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Chair

Mr. Anthony Housefather

Standing Committee on Justice and Human Rights

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● (1535)

[*English*]

The Chair (Mr. Anthony Housefather (Mount Royal, Lib.)): Good afternoon, everyone, and welcome to the Standing Committee on Justice and Human Rights as we resume our study on Bill C-78.

It is a great pleasure to have with us today a very distinguished group of witnesses.

[*Translation*]

Our first group of witnesses includes members from the Barreau du Québec, Siham Haddadi, Valérie Laberge and Nicolas Le Grand Alary.

[*English*]

We have the Family Law Association of Nunavut, represented by Ms. Gillian Bourke.

[*Translation*]

Also with us today is Daniel Boivin from the Fédération des associations de juristes d'expression française de common law inc.

[*English*]

We have the South Asian Legal Clinic of Ontario, represented by Ms. Shalini Konanur and Ms. Silmy Abdullah.

We're gong to go in the order in which I announced everybody, starting with eight-minute presentations.

[*Translation*]

We'll start with the representatives from the Barreau du Québec.

Ms. Siham Haddadi (Lawyer, Secretariat of the Order and Legal Affairs, Barreau du Québec): Mr. Chair, committee members, good afternoon.

First of all, on behalf of the Barreau du Québec, I would like to thank you for inviting us to this meeting to discuss Bill C-78. We are very happy to be here.

My name is Siham Haddadi, and I am a lawyer with the Barreau du Québec and secretary of the Family Law Committee. With me today are Valérie Laberge, who is a member of the Family Law Committee, and Nicolas Le Grand Alary, who is also a lawyer with the Barreau du Québec.

As a professional body, the Barreau du Québec has a mandate to protect the public and the rule of law. Reform of the Divorce Act, which raises issues of promoting the best interests of the child and protecting vulnerable persons, therefore challenges the Barreau in carrying out its mission.

To begin, the Barreau du Québec would like to welcome the reform of the Divorce Act, which puts the child at the heart of deliberations, adapts terminology to soften conflicts and, above all, modernizes the Divorce Act, which had its last major reform in 1997, to make it more relevant to today's family realities. That is the challenge that the legislator set for itself with this bill, and the Barreau du Québec thinks it has met that challenge with great success.

The Chair: I'm sorry to interrupt you, but you are speaking a little too quickly.

Ms. Siham Haddadi: I'm sorry. Would you like me to repeat the last part?

The Chair: No. You may continue, but I would ask that you please speak a little more slowly.

Ms. Siham Haddadi: As I was saying, the Barreau du Québec generally considers that the legislator has met this challenge brilliantly, but we have some comments to make.

First, the Barreau du Québec notes that some provisions of the bill seem to be breaches of the principle of parental authority as defined in Quebec legislation.

In fact, Quebec civil law provides that parents exercise parental authority together, and that it is only in exceptional cases that the other parent fully exercises the attributes of parental authority. Having said that, a parent with parental authority may delegate certain responsibilities, such as custody, supervision and education of the child to a third person. However, the parent remains the holder of parental authority in general.

We therefore consider that clauses 16.1 to 16.5, which provide for the possibility for third parties to intervene in decisions concerning the child, constitute a major breach of the principle of parental authority. We consider that these decision-making powers must continue to be exercised by the holders of parental authority. We also believe that allowing such interference by third parties in this regard is not only contrary to Quebec civil law, but could go against the best interests of the child.

I will now turn things over to Ms. Laberge, who will continue the presentation.

Ms. Valérie Laberge (Member, Family Law Committee, Barreau du Québec): Good afternoon.

Another aspect that seems problematic to us is that several of the provisions, including clauses 16.1 and 16.2, are considerably unclear in our opinion. For example, subclause (9) of clause 16.1, which deals with parenting orders, prohibits the removal of a child from a specified geographic area. In our opinion, “geographic area” needs to be clarified. Does it mean a change of city, neighbourhood, country or province? “Removal of child” should also be clarified. Does this mean a trip or move? In our opinion, this part is a little unclear.

Paragraph (1)(b) of clause 16.1 is also problematic because it is not clear to whom the legislator is referring when it states that a person, other than a spouse, who intends to stand in the place of a parent to the child, would be entitled to parenting time or decision-making responsibility in respect of the child. As the legislation currently stands, the person who intends to stand in the place of a parent cannot be a person acting *in loco parentis* within the meaning of the decision rendered by the Supreme Court of Canada in the Chartier case. In order to be qualified in this way, the person must have already acted as the parent and this must be apparent from his or her interactions with the child. In addition, under the Chartier decision, this person must be one of the spouses, but this is specifically excluded by subclause 16.1(1) of the bill. So, who is covered under this provision? In our view, this should be clarified by the legislator in light of the principles set out in the Chartier decision.

On another note, the Barreau du Québec is very supportive of the changes in terminology. Indeed, the use of the terms “contact order”, “parenting order” or “parenting time” as proposed in Bill C-78 could limit conflicts between the parties. In addition, the previous lexicon, which used terms such as “custody” and “custody order”, may have had the effect of considering the child more as an object. However, in our opinion, other terms need to be reviewed by the legislator, such as the word “contact”. Instead, we might prefer “communication”, or “transfer” and “remove” which, in pertaining to the child, could be replaced by “transition modality” and “move” or “displacement”.

In addition, we reiterate that we are very much in favour of restoring the cardinal principle of the best interests of the child to clause 16 of the bill. We also welcome the list of factors to be considered that has been added to it, which could certainly allow individuals to better define this concept, which is sometimes considered vague.

However, we believe that it should be made clear in subsection (3), which lists the factors that the court must consider in determining the best interests of the child, that no one factor should have priority over another. We believe this addition is necessary to ensure that the analysis of factors is personalized and adapted to the child's needs.

On the other hand, we believe that the first factor set out in paragraph 16(3)(a), namely, “the child's needs, given the child's age and stage of development, such as the child's need for stability”, should not be one of the factors on the list, but rather underlie the best interests of the child analysis under clause 16. We therefore suggest that the wording of this paragraph be incorporated into the conditions set out in subclause 16(2).

I will now turn things over to Mr. Le Grand Alary, who will present you with the rest of our thoughts.

● (1540)

Mr. Nicolas Le Grand Alary (Lawyer, Secretariat of the Order and Legal Affairs, Barreau du Québec): Good afternoon.

The Barreau du Québec welcomes the inclusion of family violence in the bill. It is indeed a sensitive subject, but one that must be taken into account when considering the best interests of the child.

However, we believe that the legislator must specify that the prohibition, for instance, of killing or injuring an animal does not apply when it is done in the context of hunting and fishing recreational activities. In addition, the prohibition against damaging property must be limited to situations where there was intent to cause damage.

We think these clarifications are necessary to avoid absurd situations in which normal behaviour would be considered family violence. Moreover, this behaviour could be raised by either party as a criticism in a divorce case, should things already be acrimonious.

Another factor that raises questions for us is the obligation for the legal advisor to inform the client of the possibilities for reconciliation.

Although clause 7.7 of the bill repeats clause 9 of the current act, with the exception of replacing the term “lawyer” with “legal advisor”, we believe it is important to add to clause 7.7(1)(b) the phrase “if necessary”. The Barreau du Québec is indeed concerned about the possibility that a legal advisor may put pressure on the parties to reconcile, mistakenly believing that they are fulfilling an obligation under the act. We also believe that it should be clear that it is at the discretion of the legal advisor to determine, based on the facts of the case, whether a discussion on reconciliation would be beneficial to the client. There may be situations in which a discussion on potential reconciliation would be inappropriate. This is the case when acts of family violence have occurred between the spouses.

Lastly, the Barreau du Québec raises two problems regarding section 22 of the current act, which refers to foreign divorces.

First, the provision states that a divorce granted by a competent authority would be recognized within the meaning of the act. However, it should be noted that in some countries, such as France, the parties may, when the conditions are met, sign an amicable agreement and file it with a notary instead of going to court. As a result, we think Canadian law must allow for the recognition of all divorces that respect public order and Canadian values, even if they are not granted by a judicial authority.

Second, we note that a constitutional conflict could arise between this provision and article 3167 of the Civil Code of Quebec concerning the jurisdiction of foreign authorities in divorce matters.

In closing, we would like to thank you once again for allowing us to share our thoughts on Bill C-78. We hope these in turn will be helpful in your considerations. We are available to answer any questions you may have.

The Chair: Thank you very much.

[*English*]

We'll now go to Ms. Bourke.

Ms. Gillian Bourke (Lawyer, Family Law Association of Nunavut): Thank you.

I'd like to thank the committee for inviting *nuimati*, which is the Inuktitut acronym for the Family Law Association of Nunavut, to provide our feedback about Bill C-78. Every resident family law lawyer in Nunavut is an active participant in our group.

I would like to specifically thank Stefanie Laurella and Anne Crawford for their work on the brief and this presentation.

Overall, *nuimati* is supportive of Bill C-78. We believe that, if enacted, it will reduce conflict for separating families.

We have focused our response on the relocation proposals in Bill C-78. We are in favour of legislating relocation, as the current law set out in the Supreme Court of Canada in Gordon v. Goertz is highly discretionary, resulting in unpredictable outcomes for family law litigants.

There are three areas that *nuimati* would like to address and propose changes to.

First, we propose to simplify the procedure for relocation. The proposed procedure for relocation set out in Bill C-78 is the foremost concern for our group. Proposed section 16.91 states that when a parent receives a notice of relocation, their only means of stopping the relocation is to file a court application within 30 days.

In our opinion, the requirement to go directly to court is contrary to one of the aims of this bill—for parties and legal advisers to encourage the use of family dispute resolution processes. Parents become adversarial from the outset and rely exclusively on the litigation process. In our opinion, the court should not be the first step in resolving issues between parents.

Many factors could prevent an objecting parent from filing a court application within the 30 days, particularly in the north and remote regions. In our opinion, this causes significant access to justice issues. If a parent cannot afford to privately retain a lawyer, there may be delays in being approved for a legal aid lawyer. If a lawyer cannot be retained in the required time period, there are many barriers for people to bring a court application on their own within the 30-day time period.

Many communities throughout Canada, including 25 in Nunavut, are served exclusively by a travelling court. There is no permanent court presence in the community. There may be difficulty in obtaining the required forms from the court. If a parent cannot speak English or French, they may not have access to the resources to understand the requirements under the Divorce Act, or have the ability to prepare the necessary court documents. A parent may also be required to leave their community for work within this 30-day period. In the case of Nunavut, it's often for hunting or fishing to support themselves and the community.

We believe that a parent who objects to the notice of relocation should only be required to do so in writing to the other parent. This significantly reduces the likelihood of a parent being permitted to relocate with a child based on a procedural technicality, rather than in the child's best interest. We also believe that the notice of relocation should include a caution to the other parent, that if they do not object within 30 days the relocation will be permitted.

Second, we propose to simplify who has the burden of proof on relocation. Proposed section 16.93 sets out different burdens of proof, depending on whether a child spends substantially equal time in the care of each party, or spends the vast majority of their time in the care of the party who intends to relocate.

Relocation is defined in Bill C-78 as “a change in the place of residence of a child...that is likely to have a significant impact on the child's relationship with...a person who has parenting time [or] decision-making responsibility”. This is a high threshold that is not going to include parents who rarely see their children.

Unless a child is an infant, a relocation would also make a drastic change to the rest of the child's life. The child would have to adapt to a new community, attend a new school, make new friends and develop a new routine. We believe that a parent seeking to change the status quo should have the burden of proof of why it is in the child's best interest.

Third, we would like to add provisions about the financial consequences of relocations, and to clarify them.

● (1545)

In Nunavut, there's no year-round road access between any of the communities. The cost of airfare is frequently in the thousands of dollars. Currently, there is no legislation or regulations that specifically set out who is to pay the travel expenses of a child to facilitate parenting time after a relocation occurs, and there is mixed case law. The child support guidelines only speak to a reduction of the table amount of child support in cases where undue hardship is made out for the parents' high access costs. In our experience, the financial consequences are one of the most contentious issues in relocation cases.

Another factor to consider is that a relocation may trigger a child support obligation for the non-relocating party where one may not have existed previously. Proposed section 16.95 of Bill C-78 states:

> If a court authorizes the relocation of a child of the marriage, it may provide for the apportionment of costs relating to the exercise of parenting time by a person who is not relocating between that person and the person who is relocating the child.

This proposed section is highly discretionary and creates uncertainty about who is responsible for paying to facilitate parenting time upon relocation. We suggest that there should be a presumption that the relocating parent has the obligation of paying the additional cost of facilitating parenting time as a result of the relocation, absent an undue hardship claim as is already set out in the child support guidelines.

This approach adds certainty, reduces conflict, and has safeguards to ensure that the child enjoys similar standards of living with each parent. We would also suggest adding a requirement that the parent providing the notice of relocation include a proposal for the financial consequences of the relocation. This could reduce conflict from the outset if there is an open dialogue about the financial consequences between parents from the start.

This concludes our proposals. I thank the committee for considering our feedback.

● (1550)

The Chair: Thank you very much.

[*Translation*]

We'll now move on to Mr. Boivin.

Mr. Daniel Boivin (President, Fédération des associations de juristes d'expression française de common law inc.): Mr. Chair and committee members, thank you very much for agreeing to hear the comments of the Fédération des associations de juristes d'expression française, or FAJEF, on a different aspect of the amendment to the Divorce Act, that of protecting the right of individuals to use the official language of their choice when they must go before the courts in a divorce matter.

The FAJEF brings together lawyers' associations from across the country. Our mandate is to promote access to justice in French in the predominantly English-speaking provinces and territories. The seven associations of French-speaking lawyers represent approximately 1,700 lawyers, and the number is increasing every year. More importantly, they represent a population of approximately one million Canadians.

FAJEF works with other organizations in the national legal community, including the Canadian Bar Association, which I believe will appear before this committee, and with francophone organizations such as the Fédération des communautés francophones et acadienne du Canada, or FCFA, which supports FAJEF's representations on language rights issues.

To give you some background, in 1998, the Special Joint Committee of the Senate on Child Custody and Access already recommended an amendment to the Divorce Act so that parties to proceedings under the act could choose to have proceedings in either of Canada's official languages.

The committee recommended that the amendments be based on section 530 of the Criminal Code, which gives individuals the possibility of using the official language of their choice in criminal proceedings. The Divorce Act being another federal law, that act was scaled up, which was quite appropriate.

In 2002, the Department of Justice stated in its report, “Environmental Scan: Access to Justice in Both Official Languages”, that the federal Parliament had the right to impose language requirements on the provinces if it decided to entrust them with the administration of a law. However, despite these recommendations, the Divorce Act, which is still in force, still does not recognize the right of Canadians to divorce in the official language of their choice.

This means that in many provinces, Canadians who must face the courts for what is probably the most personal aspect of their lives cannot do so in the official language of their choice, particularly in French. This is already possible in some provinces and territories, namely Ontario, Quebec, New Brunswick, Manitoba, Saskatchewan, Northwest Territories, Yukon and Nunavut.

In some provinces, if you know the clerk, if the judge is a friend, if people are able to accept certain documents by turning a blind eye, it is possible to obtain a divorce judgment by consent, but certainly not to have a debate in French before the courts. In British Columbia, and Newfoundland and Labrador, it is absolutely impossible to have anything in French.

We believe that the fact that Bill C-78 does not contain a provision on language rights is a gap. The bill should be amended to explicitly recognize language rights in any proceedings brought under the Divorce Act.

Divorce affects Canadians directly. It is an intimate and difficult matter. When people who divorce have to go to court, it is a very difficult time. It is a procedure that often has significant financial and emotional consequences. For these reasons, the ability to express yourself in court in the official language of your choice is of extreme importance.

In federal law, imposing language rights on the provinces would not be new. As I just mentioned, the Criminal Code already provides, in sections 530 and 530.1, for the obligation to provide judicial services to Canadians in both official languages.

● (1555)

It is also very important to recognize that many Canadians appear in family courts without the assistance of counsel. A lawyer is often able to somewhat mitigate language difficulties, with a command of both languages. However, when people appear in court without a lawyer, they have to deal with a dual problem, in that they cannot express themselves in the precise legal language needed for the debate, or in a language that the court can understand.

