judge does find that some type of agreement was made, or implied, they can order spousal support.

Suggestions for Changing the Reasons for giving Spousal Support

Because there are several reasons that judges use to decide whether a spouse should get support, and it can be difficult to apply these reasons in different situations, whether a spouse gets support and how much often comes down to what one judge thinks is the spouses need, or by the judge using their common sense about the amount.

The result can be that different judges may give different amounts in spousal support even when cases are similar. This may make things unfair and make

it hard for spouses to figure out how much support will be given if they go to court.

Below are some suggestions for changing how decisions about spousal support are made.

Option 1: Use the Spousal Support Advisory Guideline Draft to Help Judges Determine Amount of Spousal Support

One option for change is to use the advisory guidelines for spousal support that were developed to go along with the Divorce Act. Although the guidelines are not law, they are used as a tool for deciding spousal support.

- These could be kept as guidelines to go along with the FRA or they could become part of the FRA, making them into law.

This option does **not** deal with the different reasons for giving spousal support so using the guidelines with the FRA wouldn't change the reasons that judges give spousal support in the first place.

Instead, once a judge has decided to give spousal support based on one of the three reasons, the guidelines would help judges decide how much the spouse should get based on different formulas.

Option 2: Decide Spousal Support by First Considering Compensation then Financial Need

This option means that spouses would fairly share the financial advantages and disadvantages of the relationship.

The result might be that one person has to give support to make up for the disadvantage the other spouse has had.

- There would be several factors listed that would help judges determine how the spouses can fairly share the advantages and disadvantages.

If one spouse still has financial need after the judge awards a spousal support amount based on the different roles in the relationship, the judge can then figure out what the need is.

- Again, there would be a list of factors for deciding financial need.

Like Option 1, this option does not change the reasons why spouses might get support.

Option 3

The FRA could take out some of the reasons that spouses are given spousal support and give only one reason priority.

If this was done, what reasons should be kept in the FRA:

- To compensate for spouses roles in their relationship
- To compensate for the role played by a spouse, but only if their role caused them financial disadvantage
- To lessen a spouses financial need in all cases, even if it is not caused by the relationship or the relationship ending
- To lessen a spouses financial need only in certain cases, such as a disability or illness

Should one of the reasons be more important than the other for determining whether a spouse gets spousal support?

Part B: Should Child Support and Spousal Support continue once the person paying support dies?

Currently, the FRA does not say whether a child or spousal support order should continue after the spouse paying support dies, by continuing to take the spousal support from that spouse's estate.

In other places in Canada, the family law gives judges the power to make spousal support and child support orders on the support spouse's estate.

Advantages of judge having the power to order the continuation of child and/or spousal support after the support spouse dies

- Make the law more certain
- Allow for consistent court decisions
- Recognizes that the reasons for giving spousal support do not stop just because the support spouse passes away

Disadvantages of having child and/or spousal support come from the support spouse's estate after they die

- Other people may have rights to receive benefits from the support spouses estate

- It is good to have estates settled in a short period of time, but if support payments were being paid from the estate it would need to continue

Can these Advantages and Disadvantages Be Balanced?

- A time limit could be placed on a support order coming from the support spouse's estate.
- Allowing the support to continue from the deceased spouse's estate, but giving judges the power to change the order if there were other people who are given something from the estate
- Having a section in the FRA that would let someone representing the support spouse's estate apply to have the support order changed.

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For more information contact:
Crystal Reeves
Legal Researcher
SPARC BC
creeves@sparc.bc.ca
(604) 718-7738

SPARC BC

Family Law Innovations Project

INFORMATION SHEET

Cooperative Approaches and the FRA

This information sheet has been created to help you answer questions about how the Family Relations Act (**FRA**) could reflect cooperative values and principles.

The information sheet will:

- Discuss different suggestions for encouraging cooperative approaches in BC's family law

1. Require Lawyers to tell their clients about options for resolving matters related to separation and divorce outside the courts

In other places, lawyers are required to tell their clients who are getting a separation or divorce about ways to resolve disputes.

One suggestion is for the FRA to require lawyers to tell their clients:

- Why it might be a good idea to try and resolve disputes about things such as spousal support and child custody without going to court;
- About mediation and other services that could help the client negotiate these resolve these issues.

For example, in Alberta the law requires lawyers who are making a family law court application to:

- Tell their clients about the other ways of resolving the application matter; and
- Tell the client about collaborative processes, mediation, and family justice services that the lawyer knows about.

