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Mr. Anthony Housefather

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● (1800)

[*English*]

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

It is a pleasure to be joined by this distinguished panel of witnesses.

We have with us today, Lawrence Pinsky from Taylor McCaffrey LLP, past chair of the family law section of the Canadian Bar Association. From Luke's Place, a support and resource centre for women and children, we have Pamela Cross, who is the legal director. From the National Association of Women and the Law, we have Suki Beavers who's a project director. From the Women's Legal Education and Action Fund, we have Shaun O'Brien, the executive director and general counsel.

Welcome to all.

We're going to start with Mr. Pinsky.

[*Translation*]

Mr. Lawrence Pinsky (Taylor McCaffrey LLP and Past Chair, Family Law Section, Canadian Bar Association, As an Individual): Thank you for inviting me to speak to you this evening.

[*English*]

I want to thank you, as well, for making me feel so comfortable by bringing January weather from my city of Winnipeg, here to Ottawa this evening.

I should acknowledge, as well, the Algonquin nation whose traditional territory we, as I understand it, are gathered upon.

Bill C-78 is clearly an advance in family law in Canada, and the government should be commended for bringing it forward. This should be a non-partisan issue. I worked closely with the then NDP government of Manitoba that brought in a bill that had very much the same underlying philosophies. I worked closely with the former minister from the Conservatives at the federal government. The same principles were agreed upon—best interests, relocation amendments and these types of things—and, of course, we see what's in Bill C-78.

When we look around the world and see the things going on elsewhere, we should thank all of you for the level of discourse and the civility we have in bringing forth these common ideas.

I want to spend the little time that I have talking about some amendments that, I would submit to you, would further the purposes of the bill. They would avoid unexpected consequences from, what I would suggest, are problems with the bill. I'd encourage you, most of all, as you consider the bill, to follow the social science in the area. Family law, as all law, has to change as society evolves, of course. You can't get too far ahead, but you can't lag behind, and I would submit to you that following the social science is key.

Let's look at what we can do with that in the limited time I have. I begin with the definition section. I'd suggest to you that when you look at decision-making responsibility, in terms of the words “significant” extracurricular activities, “significant” is included under decision-making responsibility.

Families fight about extracurricular decision-making. Who has the right when one parent puts the child in activities without consulting the other parent, especially on their time? You already have “significant” decisions in the preamble. I'd encourage you to take out “significant” extracurricular activities. We don't want to have battles on what is a significant versus an insignificant extracurricular activity. Just take it out. It's not necessary.

Family dispute resolution process is another area that's important. We haven't included mediation and arbitration. These are very common in B.C., Alberta and Ontario. It's coming to Manitoba. I'm working on that very hard, and so are some of my colleagues, to make it a reality in Manitoba. It's popular elsewhere. I realize it's an open set in there. It's not a closed set, but add that in. It's there.

Family violence needs some attention too, but some of my co-presenters are going to speak to that, so I'm not going to spend time on that. There are some issues there as well. It's also in my submissions.

I'm going to invite you to turn to duties. It's a great idea to add the duties of parties, of lawyers, which are expanded, and also of courts. I'd invite you to look at proposed section 7.6, in particular, where there's a certification required, and that certification is only when you commence proceedings. I want to see parties say they're committed to those principles every step of the way. Every motion, every application, every variation, they should be reminded of that.

When you turn to the duties of the court, they're supposed to know about information for other orders and proceedings elsewhere. Unless the government's going to fund a registry or some sort of database, there's no way to know that. Manitoba courts aren't going to know what's happening in Prince Edward Island if there's a child and family proceeding out there or a criminal proceeding out there. They don't even know what's happening between superior courts and provincial courts.

The fix is one of two things I would suggest. One is to also make that a duty on parents to disclose. They should have to disclose, and the courts will impose a consequence if they don't, if there was a child protection proceeding some place, a criminal proceeding or what have you. That's very important. Keep it in for the courts, but add it in there, and if you have a couple of extra bucks as you go through budgets, maybe you could create a database because that would be even more helpful.

I'm not going to talk about best interests factors. I suspect other people will. I will, though, tell you—and it's important to focus on best interests—not to have presumptions. I can talk at length about it. If you ask me questions, I'll talk about that, but it's very important. What the government did here is correct. It's supported, as I said, by the NDP in Manitoba in what it did when it was in government. It's supported by the previous minister of justice who was a Conservative, and of course, here. It is the correct approach.

● (1805)

Let me look, in the limited time that I have left, at relocation, because that's really so important. I'm just going to say that in a few areas there are some new, vague terms that aren't defined.