The FAJEF will submit a brief with the suggested wording; it looks a lot like the wording in section 530 of the Criminal Code. This recognizes the possibility of using one official language or the other in cases brought under the Divorce Act, not only for the trial, but also for all the steps that go on outside the courtroom.

There must also be a requirement for the judge to understand the language or languages used by the parties, for the witnesses to be able to express themselves in the official language of their choice without consequence, and for the record of the hearing to include all the debates in the official language that each party used.

The provisions should also indicate that courts may provide interpretation services for the parties to cases heard in both languages, and decisions to be rendered in the language or languages that the parties used in court.

Finally, we recommend that it be possible to use the official language of choice for every decision taken to appeal.

The FAJEF strongly recommends this addition, as a language right that clearly meets the federal government's obligations to promote the use of the official languages, as set out in section 41 of the Official Languages Act.

This is a matter of access to justice. Canadians who cannot express themselves in the official language of their choice before the courts do not have adequate access to justice. This is a situation that must be resolved.

Thank you very much.

The Chair: Thank you very much.

[*English*]

We'll now go to Ms. Konanur and Ms. Abdullah.

Ms. Shalini Konanur (Executive Director and Lawyer, South Asian Legal Clinic of Ontario): Thank you.

On behalf of the South Asian Legal Clinic, we would like to thank you for allowing us to appear today in front of the committee. I'll be sharing my time with my colleague Silmy Abdullah.

The South Asian Legal Clinic is a legal aid clinic that serves exclusively racialized communities in Ontario. Of our work, 40% involves family violence and gender-based violence cases. We do a significant amount of work in family law. The number one questions we receive are on divorce, child custody and access, as the old terms were.

We're here today to speak about the lived experience of our clients and how that translates into the impact of these changes. Our recommendations are going to be limited to the cases we see and how we think those cases will be impacted by these changes.

I want to start by saying that we are very pleased that the government has decided to do a reform of family law. We are very pleased that you have framed that reform as a consideration of the best interests of children, and of family violence. This is really important work for the clients we see on a daily basis.

As I mentioned, our recommendations, which will follow in a second, come out of the cases, the on-the-ground work that we see. I mentioned in my brief, which you may or may not have before you, that just last week, I alone worked with six clients who faced family violence, and that was the reason that their marriages or partnerships ended.

One client in particular, who is still sitting with me, was chained to her bed and had her head shaved because a man talked to her when they were at the grocery store. I'm telling you that story because the work you are doing on these updates is so important to those lives.

That being said, our first recommendation is that the legislation itself should have a preamble. That preamble should recognize that family violence is both a gendered issue and an intersectional issue.

The truth is that the lived experience of SALCO's clients supports the understanding that family violence is gendered. Most often, the family violence that we see is perpetrated against women, transgender, queer and non-conforming people. They are subject to violence by people who often identify themselves as men. This is sometimes a hard thing for people to accept, but this is what we see.

We would like to echo the submissions of a sister organization called the National Association of Women and the Law, or NAWL, and Luke's Place, which will be in front of this committee later this week, in stating unequivocally that family violence is a form of violence against women.

We also recognize that violence is experienced in different ways by different women, based on their intersecting sites of oppression: age, disability, immigration status, religion and so on. These are very complex issues. We must take time and care in the way that the law addresses those issues. Nothing will be perfect, but we can take that time at committee to have care.

We strongly encourage you to consider a preamble. When you look at the submissions of NAWL and Luke's Place, they've drafted something that can give you guidance for the language. I'm not going to read and repeat it, but I encourage you to refer to it.

In my other work, particularly in immigration, we use the preamble of immigration legislation at the federal level for decision-makers to understand the intent. It recognizes the importance of the screen. It provides a framework, and it guides decision-makers when they are applying the specific sections.

Second, by extension, in the definition section, if the committee accepts that family violence is gendered by nature, you should also include a definition of violence against women. We have been working for many years on having our judiciary in the family courts, in the criminal courts, in immigration decision-making to have a broader understanding of violence against women. This is an opportunity to create that understanding by including that definition.

● (1600)

Ms. Silmy Abdullah (Lawyer, South Asian Legal Clinic of Ontario): Good afternoon. Thank you for the opportunity to provide our recommendations on Bill C-78.

As my colleague Shalini mentioned, I am with the South Asian Legal Clinic of Ontario. I'm a staff lawyer.

Our next recommendation is regarding the definition of "family violence". We recommend that the definition be amended to include a couple of other types of abuse. We welcome the inclusion of different types of abuse, such as physical, sexual, threats to kill or cause bodily harm, psychological and financial. However, we recommend that cyber-violence and spiritual abuse also be included in the definition, as they reflect both the reality of the communities we serve and our current society at large.

Spiritual abuse would entail, for example, mocking someone's spiritual beliefs, forcing someone to practise certain aspects of their faith, preventing someone from practising certain aspects of their faith, or using religion as a justification for violence or abuse. We see this from time to time in our casework.

Cyber-violence is increasingly being used as both an intimidation and revenge tactic against intimate partners. Recently, a client of ours who was going through a divorce and also facing immigration issues disclosed to us that her husband had spread intimate photos of her on the Internet and via email to her friends and family. This can have devastating consequences for women who belong to particular communities, especially certain South Asian communities where reputation is paramount. It's not only used as a way to threaten and control women, but it could also lead to their ostracization from the entire community.

We believe that recognizing spiritual violence and cyber-violence as part of the definition of "family violence" would provide for a more fulsome definition.

Our next recommendation is with respect to the terms "custody" and "access". We recognize that the bill proposes to do away with these terms to promote a less adversarial framework for parenting decisions. However, we do have some practical concerns.

In terms of our international experience, just to give you an example again, SALCO recently worked with a client whose children were kidnapped to Pakistan by her abusive ex-husband, and the only way she could get her kids back was if she showed the court in Pakistan that she had sole custody. The court in Pakistan was looking for that specific language, so if we change those terms, we have to take into consideration whether that would be understood and recognized in the international context.

As well, the terms "custody" and "access" are still used in other domestic legislation, such as in immigration legislation and child protection legislation. We know that family violence does not happen in a silo. It often intersects with immigration and child protection matters, so changes would jeopardize the consistency with other legislation.

We recommend that either these terms be retained, or, if they're removed, that there be clear language that explains the equivalent of these terms as they're used in other legislation.

Finally, we also know that even though these terms have been changed in other jurisdictions, we don't really have any evidence that changing these terms has actually led to a reduction of conflict.

SALCO has been doing a lot of public legal education in communities because a lot of our clients have language barriers and simply don't have a lot of knowledge about their legal rights. We have spent a lot of time and resources in developing language-specific materials explaining these terms, so changing them would mean that we'd have to revisit and revamp all of that, and we simply don't have the resources to do so.

● (1605)

Ms. Shalini Konanur: Moving on, I'd like to address some of our specific concerns about proposed subsection 16(3) regarding the best interests of the child.

The Chair: Sorry. You're at eight and a half minutes. I'll ask you to wrap up quickly.

Ms. Shalini Konanur: Okay. I'll do this very quickly.

I won't go through them in detail, but I will say that there are three proposed subsections in particular around the willingness of a spouse to help a child foster a relationship with their partner, and the willingness to communicate. The confusion we have about those proposed subsections is that in cases of family violence, it's actually sometimes appropriate and legitimate that spouses not have a willingness to communicate and foster that. When you are looking at those enumerated grounds, think about specifically adding a "family violence" exception, because as the legislation reads, that is not the case.

Do you want to conclude?

Ms. Silmy Abdullah: Sure.

Very quickly, our last two recommendations have to do with proposed section 7.3, which encourages using family dispute resolution processes where it is appropriate to do so. Again, we would just bring to the committee's attention that in cases of family violence, it's not appropriate to go through family dispute resolution processes, especially where there is such a power imbalance. We would recommend that the language be a bit more explicit in saying that in cases of family violence, it is not appropriate and should not be encouraged.

Finally, we recommend that sections be added to Bill C-78 that require mandatory education about family violence for judges, lawyers and other people involved in the family court system.

Thank you.

The Chair: Thank you very much.

We really appreciate the testimony from all the witnesses.

[*Translation*]

We now move to the time for questions and comments.

[*English*]

We're going to start with Mr. Cooper.

Mr. Michael Cooper (St. Albert—Edmonton, CPC): Thank you, Mr. Chair.

Thank you to the witnesses.

I'll address my first question to Ms. Bourke.

You discussed the issue of relocation, and you endorsed the fact that, in the legislation, the reasons for relocation shall be considered by a judge in making a determination as to the issue of relocation.

That may be a good idea; I'm certainly open to it, but I just wanted to get a better understanding of the rationale behind it, as you see it. You did allude to the Gordon v. Goertz decision, and at paragraph 22 of that decision, the court stated that:

> All too often, such applications have descended into inquiries into the custodial parent's reason or motive for moving.... The focus thus shifts from the best interests of the child to the conduct of the custodial parent.

To sum up, the court said that only in exceptional cases where relocation is relevant to the parent's ability to meet the needs of the child should it be considered.

I was just wondering what your thoughts are and how your position squares with the determination of the court.

● (1610)

Ms. Gillian Bourke: I think that, from a survey of the case law, even though the Supreme Court of Canada in Gordon v. Goertz says that the reasons for the relocation of the parent shall not be considered except in extenuating circumstances, it's often framed in a different way through the other factors. These are taken into consideration by the court, I would say, and I think that it is relevant to consider the reasons for the parent's moving, but only as it relates to the best interests of the child.

If the relocation is to support a career that would provide an increase in income to better support the child, or the relocation is to take the child to services that would better serve them, I think that those reasons should be taken into account within the context of the best interests of the child.

Mr. Michael Cooper: Does the Barreau du Québec have a position on that issue?

[*Translation*]

Ms. Valérie Laberge: Can you repeat the question? I want to make sure I fully understood.

[*English*]

Mr. Michael Cooper: My question was in regard to the fact that legislation makes it a requirement that a judge shall consider the reasons behind the move in the case of a relocation. That's inconsistent with the Gordon v. Goertz decision, where the court said that it should be considered only in exceptional circumstances.

[*Translation*]

Ms. Valérie Laberge: We share our colleague's opinion. Courts do not always consider it in their decisions. Courts will tackle the question anyway, often obliquely or indirectly. In my opinion, which I feel is also the opinion of the Barreau du Québec, it is preferable to say that the circumstances will be considered.

[*English*]

Mr. Michael Cooper: Understood. Thank you for that.

Now, going back to Ms. Bourke, you also made reference to the burden. You suggested that the parent who is making the application for relocation should bear a burden. Again, that's a departure from Gordon v. Goertz, and the legislation itself is a departure from Gordon v. Goertz in the sense that the court said that it's the burden of the applicant to demonstrate a material change of circumstances in relation to the child, but once that's established, there is no burden. The court looks at any number of factors to ultimately determine whether the relocation is, in fact, in the best interests of the child.

Again, just comment on that distinction or that difference.

Ms. Gillian Bourke: Certainly.

Mr. Michael Cooper: Why not just have an analysis strictly based upon what is in the best interests of the child, having regard for any number of factors that might come into play in each individual case?

Ms. Gillian Bourke: I think part of this comes down to the court process itself. In our opinion, when an application is made to the court for the relocation of a child, the parent who is seeking to relocate the child should have the onus of proving why that change, which is a significant change for the child, is in the child's best interests.

In terms of the onuses that are outlined in the legislation, I think we see these more as complicating the litigation process. The vast majority of the time, the difference between substantially equal time is going to lead to situations where establishing the breakdown of the time that the child spends with each parent would become another issue within the litigation, when really the focus should be on what is in their best interests.

In our group's experience and opinions, the status quo is often in the best interests of the child. For that to be disrupted, especially when it is going to be a significant impact on the parenting time, as relocation is defined in this bill, then the person who is seeking to have a significant impact on the parenting time and disrupt the status quo of the child should have the burden of proving why this is in the child's best interests.

If the application is made by the parent who is seeking to change the status quo, it just makes it a little easier for the respondent—which is the natural litigation process—to reply as to why it's not in the child's best interests and to advocate why the status quo shouldn't change.

● (1615)

The Chair: Mr. Boissonnault, go ahead.

[*Translation*]

Mr. Randy Boissonnault (Edmonton Centre, Lib.): Thank you very much, Mr. Chair.

I would like to start.

[*English*]

by thanking you, Shalini, for being here. Thank you for the work you're doing with the LGBTQ2 community.

Unfortunately, when we got equal marriage, we also got equal divorce. We also know that there are many microaggressions inside the community and that it can be particularly divisive. Thank you for the work you're doing on behalf of two-spirit and trans people and LGBTQ2 in general. I really appreciate it.

Ms. Shalini Konanur: Thank you.

[*Translation*]

Mr. Randy Boissonnault: Mr. Boivin, thank you for being here and for the work that you do. I am very familiar with the work of your organization. I also know the president of the Association des juristes d'expression française de l'Alberta, the AJEFA, in Alberta. Justin Kingston was one of my political science students on the Campus Saint-Jean, in Edmonton.

You mentioned that, in some provinces, it is simply not possible to speak French during a trial. In which provinces is it not possible to have a trial in French in family court?

Mr. Daniel Boivin: British Columbia and Newfoundland and Labrador are the two provinces where absolutely nothing is provided in French. In Nova Scotia, Prince Edward Island and Alberta, when you know someone, you can possibly get an order in French, but no one has yet tried to have a complete trial in the language. People who live in those provinces tell us that the court's good will in granting a divorce by consent in the language of the parties would crumble a good deal if the whole trial had to be held in French.

Mr. Randy Boissonnault: Unfortunately, it also changes with the political climate, with the government and with the judicial independence. You do not need to comment on that; as a politician, I am doing that myself.

Is there any data about the millions of francophones and francophiles all over the country who want to make their case in family court in French or in both official languages?

Mr. Daniel Boivin: That is a very difficult subject to study. There have been studies on parties requesting access to justice in both official languages. The last complete study on it was actually done by the Commissioner of Official Languages.

Figures are difficult to obtain because it is a chicken and egg situation. People are not going to ask for something they know is not available. If you don’t know the number of requests or refusals when it comes to hearing a case in French, it is not possible to quantify the problem.

Mr. Randy Boissonnault: So it is important for there to be an active offer, I would say.

Mr. Daniel Boivin: Absolutely, and sections 530 and 530.1 of the Criminal Code specifically require courts to make an active offer, by telling parties that it is their right to have access to justice in the official language of their choice.

Mr. Randy Boissonnault: While I was parliamentary secretary to the Minister of Canadian Heritage, I sat on the Standing Committee on Official Languages. During that time, the committee conducted a study on francophones’ access to Canada’s justice system. After that, the government invested another million dollars to improve francophones’ access to justice across the country.

In your opinion, what should change in this bill? What provisions do we have to add so that the active offer is better?

Mr. Daniel Boivin: We have to use sections 530 and 530.1 of the Criminal Code as a model. They set out the right of the parties to use one or both of the official languages, as well as the duty of the court to understand the language used by the parties and, thereafter, to provide the results, such as the rulings and the transcripts, in the language used by the parties.

Mr. Randy Boissonnault: This is a very interesting question. It is a gray area in terms of legal responsibilities for the administration of justice, at both federal and provincial levels. Who pays, and why and how? There is a good model in New Brunswick and Quebec. Let’s see how things unfold in Alberta. I know that there are more Franco-Albertan judges who can hear cases like this.

What mechanisms can encourage provinces to act along those lines?

● (1620)

Mr. Daniel Boivin: A lot of work has been done, especially in terms of the Criminal Code. Because of the requirements imposed on the provinces anywhere in the country under sections 530 and 530.1, they have had to appoint judges able to hear cases in French. So that has already been accomplished.

Work has also been done so that the staff as a whole can speak French to the parties, not just the judges in the court and the hearing rooms, but also the clerks and reception people. In addition, some mechanisms allow provincial and municipal governments to exercise the powers they have under the federal government’s Contraventions Act. There has been a transfer between the federal government and other levels of government in order to provide access to the legal system.

Finally, the funding provided by the federal government to organizations like the Centre canadien de français juridique inc. means that court staff can use French in the legal system. This program, funded by the federal government, is hugely successful because it provides people with genuine skills that they can immediately use on the front lines.