Alberta's family law also requires lawyers to inform the court that they have told their client about these other options.

In Saskatchewan, New Zealand and Australia, the family law also requires lawyers to tell their clients about other methods of resolving their disputes

besides going to court, about using mediation, and about other processes that encourage cooperation in reaching agreements.

- These places also require lawyers to inform the court that they have told their clients about other options for resolving disputes.

2. Encourage Parents to Reach Agreement about matters related to children

In Australia, the family law encourages cooperation between parents who are separating or getting a divorce by saying that parents should be encouraged to:

- Agree on matters relating to children
- Take responsibility for parenting arrangements and for resolving their parenting conflicts
- Use the courts as a last resort in resolving issues
- To lessen present and future conflict by using an agreement
- To take into account the best interests of their children when making their arrangements.

Something similar could be included in the FRA to encourage parents to reach agreement about matters relating to their children.

3. Have a section in the FRA that requires couples to attend one mediation session before going to court

In some places, the family law requires couples to attend a mediation session before they can go to court about matters relating to separation and divorce.

In some cases, face-to-face mediation may not be a good option.

- In this case, shuttle mediation could be used.

Shuttle mediation is where the mediator meets with one person in one room, then goes to the other person in another room. This way, the couple that is separating or getting a divorce does not have to meet or talk to each other.

In some cases it would not be good to require spouses to go to mediation.

- For example, in cases where there is family violence.

If family violence is an issue, a judge could put aside the condition that spouses attend a mediation session.

APPENDIX TWO

1. Welcome to the FRA Reform Project Survey for Organizations and Advocates.

The purpose of the survey is to receive feedback on possible reforms to B.C.'s Family Relations Act (FRA), based on your experiences as advocates and service providers. The FRA is the provincial law governing separation, divorce, child guardianship, custody and access, as well as other issues related to domestic and family relationships.

The survey covers 13 topic areas. We have provided you with a corresponding information sheet for each topic, which is attached as a PDF booklet in the survey email. Please use the information sheets as a guide for answering questions in the survey.

Many of the questions are multiple choice with answer options of yes, no, I don't know/no answer. Although we recognize that not everyone will feel strongly about each question or have a definitive yes or no answer, please try and provide us with as much clarity as possible by answering yes even if you somewhat agree or no if you somewhat disagree. This will allow us to give clear recommendations back to the Justices Services Branch-Ministry of the Attorney General.

The survey should take about 30 minutes to complete. All responses will be treated confidentially.

As we mentioned in a previous email to your organization, this survey is just one part our consultation process. For information on other aspects of our consultation process regarding the FRA review, please go to our website at www.sparc.bc.ca.

If you would like further information regarding the province's review of the FRA, or to make further comments on possible reforms to the FRA, please visit the Ministry of Attorney General's website at http://www.ag.gov.bc.ca/legislation/#fra

If you have any questions about the survey, please contact Crystal Reeves at creeves@sparc.bc.ca

Please Complete the Survey by August 13, 2007. Thank you

2. Organization Affiliation

* 1. What is the name of your organization/advocacy group?

* 2. Please describe the types of clients that you serve most often through your organization (e.g. children affected by divorce, aboriginal families, women who've experienced family violence, etc.)

* 3. Name the two main services that your organization provides to individuals or clients. (e.g. counselling, policy and research, legal advocacy, etc.)

1.
2.

* 4. What is your role in the organization? (e.g. Executive Director, advocate, counsellor, legal advocate, etc.)

3. Parenting Agreements and the FRA

1. Please answer the following questions:

	Yes	No	I don't know/No answer
Do you think parenting plans would make it easier for parents to agree on parenting arrangements when separating or getting a divorce?	◯	◯	◯
Do you think that parenting plans would result in parenting arrangements that better meet children's needs?	◯	◯	◯
Do you think parenting-time guidelines would help parents in B.C. arrange custody and access when they are separating or getting a divorce?	◯	◯	◯

2. Should the FRA require parents who are separating or getting a divorce to make parenting plans or should parenting plans be optional under the FRA?

- ◯ Parenting Plans Should Be Required
- ◯ Parenting Plans Should Be Optional
- ◯ Parenting Plans Should Never Be Required

3. Regardless of whether parenting plans are made mandatory or optional under the FRA, should the FRA require certain items to be on all parenting plans in BC or should there be a list of options in the FRA which parents can choose from?