What do children need? I want to invite you to consider the legislation through the eyes of a child. What does a child need? We all agree—the men's groups, the women's groups, the lobbyists—everybody agrees that best interests is what you have to focus on. The problem is that people have different ideas of what that means or of how you get there, but the reality is that we all focus on that.

View it at every step of the legislation and think, does this work for a child? That's what I would suggest you ought to do. Where you have vagaries, that's a problem. Children need stability, consistency, predictability and close attachments to be fostered with as many people who love them as possible. That's what they need. To the extent that the bill doesn't do it, it's a problem.

I don't know how much time I have left. I'm speaking as fast as I can.

The Chair: You have two and a half more minutes.

Mr. Lawrence Pinsky: Okay.

I'll be quick on relocation. The person who's relocating has thought about the relocation for ages. This says they have to give 60 days' notice and the responding party has 30 days. It's entirely unfair, because in rural Canada or northern Canada, they can't even get a lawyer in 30 days. It can't happen. It's not going to happen. Even in urban centres, it's not going to happen. You can't give them 30 days.

My suggestion to you is to make the notice period five months and have another process with 90 or 60 days for a response. Give them a chance to consider what we're supposed to consider as an alternative, sort of an ADR method. Even in relocation, there should be a family dispute resolution process. If you tell somebody to just run to court within 30 days, they're already at the ramparts and they're ready for battle. That's the opposite of the philosophy of the legislation. You should give further time, in my submission.

Also, this notion that someone can just allegedly send a letter with what they have to send isn't sufficient, in my submission. Why? People will do mischief. They'll say they sent notice and they didn't send notice. Then what happens? Not only that, but you have an order in place that gives the non-moving party time with the child. They have a valid order doing that. The other person leaves just with notice that may or may not have been given, and you have chaos. Can you enforce the order? Can you not enforce the order? Is the person who left in contempt or not? What about if the child needs a psychologist in their new location? The psychologist, if they're good, says, “Where's the consent of the other party and let me see your court order?” Some private schools and other schools do that too. They can't show an order.

The better system, I would suggest to you, is to make the relocating party have a standard pro forma form of notice. Let them prove in court, in an easy way, that “I've sent it and here's my proposal for relocation”, all the things that are in the bill, and let there be a check box at the bottom where the responding party can say, “Yes, I agree to the move” or “No, I don't agree.” If there's no response, that person can simply file it and get a desk order. Then we don't have the administration of justice brought into chaos by having a legislative scheme allowing a move and an order disallowing a move. Yes, it'll cost a couple of bucks, but it's relatively inexpensive compared to everything else.

In the onus section of my submission, I attached a paper we did. My preference is to have the Manitoba model, if you'd look at it. I don't think that's something that the government's prepared to do, and I'll explain why in a moment. Second would be what they did in Nova Scotia. The idea of having terms like substantially equal time or vast majority of their time, which are undefined terms, is a big problem because, again, children need predictability among other things. This will lead lawyers to have arguments.

I'll make one final point on that, if I may, which is just about the double-bind question. The way it's drafted is nice but, I say with respect, incorrect, because all it says is that the court can't consider whether the person who intends to relocate would relocate without the child. When I'm the lawyer, I'm going to ask a different question: Will you stay? It doesn't say I can't ask that question.

What about sauce for the goose and sauce for the gander? This doesn't say I can't ask the non-relocating parent whether they are prepared to move. That's a problem. It should be the same. There's a good philosophical argument to say don't allow the double-bind question. I'm in the minority. I think you should allow the double-bind question. I think we should have confidence in judges. They weigh all sorts of things. They ignore things. They weigh things. This isn't going to put them over the edge. Let them consider it. Let them consider the full picture, but I'm, you should know, in the minority. My colleagues who practice in this area generally don't share that view. I think it's important.

If you are going to ban it though, be consistent. Ban it for both and be clear that it's not only to relocate with the child; it's stay or go for both. There's an amendment.

Do I have much time left?

● (1810)

The Chair: No, you've exhausted your time.

Mr. Lawrence Pinsky: Have I exhausted all of you?

The Chair: You were so fascinating I didn't stop you.

Mr. Lawrence Pinsky: I could keep going.

[*Translation*]

The Chair: Thank you, Mr. Pinsky.

[*English*]

Now, we will go to Ms. Beavers.

I'm sure you'll be just as fascinating.

Ms. Suki Beavers (Project Director, National Association of Women and the Law): I'm going to hazard a guess that I may be more fascinating. Let's see. The gauntlet has been thrown down.

Good evening and thank you very much for this opportunity to speak on Bill C-78, on behalf of the National Association of Women and the Law. As I think most of you know, NAWL is an incorporated, not-for-profit, feminist organization that promotes women's equality in Canada through legal education, research and law reform advocacy. Advocating for the much-needed changes to family laws, including the Divorce Act, has been a focus of NAWL's work since the early 1980s, so it brings me great pleasure to begin this evening by congratulating the government for introducing C-78. There are many aspects of this bill that we fully support.