Mr. Randy Boissonnault: Given what happened this week here in Ontario, we take careful note of your comments. Thank you.

The Chair: Thank you very much.

The floor now goes to Ms. Sansoucy.

Ms. Brigitte Sansoucy (Saint-Hyacinthe—Bagot, NDP): Thank you very much, Mr. Chair.

My thanks to all the witnesses for their contributions to our committee's work.

My question goes to the representatives of the Barreau du Québec. I must react to your conclusion by emphasizing that your work has been very useful for our committee. I particularly appreciated your very comprehensive analysis of the bill and your remarks on the need to reconcile and avoid conflicts between the act and the Civil Code of Québec.

I also appreciated your very concrete recommendations to replace, for example, “ordonnance de contact” with “ordonnance de communication” and to replace “transfert” with “modalités de transition”. I feel that you have well understood the contribution you are making to our work as legislators. We are of one mind about the principle of the best interests of the child, but in one of your recommendations, you mentioned an order of priority in the factors to be considered.

Could you give us some more details about that? You said that care is needed with clause 16. What during your analysis led you to issue that caution?

Ms. Valérie Laberge: There are two parts to that question. First, in subsection 16(3), the factors to be considered are listed. Paragraph 16(3)(a) specifically refers to: "the child's needs, given the child's age and stage of development, such as the child's need for stability." In our opinion, that should be a general evaluation parameter, which should perhaps even be moved to the previous paragraph, so that it establishes that the analysis is, in every case, guided by "the child's needs, given the child's age and stage of development, such as the child's need for stability."

Second, we agree that the factors listed are all very appropriate. However, we want to avoid any confusion where people may think that the factors must be applied in the order in which they are written. For example, paragraph (d), which lists "the history of care of the child" comes after paragraph (b), which says: "the nature and strength of the child's relationship with each spouse, each of the child's siblings and grandparents and any other person who plays an important role in the child's life." Now, subsection (3) says "all factors related to the circumstances of the child, including:…" I feel that there is a need to mention that no priority is given to one factor over another, and that it genuinely is the child's overall situation that must be considered.

Ms. Brigitte Sansoucy: Thank you.

Let me ask you a question on one factor that you did not deal with at all, but I am sure that the work you have done with the Comité consultatif sur le droit de la famille will make it possible for you to answer.

The Minister of Justice has stated that reducing child poverty is one of the four main objectives of the bill. One of the proposed measures is to make child support orders easier to execute. Child support orders can greatly help to reduce the impact of divorce on the custodial parent, but, as we prepared for this meeting, some people have pointed out that such orders have their limitations, especially in the case of families with a lower socioeconomic status.

In your experience, how can the Divorce Act Help to reduce child poverty by making child support orders easier to execute, especially in cases where the debtor parent does not have the economic resources needed?

● (1625)

Mr. Nicolas Le Grand Alary: First, I have to remind you that we did not study that question in particular. In Quebec, there is a plan for determining support payments and a plan for executing orders. Clearly, it will always be difficult to have orders carried out when the debtor has no money. I don't think there is a miracle solution. We found none in our study of this bill, unfortunately. Nor did we find a parallel to be drawn with the Quebec plan that could be useful here.

Ms. Brigitte Sansoucy: Can the Quebec plan shed any light on this for us? Is there a similar plan in other provinces? Are there parts of the plan that we could use as a model? How long has it been in place?

Ms. Valérie Laberge: The plan has been in place since 1998.

Ms. Brigitte Sansoucy: Okay.

However, could it help us to find solutions so that this bill can achieve one of its four stated objectives?

Mr. Nicolas Le Grand Alary: That problem was also raised in connection with the Quebec program. We have no particular suggestions in that regard.

Ms. Brigitte Sansoucy: Okay. Thank you.

Do I have any time left, Mr. Chair?

The Chair: You have 30 seconds.

Ms. Brigitte Sansoucy: Okay.

Mr. Boivin, I won't have a lot of time to ask you a question in 30 seconds. So I will make it quick.

You told us about an amendment to recognize language rights and you referred to a section of the Criminal Code. In addition to that, are there any other provisions that we would have to pass in order to respect language rights?

Mr. Daniel Boivin: The FAJEF will be submitting a brief that will contain the exact wording we suggest.

Ms. Brigitte Sansoucy: Thank you.

The Chair: Thank you very much.

We now move to Mr. Virani and Mr. Ehsassi, who are going to share the next six minutes.

[*English*]

Mr. Virani, the floor is yours.

[*Translation*]

Mr. Arif Virani (Parkdale—High Park, Lib.): Thank you, Mr. Chair.

[*English*]

I'm going to direct my questions to SALCO. It's with some pride and a paternal feeling that I was one of the.... When I was a just-graduated law student, we gathered together and thought of this great idea of creating this legal clinic and that one day maybe they'd make parliamentary submissions. Here they are, making parliamentary submissions, so yay, Shalini and Ms. Abdullah. Thank you for being here.

I take your points. We very much feel this is a much-overdue reform to family law. I think it is very much on the right track in a lot of the things you mentioned. Thank you for those comments.

We wanted to outline a couple of things. I think we're on the same page, but it's a question of whether we can perfect it. I'll ask questions of you both at once because I'm sharing my time with Mr. Ehsassi.

One is in respect of the definition of family violence, which you mentioned. I took your points, Ms. Abdullah, about cyber-attacks and spiritual threats. With the family law violence definition, we're always trying to balance being broad enough but not overly broad where we fear having too long a list that becomes somehow under-inclusive—if you see what I mean. Do you feel that patterns of coercion, psychological and other threats, the types of cyber-attacks you mentioned, are already covered in the definition we have right now? If not, why not?

Two, the brief we have is the one you jointly signed with the large group, and that brief mentioned that we have the spiritual, cultural and linguistic upbringing of the child as part of the parental decision. It's particularly looking at indigenous, but not exclusively. You said that we should also incorporate that under the "best interests of the child" component. Can you tell me why it's needed under the "best interests of the child" component? Is it unique to indigenous? That's the way the brief read. I appreciate that SALCO is looking at things like South Asian background and people who speak Punjabi, Urdu, etc.

Can you touch on both of those, please?

Ms. Shalini Konanur: Do you want to take the first question?

Ms. Silmy Abdullah: Sure.

Just to clarify, was your question whether the current proposed definition already covers cyber-violence?

● (1630)

Mr. Arif Virani: Yes.

Ms. Silmy Abdullah: Cyber-violence is a very specific type of violence. It's worth adding it.

I don't know if it would be covered under the types of violence that are already listed. My suggestion would be to add it just because it's a different type of violence.

Mr. Arif Virani: Have you seen the definition you're proposing in any other legislation, anywhere else?

Ms. Silmy Abdullah: I don't know.

Have you, Shalini?

Ms. Shalini Konanur: We haven't seen it in any of the other legislation, but we had this conversation around the definition of family violence when they were creating the conditional permanent residence.

The reality is that we're at a time and place in the world where cyber-violence is actually one of the main forms of family violence, and we have seen in the past five years, in our cases, that trend coming up over and over: threats of posting things on Facebook, threats of texting and sending intimate photos. You have a golden opportunity here to specifically name it and not say that it is just included in that larger idea of psychological violence.

People like me, who are not as Internet-savvy as my kids are, say it's new, but it's not a new form of violence. However, we are lagging in terms of legislation recognizing it. This would be a great opportunity to actually have that reflection there, because if you speak to clients, the threat of this happening is an actual, on-the-ground, real fear for many clients in the family courts, and it actually impacts their pulling back of their family law claim. Naming it would go a long way.

You don't have our specific brief in front of you. We had submitted it, but it's getting translated. You will see a bit more detail in our brief, which does address the second question around the best interests of the child.

Mr. Arif Virani: Thank you.

Mr. Ali Ehsassi (Willowdale, Lib.): First of all, I also have a question for SALCO. I know that Arif is very proud of it, and rightfully so, but I also take much pride in the fact that you do amazing work in my riding. I'm very grateful that you appeared before us, and your testimony was very helpful.

The one issue I have is that you brought up that you're concerned about the fact that this legislation actually attempts to encourage families to use alternative dispute resolution. However, reading the language, both in proposed section 7.3 and in proposed paragraph 7.7(2)(a), it's pretty obvious that it's not mandatory and it's only meant to occur when it's appropriate.

How concerned should we be that if it's not explicit here that there has been violence, perhaps mistakes will be made and there will be a referral to alternative dispute resolution?

Ms. Shalini Konanur: The crux of the problem is that when we encounter stakeholders in the family court system, their level of understanding of family violence is vastly different, depending on their own training. When you have broad terms such as "where it's appropriate", to me, because of my background, that is understood to include family violence. To many of the people we encounter in the family courts, that is not necessarily understood.

What you're going to see is a common theme in our submission that if you want to address family violence, which I believe is one of the four pillars of these changes, there has to be some specificity. The language matters. We've been talking all along about how the language matters.

If you have a recognition that not everybody is coming to that space at the same level of understanding, our strong recommendation is that it should be reflected. It should be made clear in the legislation and there should be a caveat put in, that in cases of family violence this may not be appropriate. What we see time and time again with different parts of the family court system, which in Ontario includes court support workers, mediators, paralegals, consultants and legal clinic clerks, is that people come to it with a different level of understanding.

We have the strong recommendation that the family violence wording be put into play in proposed section 7.3, but also in the best interest of the child in proposed subsection 16(3), that where appropriate, family violence should be considered by decision-makers when they're deciding the best interests of the children.

● (1635)

Mr. Ali Ehsassi: Thank you.

The Chair: Thank you very much, and I want to thank all the witnesses.

[*Translation*]

We are really very grateful to you for participating in this committee

[*English*]

We're going to take a brief pause while we change witness panels, and I'll ask the witnesses from the next panel to come forward.

● (1635)

(Pause)

● (1640)

The Chair: I would like to welcome our second panel of the day testifying on Bill C-78. Again, I apologize for the rush. We just have a lot of witnesses we're trying to hear from.

We have Ms. Valerie Irvine, assistant professor in the faculty of education at the University of Victoria.

From the Canadian Children's Rights Council, we have Mr. Grant Wilson, president.

From the Men's Educational Support Association, we have Mr. Gus Sleiman, president, and Mr. Alan Hamaliuk, vice-president.

From UNICEF Canada, we have Ms. Lisa Wolff, director of policy and research.

Welcome to all.

Each group has eight minutes. We're going in the order of the agenda, so we'll start with Ms. Irvine.

Ms. Valerie Irvine (Assistant Professor, Faculty of Education, University of Victoria, As an Individual): My name is Dr. Valerie Irvine. I want to thank you very much for inviting me to speak with you today.

I am a professor in the faculty of education at the University of Victoria. I have a Ph.D. in educational psychology from the University of Alberta and bachelor's degrees in both education and English from UBC. I have held Government of Canada Social Sciences and Humanities Research Council funding. I have been an affiliate and received funding from the Human Early Learning Partnership and was previously a research coordinator with the Research and Action for Child Health group at the University of Victoria, focusing on early childhood development.

Although family law is not my area of research as part of my academic position, I am familiar with theories of child development. Some of the family law content overlaps with education, as we also strive to meet the best interests of the child. I hope to bring a fresh perspective to what I see as a stuck system that entrenches families oppositionally in legal structures, creating more risk and harm, especially to those most vulnerable who have experienced family violence.

To give some context, I live within walking distance of two homes —one in which two girls were killed by their father on Christmas Day last year and, before that, one where children, a mother, and her parents were killed by the children's father.

The legal system fails to protect the victims of family violence. There is a lack of support, and the supports, where available, face design flaws. I personally have been engaged in the family law system as a parent for almost 10 years, and my family has been exposed to traumatic experiences before, during, and after divorce. My children have recently accessed the new Child and Youth Legal Centre in B.C. to obtain direct representation for their voice. It was only the involvement of a lawyer for the child that brought a halt to legal proceedings. It reframed the dynamics and ended the continuation of repeated legal proceedings.

I draw from these personal and community experiences, and my background in educational psychology and schools, in making recommendations for amendments to Bill C-78. There are many families who are in situations similar to ours. Most impacted are the children.

Canadian families require more integrated services, such as data analytics, the elevation of the role of a child's direct health professional team, and legal representation for the child. While we criticize the American health system for its cruel design of cost recovery for health access, we have the same approach in family law, and family violence is also life-threatening.

For child survivors, when their voice is channelled through a parent, it can be perceived as muddied by the opposing parent, and fidelity is further weakened since child voice is only one factor and not "the" factor being considered. I am deeply concerned about how a single parent with low income, minimal education, challenges with language or articulation, and no supports for self-care might get through this experience. How can this entire process serve the best interests of the children? How can this be Canadian?

Integrated services are needed to support the child in cases of family violence. What is best for the child is access to and involvement by their own personal, trusted, ongoing health professionals, such as their family doctor, child psychiatrist and counselling psychologist, and their own legal representative. Where there is triangulation from this team, any legal action should be prohibited.

It is interesting to note that the shifts that actually materialized in our parenting time, despite all the legal costs, were made not by lawyers but by the children acting out after buildup and refusal to go for their custody transition time, which created times of crisis. If only their voice had been listened to earlier on, as supported by their health professionals, adaptations could have been made without distress. I need to ask the government why legal engagement is necessary. If the voice of the child was elevated, prioritized and determined to be sound by their own health professionals and lawyer, little of this legal escalation would happen.

When $20,000, $50,000, or $100,000 has been invested into the creation of a court order, often at the financial ruination of families, the threat of legal engagement becomes so ominous that children's rights to change parenting configurations are impinged upon. The involvement of family health professionals can defuse these risks.

It is important to note that prioritizing preferences for parenting time does not need to be forever decision, unlike the presentation of court orders. This fluidity would dissolve the high stakes of seemingly permanent and financially invested court orders. It should motivate parents to be more focused on gaining child trust and building relationships, as opposed to building a case.

● (1645)

I hypothesize that the sharp increase in child anxiety disorders in schools, now at 20%, or one in five, which creates significant disruptions for the education sector, is linked to family violence in shared-parenting households. Shared-parenting households have increased from approximately 13% in 1995 to 70% in 2016, as per the Government of Canada's Department of Justice and Statistics Canada.

Legislation must occur that requires judges to lean toward making type 1 errors, which is the incorrect assumption that family violence, or risk that it will occur, is present when it actually has not occurred or will not occur, as opposed to type 2 errors, which is the incorrect assumption that family violence has not occurred or is not likely to occur, when it did occur and will occur subsequent to judgment.

The judge in the Berry case in B.C., a.k.a. the “Christmas case”, where two girls were murdered, is a type 2 error. The consequences of type 2 errors are serious to deadly. The consequences of type 1 errors are not as serious and are more likely to result in peace and safety for the child. If we want to seek a system that values the best interests of the child systematically, then evidence-based, system-wide decisions should seek to reduce type 2 errors and increase type 1 errors in risk assessment and judgments. This requires collection and analysis of data from courts involving family law with periodic follow-up, proper education for lawyers and judges with regard to family violence, and direct child legal representation.

Of concern is also the encroachment of privately funded psychologists and privately funded lawyers into the world of the child, which represents a conflict of interest, as they are paid by engagement and not by outcome. Existing government-appointed medical and mental health practitioners who directly care for the child, and government-funded lawyers who directly represent the child, would remove this conflict of interest and should be prioritized over the corporatization of child welfare in divorce.

We have private third party psychologists now forming expensive corporate programs, espousing predetermined outcomes and promoting questionable psychological frameworks criticized for their gender bias and narrow conceptualization that do not apply to the bulk of the population. These are becoming popular in courts and cost almost as much as court. These programs are even striving to override the voice of the child—whom they've never met—and their health professional team, when they have zero understanding of the situation they're entering, which may include children at risk. A child's voice and the opinion of their health professional team should take precedence over these private psychologist companies.

My brief includes a number of detailed and further amendments that could make dramatic shifts to support children's best interests. Note that it is empowering for children to know that they have voice. Children of abuse especially have had their power taken from them. In many cases, they act out when someone asserts power over them again. To re-establish their voice after abuse is a huge step toward child honouring.

Thank you.

The Chair: Thank you very much.

We'll go to Mr. Wilson.

Mr. Grant Wilson (President, Canadian Children's Rights Council): Thank you for having me.