- ◯ The FRA should require certain items to be covered in all parenting plans in BC
- ◯ The FRA should have a list of items which parents can choose from when making a parenting plan

4. If the FRA had a list of items that needed to be included in a parenting plan, what would you like to see on that list? (e.g. education plans for the child, vacation and holiday time spent with each parent, where the child lives, etc.)

5. Should the FRA require lawyers and other advisors to inform parents about how they can make a parenting plan?

- ◯ Yes
- ◯ No
- ◯ I don't know/No answer

6. Is there anything else you would like to add with respect to parenting agreements and the FRA?

4. Considering Children's Best Interests

1. Should family violence be added as a factor in s. 24(1) of the FRA, in order for a judge to determine what is in the best interests of a child in deciding custody, access and gaurdianship?

- ◯ Yes
- ◯ No

Why or Why not?

2. Should the threat of family violence be added as a factor in s. 24(1) of the FRA, allowing judges to consider the threat of violence in determining what is best for children when making decisions about custody, access and guardianship?

- ◯ Yes
- ◯ No

Why or why not?

3. Currently there are six factors in s.24(1)of the FRA, which judges consider when determining what is in the best interests of the child when making decisions about custody, access and gaurdianship.
Please choose which factors you would like to be kept in s. 24(1)of the FRA.

- ☐ The health and emotional well-being of the child - this includes any special needs for care and treatment
- ☐ The views of the child when appropriate
- ☐ The love, affection and other ties that exist between children and other people
- ☐ Education and training for the child
- ☐ The capacity of each parent who wants to exercise custody, access or guardianship to do so in an adequate way
- ☐ The child's material well-being in cases where there is an issue about care of the child's property

4. Should s. 24(1) of the FRA include other factors that judges would have to consider when determining the best interests of a child.

If you answer yes to this question, answer question 5. If you answer no or I don't know/no answer, skip to question 6.

- ◯ Yes
- ◯ No
- ◯ I don't know/No answer

5. If you said yes to question 4, what factors should also be added to s. 24(1) of the FRA, besides the factors that are already there?

	not important	somewhat important	very important	N/A
How the child has been cared for in the past by the parent	◯	◯	◯	◯
The child's culture	◯	◯	◯	◯
The child's language	◯	◯	◯	◯
Child's religious upbringing	◯	◯	◯	◯
The child's race and ethnic origin	◯	◯	◯	◯
The child's Aboriginal Heritage	◯	◯	◯	◯
Benefits to the child of having a relationship with each person who wants to have custody, access or guardianship	◯	◯	◯	◯
If the parent is involved in any civil or criminal case that would affect the child's safety or well-being	◯	◯	◯	◯
The plans that each parent for the child if they were given custody, access or guardianship of the child	◯	◯	◯	◯

Other (please specify)

6. Should the FRA say that parents must take into account their children's best interests when making parenting arrangments during separation and divorce?

If you answer yes to this question, answer question 7. If you answer no or I don't know/no answer, skip to question 8.

◯ Yes
◯ No
◯ I don't know/No answer

7. If you answered yes to question 6, what factors should parents have to take into account for deciding their children's best interests when making parenting arrangements?

	should not be included	somewhat important	very important	N/A
The health and emotional well-being of the child - this includes any special needs for care and treatment	◯	◯	◯	◯
The views of the child when appropriate	◯	◯	◯	◯
The love, affection and other ties that exist between children and other people	◯	◯	◯	◯
Education and training for the child	◯	◯	◯	◯
The capacity of each parent who wants to exercise custody, access or guardianship to do so in an adequate way	◯	◯	◯	◯
The child’s material well-being in cases where there is an issue about care of the child’s property	◯	◯	◯	◯
How the child has been cared for in the past by the parent	◯	◯	◯	◯
The child’s culture	◯	◯	◯	◯
The child’s language	◯	◯	◯	◯
Child’s religious upbringing	◯	◯	◯	◯
The child’s race and ethnic origin	◯	◯	◯	◯
The child’s Aboriginal Heritage	◯	◯	◯	◯
Benefits to the child of having a relationship with each person who wants to have custody, access or guardianship	◯	◯	◯	◯
If the parent is involved in any civil or criminal case that would affect the child’s safety or well-being	◯	◯	◯	◯
The plans that each parent for the child if they were given custody, access or guardianship of the child	◯	◯	◯	◯

Other (please specify)

8. Based on your professional experience, is there anything else that the FRA should say that would help judges decide what is in the best intersts of children.