However, before I get into talking about the specifics, I want to reflect that NAWL worked jointly with Luke's Place in developing both a discussion paper and a brief on C-78, which I think you all now have. Our joint brief has been endorsed by 31 organizations from British Columbia, Saskatchewan, Manitoba, Ontario, Quebec and New Brunswick, as well as more than a dozen national feminist and equality-seeking groups, and is the fruit of consultations that we convened with feminist lawyers, academics, service providers and advocates. I mention this, not just because we're proud of our network and of our collaborative work—because we are—but also because it's important to emphasize the depth and the breadth of our shared feminist intersectional analysis of Bill C-78, particularly in relation to the issue of family violence in the context of divorce.

Now, let me turn to some specifics, beginning with the aspects of the bill that we fully support. We congratulate the government for putting the best interests of the child at the centre of this bill and for developing a much-needed set of criteria to help guide the determination of what will be in the best interests of each child, based on the recognition that every family and every child's needs are unique. NAWL fully supports the exclusion from this bill of any presumptions of shared parenting. Determining what's in the best interests of the child must be done on a case-by-case basis.

We also fully support the inclusion of family violence in this bill and a comprehensive definition of it that recognizes that family violence exists on a spectrum.

I now want to turn to some aspects of the bill that we think do not yet go far enough because, as we know, the impacts of family violence can continue long after a marriage ends.

Our first recommendation is that a preamble be added to this bill that acknowledges the gendered nature of family violence and confirms that addressing family violence is one of its aims. The evidence here is clear and unequivocal. As with other forms of gender-based violence, the majority of victim survivors of violence within marriage, and when it ends, are women. Men are overwhelmingly the perpetrators of this violence. A preamble is important because it can guide the interpretation of an act and is good practice. Just a few weeks ago, when it was used in Bill C-86 to frame the establishment of the new department of women and gender equality, which will replace Status of Women Canada, that bill included a preamble that recognized the government's obligations to advance women's rights and gender equality. A similar preamble should be added to C-78 that recognizes that women experience family violence, as a form of violence against women, and that women have diverse lived experiences of it. We've drafted a preamble that we hope this committee will recommend to be included in the act.

In addition, we also recommend that a definition of violence against women be added, which acknowledges that it is a form of gender-based discrimination that's experienced by women in multiple ways and shaped by other forms of discrimination and disadvantage. This intersects with race, indigenous identity, ethnicity, religion, gender identity or gender expression, sexual orientation, citizenship, immigration or refugee status, geographic location, social condition, age and disability. This would be consistent with the government's commitment to GBA+.

The appalling and ongoing situation of violence against indigenous women must be redressed immediately. We urge the federal government to consult with indigenous women's groups on the potential impacts of C-78 on indigenous women, their children, their communities and their families to ensure the cultural heritage, safety, security, autonomy and rights of indigenous women and their children are respected, protected and fulfilled, and not further endangered or violated by any direct or indirect impacts of any of the provisions of C-78.

● (1815)

We propose the addition of provisions to help ensure decision-makers do not rely on harmful myths or stereotypes about family violence, even inadvertently, when they're making decisions in the context of divorce. While I don't have time to read through the entire section that we have drafted—I hope you will, though—I will highlight some of them, including for example, that a court should not infer that because a relationship has ended or divorce proceedings have begun the family violence has ended.

A court should not infer that if claims of family violence are made late in the proceedings or were not made in previous proceedings they're false or exaggerated. A court should not infer that if a spouse continued to reside or maintain a financial, sexual or business relationship—or a relationship for immigration purposes—with a spouse, or has in the past left and returned to a spouse, family violence did not happen or the claims are exaggerated.

The court should not infer that leaving a violent household to reside in a shelter or other temporary housing is contrary to the best interests of the child. The court should not infer that fleeing a jurisdiction with children in order to escape family violence is contrary to the best interests of the child. Also, the court should not infer that the absence of observable physical injuries or the absence of external expressions of fear mean that the abuse did not happen.

I don't have time to adequately address this issue, but I also want to reflect some thoughts on changes to language included in Bill C-78.

We understand and commend the objective of reducing tensions and conflict in divorce proceedings. However, there is no evidence that removing the familiar language of custody and access will actually reduce conflict and benefit children. Further, there's a real risk that this change in terminology will create uncertainty that will be available to abusers to exploit and to perpetuate ongoing abuse through court proceedings and otherwise.