The Canadian Children's Rights Council is a leading Canadian group advocating for the rights of Canadian children. There are other groups that do some Canadian rights but mostly international child rights advocacy. Our website, canadiancrc.com, is the most visited website in Canada pertaining to the rights of Canadian children, and it contains an archive of news articles, videos, resources, and all sorts of other items. It is one of the top 10 children's rights websites in the world. We have visitors from over 160 countries every month. In fact, on our busiest day so far, in 2016, we had 397,000 people on the website.

On that website, you're going to see videos that go back quite a way on family law. One of them you might find interesting. I appeared on probably the best CBC TV show on paternity fraud, which is a form of family violence. I was up against one of the best family law lawyers in Canada on that show with Carole MacNeil and Evan Solomon. That show should be watched, so you can understand the gender issues, and how they affect children negatively.

In 1998, over 20 years ago, I appeared before the Special Joint Committee on Child Custody and Access, and our recommendations on the enforcement by government of court-ordered parenting time were endorsed by many groups shortly thereafter. The special joint committee itself recommended that parents be jailed for repeated criminal acts, offences of contempt of court-ordered parenting time. Playing around with parenting time is just causing parental alienation. There are all sorts of issues there.

As a victim of domestic violence, my ex-wife broke into my home to assault me and threaten my life. I was left bleeding and badly bruised, when the Peel Regional Police came in and took her away. They didn't even put her in handcuffs, and at no time did they even talk to me after that. The prosecutors never talked to me at all. Victims' services never contacted me, so I have some interest in domestic violence and know something about it.

When we look at all the StatsCan studies, they show, from self-reporting studies, that men and women are equally victims of domestic violence. Yet, the reporting on this, using police statistics, is that the guy gets arrested 90% of the time. This is the number one weapon we heard. We're back 20 years ago when the special joint committee heard from over 500 witnesses, an equal number of men and women, from across this country, as they toured all the major cities and heard all this. The number one weapon was to claim domestic violence, get the kids, establish the status quo, and then you win.

The UN Convention on the Rights of the Child dictates that children be raised by both their biological parents without interference from the state, unless the child is being neglected or abused to such an extent that the state has to step in to protect them. It doesn't mean there's a big debate over the child's future where everybody goes bankrupt in family courts. Now we have more than half the litigants self-represented, and a court system that's dysfunctional. It doesn't work. It causes this kind of distress to people. The answers we talk about in family law here, you can't even read the 133 pages of this, let alone understand it for the 50%-plus who are self-represented in court.

Finally, we see some movement on these issues from certain provinces. I am delighted to see an order from Alberta, where if a parent doesn't turn over the children on time, he or she will be taken into custody by police to appear before the judge on contempt. Twenty years ago, when you got an order in Ontario to locate, apprehend and deliver the children, the police wouldn't act on it. The Hamilton police were taken to court. Why didn't they do it? That was what Judge Mazza said. It was a lawful order made under the Children's Law Reform Act, and the police wouldn't act on it. Incredible.

● (1650)

Some of the bias that we see even with MPs, in talking to some of them, is incredible. I want to bring your attention to MP Larry Miller, who.... You can read his letter to a Superior Court judge on our website. This is an international child abduction case, where the mother thought she could win a case if she went to Canada from Australia. She's a Canadian, and we have an MP lobbying a Superior Court judge. You can read the letter. It's on there. Just put “Larry Miller, MP, letter to judge” and it will come up on our website.

He's repeating all of these false allegations of domestic violence and everything else that never occurred. The father's side was never heard. The papers are saying that people are raising money to deposit in their bank account, and all this kind of stuff. This woman had so much money from the fundraising that she could hire one of the best lawyers in Canada to represent her and appeal on this. I watched at the court of appeal, and she lost on that, so the child was going to go back to the habitual residence in Australia. The child is entitled to Australian and Canadian citizenship. The child is doing very well, by the way. The power of these people who come up with false allegations of domestic violence is just incredible.

Over the last 20 years, there's been a huge problem with boys. Ten years of research is in *The Boy Crisis* book, which you should read. Every MP ought to read this. Eighty per cent of suicides are males. If you want to look at depression and all of these things, look at the facts. A lot of this stuff isn't even studied. If 80% of suicides were women, we'd have a day of silence every week. Who cares? They're men. This is incredible.

Boys now are so afraid of getting into relationships with females that we have MGTOW—men going their own way—because they don't want to get into the same scenario that we've seen here in family law for the last 20 years. They're victims of the family law system, where there was just chaos in the parents' life. Because we're so popular on the Internet, we've had a lot of phone calls over the last 20 years from parents. I have taken thousands of them, including from parents whose children have committed suicide. I had one last week. The child committed suicide because of all the conflict between the parents.

You people promote that. You make them go to court and fight over this stuff. You have a right to both parents, and to be raised by them. Yet, you people want to have all these rules, and under certain circumstances you can move away from the other parent and eliminate them. If you read this book, it will tell you how important fathers are, as well as mothers, to children's well-being, what they learn from their fathers and their important role.

You read in the news about mass shootings by boys in the U.S., and one in Canada, and another situation with a truck. If you want to read that, it will explain that nearly every one of them was a fatherless child. They didn't have a good role model, their father. It's incredible what's happening out there.

● (1655)

The Chair: Mr. Wilson, you've exceeded your time.

I'd ask you to wrap up, please.

Mr. Grant Wilson: On the issue of child identity rights, which is something we coined about 15 years ago, 10% of the Canadian population is misidentified on birth records. There are all sorts of falsifications on those. This is a provincial matter, but you ought to have concern about that because it's a charter rights issue as well.

If you look up “Mommy's Little Secret”, from The Globe and Mail, 2002, which you can read on our website, you'll see that over 10% of Canadians are victims of paternity fraud. This is what the Hospital for Sick Children published in The Globe and Mail. This is violence against children. You have a right to your identity and your heritage, no matter what it is. We want governments to do their job and enforce birth registrations properly. They want all these people who don't even exist to begin with, which.... There's an opportunity to falsify people.

The Chair: Mr. Wilson, you're at 10 minutes now, so I have to wrap you up.

I move on to Mr. Sleiman and Mr. Hamaliuk.

The floor is yours.

Mr. Alan Hamaliuk (Vice-President, Men's Educational Support Association): Thank you, honourable Chairman.

Thank you, honourable members of the committee.

We started out as a men's educational support association. It's a charitable organization established in 1994 to help fathers and men in domestic crisis. Our organization has evolved to provide service, support and information to parents—both mothers and fathers—about divorce and family violence issues. Our organization, MESA, is especially proud of the program and the purchase of a house for supervised access in the city of Calgary, which helps fathers and mothers alike. Because the cost of supervised access was so high, we had to have a low-cost alternative.

MESA believes it is in the best interests of all children to have both parents able to participate fully in their lives, even after divorce or separation. This is the concept of equal parenting. The proposed amendments to the Divorce Act do not include the fundamental principles of equal, shared parenting, which leaves this act without a heart to solve current divorce issues.

If the Divorce Act is not amended to include equal, shared parenting, it will continue to be an extension of the current dysfunctional system and may well increase litigation. Canadians deserve a lasting and fair solution that incorporates equal parenting.

I'll pass it on to our president, Gus.

● (1700)

Mr. Gus Sleiman (President, Men's Educational Support Association): Thank you, Alan.

About 25 years ago, one good person began the process of changing and raising awareness about the issues of divorce. Senator Anne Cools helped put together the Special Joint Committee on Child Custody and Access. During those times, discrimination against fathers and men was extreme, at the highest levels. That committee's main objective was to discover all the issues and come up with solutions.

We see in the current Divorce Act most of the elements already included in the proposed amendments, with the exception of one very important element, which is the presumption of equal-share parenting. That gives the parents an equal level, starting equally, and the courts can decide after that if there's an issue of violence or any other matter to depart from this particular principle.

From that time on, we have had a large number of government officials changing their minds about the issues of divorce, and they began to support the concept of equal-share parenting. We know already from several bills that went through Parliament that the numbers are almost over 50%. We know which bodies are doing the support and others who cannot speak directly to these issues, so we're asking the government to open the floor for every MP to speak their minds about those issues. It's very important. This issue affects every parent, every mother, every father, and every child in the country. We have serious issues involved, including emotional and financial.

At our parent-child access centre, which Mr. Alan Hamaliuk spoke about, we help a lot of parents. In the last several years, we have seen a tremendous change in that process. We are seeing mothers coming in under supervised access, which is something we haven't heard about before, let alone us, as a men's organization, to help fathers.... We do respect mothers, and we respect fathers. We want them to be involved. We help those parents to resolve their issues directly. We help other fathers pay custody and level the issues between the mothers and the fathers. This is the approach that we need to take.

We know the issue of domestic violence. We've heard about it a lot already. Domestic violence is not a gender issue; it is a human issue. It affects all of us. Mothers and fathers, men and women, abuse each other at almost equal levels. Eventually, the Government of Canada came up with information, available from StatsCan, to indicate that fathers and men are abused at very equal levels to mothers. The issue with fathers and men is that they do not come forward as they're supposed to, and they are not reporting the issues of violence against them. We have to depart from that process of using violence as a scare process to tell the courts and the judges that we have to give custody mostly to mothers, because men and fathers are always violent. That's not true. False allegations are filling up our system.

The Divorce Act, the way it stands right now and the new elements in it, basically implicates every father and every mother who, for some reason, would not want to say a word or anything that might upset the other parent. The courts are not going to extreme lengths to investigate those issues and to make a proven fact whether violence has taken place or not. We stand against the violence. If there's violence, whether it was against the other parent, the spouse or the child, no parent should be close to that child. That's not to be confused with the issues that other groups are coming in to tell us about and convincing the government officials that it's only violence that has to determine the issues of divorce.

Other jurisdictions all over the world, basically, have implemented the concept of equal-share parenting, beginning in Australia. We know already several states in the U.S., most notably Arizona and Kentucky, which recently passed direct presumptive equal-share parenting process in their laws. We already have enough studies from researchers in the field that indicate that parents should have equal time with their children. Dr. Fabricius has done an enormous amount of work. He studied the most recent Arizona custody laws and found out that parents should remain with their children equally all the time, departing slightly depending upon their situations and their issues, whatever they face.

● (1705)

We have the issue of relocation. These are the most difficult cases that the courts face. We already know about important cases in court and how they've developed. What we see in the new Divorce Act is another section to place the burden on the non-resident parent, basically. If a parent decides to move with the child, they have to prove that the move should occur, which we totally reject. The burden of proof will always remain on the parent who wants to move away with the child, because we already know from the study that it affects the children tremendously. Their psychological development, their abilities and every aspect are affected. We support the mobility of reunification; we don't support the mobility of isolation and deprivation.

Children are deprived of their parents, especially fathers, and that leads to tremendous social issues in our society. If this trend continues, we will devastate our families, and we will devastate even our governments, because a healthy government comes from healthy families. Even though the divorce takes place, there's no reason to continue with that hostility against both parents. We already know this from many experiences in our groups, from people who come to us and tell us about their agony and the issues that they face from custody, access, child support, and family violence.

Family violence is the least thing they talk about, because it's the least thing that can happen in divorce cases, contrary to what we're hearing. False allegations are widespread and are considered family violence. This cannot dictate the process of the divorce. We have to depart from those assumptions about issues of violence and determine them 100%.

The Chair: Mr. Sleiman, you've passed your time, so I'll ask you to wrap up, please.

Mr. Gus Sleiman: Okay. Thank you.

We would ask the committee in its final recommendations to recommend that equal-share parenting become the main issue to solve the divorce issues, because where parents don't have to fight, they understand that they are equal at both levels, and they sit down and want to mediate properly with each other. That resolves most of these issues.

Thank you.

The Chair: Thank you very much.

Ms. Wolff, go ahead.

Ms. Lisa Wolff (Director, Policy and Research, UNICEF Canada): Thank you very much.

I'm Lisa Wolff. I'm the director of policy and research at UNICEF Canada. You may know UNICEF as the United Nations International Children's Emergency Fund. We have a presence in more than 190 countries. What we do in low- and middle-income countries is different from our role in high-income countries, but the one thing that unites UNICEF everywhere is that we work to promote decision-making, including legislation, consistent with children's universal human rights, which are their entitlements and our obligations.

The Convention on the Rights of the Child is really a fundamental instrument that is a practical tool to help make decisions and make legislation that is truly in the best interests of children. It's 29 years old tomorrow on National Child Day in Canada. I've been working with the convention in policy for about 20 years. As I reflect on one of the greatest challenges around supporting the realization of children's rights, it's in the recognition that children have the ability to participate in decisions that affect them, that they have capacity even from a very young age. And when they do that, it's a really strong, protective factor and it makes decisions better.

I'm really pleased to be here because I think this bill, Bill C-78, proposes some improvements that really help Canada bring its obligations into alignment with legislation around divorce. Close to a quarter of Canada's children and youth are affected by divorce, as you know, so the efforts that you have under way to make this process better for them and make the outcomes better for them, at least in terms of the proposed changes, are significant.

UNICEF Canada very much welcomes, in particular, the measures that affirm that children's best interests are the priority, and that help define to some extent—at least better define—what those best interests entail. These measures expand protections for children, support parents to fulfill their roles and responsibilities, and reduce delays, costs and adversity for families, but more specifically go towards better outcomes.

Enacting the changes that are proposed in Bill C-78, by and large, we think, would bring Canada into greater alignment with children's human rights obligations and entitlements and with the intention of the Divorce Act, as stated in its preamble.

Essentially, I'm speaking to two things: the call on us to give priority as the decision-makers to children's best interests in all decisions that affect them, and to recognize that when young people have the opportunity to participate in decisions, the process and outcomes are, again, generally better for all of them.

I think that affirming, as the bill does, the best interests of the child as a common north star for all parties, for everyone involved in the process of divorce, is laudable. Few object, of course, to giving priority to the best interests of the child. I think you will not hear witnesses say we shouldn't do that, but the challenge has always been that there are very divergent views about what "best interests" is. It was used to justify residential schools in Canada.

What the convention does is give a definition of what "best interests" is. It actually offers three approaches that are really helpful in deciding best interests and establishing what those are.

One is that we can think about best interests as the option for the child or children that best supports all of their interconnected rights, their human rights that are in the convention. These are things like access to education or supports for disabilities or language and culture.

Second, the views of the child really indicate what is in their best interests. They are one of the strongest clues we have to what will actually be in their best interests.

The third approach is that a case-by-case assessment of best interests, wherever possible, tends to make the most sense in legislation. Sometimes, for administrative reasons, we have to set arbitrary minimum ages, such as for driving or marriage, but when it comes to children in cases of divorce we can make case-by-case decisions and those will look different for every child in terms of the balance of the rights that can best be realized to support them.

● (1710)

Fundamentally, we applaud the way that Bill C-78 creates new criteria for shared understanding to apply the best interests. We think it's a good move to offer some clear criteria. It supports an overall assessment and balancing of many different factors that are consistent with children's rights, as opposed to a hierarchy, which we often think of in terms of certain needs that have to be met first and other things that are less important. Taking the convention's approach, we look at many different interacting factors, and the balance will be different for different children. It's not a checklist of requirements in which we have to meet every single element of consideration for every single child.

I think that flexibility and a case-by-case situational approach are really key, and the criteria just help us to remember to think of certain things, and help decision-makers, the courts and the adjudicators remember what to think about when they're thinking about best interests.

The other aspect of best interests that I mentioned, the importance of children's views, is also really welcome in how the BIC criteria, and particularly proposed paragraph 16(3)(e), recognize that children's views and preferences are a factor to be considered. Importantly, the bill doesn't set an arbitrary minimum age for doing that. It also recognizes that some children may not wish to participate in expressing their views.

We have just a few changes in the bill, ways to better protect the rights of children to have their best interests considered and their views considered. I think there is a bit of a paradox in setting out best interest criteria, because then "best interest" does take on a certain meaning and weight based on what is included, and therefore what is not included also becomes important. We would recommend that explicit consideration be given to children's convention rights as other factors that can be brought in.

The best interest criteria mention stability, and they pay a lot of attention to violence and protection, which are critical, but rights to access education or, as I mentioned, special supports for disabilities and to continue language and culture could be brought into consideration if it were mentioned that the convention rights are important considerations in determining the best interests.

