

LEGAL BULLETIN

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IVF Funding and Parentage Law in British Columbia: Rethinking Normative Assumptions

Introduction

In 2024, the Government of British Columbia announced the introduction of a publicly funded in vitro fertilization (IVF) program, with funding expected to support one cycle of treatment for eligible residents beginning in April 2025 (BC Government 2024). The program represents a significant expansion of access to reproductive health care in the province. However, the program's scope is limited. While the program funds the core IVF procedure, it does not cover donor sperm, donor eggs, or surrogacy-related costs. Funding for only one IVF cycle per patient also departs from standard medical practice and from policies in provinces such as Manitoba and Nova Scotia, where IVF success is widely understood to depend on time and multiple treatment cycles (Quelch, 2025).



From an equality perspective, these exclusions raise important questions about who is able to access publicly funded reproductive assistance. Individuals who require donor gametes or surrogacy in order to conceive, including many LGBTQ+ individuals and single parents by choice, must continue to bear significant financial costs. Although the program's eligibility criteria do not explicitly distinguish based on sexual orientation or family status, the structure of the funding scheme may nonetheless produce unequal effects for individuals who cannot conceive using their own genetic material, as well as those who are low-income and/or living in more rural areas.

The design of reproductive policy also intersects with broader legal definitions of parentage. As Harder notes, “the state's interests in ensuring the care of children align with the state's governance of kinship—or who constitutes a family” (Harder 2021, 306). Decisions about what forms of reproductive assistance are publicly supported reflect underlying assumptions about the types of family formation considered eligible for both public funding and legal recognition.

Parentage Law and Assisted Reproduction

Parentage laws determine who is legally recognized as a child's parent. Legal parentage determines parental responsibilities, decision-making authority, and inheritance rights. In Canada, the regulation of parentage has been increasingly shaped by developments in assisted reproductive technologies, which have complicated traditional conceptions of parenthood. Scientific advances now allow parenthood to be separated into several distinct roles: the individual who provides genetic material, the person who gestates and gives birth to the child, and the individual or individuals who intend to raise the child (Kelly 2013). These developments have required family law to reformulate traditional legal models of parentage.

British Columbia's *Family Law Act* is often described as one of the more progressive legislative frameworks in Canada for addressing these developments (Harder 2021). Part 3 of the *Family Law Act* provides detailed rules

governing parentage in the context of assisted reproduction, including provisions that allow multiple intended parents to be recognized as legal parents and mechanisms that permit the birth parent to waive parental status in certain circumstances (*Family Law Act* ss 29, 31). This framework reflects an important shift toward intention-based parentage, recognizing that families formed through assisted reproduction may not conform to traditional biological models.

Normative Assumptions in Parentage Law

Despite these progressive features, parentage law continues to reflect underlying assumptions about biology and family structure. Harder argues that even legal frameworks that attempt to accommodate assisted reproduction remain “circumscribed by genetics, biology, and conjugality,” reflecting assumptions historically associated with heterosexual family structures (Harder 2021, 305).

These assumptions become particularly visible in the legal categories used to regulate assisted reproduction. Although British Columbia law allows for the recognition of non-biological parents in certain circumstances, it frequently does so within structures that continue to privilege biological relationships. For example, the recognition of multiple parents under the *Family Law Act* (s. 30) generally occurs within a model that still assumes a biological connection between the child and at least one legal parent. Harder describes this as a “three-parent model” involving a monogamous couple plus a donor or surrogate (Harder 2021, 319). While this approach represents a significant legal innovation, it nevertheless remains constrained by underlying assumptions about biological parenthood and the nuclear family. It is important to note that, in many queer family formations, biological connection is not necessarily the defining feature of kinship (Hayden 1995, 56).