5. The FRA and Children's Participation

1. Should the FRA be amended to say that any person making a major decision involving a child to consider the child's view, provided the child is capable of forming views and wants to share them?

- ◯ Yes
- ◯ No
- ◯ I don't know/No answer

2. Should the views of children ever be the determining factor in custody, access or guardianship decisions made under the FRA?

If you answer yes to this question, answer question 3. If you answer no or I don't no/no answer, skip to question 4.

- ◯ Yes
- ◯ No
- ◯ I don't know/No answer

3. If you answered yes to question number 2, under what circumstances should the views of children be the determinant in deciding custody, access or gaurdianship under the FRA?

- ☐ When the child has reached a certain age
- ☐ When the child has reached a certain maturity level
- ☐ When one parent has been violent towards the child or toward the other spouse
- ☐ Other (please specify)

4. Should the filing of an application for custody, access or guardianship under the FRA automatically trigger a child’s right to have his or her views considered?

If you answer yes to this question, answer questions 5 and 6. If you answer no or I don't know/no answer, skip to question 7.

- ◯ Yes
- ◯ No
- ◯ I don't know/No answer

5. If you answered yes to question 4, when should the child's right to express their views be triggered?

- ◯ When parents file an application under the FRA
- ◯ Before mediation between the parents is attempted
- ◯ When a trial is scheduled

6. If you answered yes to the question 4, what kind of practice would be helpful for getting the child's views?

- ◯ Fill-in-the-blank court forms for children
- ◯ Interviews with children, where their responses are recorded
- ◯ Written reports or assessments
- ◯ Other (please specify)

7. Have you had experience involving children in family mediations?

If you answer yes to this question, answer question 8. If you answer no or I don't know/no answer, skip to question 9.

- ◯ Yes
- ◯ No
- ◯ I don't know/No answer

If yes, how were they involved?

8. If you were involved in family mediations which included children, what worked in the mediation sessions and what did not work with respect to including children?

9. Please answer the following questions regarding getting the children's views when parents are separating and/or getting a divorce:

	Yes	No	I don't know/No answer
Would you like to see children included in mediation sessions when parents are separating or getting a divorce?	◯	◯	◯
Would you like to see an independent lawyer or counselor meet with a child or young person to hear their views in family law matters?	◯	◯	◯
Do you think children should be notified of a major decision affecting them in family law matters via a form such as the F-9 form used in Scotland (see form at the back of the Children's Participation Information Sheet)?	◯	◯	◯
Is separate legal representation for chidlren a good way to ensure children's voices are heard in decisions that affect them in family law disputes?	◯	◯	◯
If children did have legal representation in family court, should the FRA allow the courts to allocate the costs of the children's representation between the parties or to recover the costs from the parties?	◯	◯	◯
Should the FRA be amended to give judges a discretionary power to interview children to determine their views?	◯	◯	◯

10. What do you think of Ontario's approach of having social workers and lawyers working together to ensure the voices of children are included in disputed custody and access cases? (More information on the model is on p. 5 of Children's Participation Information Sheet attached to the email or on p. 12 of the Children's Participation paper at http://www.ag.gov.bc.ca/legislation/pdf/Chapter8-ChildrensParticipation.pdf

◯ I would like to see a simliar approach used in BC
◯ I do not think this approach would be helpful
◯ I don't know if this approach would work

11. Would a less adversarial trial format for cases involving children help ensure children's voices are heard in family law disputes?

- ◯ Yes
- ◯ No

Why or Why not

12. Would you support the introduction of the Australian Children's Cases model in B.C. (More information on the model is on p. 5 of Children's Participation Information Sheet attached to the email or on p. 12 of the Children's Participation paper at http://www.ag.gov.bc.ca/legislation/pdf/Chapter8-ChildrensParticipation.pdf

- ◯ Yes
- ◯ No
- ◯ I don't know/No answer

13. Is there anything else you would like to add with respect to children's participation and the FRA?

6. Access Responsibilities

1. Please answer the following questions about access responsibilities and the FRA:

	Yes	No	I don't know/No answer
Should s. 128(3) of the FRA be kept? This section allows the courts to fine or imprison a person who does not follow an access order?	◯	◯	◯
Should the FRA authorize the Provincial court to fine or imprison those in contempt of access orders when the access order is made in provincial court?	◯	◯	◯
Should the FRA include specific access enforcement remedies?	◯	◯	◯

2. Do you think that there should be remedies set out in the FRA for access denial as well as for the failure to exercise access?