Indeed, we heard from feminists in other jurisdictions, including British Columbia, where similar language changes have been made, that they have not seen a reduction in conflict in family law proceedings after the terminology of custody and access was removed from the provincial Family Law Act. Therefore, we recommend that the language of custody and access be retained and inserted in Bill C-78.

In addition, we believe the proposed definitions of parenting orders and parenting responsibilities are too vague and ambiguous and also provide opportunities for abuse. We recommend, therefore, that a clearer set of responsibilities be set out for the parent with decision-making responsibility.

Because of time constraints, I'm going to end my comments here, but I'm of course eager to answer any questions that the committee might have. I want to simply confirm that NAWL supports the positions that Luke's Place will now present, which, like ours, are the product of our joint work together.

I thank the committee again for providing NAWL with the opportunity to appear this evening.

The Chair: Thank you very much. It's really appreciated.

Now we'll throw down the gauntlet to you, Ms. Cross, to see if you can be as fascinating as the first two witnesses.

Ms. Pamela Cross (Legal Director, Luke's Place Support and Resource Centre for Women and Children): I will do my best, but you know eight minutes is a bit tough.

Good evening. Thank you for this opportunity to appear before you and share some of my thoughts about Bill C-78. I'm the legal director of Luke's Place Support and Resource Centre in Durham Region, Ontario. We're named after Luke Schillings, a three-and-a-half-year-old boy who was murdered by his father on his first unsupervised access visit, after his mother sought an order for supervised access but was unable to obtain one.

We deliver direct family court support to women who are leaving abusive relationships. We also work on the provincial and national levels doing research, training and law reform advocacy on the issue of violence against women and the law.

Naturally, family laws at both the provincial and federal levels have a huge impact on the women we serve, as well as on their children, so we've been involved in advocacy in this area for many years.

We're delighted to see Bill C-78. As you all know, the Divorce Act has not been amended for more than 20 years. During that 20 years, the realities and needs of families in Canada have changed considerably. As Suki has already noted, this brief, prepared jointly by Luke's Place and NAWL, is the product of many wise minds. My comments will focus on some of the key issues that she has not already noted.

The brief reflects the expertise, among other expertises, that comes from our work at Luke's Place with women fleeing abuse who are engaged with legal systems, as well as from my own experience as a family law practitioner. These are perspectives that we think are critical for the government to consider when amending the divorce act.

First, like NAWL, I'd like to congratulate the minister and the government on presenting a bill that has many positive elements. We especially comment on these. Placing the well-being of children at the centre of the bill is really important. Developing clear criteria for the best interests of the child test will assist unrepresented litigants, lawyers and the judiciary to understand what needs to be taken into account when determining arrangements for children. The clear identification of family violence as an issue to be taken into account in divorce proceedings will be very helpful, and in particular in that category, we note the inclusion of coercive control, psychological, financial and animal abuse in the definition, and the recognition that family violence exists whether or not the conduct constitutes a criminal offence.

We are very pleased that the government has not introduced a presumption in favour of shared parenting. Because of the unique circumstances of every family, any such presumption would not be in the best interests of children.

Of course, we also have some concerns. There are some elements of the best interests test that are problematic in situations of family violence. Mothers, in Canada, remain the primary parent in most separated families. Keeping mothers safe enhances the well-being and best interests of their children. We would like to see proposed new section 16 amended to clarify this. Mothers need to be able to keep themselves and their children safe without having their behaviour labelled “parental alienation”.

Proposed new paragraph 16(3)(c) requires each spouse to support a relationship between children and the other spouse, and new paragraph 16(3)(i) requires spouses to communicate and co-operate with one another on matters related to the children. Our work with women has shown us repeatedly that these are not appropriate in cases of family violence. Indeed, communication and co-operation may be impossible where the abusive spouse engages in coercive and controlling behaviours. Such a requirement places women at risk of ongoing abuse, both physical and emotional, including lethal violence, and leaves children living in an environment of fear.

Furthermore, it's our experience that parents who are able to co-operate and communicate effectively are not turning to the courts to work out post-separation arrangements for their children. Court orders for joint or shared parenting are something of an oxymoron. It's for these reasons that we have recommended removal of these two paragraphs, or in the alternative, rewording of them to identify situations of family violence as exceptions.

Proposed new subsection 16.2(1) sets out the principle that a child should have as much time with each parent as is consistent with his or her best interests. This is highly problematic for mothers who have left an abusive spouse and who often have serious and legitimate concerns for the safety of their children when in the care of their father. This provision is neither appropriate nor necessary and should be removed.

The bill would be strengthened by the addition of clauses that set out specifically that the court should not presume that any particular arrangement is in the child's best interests.

