(3) the strength of the child's bonds to persons and circumstances in each province;

(4) whether the removal was wrongful, that is, unilateral;

(5) whether the removal was justified in light of abuse directed at the child by the parent remaining in the other province;

(6) the behaviour of the parents towards compliance with interim custody orders;

(7) the province in which evidence of the child's present circumstances is most readily available; and

(8) the province in which the issue of custody can be most easily and cheaply determined.

See *Hefter v. Hefter* for a practical application of these factors. See also *Crerar v. Crerar*, 2013 BCSC 2244 (Chambers) at paras. 23 to 26.

B. GUARDIANSHIP, PARENTING RESPONSIBILITIES, AND CONTACT UNDER THE *FAMILY LAW ACT* [§1.20]

Under s. 39 of the *Family Law Act*, parents who live together during the child's life are presumed to be guardians of the child and to have the responsibilities of a parent/guardian under s. 41 of the Act. While parents are generally guardians under the *Family Law Act*, with some narrow exceptions, there is limited opportunity for any other person to assume the role of the guardian. Section 50 provides that parents can become guardians by agreement or through parentage (s. 39), the *Adoption Act*, R.S.B.C. 1996, c. 5, or the *Child, Family and Community Service Act*, R.S.B.C. 1996, c. 46, although the latter two statutes do not allow the appointment of a guardian. Except for biological parents, guardians are appointed by the court. A parent's new spouse is not automatically a guardian (*Family Law Act*, s. 39(4)), though they may be appointed (*B.A.S. v. S.R.S.*, 2015 BCSC 878), and a surviving parent, who is not a guardian, does not become a guardian on the death of a guardian unless appointed (*Family Law Act*, s. 54).

A parent who has never lived with the child is not a child's guardian unless s. 30 (Parentage if other arrangement) applies, the parent and all other guardians agree, or the parent regularly cares for the child (*Family Law Act*, s. 39). In *A.A.A.M. v. British Columbia (Children and Family Development)*, 2015 BCCA 220, the court considered the meaning of the phrase "regularly cares for", finding it to mean "a continuing willingness to provide for the child's ongoing needs". The central question under s. 39(3)(c) has been construed as "whether the

applicant parent has shown a willingness to provide for the child's ongoing needs 'usually' or 'normally', that is, more than simply visiting the child at regular intervals" (*M.A.B. v. J.A.B.*, 2023 BCSC 1276 at para. 87). Where a parent's ability to exercise parenting time is restricted for reasons outside their control, it may be unfair to conclude that they are unwilling to meet the child's ongoing needs (see *A.A.A.M. v. British Columbia (Children and Family Development)* at para. 67). See *L.P. v. A.E.*, 2024 BCCA 270 at paras. 6 to 13 for discussion of s. 39 and guardianship and for a summary of parentage principles generally.

A party applying to be declared a guardian under Division 3 of Part 4 of the *Family Law Act* has the onus of establishing that such declaration is in the child's best interests (*A.A.A.M. v. British Columbia (Children and Family Development)*; *L.M.S. v. W.D.U.*, 2018 BCSC 1154 at para. 189; see also *M.M.F. v. C.T.F. and J.J.K.*, 2019 BCPC 19).

A person applying for guardianship under s. 51 does not have to be a party to the family law proceeding (*De Cotiis v. De Cotiis*, 2019 BCSC 172).

Under s. 42(1), only guardians may have parenting time with a child. During parenting time, the guardian has responsibility for the day-to-day care and decision-making on behalf of the child. While exercising parenting time with a child, the guardian must exercise their parental responsibilities in the child's best interests.

Section 59 permits a court to grant contact to any person who is not a guardian, including a parent or grandparent. Contact with a child describes the contact between the child and a person other than the child's guardians.

In *K.B. v. M.S.B.*, 2021 BCSC 1283, a surrogate surrendered a child, along with all parental rights, to the intended parents. The parties agreed that the surrogate would be able to see the child at any time. The relationship soured after two years, and the surrogate applied for contact on an interim basis while seeking to be declared a parent at trial. The court held that, despite the parents' written agreement to allow the surrogate to see the child, they could vary the agreement in the child's best interests. The court upheld the parents' decision to deny contact.