- ◯ There should be remedies for both access denial and for failure to exercise access
- ◯ The remedies should only apply to access denial
- ◯ The remedies should only apply to the failure to exercise access
- ◯ I don't know/No answer

3. If there is a list of access enforcement remedies provided in the FRA, what should be on the list?

	It should be on the list of access enforcement remedies	It should not be on the list of access enforcement remedies	I don't know/no answer
A reprimand by a judge	◯	◯	◯
Attendance at a program or service (e.g. parenting education course)	◯	◯	◯
Community service	◯	◯	◯
The costs for having to bring the issue to court	◯	◯	◯
Counseling (family or child), which would be paid by the parent who did not meet their access responsibilities	◯	◯	◯
Court-ordered taking and delivering of the child to the access parent	◯	◯	◯
A fine	◯	◯	◯
Having a judge put new access conditions on the original access order	◯	◯	◯
Jail time	◯	◯	◯
Make-up time for the parent who did not get	◯	◯	◯

access to spend with the child			
Mediation between the parents	◯	◯	◯
Payment of reasonable expenses for the parent who suffered loss of money because the access order was not followed	◯	◯	◯
Specification of the access order	◯	◯	◯
Supervised access	◯	◯	◯
Termination, modification or suspension of spousal support	◯	◯	◯
Changing the access order	◯	◯	◯

Other Remedies that should be on the list (please specify)

4. If a list of access enforcement remedies were set out in the FRA, should a judge be able to choose between different remedies on the list depending upon the circumstances in the case OR should the FRA have a sliding scale of access enforcement remedies?

- ◯ The judge should be able to choose between different remedies on the list depending upon the circumstances in the case
- ◯ There should sliding scale of access enforcement remedies that would apply in every case
- ◯ I don't know/No answer

5. Should the FRA contain a part that sets out when it is okay for scheduled access to not go ahead?

- ◯ Yes
- ◯ No
- ◯ I don't know/No answer

6. What are some situations where it might be okay for a scheduled access visit not to go ahead?

	This situation should not be a reason for scheduled access to not go ahead	This situation should be a reason for scheduled access to not go ahead	I don't know/no answer
risk of physical harm to a child	◯	◯	◯
risk of emotional harm to a child	◯	◯	◯
risk of physical harm to the parent who made the decision or who the child lives with	◯	◯	◯
risk of emotional harm to a parent who made the decision, or who the child lives with	◯	◯	◯
reasonable belief that the parent wanting access is intoxicated at time of the visit	◯	◯	◯
the access parent is more than one hour late for the visit	◯	◯	◯
the child is too ill	◯	◯	◯
the access parent is not meeting conditions written in the access order	◯	◯	◯
the parent wanting access has failed to show up for other access visits in the last 12 months	◯	◯	◯
access parent indicated to the other parent that they would not be using the access visit this time	◯	◯	◯
a court finds that the denial was excusable for the situation	◯	◯	◯

Other (please specify)

7. Should the FRA provide remedies even when there is a reasonable excuse for the scheduled access not going ahead?

If you answer yes to this question, answer question 8. If you answer no or I don't know/no answer, skip to question 9.

◯ Yes
◯ No
◯ I don't know/No answer

8. If you answered yes to question 7, what should the remedies be if scheduled access does not go ahead?

	Yes	No
That the parent who lost access be given other time with the child to make up for the missed access.	◯	◯
That the parent who lost access be given money by the other parent for necessary expenses resulting from the missed access.	◯	◯

Other things that could be useful for ensuring future access with the children goes ahead as scheduled

9. Is there anything else you would like to add with respect to access responsibilities and the FRA?

7. Giving Parenting Responsibilities to Non-Parents

1. How should the FRA allow parents or another guardian to appoint a testamentary guardian for their children.

- [ ] A simple form
- [ ] A will
- [ ] Other (please specify)

2. Please answer the following questions in regards to giving parenting responsibilities to non-parents:

	Yes	No	I don't know/No answer
Should a guardian who is not a parent be able to appoint a testamentary guardian (that is, a person who will become a child's guardian when the non-parent guardian dies)?	◯	◯	◯
Should the FRA allow a guardian to appoint a "standby guardian" who will assume joint guardianship during the lifetime of the appointing guardian and continue as guardian after the appointing guardian's death?	◯	◯	◯
If the FRA does allow for standby guardianship, should it be restricted to situations where there is only a sole guardian of the children and not joint guardianship?	◯	◯	◯