● (1820)

Like NAWL, we're not convinced that changing the language of custody and access to parenting time and decision-making responsibility will have the results that the minister is hoping for. The definition of decision-making responsibility at the beginning of the bill is general and lacks detail. Coupled with proposed subsection 16.2(3), which says that a person with parenting time has “exclusive authority” to make day-to-day decisions about the child when the child is with that parent, the bill creates a broad opening for an abusive spouse to intentionally interfere with the other spouse's ability to make decisions about the kids.

Children's lives do not divide neatly into big decisions and day-to-day decisions. This reality can be easily manipulated by a spouse who is seeking to maintain control over the other spouse rather than to ensure the children's best interests. We have seen this time and time again in our work with women. We'd like to see a detailed but non-exhaustive list of the kinds of decisions a parent with decision-making responsibility would have. We've provided that in our brief.

We would also recommend changing the provisions with respect to day-to-day decision-making, and adding a provision that any day-to-day decision shall not conflict with decisions made by the parent who has decision-making responsibility.

This may come as a surprise to some members of the committee, but we do not oppose the use of family dispute resolution, even in cases involving family violence. We've worked with women who have found the process empowering and who have emerged with satisfactory outcomes. However, we do not support prioritizing family dispute resolution over litigation, and we have concerns that the present wording in the bill does this. Families have different needs, concerns and abilities, and should be made aware of all options for the resolution of their dispute.

We would like to see the duty on parties to resolve matters by a family dispute resolution rephrased to include a specific reference to family violence. We would also like to see the rewording of the duty of legal advisers to require them to screen all clients for family violence.

We appreciate the inclusion of a provision to speak to non-parental time with children. This is an arrangement that is a reality for an increasing number of families in Canada where grandparents in particular play significant roles in the lives of their grandchildren. However, we do not want to see this provision used by an abusive spouse who has limited or no time with his children because of safety concerns, who then manipulates his parents into seeking contact as a backdoor way to allow him to see his children.

As you heard from witnesses on Monday, the clarity that the relocation provisions will provide is badly needed and much appreciated. However, the family violence exemption from the notice requirement needs to be made more clear. We have offered some wording in our brief that could assist with this.

The burden of proof sections are ambiguous and confusing, particularly for unrepresented litigants who make up more than 50% of the people in family court in Canada. We think the language of "substantially comply" should be removed.

I have one last note on the bill. While we did not comment on these provisions in our brief, largely due to time and space constraints, we fully support those sections of the bill that will make income disclosure and enforcement of support orders both easier and more efficient. Many women and children live in poverty post-divorce because the present systems are cumbersome and slow.

Finally, subject to any questions you may have for me, let me say that while I certainly hope the committee will be persuaded by our recommendations, I also hope this bill is able to move quickly through the remaining stages so that the Divorce Act can become a law that protects the best interest of children, understands family violence, reduces child poverty and increases access to justice for families in Canada.

Thank you.

● (1825)

The Chair: Thank you very much.

We'll move on to Ms. O'Brien.

Ms. Shaun O'Brien (Executive Director and General Counsel, Women's Legal Education and Action Fund): Thank you very much.

Thank you for the opportunity to provide submissions on behalf of LEAF. As you may know, LEAF has been advocating for equality rights for women and girls since 1985, coinciding with the advent of section 15 of the charter. In addition to our regular interventions before the Supreme Court of Canada, we have extensive experience in law reform, including in appearing before parliamentary and Senate committees. We've been involved in numerous family law issues for over 30 years, and my comments today are informed by a committee of family law experts from across the country.

I also want to note that LEAF participated in the broad consultations conducted by NAWL and Luke's Place. We endorse their brief, and our brief should be read together with theirs. I also want to underscore the positive parts of the bill that my colleagues have emphasized today.

I'm going to launch into my two main points for today, which are related to maximum parenting time and family dispute resolution.

With respect to maximum parenting time, under the bill, proposed section 16.2 would require a court, in allocating parenting time, to give effect to the maximum parenting time principle, which is generally understood as being that maximum contact and care by parents is a good thing for children. Even though maximum parenting time may seem like a good idea, the reality is that research in Canada and elsewhere documents the devastating impact to women and children of the assumption that maximum contact with both parents is good. It's important to carefully review the research and expert evidence on this issue. The bottom line is that if one parent has not been an attentive parent to date, the time of separation, a time of high conflict and serious danger, is not the time to try to encourage this.

What is needed is the amount of contact that's appropriate to the facts of a given case for the best interests of a child. Maximum contact isn't necessarily the best in many cases. It needs to be an individualized assessment of the specific context, the best interests of the child in each individual case. The key point for the purpose of the wording of the legislation is that the assumption about maximum contact is so pervasive that unless it's specifically debunked...and even then, it has a vastly undue influence to the detriment of women and children. The problem is that assumptions in legislation about maximum contact are known to result in reduced scrutiny of issues associated with safety and other best interests of the child factors. That's the case—and here's the important point—even when the best interests of the child are built into the maximum time provision, as they have been here.