VI. PARENTAGE DETERMINATION UNDER THE *FAMILY LAW ACT* [§1.21]

Part 3 of the *Family Law Act* is a comprehensive statutory framework codifying the determination of who is a parent of a child. The court lacks inherent jurisdiction to determine parentage outside this statutory scheme (*Cabianca v. British Columbia (Registrar General of Vital Statistics)*, 2019 BCSC 2010).

While the court has authority to correct uncertainty as to parentage, the *Family Law Act* does not give the court overarching power to make parentage declarations not otherwise provided for in the *Family Law Act*. However, the court retains *parens patriae* authority to declare parenthood where the *Family Law Act* contains a "gap" (*British Columbia Birth Registration No. 2018-XX-XX5815*, 2021 BCSC 767).

The provisions of Part 3 are particularly relevant to birth registration under the *Vital Statistics Act*, R.S.B.C. 1996, c. 479, to guardianship and parenting provisions (as parents are generally guardians, and only guardians may have parental responsibilities and parenting time), and to issues of inheritance under the *Wills, Estates and Succession Act*, S.B.C. 2009, c. 13.

Section 23 replaced former s. 61(1) of the *Law and Equity Act*, R.S.B.C. 1996, c. 253 and provides that for all purposes of the law in British Columbia, Part 3 sets out the rules to determine parentage of a child including situations where assisted reproduction is used. However, if a child is adopted under the *Adoption Act*, the child's parents are as set out in that Act (*Family Law Act*, s. 25).

The parentage rules do not apply retroactively to dispositions of property made before the Act came into force (s. 22).

Section 33 provides authority for the court to order "parentage tests", which are defined in s. 33(1).

In *A.A.A.M. v. British Columbia (Children and Family Development)*, 2015 BCCA 220, the court broadly considered the parentage and guardianship provisions of the *Family Law Act* in a complicated family scenario. The child's biological mother signed a consent to adoption making the respondent director of adoption a "guardian" of the child under the *Family Law Act*. The child's biological father sought guardianship under the *Family Law Act*. The court reversed the trial judge's finding that the biological father was not a guardian under s. 39(3)(c) of the *Family Law Act* because he did not "regularly care

for the child". The court found that the biological father intended to care for the child and did all that he could reasonably have done in the circumstances. The court declared the biological father a guardian on the condition that he and the other guardian agree to each guardian's rights and responsibilities. If unable to agree, the matter was to be remitted to the Supreme Court. The matter has been the subject of a number of decisions since then, including an order suspending all in-person and Skype time between the father and the child (*A.A.A.M. v. British Columbia (Director of Adoption)*, 2017 BCSC 2077).

In *British Columbia Birth Registration No. 2018-XX-XX5815*, the court considered the issue of parentage and birth registration in the context of a child born in a polyamorous relationship. Two of the child's parents were his biological parents. The parties sought a declaration that the third (non-biological) parent was also a parent of the child and an amendment to the child's birth certificate to name the third parent. The court concluded that there was a gap in the *Family Law Act* where polyamorous families were concerned. It exercised its *parens patriae* jurisdiction to declare the third parent a legal parent of the child and directed the Vital Statistics Agency to amend the child's birth registration accordingly.

A. ASSISTED REPRODUCTION [§1.22]

Many of the key terms associated with assisted reproduction are set out in s. 20 of the *Family Law Act*.

Generally, a donor of genetic material in assisted reproduction is not a parent of the child conceived and born. The donation does not make the donor the child's parent (s. 24). The exception is if, prior to conception, the donor and the birth mother, and the person married to or in a marriage-like relationship with the birth mother, sign a written agreement that the donor would be a parent.

If a child is conceived through assisted reproduction, the child's parents are the birth mother and the person married to or in a marriage-like relationship with the birth mother (see *L.M.S. v. W.D.U.*, 2018 BCSC 1154) unless there is proof that that person, before conception, did not consent or withdrew consent to be the child's parent (s. 27).

If the person who donated reproductive material in assisted reproduction dies before the assisted conception, s. 28 sets out the circumstances in which the deceased will be considered a parent. The deceased person will be a parent if the deceased person gave explicit