3. What should be the triggers for standby guardianship?

- [ ] death of the guardian of the child
- [ ] mental incapacity of the guardian of the child
- [ ] physical incapacity of the guardian of the child
- [ ] Other (please specify)

4. Please answer the following questions regarding temporary guardianship:

	Yes	No	I don't know/No answer
Should the FRA specifically provide authority for a guardian to appoint a "temporary guardian"?	◯	◯	◯
If the FRA does allow a parent to appoint a temporary guardian, should there be any restriction on when a temporary guardian may be appointed	◯	◯	◯

5. If there are restrictions on when a temporary guardian may be appointed, what should those restrictions be?

6. Is there anything else you would like to add with respect to giving parenting responsibilities to non-parents?

8. Defining Parenting Roles and Responsibilities

1. Which terms should the FRA use to describe parents roles and responsibilities upon separation and divorce?

	Yes	No	I don't know/No Answer
Guardianship	◯	◯	◯
Guardian	◯	◯	◯
Guardian of the person	◯	◯	◯
Guardian of the estate	◯	◯	◯
Custody	◯	◯	◯
Access	◯	◯	◯

Other (please specify)

2. Please answer the following questions:

	Yes	No	I don't know/No answer
Do you think that including detailed definitions in the FRA for words used to describe parenting roles and responsibilities would help people resolve disputes?	◯	◯	◯
Should the FRA replace the words “custody” and “access” with other terms, if the Divorce Act continues to use “custody” and “access”?	◯	◯	◯
If the term custody is included in the FRA, should the definition of custody in the FRA parallel the definition of custody in the federal Divorce Act?	◯	◯	◯
Should the FRA have a list of parenting roles and responsibilities in it that judges use to determine the roles and responsibilities of each parent upon separation and divorce?	◯	◯	◯

3. If the FRA were to set out a list of parenting roles and responsibilities, what should be included on the list?

- [ ] The powers, responsibilities and authority that each parent has by law
- [ ] Who the child should live with
- [ ] The amount of time a child spends with another person
- [ ] How much communication a child has with another person
- [ ] That parents or a parent are responsible for nurturing a child's physical, emotional and psychological development
- [ ] That parents or a parent are responsible for making sure the child has basic necessities (ex: shelter, food, etc)
- [ ] That parents or a parent are responsible for making day-to-day decisions about the child's care and well-being
- [ ] That parents or a parent are responsible for making decisions about a child's education
- [ ] That parents or a parent are responsible for making decisions about a child's cultural upbringing
- [ ] That parents or a parent are responsible for making decisions about a child's linguistic upbringing
- [ ] That parents or a parent are responsible for making decisions about a child's religious upbringing
- [ ] That parents or a parent are responsible for appointing a guardian for a child in case a parent dies
- [ ] That parents or a parent are responsible for consenting to health treatment for the child
- [ ] That parents or a parent are responsible for identifying and advancing all of a child's legal and financial interests

4. In your opinion, what are the three most important issues relating to parents' roles and responsibilities and parenting arrangements?

1.
2.
3.

5. What three measures do you think would be most effective in resolving those issues?

1.
2.
3.

6. Are there issues related to parents' roles and responsibilities and parenting arrangements that are not covered that you would like to raise?

9. Cooperative Approaches and the FRA

1. Please answer the following questions:

	Yes	No	I don't know/No answer
Do you think the FRA should encourage cooperative or collaborative approaches for resolving family law matters?	◯	◯	◯
Should the FRA require lawyers to tell their clients about options other than the courts for resolving matters related to separation and divorce?	◯	◯	◯
Should the FRA require lawyers to inform the court that they have told their clients about other options for resolving their disputes?	◯	◯	◯
Do you think that the FRA should say that parents should be encouraged to take a cooperative approach when deciding matters related to their children, as in the Australian Family Law?	◯	◯	◯

2. Which options would you like to see included in the FRA to encourage cooperative approaches to separation, divorce and associated issues?

	Not important	Somewhat important	Very important
Use the courts as a last resort in resolving issues	◯	◯	◯
To lessen present and future conflict by using an agreement	◯	◯	◯
Agree on matters relating to children	◯	◯	◯
Take responsibility for parenting arrangements and for resolving their parenting conflicts	◯	◯	◯
To take into account the best interests of their children when making their own arrangements.	◯	◯	◯

Other (please specify)

3. Please answer the following questions:

	Yes	No	I don't know/No answer
Do you think the FRA should require couples who are separating or getting a divorce to attend one mediation session before going to court when there are issues to be resolved?	◯	◯	◯
Do you like the idea of shuttle mediation for cases where face-to-face mediation might not be appropriate?	◯	◯	◯
Are there any situations where the requirement to attend a mediation session, whether it is face-to-face or shuttle mediation, should be waived for the couple?	◯	◯	◯

4. If there are situations where the requirement to attend a mediation session, whether it is face-to-face or shuttle mediation, should be waived for the couple, when should this be?