In other words, I realize that proposed section 16.2 is worded to include reference to the best interests of the child, but I don't think that's enough. The heading is "Maximum parenting time", and any suggestion that this principle should be complied with is very concerning.

I want to give you the example of the Family Law Act in B.C. That legislation makes explicit efforts to take account of family violence and to focus on the best interests of the child only when it comes to parenting or contact orders. The best interest is the only thing that can be taken into account. There's no maximum contact provision, and the act explicitly says there's no presumption of equal parenting time. In spite of that, the evidence is that judges in B.C. still make orders in favour of maximum contact and shared parenting, even in cases where family violence has been established. They tend to underestimate the consequences of being abused or exposed to abuse and treat shared parenting as a presumption, even when there's no presumption at all in the act.

Given this evidence, and this is just one example—it's consistent with the research elsewhere—an explicit presumption is dangerous to the safety and security concerns of children. Our strong recommendation is to eliminate this provision altogether. If that doesn't happen, our alternative position is that the heading in the legislation needs to change, because the wording of the provision, as I said, doesn't actually say "maximum parenting time", but the heading does. I submit that this will signal the wrong thing. It should say something like "Best interests and parenting time", which would give better emphasis to what the provision seems to actually say and would emphasize the important point that the overall governing principle is the best interests of the child.

We also endorse a further provision that clarifies that there should be no presumption that things be shared equally or for maximum parenting time. That's set out in our brief and in the recommendations from NAWL and Luke's Place. It's similar to the language in the B.C. legislation.

Turning to the family dispute resolution processes in the bill, our basic point here is that there's too much emphasis in the bill on dispute resolution given women's inequality in the context of family law and the dangers of family violence. The wording in the bill acknowledging these concerns, in our submission, isn't strong enough.

● (1830)

Broadly, proposed section 7.3 requires parties to try to resolve matters through family dispute resolution processes, and proposed section 7.7 puts the duty on legal advisers to encourage clients to resolve matters through a family dispute resolution process unless it's clearly not appropriate to do so.

These provisions raise serious concerns for us. Even though there's a reference in both provisions to whether it's appropriate to do so, the provisions make out-of-court processes the norm. This is an access to justice issue because of the inequality and power imbalances that plague women in the family law context, including the danger to women and children of family violence.

The strong emphasis on dispute resolution processes may encourage women to settle inappropriately in a manner that compromises their safety, security and well-being and that of their children. For example, women may agree to supervised access or to overnight access, because they don't know they can avoid it, and because there's so much pressure to agree to these things because of things like the maximum time principle. These types of arrangements in some cases lead to serious danger. The overall point is that there needs to be a more explicit reference in the statute to the fact that dispute resolution may not be appropriate in cases of family violence. There are recommendations on this in our brief, and in the briefs of NAWL and Luke's Place.

We're also concerned about the duty imposed on lawyers to encourage women to attempt to resolve matters through dispute resolution processes unless it's clearly not appropriate to do so, and the word “clearly” is in the legislation in proposed section 7.7. Our concern is that this isn't consistent with lawyers' professional obligations. The obligation on lawyers is to ascertain the appropriate legal principles and best course of action for their clients. That includes taking into account principles of substantive equality, and to represent the client resolutely and to endeavour to obtain the benefit of every remedy authorized by law. Our position is that to place the stringent requirement on legal advisers of encouraging their clients to settle unless it clearly is not appropriate deprives women of appropriate legal advice, and in particular it's a critical type of legal advice because it's about their substantive equality and their safety, security and well-being.

Overall, given the dangers of dispute resolution processes for women, legal advisers should be required to use accredited family violence screening tools, and the duty to inform should be to inform the person of all processes to resolve the matter, including dispute resolution. We endorse the recommendations and the briefs by Luke's Place and NAWL with respect to those issues.

I'd be happy to receive any questions, but for now those are my submissions.

Thank you very much.

● (1835)

The Chair: Thank you very much.

I note you hit eight minutes and one second. Congratulations, you are the absolute closest to the eight-minute mark of anybody we've had so far.

Ms. Shaun O'Brien: It's not by design, but thank you.

The Chair: Let's see if Mr. Cooper can hit exactly six minutes on his questions.

Mr. Michael Cooper (St. Albert—Edmonton, CPC): I'll try, Mr. Chair.