Second, in terms of the views of the child, currently those are just one of many considerations in the BIC criteria, and we have some challenges around consideration of due weight for maturity. That's language you often hear in legislation around children's voice: give due weight based on the age and maturity of the child. We would say that due weight has always been a problem, because children can offer views, which is one half of the equation, but they're not always given import. They're not always persuasive, and they can easily be ignored. I think we would want to emphasize that even the views of young children, who may not have maturity, should be considered and taken into account.

One way to correct for some of the challenges of actually taking kids' views into account is to consider elevating the views of the child as a primary consideration. I am careful in recommending that, because I feel that once you start elevating certain priorities, you again get into this hierarchy rather than a careful balancing, but if we were to elevate any consideration that is not currently there, it would be that the views of the child need to be given due weight and considered in decision-making.

I also think there's an onus that could be clearer around reducing barriers. We acknowledge that not all children may wish to express their views, and for good reason, but I think the onus is to reduce barriers, whether by helping to ensure that they are informed or through third parties that could help them, or through views of the child reports, to make it safe and to make it a good experience for them.

Thank you very much.

● (1715)

The Chair: Thank you very much.

Thanks to all the witnesses.

We'll move to Mr. Cooper for the first question.

Mr. Michael Cooper: Thank you, Mr. Chair.

I want to drill down a little bit on the issue of the presumption of shared equal parenting.

Mr. Hamaliuk or Mr. Sleiman, perhaps you could answer some of the questions I want to ask.

I think it was Mr. Hamaliuk who made reference to the special joint committee in 1998. In that report, the presumption of shared equal parenting was not endorsed by the special joint committee, but one of the things that the committee did recommend was that under section 16 of the Divorce Act there be a number of principles enumerated respecting the best interests of the child. That is something that Bill C-78 does do.

One of the factors recommended by the special joint committee was the importance and benefit to the child of shared parenting. Would you see that as something that would be an improvement to the legislation?

● (1720)

Mr. Gus Sleiman: Yes, of course.

I mean, we presented to the joint committee at the time. The recommendation, the central focal point, was to have equality in parenting. Now, the Divorce Act, with the current proposed amendments, if it's not in there, what's going to happen is a continuation of the present system as it is. With the exception of increasing certain elements, that means the conflict is going to escalate if that shared parenting concept is not introduced into the Divorce Act.

That was the hard work of the committee, except from that time until now a large number of MPs changed their mind about it. We educated the public. We educated the MPs and the government about the issues facing parents and what's happening in our court system. This will reduce the conflict of the parents. When they understand that when entering the court system or going through a divorce they are equal, at the same level, they could sit down and resolve their issues. That will help them not to fight about these issues.

Mr. Michael Cooper: Thank you for that.

What would you say in response to those who might say, well, this presumption really isn't required or it need not be incorporated into the list of factors that the court may consider in determining the best interests of the child with regard to proposed new section 16.2 in Bill C-78, which is in respect of the maximum parenting time, which recognizes to a degree that it is in the best interests of the child that it be considered by the court?

What's wrong with that?

Mr. Gus Sleiman: We already have in the current Divorce Act a section that talks about the maximum contact with the parents. What we're seeing is that, when a parent obtains custody of the child, basically they start excommunicating the other parent, removing the other parent completely from the life of that child. Our courts are basically giving.... When it comes to enforcing the act, as you already know, what happens in all cases is that it takes a lot of fight in the court. We have several cases where.... In Ontario, one of the cases went to court 40 times. Eventually the judge said that was enough.

This will always escalate the fights about these issues. That means we don't have access enforcement. We have child support enforcement. When fathers come to court to ask about the issue of access to their children, it's not given the same weight as for child support. By the way, the mechanism that we're introducing into the Divorce Act to enforce child support is completely separate and different from when we want to maximize contact. With the equal parenting concept, parents are always going to be equal. This is the main starting point of this whole process.

We can assure everybody else about the issues of domestic violence and the issues of child abuse and matters like that. We want the court to protect children from that. We want the court to protect fathers. We want the court to protect mothers, as well, from those particular issues, so there's no fear about what they are going to face. Their concentration should always be on their children's interests, and equal shared parenting will provide that principle for them.

Mr. Michael Cooper: Right.

How much time do I have, Chair?

The Chair: You have a minute and a half.

Mr. Michael Cooper: Okay.

You were right when you made reference to the maximum contact section, subsection 16(10) in the Divorce Act.

You made reference, though, to the Australian experience. Maybe you could elaborate a little bit on that.

I'm just looking at a study that was conducted by the Australian Institute of Family Studies, which is a government entity. It's from 2011. It says, “Post-reform, shared care remains unusual in the broader community—about 16% of the...recently separated parents who participated in the Australian Institute of Family Studies [longitudinal study]”.

I don't know if you have any insights on the outcomes in Australia based on the reforms that were implemented in 2006 and then ultimately reversed to 2012, from the standpoint of outcomes.

Mr. Gus Sleiman: By the way, we participated in this particular approach for the Australian government. We submitted a brief on all these issues, and we were pleased that the Australian government introduced the concept of what they call “shared parental responsibility”.

We already know there are cases where parents are satisfied. We already know that from reports we are receiving. Maybe it's not 100%. We already know that, just as we can see in Canada, the Australian government, Australian agencies and government organizations constantly oppose fathers, and men, and raise issues of domestic violence. These are obstacles in the way of parents to achieve equality in parenting.

We already know it's working for all the cases that want it to be, because the parents still have that option, by the way. They are not completely restricted to take it equally. We can vary the time, and we vary the responsibilities. They can always share all of that. This is already included in the law. You can adjust it as much as you want. It doesn't have to be fifty-fifty. It doesn't have to be ten-ninety or forty-sixty. The way we have it right now is, well, I'm not going to pass the 40% mark because of the issue of child support.

I want to mention one more thing about the issue of poverty, by the way. The poverty that we're claiming, let's trade it for parents looking after their children, rather than having to look after their children 100% of the time so they don't have time to work. If we allow them that opportunity, the parent who is the poorest, let's say, can go and find a job and allow the other parent to share the responsibility for taking care of the child. This is one issue we need to carefully look at to resolve. That could resolve the issues of child support altogether and the complications around it.

● (1725)

The Chair: Thank you very much.

Mr. Fraser, go ahead.

Mr. Colin Fraser (West Nova, Lib.): Thank you, Mr. Chair.

Thank you, all, very much for being here today. We appreciate the testimony.

Mr. Sleiman, I will continue on with you. I understand what you're saying in response to some of Mr. Cooper's questions. I think Ms. Wolff alluded to the fact that family law cases, in particular, have to be done on a case-by-case basis. Each situation is different and unique. The needs of each child in these cases are unique and different things have to be balanced.

Don't you think, therefore, that it is important that Bill C-78 is enshrining the principle of the paramountcy of the best interests of the child in these decisions?

Mr. Gus Sleiman: The best interests of the child are still the paramount principle to guide our courts. However, it has to be connected to the equal shared parenting principle. That's what we look at, the best interests of the child, not an individual, because we know that the courts already decide cases on the best interests of the child. They have been doing so in all the cases. In the process, they eliminated fathers out of the lives of the children. We already know that society is facing a serious dilemma with children: teen suicide, violence, drug and alcohol abuse, and issues like that.

Mr. Colin Fraser: What you're saying, though, is that it's correct that there should be a paramountcy of the best interests of the child so long as it lines up with shared equal parenting. Is that what you're saying?

Mr. Gus Sleiman: Absolutely, because we still have to determine the issues of the interests of the child in terms of the equality itself. We cannot put parents on the side and say we're going to pick and choose which interest fits that particular parent because we have already seen judges moving in that direction all along. They come up with an issue, the primary caregiver, for example. Well, most of the time we already know mothers stay at home and fathers go to work. This does not eliminate the issue of equality in parenting because you need the two elements to create that family.

Mr. Colin Fraser: It would seem to me, sir, and I will suggest that you're saying that the paramountcy is the best interests of the child, but really what you're saying is that paramountcy is shared equal parenting, and therefore case-by-case doesn't really match up. You're saying that this should be the first thing, that you look at it from the point of view that it should be a shared equal parenting arrangement, and then you look at all the other factors that should go into the best interests of the child.

I put it to you, sir, that this is not necessarily taking into account the best interests of the child. You're starting from a point of shared equal parenting. Is that right?

Mr. Gus Sleiman: Equal shared parenting takes into consideration, at its utmost, the best interests of the child. The best interests of the child include that both parents remain fully involved in the life of the child all along. Divorce and separation do not mean a reduction in the best interests of the child or the elimination of that—

Mr. Colin Fraser: Irrespective of the fact that Bill C-78 puts in place the principle of maximum parenting time....

Ms. Wolff, can I ask you for your thoughts on this?

Ms. Lisa Wolff: Again, we use the convention—what the government has agreed to support and what children's entitlements are—to think about how best to understand what their best interests are. Children have rights to maintain relationships with both parents, unless it's against their best interests. There's nothing in the convention about equal time—shared parenting, yes. For some children, equal time might be in their best interests, but we would say that a case-by-case basis means not in every instance.

● (1730)

Mr. Colin Fraser: The principle of maximum parenting time makes sense in most cases, but that can be different from shared equal parenting. Is that correct?

Ms. Lisa Wolff: It is distinct, yes.

Mr. Colin Fraser: Dr. Irvine, do you have thoughts on this?

Ms. Valerie Irvine: I don't know what the issue is. We had shared parenting at 13% in 1995. It's gone up to 70%, so I don't see the crisis that's being carved out at the moment. In fact, the crisis I see being carved out is that the stats on child anxiety are going extremely high—one in five with disorder labels in schools—but that's more of a misdiagnosis, since it's more of a response to trauma than just generalized anxiety.

I believe in the support of case-by-case and looking at strong relationships and nurturing them. That kind of thing is the most important piece. I think the maximum parenting time is ill-advised in cases of family violence. I think that needs to be carved out really clearly. In my brief, I actually said that I believe in striking that clause from the bill, but you can refer to the brief when it's posted.

Mr. Colin Fraser: Obviously, all of the other factors have to go into making the decision of what is actually in the best interests of a child.

Ms. Valerie Irvine: I support the Convention on the Rights of the Child as primacy in this, too.

Mr. Colin Fraser: You mentioned that children should actually be represented in order to have their views and their best interests defended. I don't know if you mean in all cases or just in some cases. We're talking about already complex cases, with already opposing sides oftentimes, which makes it very difficult, in some cases, to come to an agreement where both parties buy in. Wouldn't adding another litigant add to the complexity and the difficulty of coming to a conclusion that everybody can buy into?

Ms. Valerie Irvine: It provides fidelity in child voice and child interests. Currently, we don't have that.

We often have a litigious he-said-she-said back and forth. You can have people motivated over other interests than actually recognizing the child's best interests. Getting fidelity for that is really important. The health professionals should become involved and provide their input, and then you have the option for children to actually express their voices clearly, even through the use of the child reports. They never get to see what's published.

A children's lawyer—from the Child and Youth Legal Centre in B. C., for example—will go over a views of the child report with the child to confirm its accuracy. That's another piece that's putting forward the best interests and meeting their needs.

Mr. Colin Fraser: Do I have more time?

The Chair: No, I'm sorry.

Mr. Colin Fraser: Thank you, all.

The Chair: Go ahead, Madame Sansoucy.

[*Translation*]

Ms. Brigitte Sansoucy: Thank you, Mr. Chair.

I am going to follow up on my colleague’s comments. For me, if the child is represented, it will not complicate the situation, it will help it.

Ms. Wolff, in your last sentence, you said that there could be a third party whose role would be to make sure that the rights of children are respected and that their point of view is considered.

For me, that establishes a link with Ms. Irvine’s presentation. In the current system, it is particularly difficult, if not impossible, for children to make themselves understood in a legal environment that is completely foreign to them.

Bill C-78 puts the interest of the child at the centre of everything, but Ms. Irvine and other criminal lawyers and counsel have pointed out the importance of considering the interests of children and listening to their point of view. They also believe that they should be represented by a third party, just as the two parents are.

Ms. Wolff, you raised the legal issue by saying that children should be represented by their own counsel in order to get away from the two-party nature of divorce. You also raised another important point, that we should ensure that children living through the divorce of their parents have access to medical and psychological care, especially in cases of spousal violence.

Could you tell me about those two aspects, that is, children having their own lawyers, and access to medical and psychological care in order to face up to the consequences of the divorce?

● (1735)

[*English*]

Ms. Lisa Wolff: When we're asking rights holders to claim their rights and express their voices, one basic principle is that it not be harmful to them and that any risks be mitigated. I think children can have some risk in expressing their voice, especially in very high-conflict situations, again depending on the individual child and their needs, whether there is trauma and so on.

Having more support workers trained in working with children is critical, even in situations where children are more readily able to express their views. That will be important for informed expression of views, not just protection.

I think it can take different forms. In some cases, it might be a judicial interview. A lawyer might be a recourse; it wouldn't always be necessary. I think it becomes an alternative probably in more high-conflict situations.

[*Translation*]

Ms. Brigitte Sansoucy: Ms. Irvine, I would like to know what you think of my colleague's comments. He said that the situation is already complicated by the fact that there are two parties and two lawyers, and that adding a third party would make it more complex. Could you tell me what led you to make your recommendation?

[*English*]

Ms. Valerie Irvine: I'll speak to the point raised earlier about children maybe having a risk to voice and needing health professionals to become involved. That is a type of voice that can be elevated to also represent the view of the child.

In terms of conflict, let's say that the best interests—the health, medical, psychological interests—are clear. They are known by a child's direct health team. If that is not being heard, or there are attempts to suppress it in legal proceedings, that is going to be problematic in supporting the child or having that voice come to fruition.

Again, by bringing in that role.... It doesn't necessarily have to be a lawyer directly with a child; it could be a lawyer supported by the health team, but we need to have those pieces in place. After 10 years of being involved in legal proceedings, to be at the end of 10 years and then to have that wonderful support program pop up and stop everything.... I wish it had been here 10 years ago.

In terms of talking about the impact and whether it is going to create more issues, I would say that it's going to stop litigation that's unnecessary or repetitive or not listening to the best interests of the child for their medical and psychological needs.

[*Translation*]

Ms. Brigitte Sansoucy: Ms. Irvine, you said that, if a program like this had existed 10 years ago, the situation would not be the same. Could you be more specific about the program?

● (1740)

[*English*]

Ms. Valerie Irvine: It just started as a pilot in December in British Columbia under the Society for Children and Youth. It's called the Child and Youth Legal Centre. Again, law, politics and family violence are not my area of research.

Any child in British Columbia can access a lawyer confidentially, out of view of any parent, via Skype throughout the province, for anything from questions about mediation to requests for language rights or gender rights. It's any type of support for children. That's prioritized right now.

My children accessed that program. They were able to get their rights. They were able to have the views report reviewed with them, and they offered to attend in-court via video. After three court dates in the past year alone, it stopped. The only difference in the last one.... Medical and health team members were always there, and letters were always there, but it was the introduction of the child lawyer that stopped everything.

I cannot overstate the importance of bringing in someone to defend the child to change the dynamics. That person is not there for either parent, for anyone's bias, other than to meet the needs of the child. It is so fundamentally critical. It can unclog your courts, and these programs need to be supported.

There is a clause that they could retain monies from the parents. They could petition for reimbursement, but it's free as a default. I honestly believe it needs to be.... It's not going far enough. It also needs to bring in the views of health practitioners. If a family has a family doctor, that doctor knows all of the medical and health issues of everyone in that family. When you have a divorce, if there is something going on, it forces a parent to disclose private medical information about the competency of a parent, for example. How is that going to help? It would be the opinions of medical professionals coming in who could say—

The Chair: I'm sorry. We have to get to the next question.

Ms. Khalid, go ahead.

Ms. Iqra Khalid (Mississauga—Erin Mills, Lib.): Thank you, Chair.

Thank you to the witnesses for their testimonies today.

Over the past three years, I've had a lot of women come forward in my constituency office to describe their marital lives. This past week I had a woman sit across the table from me and describe in quite explicit detail 23 years of physical abuse and mental abuse, with three children under the age of 13.