5. Should there be any exceptions to using a cooperative or collaborative approach to resolving family law matters? Explain what the exceptions might be.

6. Is there anything else you would like to add with respect to cooperative approaches and the FRA?

10. High Conflict Families and Repeat Litigation

1. Should the FRA include a provision that would permit the court to impose a leave requirement, including one on the court's own motion, on litigants who bring unmeritorious or trivial complaints in family law cases?

If you answer yes to this question, answer question 2. If you answer no or I don't know / no answer, skip to question 3.

- ◯ Yes
- ◯ No
- ◯ I don't know/No answer

2. If you answered yes to question 1, when should the leave requirement be automatically triggered?

- ◯ after one access enforcement application is found to be either unsubstantiated or too trivial to warrant a sanction by the court
- ◯ after two access enforcement applications are found to be either unsubstantiated or too trivial to warrant a sanction by the court
- ◯ after three or more access enforcement applications are found to be either unsubstantiated or too trivial to warrant a sanction by the court
- ◯ Other (please specify)

3. Should the FRA address access enforcement applications brought in bad faith?

If you answer yes to this question, answer question 4. If you answer no or I don't know / no answer, skip to question 5.

- ◯ Yes
- ◯ No
- ◯ I don't know/No answer

4. If yes, how should the FRA address access applications brought in bad faith?

- ☐ A warning by the judge
- ☐ Community Service
- ☐ A fine
- ☐ A jail term
- ☐ Require the person who brought the application in bad faith to pay the other parents costs for coming to court
- ☐ Other (please specify)

5. Do you have other suggestions for ways to resolve or prevent access disputes in higher-conflict families?

11. Family Violence and the FRA

1. Should the FRA define family violence?

- ◯ Yes
- ◯ No
- ◯ I don't know/No answer

2. If yes, what should the definition of family violence cover?

- ☐ physical abuse
- ☐ forcible confinement
- ☐ sexual abuse
- ☐ psychological or emotional abuse
- ☐ neglect, such as refusing food, shelter, clothing, etc.
- ☐ financial abuse
- ☐ threats of violence
- ☐ attempted violence
- ☐ Other (please specify)

3. Should the definition say that family violence does not include acts of self-protection or protection of others?

- ◯ Yes
- ◯ No
- ◯ I don't know/No answer

4. Is there anything else you would like to add with respect to family violence and the FRA?

12. Family Violence and Children

1. Please answer the following questions regarding family violence and children:

	Yes	No	I don't know/No answer
Should the FRA include family violence as a factor when deciding what is best for children when making custody, access and guardianship orders?	◯	◯	◯
Should the FRA say that a violent parent ought not to get custody of the children unless that parent can prove it would be in the best interests of the child to do so?	◯	◯	◯
Should the FRA allow a violent parent access or parenting time with the child?	◯	◯	◯
Should the FRA have a rule that allows only supervised contact between a violent parent and their child?	◯	◯	◯
Should the FRA allow a judge to make any order to protect a child's safety even where the judge has not been able to determine whether the allegation of violence is proved so long as the judge is satisfied that there is a real risk to the child's safety?	◯	◯	◯
Should the FRA say that a judge cannot give a contact order where the parent has sexually abused a child?	◯	◯	◯

2. Should the FRA require judges to impose conditions in access orders on the parent found to have been violent?

◯ Yes
◯ No
◯ I don't know/No answer

3. If you answer yes to question 2, what conditions should be imposed?

1.
2.
3.

13. Family Violence and Orders to Ensure Safety

1. Please answer the following questions:

	Yes	No	I don't know/No answer
In order to prevent violence in a domestic or family relationship, should restraining orders made under the FRA be available to anyone who is in a domestic or family relationship, including people who are dating or those who are living together as a couple but who do not meet the legal definition of "spouse"?	◯	◯	◯
Should the FRA be amended to make it clear that family members, such as former spouses, may bring applications for restraining orders, even if they are not applying for anything else under the FRA?	◯	◯	◯
Should the FRA allow others to apply for restraining orders on behalf of those who are at risk of being abused?	◯	◯	◯
Should s. 124 of the FRA include specific factors, such as violence, to guide a judge's decision about orders for exclusive occupancy of the family home?	◯	◯	◯

2. If others were able to apply for restraining orders on behalf of those at risk of abuse or those who are experiencing violence in a domestic or family relationship, who should be allowed to apply for such orders?

