

October 6, 2016

Re: Response to your comments regarding the Non-Parental Child Custody and Visitation Act

Mary,

Thank you again for your detailed suggestions. I'll offer responses, generally in chronological order relative to your suggestions.

1. I agree it would be useful for the committee to discuss what we hope to accomplish with the Non-Parental Child Custody and Visitation Act. My broad answer is that the goal of the act is to protect important relationships a child has with non-parents – for both the benefit of the child and the benefit of the non-parents who have made a substantial investment in the relationship. De facto parents may be part of the group whose interests are protected, but if a de facto parent is already considered to be a “parent” under state law (such as through the state’s parentage law), then de facto parents would not need to be explicitly covered in our act. I’d also note that if the child needs protection because the parents are unwilling or unable to assume a parental role, guardianship laws can cover that situation (and our act covers that issue as well, at least in part).
2. I too favor somewhat broad standing – but not too broad. Courts, including the U.S. Supreme Court in *Troxel*, have noted that having to defend law suits by non-parents can be an undue burden on a parent’s fundamental rights. I tried to strike that balance in Section 5 of the September 2, 2016 draft. [By the way, the fourth alternative basis for standing in Section 5(a) got garbled in the reformatting. Section 5(a)(4) should read: “the non-parent has exercised [primary] care and control of a child and made decisions regarding the health, welfare, and other needs of the child [for a period of six or more months] during the year before the filing of the petition.”]
3. “Parenting time,” as used in states that have adopted the term, generally applies to rights given parents. The term seems rather awkward if applied to remedies given to non-parents. For non-parents I believe the term “custody” and “visitation” work better. If a de facto parent is given remedies, the term “parenting time” is appropriate (in states that use that term).
4. Some of the issues you raise are ones of style (e.g., the phrasing of the jurisdiction section). For the September 2 draft, I have generally followed the most recent suggestions from our style advisors.
5. I am quite open to having the committee continue to discuss giving explicit rights to persons who entered into an agreement before a child’s birth to raise a child together. I’ll also note that if the agreement is made prior to use of assisted reproduction technology (ART), the law governing ART is likely to deal with that issue.

6. Regarding pleading requirements, your list of specific elements to describe “the nature of the relationship between the petitioner and the child” is useful. We also need to balance the degree to which added specificity might make the act more unwieldy.

7. I anticipate the committee will discuss whether the act should include coverage of de facto parents – either explicitly or by the finesse you suggest: giving rights if a court finds by clear and convincing evidence that “within the two years immediately preceding the commencement of an action” “a party has acted as a parent.” I note that a trend in the law is to grant rights to de facto parents.

8. I think I know what you mean when you suggest that a party who has acted as a parent should not receive “direct” financial compensation in order to be eligible for relief. Perhaps you are saying, for example, that such a party should not be receiving cash compensation, but that receiving food in the parents’ home would be ok. I am not sure if the word “direct” adds much to the phrase “financial compensation.”

9. Regarding court services, when I said, “To the extent available in other cases involving custody and visitation of children,” I was thinking of custody and visitation disputes between parents, but I am not adverse to having that phrase encompass court services that might be available in other categories of cases, including adoption and guardianship.

Thank you again for your input! I am sorry you won’t be able to attend the October 14 - 15 meeting.

Would you like me to share your comments with the rest of the committee (and have them posted on the ULC website)?

Best wishes,

Jeff