Similarly, the legal recognition of assisted reproduction is generally limited to IVF or artificial insemination. Sperm donation cannot be completed through sexual intercourse, which makes legal recognition for some non-normative family structures more complicated. For example, a lesbian couple who conceive through sexual intercourse, or through at-home donor insemination, with a known donor face greater legal uncertainty than couples who conceive through regulated assisted reproduction. This challenge applies, too, in the context of polyamorous relationships. As Kelly argues, legal reforms around assisted reproduction have largely been designed to protect “traditional” families formed through medical donor insemination, while non-normative queer parenting arrangements continue to fall outside the legal framework. The more a lesbian or gay family deviates from traditional nuclear family norms, the less responsive the law appears to be (Kelly 2013).

As a result, many family arrangements that fall outside these models, particularly non-normative queer family structures, may still face legal uncertainty or limited recognition. As Kelly further observes, “non-normative queer families have few legal mechanisms available to protect their parenting relationships” (Kelly 2013, 5).

Modernizing Parentage Law: Reform of Part 3 of the *Family Law Act*

These tensions have prompted growing discussion about the need to modernize parentage law. The British Columbia Law Institute (BCLI) conducted a comprehensive review of Part 3 of the legislation (BCLI 2024). The report formed part of the Parentage Law Reform Project within the second phase of the BC Government’s Family Law Act Modernization Project. The review concluded that while the existing framework generally provides a workable legal structure for determining parentage, several areas require clarification or reform in light of evolving reproductive technologies and family structures. As the report notes:



In the ten-plus years that part 3 has been in force, British Columbia has witnessed noteworthy developments in the law... as well as in social attitudes and reproductive technology. (BCLI 2024).

The report ultimately proposes 34 recommendations intended to enhance diversity and inclusion while decreasing the costs and barriers associated with forming and raising families. A central focus of the reform proposals is the expansion of “intention-based parentage”. This would mean a reduction in biology being the primary determinant of parentage, especially for children conceived through sexual intercourse.

One key proposal involves amending s. 26 of the *Family Law Act*, which currently states that where a child is conceived through sexual intercourse, the child’s parents are the birth mother and the biological father. This rule reflects earlier legal principles carried forward from s. 61(1)(a) of the *Law and Equity Act* (1996). The BCLI report recommends amending this framework to allow for the possibility of more than two legal parents in the context of conception through sexual intercourse, where the parties have entered into a written pre-birth parentage agreement. This proposal aligns with the existing recognition of multiple parents in situations involving assisted reproduction under s. 30 of the *Family Law Act*.

The committee recommends that, where such an agreement exists, the child’s parents would include:

- (a) the intended birth parent, who is not a surrogate;
- (b) the person whose sperm is used to conceive the child, unless the parties made a pre-conception agreement under the section for sperm donation by sexual intercourse,
- (c) the other parties to the pre-birth agreement who agree to be parents of the child (BCLI 2024, 53).

The requirement that the birth parent remain one of the child’s parents is intended to ensure that this provision is not used as an alternative method of creating a surrogacy arrangement, which is governed separately under s. 29 of the *Family Law Act*. Additional reform proposals include revising the legislative language to ensure gender-inclusive terminology.

Conclusion

Although these proposals remain part of an ongoing policy process and have not yet been implemented, they signal growing recognition that existing parentage rules may not adequately reflect the diversity of modern family structures. One notable recommendation would permit sperm donation through sexual intercourse, where a pre-conception agreement confirms that the donor does not intend to be a legal parent. This change would expand reproductive options for individuals and families who may fall outside the scope of regulated assisted reproduction or who cannot access the limited IVF funding currently available.¹

Taken together, these proposals illustrate a shift in British Columbia toward recognizing intention-based parenthood and diverse family forms within parentage law. As this framework evolves, related policies such as IVF funding may come under increasing scrutiny to ensure they align with the legal recognition of more diverse family structures.

¹ Similar legislative approaches already exist in other Canadian jurisdictions, including Ontario and Saskatchewan (*Children’s Law Reform Act*, 1990, s. 8; *Children’s Law Act*, 2020, s. 60)

Notes

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Children's Law Reform Act, RSO 1995, c 12

Family Law Act Modernization Project. Chapter 6: Parentage (2024)

Family Law Act, SBC 2011, c 25

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