Can you tell us, Dr. Irvine and Ms. Wolff, what the statistics are when it comes to family violence, when it comes to the difference between males and females? Also, how do you think this bill would impact those three children who have watched for 13 years abuse happen to one of their parents?

Dr. Irvine, you can go first.

Ms. Valerie Irvine: Again, given that I'm not a researcher in family violence, I can't produce statistics for you, but the impact on children is severe. Post-traumatic stress disorder can present itself as anxiety issues in the schools, for example. Again, I'll point to the increase in shared parenting and the increase in diagnoses and IEPs in schools now. That's a severe impact, and it will carry forward throughout the rest of their lives.

The more we can protect them from that, protect them from violence.... Children know, even at a young age, whether they feel safe or not safe. They may not know their rights, and that is a huge thing that needs to be done, because they know the culture they're born in, and that's the world they know. Being insulted or being harmed, that could be normal to them.

We need to have conventions that communicate and give them those rights, but the damage is severe. As I said, in my community, within walking distance of my home, I get reminded all the time when I walk by those homes that children died there. That's just the tip of the iceberg. There's a huge submerged part, different levels of trauma that are being experienced.

● (1745)

Ms. Lisa Wolff: Yes, I think Canadian society has a fairly high level of family violence, which about one in five children witnesses. What the best interests criteria do is make sure that decision-makers are looking at those criteria.

You have illustrated perfectly what I was trying to express earlier, that young people need support when they are expressing their views. If they are speaking about traumatic situations or experiences of violence, maybe a lawyer is there to represent their interests as a party—and they are a party in the proceedings—but having child-specific workers to support them through a process of giving voice can be really important as well.

Ms. Iqra Khalid: Thank you.

How do you think this bill would impact, going forward, those children who are coming from family violence, in terms of really looking out for their best interests? Will this bill really fulfill that need?

Ms. Lisa Wolff: I think it stands a good chance of doing so in a stronger way, because it is much more explicit that this is a factor to be delved into.

Ms. Iqra Khalid: Dr. Irvine, go ahead.

Ms. Valerie Irvine: I think it's making great movements in its current form, but it still needs more revision to address family violence appropriately. There are a few briefs out there that are very strong, from NAWL and UNICEF, and the Canadian Coalition for the Rights of Children. I have also put one together that goes through what I believe could have prevented harm to children.

We're getting close, but please pay attention—take one of those cases and apply it to see if it fits. See if it supports those cases of violence and see how it supports those children.

Ms. Iqra Khalid: Can you speak a little bit about the revisions you're proposing, and how they would impact children like those coming out of family violence?

Ms. Valerie Irvine: Yes. Well, I have 12 pages of a brief. I didn't want to go through all of those things.

We need to bring in integrated services and, as I mentioned, data analytics. We need to have information about judgments and the errors they're making. We need to collect data about the gender and the various characteristics of litigants and of judges. We need to bring in education about family violence as well, and track those over time.

I was actually shocked to find out that a lot of our law programs don't have statistics heavily brought in, or those types of high-level analyses of programs. I think we need to have some of that brought in, the larger data analytics, so we can minimize type 2 errors.

We need to minimize maximum parenting time, maximize child voice, and restructure some of the layout of the sub-pieces where children's views are a "factor". I would have to bring up the clause exactly, but I think it needs to be moved out as a priority, not a factor.

Ms. Iqra Khalid: Do I have a bit more time?

The Chair: You're at six minutes, sorry.

Ms. Iqra Khalid: Thank you.

The Chair: Thank you very much.

I want to tell the witnesses on this panel that we really appreciate their testimony.

[*Translation*]

Thank you very much. It was a great pleasure to have you here.

[*English*]

We're going to move to the next panel.

I would ask everyone on the next panel to move forward as quickly as possible.

We will have a short recess.

● (1745)

(Pause)

● (1750)

The Chair: It's a great pleasure to have our third panel of the day with us, on Bill C-78.

I would like to introduce, as an individual, Mr. Rollie Thompson, who is a professor at Dalhousie University. Welcome.

From the Canadian Association of Social Workers, we have Ms. Janice Christianson-Wood, who is the president, and Ms. Sally Guy, who is the director of policy and strategy. Welcome.

From the Canadian Equal Parenting Council, we have Mr. Glenn Cheriton, who is the president. Welcome.

From Harmony House—which the committee had the privilege of visiting in Toronto—we have Ms. Leighann Burns, who is the executive director. Welcome.

From Germany today, we have Mr. Edward Kruk, president of the International Council on Shared Parenting. Welcome, Mr. Kruk.

Because you are on teleconference and it's so late there, we have agreed to put you first on this panel. You have eight minutes. I will turn the floor over to you right now.

Mr. Edward Kruk (President, International Council on Shared Parenting): Thanks to the standing committee for the opportunity for me to discuss with you today a child-focused, evidence-based approach to the best interests of children of separation and divorce. I should say I'm a professor at UBC in Vancouver. I would have preferred to address you in person, but I am on my way to Strasbourg for a conference on shared parenting, children's rights and social justice sponsored by the Council of Europe. I will be making a similar presentation over the next few days.

My jumping-off point is what I expect will be the jumping-off point for many presentations, and that is the UN Convention on the Rights of the Child, article 3, which states, “In all actions concerning children...the best interests of the child shall be a primary consideration.” The concept of the best interests of the child is referenced in seven other articles of the convention.

If I make only one point, it will be this. In Canada, the best interests of the child are really nothing but what Hillary Clinton many years ago referred to as an empty vessel into which adult prejudices are poured: the idiosyncratic prejudices, biases and ideologies of individual judges who have little or no training in the complexities of child development and family dynamics.

Today, the extremely damaging impacts of adversarial resolution of parenting after divorce disputes occur within the context of a divorce law that proclaims that the best interests of the child are its guiding principle. At the same time, in the arena of child custody, the best interests principle is used to justify any number of harmful policies and practices.

Parents justify their own interests by using the language of “best interests”. Judges justify their subjective biases by using the language of “best interests”. An ever-growing industry of professionals impose their views on the best interests of the child. Children are basically at the mercy of whoever has the most power and influence to impose their will regarding the best interests of the child.

We pay lip service to the best interests idea. We claim it's the guiding principle in our laws, policies and practices with respect to children, yet we seem to have no clear definition of what these best interests are, and rarely do we assess the impacts of our laws and policies on children. Rarely do we consider the best interests from the perspective of children themselves. It's almost always from the perspective of adults, and when adult rights clash with children's needs, the interest of adults almost always win out.

In so-called contested child custody cases, although it's generally understood that judges make residence awards such as primary residence to one or the other parent, in fact what they are doing is removing a fit and loving parent from the lives of children under the guise of the best interests of the child, which is in effect a type of parental alienation that is increasingly becoming recognized as a form of legal violence against children and families. It's exactly the same as the removal of first nation children into residential schools or the removal of young children at the border from the embrace of their migrant parents. That's what the best interests of the child standard in Canada in the arena of family law is all about.

My remarks focus on the majority of divorcing parents, where family violence and abuse is not a factor. I'm not talking about situations of family violence and child abuse on the one extreme, and I'm not talking about, on the other extreme, co-operative parents who are able to jointly agree on the parenting of their children after a divorce. Parental autonomy should be the cornerstone of family law in those cases. I'm talking about non-violent, non-abusive but high-conflict parents who are unable to agree on the post-divorce living arrangements of their kids.

The type of best interests approach being upheld by the Minister of Justice and the drafters of this bill is a discretionary standard that empowers those who really don't have the expertise in these delicate areas of child development and family dynamics to make life-and-death decisions.

There is a viable alternative to the discretionary approach, and that is an evidence-based and child-focused approach based on a strong foundation of research studies examining the best interests of children from the perspective of children and parents themselves, who identify shared parenting, in fact, as being in the children's best interests.

● (1755)

There are now over 60 studies that have compared child and family outcomes in single-parent and shared-parenting families, which have found that there are two main factors associated with child well-being and the best interests of children of divorce. The first factor is the maintenance of ongoing parent-child relationships with both parents, and shared parenting produces the best outcomes in this regard. The second factor is children being shielded from family violence and ongoing high conflict, and again shared parenting produces the best outcomes in that regard.

You will hear over the next days and weeks from countless experts in the field who will have very strong opinions concerning the best interests of children, but primarily they are going to be guided by their own ideologies about what is in the children's best interests, and these will be asserted with little or no research evidence to back up their positions. If you are influenced by their impressive rhetoric, then divorce law in Canada will remain exactly as it is now, which has been in many ways quite disastrous with regard to the harm it has produced for children and families.

I am suggesting that you think about adopting a new approach to the best interests of the child, one that is child-focused and evidence-based.

You'll also hear from opponents of shared parenting that a legal presumption of shared parenting is essentially a fathers' rights position, which is a complete mischaracterization and, I believe, an attempt to marginalize proponents of shared parenting, who are in fact mainly parents and children themselves. Equating shared parenting with fathers' rights is a last, desperate attempt to deflect your attention away from child-focused research on children and parent outcomes in primary residence versus shared-care arrangements.

I have a few other points. I realize my time is drawing to a close.

Parental alienation is becoming recognized as a much more serious and debilitating form of both child abuse and family violence. It affects far more families than most of us assume. It is far more commonplace than most of us assume, and it flourishes within the present system. There are now over 1,000 articles on the topic of parental alienation.

Shared parenting is a bulwark against that. It is a preventative measure with regard to parental alienation, which is now recognized by the World Health Organization in the international classification of diseases. The American Psychological Association has just struck a committee to examine the impact and prevalence of parental alienation. That's another key factor.

In non-divorced families, shared parenting is now the norm. Family life today is characterized by the shared responsibility of both parents in both family work and work outside the home. We promote the idea of shared parental responsibility in two-parent families, yet we seem to turn a blind eye to that idea post-divorce.

I would also say that a rebuttable presumption of shared parenting is compatible with a rebuttable presumption against shared parenting in cases of family violence, where children's safety and the victim's safety should always be the priority, and this is very much the position of the International Council on Shared Parenting.

A final point I would make is that there is really no moral, legal or scientific basis for the removal of a fit and loving parent from the daily life of a child. There is no justification for removing a parent from the life of a child in a situation where there is no neglect or abuse present. I would suggest that it is the responsibility of the committee to reform the Divorce Act in a way that will support parents in the fulfillment of their parenting responsibilities for their children's needs.

Shifting away from a rights-based focus to a responsibility-based focus is the measure by which Canadians will be able to ascertain the degree to which you are truly committed to the best interests of children.

Thank you.

● (1800)

The Chair: Thank you very much.

We'll move to Professor Thompson.

Mr. Rollie Thompson (Professor, Schulich School of Law, Dalhousie University, As an Individual): Thanks for the chance to speak to the committee.

I'm appearing as someone who has practised and taught family law for—I hesitate to say it—almost 40 years. I teach family law at Dalhousie University in Halifax, Nova Scotia.

I understand you don't have my written brief yet, but I want to emphasize, following what Professor Kruk said, that in the brief you will actually see the research. I've given you some citations in my eight-page brief on that.

In general, I'm supportive of Bill C-78. I think it's fair to say that, if anything, it's overdue.

With the time I have, I want to focus on three points about relocation. It's one of my areas of research over many years.

I come from the province of Nova Scotia, which has in fact passed legislation on relocation that looks very much like the proposals in Bill C-78. We've had it in place since 2017. It's early days, but I think it has been fairly successful so far. B.C. also passed provincial family legislation involving relocation, which came into effect in 2013—less successfully, I think it's fair to say.

Here are my three points, and without the brief, I'm going to try to be as pointed as I can.

First, the relocation burdens in proposed section 16.93, which have been talked about already, would provide important guidance to parents, lawyers, mediators and courts that is desperately needed. I think there is general, broad support for bringing some order in this area of law. It's a critical part of the bill. I'll explain the underlying rationale.

Second, there is a minor tweak I'm going to suggest in the section on mandatory notice of relocation and also the other two kinds of mandatory notices in the exception. I'll be brief on that.

Third, generally speaking, the added best interest factors on relocation, including the reasons for the move, I think are helpful and clear. It's similar to what we did in Nova Scotia. There is a proposed subsection 16.92(2), and I'm going to tell you why I think it should be deleted.

At the heart of the relocation part are the burdens that are set out in proposed section 16.93.

As little bit of backdrop, back in 1996, the Supreme Court of Canada decided a case called Gordon v. Goertz, which has already been referred to today. It's fair to say that the decision gave very little guidance on how to deal with relocation cases. It has led to case-by-case decision-making. I think it has actually encouraged litigation. It's been heavily criticized. It's important at this point in time to bring some structure and guidance to the difficult decisions on relocation where the court did not.

The court has had 21 opportunities since 1996 to give leave to a case involving relocation to reconsider Gordon v. Goertz, and they've turned them down every time. My point is that it's a matter for legislation. The courts aren't going to change that.

The starting point is burdens of proof about what's in a child's best interest at the relocation stage. I think the three-way split that is set out in that section is consistent with what social science and empirical studies can tell us. I think it's important to say what we know and what we don't know about how relocation affects children, hence the three different categories.

There are three categories in that section on burdens that are built around the care arrangements already established under agreement or court order. It's a fairly sophisticated attempt to give some guidance and to reduce litigation.

The first says that when the child spends “substantially equal time in the care of each party”, the burden of proving that a move is in the child's best interest is upon the parent proposing to move. That's the first one.

You might ask why. The answer is that when you have both parents actively involved in that substantially equal way, the child can stay with the remaining parent and gain the advantages of continuity of care, community, schools, day care, friends and family. That burden can be met by someone proving, to the contrary, that in fact the move is in the child's best interests. It's important not to treat this like a rule. It's just a starting point.

By the way, in practice, right now, in cases where there is substantially equal parenting, it's relatively rare that moves are permitted. It's fair to say that 70-75% of the moves are refused in these cases. I think it's fair to say that the ones where moves are allowed are the unusual cases. In typical cases, the answer is no; the children don't get to move.

Second, at the other end of the spectrum under that section, where one parent has the care of the child for the vast majority of the time, it would be up to the parent opposing the move to prove that a move would not be in the child's best interest. We assume as a starting point, and I'd say rightly, again, that continuity of care with a predominant primary caregiving parent the vast majority of the time is going to be critical to the child's well-being in the future.

● (1805)

By the way, in existing case law in Canada, in cases such as this, where someone has the vast majority of the time, courts allow moves in about 90% of the cases already, so this is reflecting also what's happening before the courts.

I'll give you some examples in this category. We have cases where a remaining parent, for example, cannot offer a viable alternative as the primary care parent if the other parent moves. We also have a fair number of cases—I want to mention this—of young mothers, because that's what they are, coming to Canada with a Canadian father. They'd met overseas, and then they split up. She has no family here. She can't speak the language and is often unable to find employment. She has a young child and applies to move back home. That's someone who has the bulk of the time, “the vast majority” as the language says. Those are a couple of examples.

In between those two, what the legislation proposes to do is add a third category that says that both parents have the burden of proof when they don't fall in either end, in one or the other, because quite frankly, we don't know enough about that category of cases to say that we have a sensible starting point. We just don't know, so we have to accept the limits of our knowledge at the present time.

That's quite a mix of cases. The ones in the middle are cases where people have been shifting their care arrangements, cases where people have lessened “the vast majority” or fall slightly short of “substantially equal”. It's a mixed bag, and it's very hard to tell what's in the best interests of the child in those cases, hence no assumption either way.

By the way, those two extremes, “the vast majority” and “substantially equal”, would account for about 65% to 75% of the relocation cases, where you can give helpful guidance to people who are out there trying to sort out their lives.

In Nova Scotia, we've had this three-way split in effect only since May 2017. It's interesting. Our courts have had no great difficulty sorting out who falls in which of those three categories. If anything, I'd say Bill C-78 is probably easier to administer than what we have in Nova Scotia.

These burdens would make a big difference. It would help resolve cases and remove some, but not all, of the uncertainty.

That's the first point, and I'm keeping an eye on my time.

My second point is on mandatory notice of relocation. One thing I want to mention is the 60 days' written notice to the other parent of the intended move. There's an exception that you can be exempted or have that modified, and there's a specific identification of a risk of family violence as a case. One thing that should be made clear, and it isn't—and on page 4 of my brief I actually suggest the wording—is that when you're applying to exempt yourself from the requirement to give notice, it should be possible to make that application without giving notice. I think that's the intention of the section, but it should be made clear that the application can be made without notice to the other party—for example, in a family violence setting. This is just to leave no doubt.