3. Do the restraining orders available under the FRA address the different kinds of family violence adequately (i.e. violence against spouses, violence against children)?

If you answer no to this question, answer question 4. If you answer yes or I don't know / no answer, skip to question 5.

◯ Yes
◯ No
◯ I don't know/No answer

4. If you answered no to question 3 because you think restraining orders made under the FRA do not adequately address different kinds of family violence, what could be added to the FRA to provide adequate protection?

5. Do you have any other suggestions as to how restraining orders under the FRA can be structured so as to best ensure the safety of family members in the face of family violence?

14. Falsely Accusing the Other Parent of Abuse

1. Please answer the following questions:

	Yes	No	I don't know/No answer
Are existing criminal and civil penalties discussed in Part A of the Information Sheet (Page 4-5) adequate to address the situation where one parent falsely accuses another parent of abusing their children in custody and access disputes?	◯	◯	◯
Should the FRA set out that when a judge finds one parent has falsely accused another parent of the abuse of their children, the parent who made the false allegation should pay the legal costs of the accused parent?	◯	◯	◯
If costs are ordered, should the person who made the false allegation pay the entire legal costs of the falsely accused parent?	◯	◯	◯
If costs are ordered, should the person who made the false allegation pay only part of the legal costs of the falsely accused parent?	◯	◯	◯

2. Should there be any other penalties for a parent who knowingly makes a false allegation of abuse against another parent in custody and access disputes?

3. Is there anything else you would like to add with respect to false allegations of abuse and the FRA?

15. Spousal Support

1. Please answer the following questions regarding spousal support:

	Yes	No	I don't know/No answer
Do you think it is a problem that spouses are entitled to spousal support for so many different reasons – e.g., to compensate for the advantages and disadvantages of the relationship; to lessen financial “need”, etc.?	◯	◯	◯
Do you think about the Spousal Support Advisory Guidelines Draft developed to go along with the federal Divorce Act are useful?	◯	◯	◯
If you thought Spousal Support Advisory Guidelines Draft were useful, do you think they should be kept as guidelines to go along with the FRA or become part of the FRA, which would make them into provincial law?	◯	◯	◯
Do you think spousal support should be decided on the basis of a compensation model first and then on the basis of financial need?	◯	◯	◯

2. Please choose those options that you think should be reasons for providing spousal support in the FRA.

	Not important	Somewhat important	Very important
spousal support should be given to compensate for spousal contributions to the relationship (e.g., their role in the relationship)	○	○	○
spousal support should only be given if the spouse's role negatively affected their ability to financially support themselves	○	○	○
spousal support should be given regardless of whether or not the spouse's role in the relationship negatively affected their ability to financially support themselves	○	○	○
spousal support should be given to lessen spousal need	○	○	○
spousal support should be given in all cases, even if the need is not caused by the relationship or its breakdown	○	○	○
spousal support should only be given in exceptional circumstances (e.g., disability; serious illness)	○	○	○
there are no reasons that spousal support should be given	○	○	○

Other (please specify)

3. Please answer the following questions about the continuance of spousal support after the death of spouse who pays support:

	Yes	No	I don't know/No answer
Do you think it would be useful to include a provision in the FRA that clearly allows judges to make support orders binding on the estate of the spousal support payor?	◯	◯	◯
If judges are allowed to make support orders binding on a payor's estate, should the FRA include a way to balance the competing interests of a spousal support recipient and other beneficiaries with a right to the payor's estate?	◯	◯	◯

4. If judges are allowed to make support orders binding on a payor's estate, how should the FRA balance the competing interests between the spouse recieving support and other beneficiaries with a right to the spousal support payor's estate?

	Not important	Somewhat important	Very important
limit the time that a support order can bind the payor's estate	◯	◯	◯
make a binding support order subject to change if relief is later awarded out of the payor's estate to other beneficiaries under the Wills Variation Act	◯	◯	◯
allow the personal representative of the payor's estate to apply to vary a support order	◯	◯	◯

5. Is there anything else you would like to say about spousal support and the FRA?