Mr. Pinsky, regarding relocation, toward the end of your presentation you addressed the issue of burden of proof in terms of parents who spend the vast majority of time, or substantially equal time, the three-way split that is provided for in the legislation. You touched on Manitoba and Nova Scotia, but you didn't have time to elaborate on that.

We heard yesterday from Professor Thompson from Dalhousie University, and he suggested—it was his opinion anyway—that has worked relatively well in the year that the legislation has been in place in Nova Scotia. I'd be interested in your thoughts on Nova Scotia and Manitoba. In addition to that, he said it hadn't worked so well in British Columbia. I didn't have a chance to ask him why that was and he didn't share that opinion.

Mr. Lawrence Pinsky: Thank you so much for your question. I'm happy to respond to that.

In Manitoba, we formed a committee that I chaired, proposing changes to relocation. Bill 33 was the result. Unfortunately, it died on the order paper. Actually, I believe the sections are attached at schedule 1 to my submission. If you read that, you'll see that it's part of the paper that we had done some time ago.

On that committee was Professor Nick Bala, who I think is addressing you next week. We consulted with Rollie—Professor Thompson—extensively. We had a judge advising us. We had practitioners and governmental people, who we just assembled and put together.

Let me tell you what Manitoba did at the time.

We wanted certainty, and we didn't want to promote any litigation at the front end. The worry is that, if you're using terms like the terms that are used in the bill, people are going to fight for the vast majority of time, or whatever the term is, at the front end. In Manitoba, we asked, “Why don't we look at what adequate parenting parents get, in fact, in terms of time-sharing?” The key, again, looking at it from the perspective of the child, is that if I have a close attachment as a child to this other parent, the left-behind parent, is it in my best interests to have that relationship severed?

Because no matter what you say, and no matter what is said by anybody, the reality is that when that kid goes, the left-behind parent becomes like an uncle and is no longer a parent. That attachment is really broken—or changed. I can say "changed"—and I think everyone would agree with that—and lessened. In Manitoba, we said that the rebuttable onus is on the relocating parent to prove that relocation is in the best interests of the child if the other parent has at least one-third of the overnights over the course of the year. We defined it by overnights.

I shouldn't say "we". It was the government. We recommended it but they did it. We defined it as one-third of the overnights so that you'd have certainty, because mere adequate parenting, they're going to get that anyway in terms of the course of the year in Manitoba, assuming that we're not talking about a baby or a child where they're assuming adequacy. Those assumptions are built in.

Also, of course, we respected the Convention on the Rights of the Child, because we took into account and said what the child's view might be, and of course we took into account where a parent has complied with a court order.

I will note as well—I didn't have a chance to mention it—that this bill talks about substantial compliance with court orders. That is an enormous mistake, in my view. There has to be compliance with court orders, not "substantial"—whatever that means—compliance with court orders. I don't want to have to fight when someone removes a child: "Was that substantial or insubstantial or what was that?" Predictability and certainty....

Anyway, we did that. The onus would have shifted to the other parent if they had less than one-fifth of the overnights over the course of the year because, again, adequate parents are going to get that in the normal course. You're not going to be encouraging fighting. That's what the proposal was in Manitoba.

In Nova Scotia, they have guidelines, which I would say is second best. I think Manitoba's was best. Rollie and I went back and forth, and Professor Bala was in favour of our view, as he may speak to in due course.

As I say, in Nova Scotia they had a sort of shopping list of issues to consider. That's a good approach to do, too, with terms that we know, terms that are established. It gives guidance to the court. That has worked reasonably well.

B.C. is problematic, I say with respect, in a number of issues. It's been criticized quite a bit by people who write on the point. I can go through that if you want. It's attached as well to my submission, if you like. Essentially, where you look at an application under the section and the relocating parent—or guardian, I should say—doesn't have substantially equal time, the relocating guardian has to satisfy the court that the relocation is made in good faith and that there are reasonable and workable arrangements to preserve the relationship.

You can't do that in moving from B.C. to England or wherever you're going to move to—Winnipeg or whatever it might be—but that's what they had to show. If the court is satisfied, then the presumption is that it's in the best interests to move. The fundamental principle at the end of the day, and what the basic philosophy is as I've said, is that where there's a close, healthy attachment with a parent who isn't leaving, don't sever that unless there are darn good reasons to do that—and sometimes there are.

● (1840)

The onus should be on the person to show that is the case, in my submission.

Mr. Michael Cooper: The onus, so—

The Chair: Sorry, you're over six minutes.

Mr. Lawrence Pinsky: Okay, I'm sorry. I did that, too.

The Chair: It was actually a very helpful answer. He would have stopped you if he didn't find it helpful. It was very good.

Sorry about that, though.

Ms. Khalid.

Ms. Iqra Khalid (Mississauga—Erin Mills, Lib.): Thank you, Chair, and thank you to the witnesses.