I hope I have enough time here. The last point I want to make is about the so-called double-bind question. There's a list of relocation factors that it says you can look at for the reasons for the move, and you can look at some others, but there's a provision in there that says:

> the court shall not consider whether the person who intends to relocate...would relocate without the child if the child's relocation was prohibited.

It's what we call the double-bind question. That provision comes from the B.C. act, and it has caused a lot of difficulty in that province. We in Nova Scotia said we didn't want to get into this; we didn't include it.

Here's the double-bind question. You ask the parent seeking to move, “Will you move without your child?” What do you think the answer is going to be in most cases? It would be “No.” Some people have said the question is unfair and doesn't give us any probative information. That's the thing about the double bind. If you say, “Yes, I am going”, what's the implication of that? “I'm more important.”

The important thing to remember here is that courts can't tell parents where to live. Courts can only tell whether the children can move or not. Courts can't order parents to move or not to move, so the parent's intentions are important.

The other thing worth remembering is that 90% to 95% of the parents proposing to relocate are women, so the question falls upon them.

Think about the difficulty here. The fear that's underlying that question, or the answer to that question, is that if the parent says, “No, I'm not going to move without my kids”, that obviously means the move isn't so important, and there's a tendency for the courts to default to the status quo—that is, not to allow the move.

● (1810)

The difficulty here is that, if you think about it, that's a question for the parent proposing the move. Can you ask the parent who is not moving if they would move to the new location to be with their kids? Is that a fair question? This legislation doesn't stop that. Many parents will volunteer that they won't move without their kids. Does that mean you have to ignore that answer? It says, “shall not consider”.

I'll give one last example and then I'll stop. If you have a situation where, let's say, mom proposes to move from Ottawa to Calgary where her new partner is located, under our approach right now in Canada we say to the new partner, why can't you move from Calgary to Ottawa? That's a question we allow to be asked. It's an important question, because sometimes it can avoid the conflict. Can we ask that question? The answer is yes. We can even ask grandparents whether or not they intend to move with the grandchild. As a grandparent, how would you answer that question?

The reason I'm emphasizing this is that the provision says.... I know it's awkward to give that answer, but sometimes it may give the court important information about what the realistic options are. Leaving that provision in means that the court can't consider the answer to that question, when the answer to that question may be really important in knowing what the best option for the child is.

I'll stop there. I have other stuff, but it's in my brief.

● (1815)

The Chair: Thank you very much, Professor Thompson. I'm sure you're a very good family law professor because you've educated us very well.

We'll move on to the Canadian Association of Social Workers, please.

Ms. Janice Christianson-Wood (President, Canadian Association of Social Workers): Thank you very much, and good evening.

My name is Janice Christianson-Wood. I am the president of the Canadian Association of Social Workers. I'm very pleased to be testifying today on behalf of our federation and the 50,000 social workers in Canada. I'd like to thank the committee for inviting the perspective of our profession to this important consultation on Bill C-78.

On a personal note, I have had the privilege of spending my social work career in the service of a better world for children, including as a front-line caseworker with Winnipeg Child and Family Services, as a special investigator with the office of Manitoba's chief medical examiner, and as a program specialist at the General Child and Family Services Authority, in addition to research and writing on child deaths and the need for effective and equitable risk assessment.

I've seen first-hand the ways that children are deeply impacted by family relationships. Coincidentally, my last placement as a student, before my first degree, was at the Family Conciliation Services of Manitoba, back in the late eighties. It's nice to know that federal legislation is catching up with practice in a number of the provinces.

Having reviewed the submissions already received, we were pleased to see the excellent brief submitted by the Canadian Coalition for the Rights of Children, of which our organization is a proud member. We join the coalition and many other staunch advocates of children in celebrating these changes in Bill C-78, as they will bring, most notably, the centring of children in the legislation.

We feel that the bill makes a historic step forward for the rights, safety and well-being of children in Canada. The spirit of the changes and the shift in perspective and dialogue that it will bring are deeply aligned with our social work values.

As a profession that privileges consensus-building, non-violent communication, and conflict resolution techniques, we are very pleased at the change in language from adversarial terms like “custody” and “access” to terms like “parenting orders” and “parenting time”. Although these changes may take a while to have their impact, this will likely be a generational change and shift in attitudes. These phrases better support the development of healthy, safe dispute resolution, a key factor in preserving the best interests of the child.

Further, we support changes that will compel lawyers and paralegals to encourage clients to use family dispute resolution services such as mediation instead of proceeding directly to court. Not only will this help to reduce family conflict, but it will also help reduce legal costs, a significant consideration for many single parents, especially women. This would mean that the ability to pay for legal fees will not govern a certain parent's ability to establish a mutually agreeable resolution. As other speakers have said, when you have parents who are committed to this, they can significantly reduce the disruption and expense of a divorce.

We are also very supportive of the changes that would provide courts with measures to address family violence in a comprehensive way. This is such an important and often overlooked area. We are pleased to see children's safety being centred through this measure.

We also agree with the recommendations made in the joint brief by Luke's Place Support and Resource Centre and the National Association of Women and the Law on the importance of stressing the gendered nature of family violence and providing a further definition of the ways that family violence is manifested.

In the same vein, we agree with the joint brief by Luke's Place and the National Association of Women and the Law and support their recommendation for a preamble to the bill acknowledging, one, that women are more likely to be victims of gender-based violence; two, that indigenous women are disproportionately impacted by gender-based violence; and three, that family violence is experienced by women in many different ways, which are shaped by other types of discrimination relating to their race, religion, identity, age, or ability, to name only a few.

CASW also believes that each child, and each family, is unique. Again, the change in language to “parenting orders” and “parenting time” would much better reflect that a child's holistic well-being, including culture, extended family, language, and other considerations, must be paramount.

On this note, we know that there are some individuals and organizations that would have liked to see an equal parenting presumption in this legislation. It's our position that the choice to exclude a presumption in favour of any kind of parenting arrangement is a wise one and would best uphold the best interests of the child in each individual circumstance.

● (1820)

When it comes to a child's safety, happiness and general well-being, there is no one-size model that fits all. With that said, however, we would like to see the spirit of these changes made to centre the child cemented through an explicit reference to the Convention on the Rights of the Child. We echo the Canadian Coalition for the Rights of Children in recommending that section 16 of Bill C-78 “include reference to the Convention on the Rights of the Child, either as a separate article or adding to article 16.1 [the phrase] 'as in the Convention on the Rights of the Child.'”

In terms of next steps, we would also caution that this historic change will need to be accompanied by appropriate education. There will need to be a comprehensive and widespread campaign assisting all those involved in the legal system in making these shifts in understanding and in practice. Social workers who are already practising mediation in government or in private practice look forward to being part of the solution.

Overall, Bill C-78 aligns with our profession's values and with the values of the Canadian Association of Social Workers and our perspectives.

Thank you very much.

The Chair: Thank you, Ms. Christianson-Wood. It's much appreciated.

We will now go to Mr. Cheriton.

Mr. Glenn Cheriton (President, Canadian Equal Parenting Council): Good evening, everyone.

I'm the president of a national parents organization, and before that I was involved in a number of parent support groups, going back almost three decades. During that time, we've done a lot of public opinion surveys, as well as having parents approach us. I'm passing on a lot of the opinions of parents who have come to us in desperation.

The public opinion surveys show that about 83% of the Canadian public supports the position that I'm about to present to you—that the current family law system is a major problem for parents. I'm speaking very bluntly here. The problem is that it's too costly, too inaccessible, too slow and too adversarial. Parents have lost confidence in the family court system in Canada. It doesn't resolve conflict. It doesn't work in children's interests. It's not fair. It's not efficient. It's not coherent and it's not responsible for its actions. It's arbitrary. Parents say the system is like a feudal system. Parents don't feel respected. They don't feel listened to in family court.

That said, I do support the aims of Bill C-78: the best interests of the child, accessibility of the courts, less poverty, reduced violence, improved child support. We also support the bill's movement from the terms “custody” and “access” to “parenting time” and “parenting orders”. This is perhaps just a symbolic change, but it's an important initiative in the right direction.

The real issue is whether a child will retain parenting time with both parents, not whether the adversarial legal system will profit from arbitrarily creating winners and losers. Parents want changes. Social science shows better outcomes in other jurisdictions around the world from a variety of somewhat similar approaches that I'm going to call equal shared parenting.

In these different jurisdictions, the terminology, the laws, the regulations and procedures vary, but all these approaches aim to keep both mother and father as full parents in the lives of their children. There are exceptions to equal shared parenting, but jurisdictions that get 30% to 90% of joint physical custody or equal shared parenting, or however you want to call it, show substantial improvement in the outcomes that were listed as the four objectives of Bill C-78.

In Europe, for example, equal shared parenting is made up of shared parenting plus recognition by governments of two homes for the children. A lot of other problems are recognized and solved. No longer can one parent deny the educational records of the child, or the health records, and it goes on.

In the United States, equal shared parenting is made up of joint physical custody. A number of states have moved essentially to joint physical custody and their laws vary, for example, between a law in Arizona and a law in Kentucky. There hasn't been movement away from shared parenting, as has been claimed, but the states are increasingly moving toward it against some pretty substantial opposition from the vested interests.

In Canada, there's a problem in that what we call joint custody is essentially sole custody with a coat of imaginary legal paint. The problem is that they call it “joint custody” but they say it's sole physical custody to one parent, which means that you cannot enforce one parent's side of the agreement. One parent's parenting time is not enforced; therefore, it's not a good agreement from the standpoint of that particular parent.

There is overwhelming scientific, peer-reviewed, accepted evidence that equal shared parenting is in the best interests of the child. I have some of it here from around the world. The problem is that, as far as I know, there is no evidence that Canada's primarily sole custody system acts or is in the best interests of the child. Parents don't believe it is, and by extension these parents blame the legal profession. They blame the judges, the laws and the parliamentarians who enabled, funded, regulated the system and appointed the judges.

● (1825)

I would like to cite a report by Supreme Court Justice Thomas Cromwell, “Beyond Wise Words”, which says that Canada's family law system is largely inaccessible.

You have a choice. You can either put substantially more funding from legal aid or social services, and a whole bunch of others, into the system, or you can try a system that is working in other jurisdictions, such as equal shared parenting in Australia, Iceland, Denmark, Sweden and many other jurisdictions, where over 90% of parents retain their parenting time and decision-making, which essentially is the “equal” part of the equal shared parenting. They do that without going to court and without hiring lawyers.

I wanted to deal with the question of poverty. If you're dealing with child poverty, you're dealing with parental poverty. Family poverty is parental poverty, and the current adversarial system produces parental poverty. Equal shared parenting reduces costs to parents, so the parents can have more investment with their children, and that's the experience of these other jurisdictions.

Dealing with the question of family violence, this is part of a continuation from conflict, abuse, violence and criminal behaviour. However, equal shared parenting in the various jurisdictions is shown to reduce conflict. It reduces violence. Furthermore, the problem with the sole custody system is that violence and conflict increase over time because the problems are not resolved, whereas in the situation of equal shared parenting, conflict is reduced over time and there is research to support this.

The question of child support is also brought up as an objective of the bill. It is clear from the research that more child support is collected if the parents are under a joint custody regime, equal shared parenting, whereas the child support problems are largely in the sole custody situation.

Even though a number of legal scholars are increasingly accepting shared parenting—I would note Professor Nick Bala as an example—they don't accept the equality part of equal shared parenting. The question is, why do parents need equality? The inequality of parents means that one parent is relegated simply as a bystander. He is no longer a parent—he or she, as it's also happening increasingly to mothers. Half of our board members are women.

The problem is that once you are unequal, the court rulings are only enforced on one side. Therefore, the other parent can decide whether your parenting time is going to be respected or not. What we're looking for.... You can call it equal shared parenting; you can call it a starting point; you can call it rebuttable presumption; you can call it an onus. Whatever you call it, the outcome should be the same: keeping both fit parents in the lives of their children.

Professor Kruk mentioned first nations. We have shared the land with them, but we have 95% of that land. They're not equal in the land. With the native residential schools, the government claimed best interests, but it caused harm. There was no consultation with the parents.

To fix this problem, we want the Department of Justice and this committee to recognize parents as stakeholders. We want to collaborate with the government. We want to collaborate with Justice Canada, and we want to fix this problem, so that parents can go back to parenting and not spend their money and time in court.

Thank you.

● (1830)

The Chair: Thank you very much.

Mrs. Burns, go ahead.

Ms. Leighann Burns (Executive Director, Family Law Lawyer, Harmony House): Thank you very much. I appreciate the opportunity to appear today.

I've been sitting here throughout the afternoon, noticing the improved tenor over the last time I was here before this committee 20 years ago, and I appreciate it very much.

I stated in my brief that we support the briefs of the National Association of Women and the Law and Luke's Place, as well as Believe, End Violence Against Women. The latter, in particular, was written by survivors of violence, and I think that it's an important perspective. There are members of Believe here in the room as well. It's a perspective that we didn't hear a lot from 20 years ago, and I think it's a critical one.

My interest in the subject matter is as the executive director of Harmony House, a second-stage shelter for women and children fleeing violence. I began in that role 25 years ago. Prior to that, I was a rural outreach worker. Most of my time was spent accompanying women to meetings with family lawyers, to family court, and to criminal court. For the past 11 years, I've also been working as a family lawyer, assisting women and children in escaping abusive situations. So, I have spent a long time observing family courts and how they function.

Recently, thanks to a grant from Status of Women Canada, I have had the opportunity to really dig into what happens to claims of violence against women in family courts. Today, I would like to share some of those observations with you, as I think they are really relevant to what's before you in terms of considerations of changes to the Divorce Act.

Women escaping violence continue to struggle to have courts understand the nature and consequences of the violence they experience, and this occurs for a number of reasons.

Linda Neilson looked into this for the Canadian Bar Association in 2000. What she found was that women's claims of violence were erased from the file, from the original lawyer-client interview to the drafting of the pleadings and all the way through to the final disposition of the file.

The other thing is that, in my own research, in 2015 a group of us looked at what training lawyers get on violence against women, and it's remarkably little. The high-water mark we found was four hours of training in one law school, and it wasn't mandatory.

Ontario's Domestic Violence Death Review Committee has been recommending mandatory education for lawyers in law schools and ongoing education through the law societies since 2011, and that has yet to come into play. Lawyers, of course, aren't trained and then become judges, so we have an education deficit that needs to be addressed.

What do we know about what happens to these cases in family court? In 2014, Statistics Canada had a hopeful statistic available, which said that fewer women and men reported having been physically and/or sexually abused by their partner in the preceding five years. It was down to 4% from 7% a decade earlier. However, the same study found that spousal violence was reported more frequently in relationships that had ended than in marriage or common-law relationships. The difference was 13% versus 2%, so that's quite a difference. Half of them reported that the violence had increased in severity after the relationship ended, which is important.

In terms of figuring out how many of these cases are actually coming in to family court, Bala et al. reported that roughly one quarter of all separations and divorces in Canada involve spousal violence issues. That's a significant portion.

Canada's Department of Justice has studied what happens to these cases as well. It did a court file review of final custody issue determinations between 2000 and 2005, and found that family violence was mentioned in 8% of divorce cases.

The Department of Justice also found, using 2009 data with respect to post-separation arrangements for children from violent relationships, that in 29% of the cases the children lived primarily with the respondent who had experienced the violence; in 25%, the kids lived principally with the person who had perpetrated the violence; and in 20%, the kids spent approximately equal time in both households. So, these kids are still potentially in these situations post-separation.

As the committee knows, and as I outlined in my brief, Ontario's Children's Law Reform Act was amended in 2006 to make consideration of abuse mandatory in custody and access determinations. In 2010, Ontario implemented inclusion of a mandatory affidavit disclosing any abuse in every custody and access case.

In my brief, I shared the preliminary results of the research of the project that I am working on, made possible through Status of Women. It won't be a surprise to the committee that the vast majority of family law cases are resolved without trial, which means that their outcomes are not reported anywhere. We took two random, representative samples of family law files in Ottawa in 2010 and 2016, and looked to see what occurred in them. It's interesting that between 2010 and 2016, the total number of family law cases started went down by 12%, which I think is probably a reflection of the cost and accessibility of family court for many families. It's too early to say that, but that's a likely theory.

The other thing that is striking about our findings is that the violence against women does not appear in these court files at the prevalence rates it ought to. We found that in the first sample it showed up 15.5% of the time, and in the second set it showed up 16.2% of the time. The difference between those two sets is that the students who were looking at the files in the second set were bilingual, so the difference might be that they were able to read the French files.

● (1835)

The other interesting thing we found was the contrast in custody claims by gender. Most women claim full custody, whereas the most common type of custody claim made by men was no claim at all, followed by joint custody. Sole custody was the third most common claim they made.

The other interesting and disappointing—but not surprising—finding was how little impact the disclosure of violence had on the pleadings, on the outcomes of the cases. Where women sought full custody and disclosed the abuse in their pleadings, they were granted full custody 45% of the time. Where they sought full custody and disclosed no violence, they were granted full custody 44% of the time.

The other thing we're doing in the project is reviewing case law and comparing custody outcomes where violence was claimed under the Divorce Act, compared to Ontario's Children's Law Reform Act. Under the latter, it's a mandatory consideration. I referenced in my brief what we found.

After reading so much case law, one of the things that we see is the assumptions that appear over and over again in family law cases. One continual assumption that could be addressed in the preamble to the Divorce Act, which has been endorsed by other groups, is that violence is always in the past. We know from the evidence that this is not necessarily true. The other assumption that you see often is who abused women are or can't be: If you're a professional or you're educated or you're assertive, you can't be an abused woman. That is simply not true. That's borne out by decades of research.

In closing, I would point out that as the committee knows, the UN Special Rapporteur on Violence against Women made her first visit to Canada this fall. She heard from women about their experiences in family court and will be reporting on her visit in the coming year. I urge you to get ahead of that report and be able to say that you've addressed the issue of violence against women by adopting a preamble that provides the much-needed guidance to courts on the gendered nature of violence in intimate relationships.

I would suggest to you that one of the reasons we have not made greater progress in the 40 to 50 years that women have been disclosing violence, and in the 20 years since we last considered this issue in the Divorce Act, is that we tend to think of violence against women as inevitable, and as something that can't change. I would urge you to reframe your thinking about this, using examples we've seen in recent times.

For example, with respect to smoking or drinking and driving, we've created huge social change by using a combination of legislation and education to alter ideas and behaviours. I would urge you to take the same approach with respect to the Divorce Act. It's clear that the courts need assistance to understand the gendered nature of violence in intimate relationships, the role that violence plays in impeding the realization of women's rights to equality and to life, liberty and security of the person, and the ongoing and well-documented harms to children through exposure to abuse, which too often continues and escalates post-separation.

As I make this presentation, I am mindful of the fact that we are approaching December 6, Canada's National Day of Remembrance and Action on Violence against Women. I'm also thinking of certain people, whom I will list for you.

Margret and Wilson Kasonde were shot and killed by their father on an access visit in Ottawa on May 25, 1995. Margaret was eight, and Wilson was 10.

Since then, Alexis Currie, two, was stabbed to death on an access visit in Scarborough by her father, in March 2002.

There is Francine Mailly and her children: Jessica, 12; Brandon, nine; and Kevin, six. The children were shot to death on an access visit; their mother was killed when she came to pick them up.

Olivier and Anne-Sophie were stabbed to death by their cardiologist father in Montreal in February 2009. He was originally found not criminally responsible but on appeal was found guilty of second-degree murder.

Then there are Chloe and Aubrey, ages six and four, who were found murdered on Christmas Day in 2017 in Victoria, B.C., while on an access visit with their father.

Margret and Wilson were the only ones killed prior to the last hearings on this issue; all the rest have been murdered since those last hearings. I urge you to take that into account in whatever recommendations you adopt.

Those are my recommendations. Thank you.

● (1840)

The Chair: Thank you very much.

We'll go to questions now with Mr. Nicholson.

Hon. Rob Nicholson (Niagara Falls, CPC): Thank you very much.

Ms. Burns, let me start with you. You read off some statistics earlier that showed that most of the settlements in property cases or divorce cases don't involve violence. Don't you think that those numbers underestimate how much violence there is? I know that many times lawyers will file for divorce for a one-year separation rather than have the woman testify about how disgustingly she's been treated. Don't you think those statistics are underestimating the level of violence?

Ms. Leighann Burns: That's what I said: They do underestimate. It doesn't show up as often as it ought to in the pleadings, so I agree absolutely that it's underestimated in the pleadings.

What we were looking at were cases where custody and access were to be determined, so violence may be relevant to property issues but not particularly. Where violence is very relevant is in terms of custody and access determinations. The arrangements that are made for the children can make it possible for the perpetrator to continue the abuse post-separation.

Hon. Rob Nicholson: That leads to my next question, which is for you, Mr. Cheriton.

You said that violence gets reduced when they don't give sole custody, but isn't that why sole custody is generally given in the first place? Isn't it to protect the child against violence, usually promoted by addictions to alcohol and drugs or other issues? Isn't that why many times somebody is given sole custody, because of the danger to the child?

Mr. Glenn Cheriton: Looking at the levels of family violence we're talking about, with Statistics Canada saying that it's 6% against men and 6.4% against women, it seems to me that.... And yes, it does rise when you have highly conflicted separation and divorce. However, that does not relate to the very large percentage of people who end up with sole custody. If family violence is 6% and yet we're ending up with 75% to 90% sole custody, then I don't see how that high level of sole custody is in fact caused by a 6% level of domestic violence.

That's not the complaint that parents are making. I think you'll find that, increasingly, parents are leaving the system. They're working out their own agreements. In fact, we got a letter from you saying that if parents worked out their own consensual agreements, this worked out much better and the agreements were a lot more stable. In these cases, putting the parents on an equal basis does reduce the level of violence, because there is less to fight about.

Hon. Rob Nicholson: Do you support the comments that were made earlier? When you were in the audience, you probably heard Professor Irvine saying that, in fact, when you have representation for the child, one way or the other, this in and of itself helps collapse this and bring about an agreement on this, because the child is now represented and gets to have his or her voice heard.

Mr. Glenn Cheriton: I would agree with that, if both parents are on a reasonably equal basis going in. If, because of procedural manipulation, the child has spent a large amount of time with one particular parent prior to the case being considered, and that parent is able to poison the child against the other parent, then, because the child has already been poisoned, the legal representation of the child may be biased against the parent, and subsequently you don't get a fair decision. We're looking at.... When the decision is made, we want both parents to be on a reasonably equal basis, and then—

Hon. Rob Nicholson: The responsibility of any lawyer is to represent the interests of his or her client, which in this case would be a child.

That being said, I know my time is running out.

Ms. Christianson-Wood, I agree with you about changing the wording to “parenting orders” and “parenting time”, as opposed to “custody” and “access”, but then you tossed in a line saying that it might take a generation to sink in. Would you elaborate on that?

Ms. Janice Christianson-Wood: This isn't something that has happened overnight, to become an adversarial system. Courts do generally have winners and losers, so I think it's going to take a bit of time for that to change, and for people to understand that when they approach the court, they'll be approaching it in a different way.

Very few people are at their best during divorce. They may be acting quite differently than they normally do. It takes a lot of co-operation to have a mutually agreed-upon divorce. We need to do more within the system, as others have said, about supporting parents, listening to children and helping people possibly find a less conflicting solution to their parenting issues.

For those the court needs to see, it's important that the court understand the nature of family violence and the central role of a child's growing up in a protected and loving situation, whatever the family constellation will be.

I would just like to offer one comment made a number of years ago by an author named Margrit Eichler. She favoured a nesting agreement whereby the parents would move out and the child would stay in the home. Most adults would say, “You can't do that to me. All of my stuff is there.” When children live in two homes, all of their stuff is moving back and forth as well, so we are definitely proponents of a child-centred arrangement.

● (1845)

Hon. Rob Nicholson: Very good. Thank you very much.

The Chair: Thank you very much.

Mr. Boissonnault, go ahead.

Mr. Randy Boissonnault: Thank you, Mr. Chair.

I have a comment for Professor Burns. It was hard to hear the names. I'm a proud uncle. My nieces and nephews are aged 17, 15 and 10, and if David and I ever decide to make kids a part of our life.... I can't imagine the psychology and the vindictiveness that would lead a parent to kill their child, especially in a domestic violence situation.

In your research, if you could rank the order for me, who faces more family violence: women, gender-nonconforming people or men?

Ms. Leighann Burns: I think the evidence is overwhelming that it's women. There is more recent talk about gender-nonconforming people experiencing high levels of violence. I'm not familiar with where that comes from, so I can't speak to that.

Mr. Randy Boissonnault: What is the ratio of women to men?

Ms. Leighann Burns: It's overwhelmingly women.

Mr. Randy Boissonnault: Is it eighty-twenty, or sixty-forty?

Ms. Leighann Burns: It depends on what you're looking at. Statistics Canada stats that say there are approximately equal numbers of men and women, 4% or 7%, are one thing, but when you look at the nature of the violence, you see that women experience much more lethal, severe, and persistent violence.

Mr. Randy Boissonnault: I'm interested not just in the anecdotal but in the statistics that your organizations are able to generate, because we learned in the human trafficking study that as much as StatsCan tries, unless something gets to trial and is reported, they can't track it.

Let me ask you this question, because I want to know what you think as a researcher. Why would the family violence history be removed from the trial documents? Is it male lawyers removing the family violence?

Ms. Leighann Burns: No.

Mr. Randy Boissonnault: Is it female lawyers? Is it consistent across the board?

Ms. Leighann Burns: It's across the board.

There are a couple of things. One is that lawyers aren't trained about it, so it's an uncomfortable topic. Unless you're comfortable talking about it, you tend to avoid it. I think that's one of the reasons why it gets removed.

The other thing I've heard frequently is that lawyers advise people that they're not going to do well on this issue so it's best not to raise it. That has not been my experience. My practice is entirely with survivors of violence. I always raise it. It's my view that you have to put it before the court in order for the court to determine it. You have to marshal your evidence well. You have to understand the issue and bring it forward in an effective way. In my view, that's the only way to deal with it.

Mr. Randy Boissonnault: I'm going to ask you first, and then I'm going to ask Ms. Christianson-Wood the same question. Why is the preamble so important, from a symbolic perspective but also a material perspective? I've seen an example of the preamble, and I like the richness of the language and the various "whereases". Why is that important to the people you help?

Ms. Leighann Burns: It's clear to me, after all these years of observing family court and now actually looking at the outcomes of these cases, that courts need guidance on how to interpret this issue. A gender-neutral notion of violence is why we are where we are, not making better progress. The courts need assistance to understand the nuanced nature of the kind of abuse that's happening.

I don't know what people imagine that men who perpetrate violence look like, or what women who survive violence look like, but I think they need assistance to understand that it's people from all walks of life. Some of the scariest men I've ever dealt with present really well in family court. Courts need assistance to understand.

The system is already inaccessible. We cannot ask all litigants to come with experts to educate the court over and over again about this issue. We need courts to be equipped to understand that they have to take into account women's rights to life, liberty, and security of the person, and equality.

● (1850)

Mr. Randy Boissonnault: Thank you.

If I get more time in round two, maybe I'll come back to you.

Ms. Christianson-Wood, thank you for your service and decades of work in the field—you said decades, so I can say decades.

Ms. Janice Christianson-Wood: That's fine.

Mr. Randy Boissonnault: Why are "parenting orders" and "parenting time" so much better than "custody" and "access"? I'm not a lawyer; I don't come from this world. It's sad when marriages break down.

According to you, why is a preamble so important?

Then I'm splitting time with my colleague Mr. Fraser.

Ms. Janice Christianson-Wood: As far as the change in language is concerned, with a change in language you can also implement a change in conditions so that it's not access, where I give you access. It's something that we both share for the benefit of our child.

Why should it be in the preamble? Well, my experience with child welfare legislation says that when you start out by saying what way things are going to go on, who's going to be the centre of it, and what the conditions are going to be, and that people's heritage and language and gender identity are going to be honoured, people know what they have going in. Whether it's courts or social workers, we know the structure of what we're going into in terms of legislation and system and expected outcome.

Mr. Randy Boissonnault: Thank you.

The Chair: Mr. Fraser, you have one minute left.

Mr. Colin Fraser: Thank you very much to my colleague.

Professor Thompson, I thought it was very interesting that you raised the issue of the double-bind question. I'm sorry; I haven't read your brief yet, but I look forward to reading it.

In Nova Scotia, the legislation doesn't comment on that, but you're saying that it would be better for us to remove the bar to actually considering it because in some cases it might be appropriate.

What happens in those cases where it wouldn't be appropriate? Is that something for the judge to determine, or does it just go to weight, and they don't place any weight on that consideration? How does that work?

Mr. Rollie Thompson: The difficulty you bump into with that, if I can describe it this way.... The underlying concern that leads to that is the worry that you will default and say no to the move. That's the concern that underlies that, if the parent seeking to move says, "I won't move without my kids." That's the concern that underpins the question. The difficulty is that, if you end up not knowing what someone might do—and let's face it, what they might do after the judgment—you may not know what the options realistically are. Someone may be prepared to move no matter what; other people might not.

If you want to resolve these cases, the one thing that we've learned is that the more you know what options are on the table, the more likely it is that you can find one that will avoid the conflict. My concern is that, when you take something off the table like that, because it's awkward.... There's a wonderful quote in my brief from a B.C. Court of Appeal judge. The reality is that it may provide important information in the best interests of the child. That's what we're after in trying to resolve these cases.

It's awkward, and it's difficult, but sometimes you need to know it.

Mr. Colin Fraser: Thanks, that's helpful.

The Chair: Ms. Sansoucy, go ahead.

[*Translation*]

Ms. Brigitte Sansoucy: Thank you, Mr. Chair.

My question goes to Ms. Christianson-Wood.

Bill C-78 stresses the need for a dispute resolution mechanism, a process that would happen out of court.

That seems like a wise option to make the process of divorce easier. But does the bill contain the provisions needed to prevent the insistence on those mechanisms from creating disparities in access to justice as a result of a family's social economic background? It is the poorest families who are directed to out-of-court processes because they do not have access to legal services.

[*English*]

Ms. Janice Christianson-Wood: In Manitoba, since before 1989, families access services of mediation, consultation and court-ordered assessments through a government-funded service. At different times, Manitoba has also put in services for teenagers, recognizing their special needs, or for children in a program called Caught in the Middle. I'm not sure that these are in effect at this time. My information suggests that they're not.

Extrajudicial processes are possible if governments are willing to support children. We know that divorce is hard on children. We know it's hard on everybody. Put the money where it will help children. Yes, we know that it's often difficult for one parent who is less financially advantaged to hang in to fight longer. We'd like to see money, time and effort put into reducing conflict and moving children through with as little harm as possible.

● (1855)

[*Translation*]

Ms. Brigitte Sansoucy: Thank you.

Ms. Burns, you said that, in addition to the act, it is important to conduct an awareness campaign. Could you tell me more about that?

[*English*]

Ms. Leighann Burns: I think the conceptions of what violence is are not clear. With something like coercive control, which is an emerging understanding, I think the courts need assistance to figure out what that looks like.

The other thing is that courts tend to look at discrete acts of violence rather than the overall pattern of control and abuse. We've had legislation in Ontario since 2006, making violence and abuse mandatory considerations in custody and access, and it's not showing. It's not translating into big changes in terms of outcomes, so it's clear that we need more. We need to assist courts to understand what that looks like, what it means and what the implications are for children.

[*Translation*]

Ms. Brigitte Sansoucy: Thank you.

That is it for me, Mr. Chair.

The Chair: Thank you very much.

[*English*]

I want to thank all the witnesses. It was really appreciated to hear from you. You really helped us.

[*Translation*]

Thank you very much.

[*English*]

We have a five-minute in camera meeting, so unfortunately, I'm going to have to ask everyone if they could clear the room as quickly as possible. If you want to talk to us, feel free to wait outside. We'll be happy to talk to you. Thank you so much again. Your testimony was really helpful.

[*Proceedings continue in camera*]

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