I want to start off by clarifying. Ms. Beavers, you mentioned in your remarks that you are in support of family dispute resolution or alternative dispute resolution. Could you comment on Ms. O'Brien's views on the impact of ADR or FDR with respect to Bill C-78?

Ms. Suki Beavers: Thank you for the question.

We actually are not in disagreement. The starting point for us is that there should not be an automatic exclusion of ADR because it does work for some women. They are able to get the kinds of outcomes they're looking for. However, there are many cases involving family violence where ADR may not be appropriate. The change we're asking for in the wording of the bill is that there be no preference given, nor indeed a requirement, for any clients to be encouraged to pursue ADR. That may be quite inappropriate for all the range of reasons that LEAF has outlined today.

The difference, the shift in language that we're looking for, is the requirement for all legal representatives to present to their clients the full range of legal options available to them, to listen to their clients and to help them determine what process will work well for them and what will not. Sometimes ADR is absolutely inappropriate for women in the context of family violence, and sometimes women will choose to pursue it for the range of reasons that apply directly to them.

That's the change we're looking for.

● (1845)

Ms. Iqra Khalid: Thank you.

Ms. Cross, do you have anything to add to that?

Ms. Pamela Cross: I would add that we would really like to see mandatory screening for family violence "by any legal adviser", as I think is the term in the bill.

It's not possible to know just by looking at a client whether they have been a victim of domestic violence. Many survivors of that violence do not disclose that information until they're asked. They're afraid to. They're afraid the lawyer won't believe them, or they're afraid there may be repercussions from their abusive spouse. They're ashamed, they're embarrassed or they're worried that we as their lawyers may judge them for that.

The use of a standardized screening tool, a mandatory screening tool, would be extremely helpful. It would then guide the discussion from that point on, and as both my colleagues have said, it in no way takes alternative dispute resolution off the table. It just doesn't preference it in the way the bill currently does.

Ms. Iqra Khalid: Okay.

Mr. Pinsky.

Mr. Lawrence Pinsky: In terms of a screening tool, I agree entirely. Actually the federal government, the Department of Justice and the CBA are working on exactly that and will shortly come out with a tool that will be recommended across the board.

I agree with my friends who talked about family violence being mostly against women. There is some against men, and it comes in different forms.

I would just add a couple of things to that. When you're funding things, there is no question survivors of abuse have to be funded for a wide variety of services, but from the perspective of the child—unbelievably maybe—they still want a relationship with both parents. As well, that abuser—I shouldn't say "he" but it's predominantly "he"—also needs to be counselled. There need to be funds for that, to make the family whole. It's very important.

I would just add one other thing in terms of the FDR—the other FDR—which is this: When I said we should add mediation and arbitration, I meant that it should be in accordance with Canadian law. What we shouldn't have are mediation and arbitration done by religious authorities of one stripe or another. That would perpetuate inequality and other problems. It should be in accordance with Canadian law. I should have said that before. I apologize.

Ms. Iqra Khalid: Thank you for that. I appreciate that.

I have one more question.

In the brief, Ms. Beavers, you talk about making amendments to the day-to-day decisions and how they're made. You recommend taking out the phrase "has exclusive authority to" and replacing it with "may, subject to compliance with best interests of the child principles, make decisions", set out in the act.

Do you think the impact of this would be to create uncertainty? Would it actually increase conflict between parents as they try to parent? Would they undermine each other because the language is no longer as clear?

Ms. Suki Beavers: No, in fact we hope it will have the opposite effect.

The reason that we've asked for that change is to centre the best interests of the child again in all the considerations. One of the things that we have put forward in the brief is that keeping women safe, keeping mothers safe is also in the best interests of the child. We have put in some additional language to ensure that different areas of decision-making cannot be used to try to undermine the decision-making of the parent with primary decision-making. We've clarified it. We've given a set of criteria or a set of decisions that should be very clear that these rest with the parent with decision-making authority, and that the day-to-day bits and bites that go to the other parent cannot in any way be used to undermine those. The only place in which we need to have an additional consideration is in the best interests of the child, and again this is in the context of family violence.

I hope that helped.

Ms. Iqra Khalid: Yes, that clarified it for me.

Thank you.

Ms. Suki Beavers: Did you want to add anything?

Ms. Iqra Khalid: We're out of time, but I just wanted to thank you for all of your advocacy. I really appreciate it.

The Chair: May I ask everyone who is not fluent in French now to please put on your headset. My colleague Madame Sansoucy will be asking her questions in French.

[*Translation*]

Ms. Sansoucy, you have the floor.

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

Mr. Pinsky, my first question is for you. In your brief, you addressed the issue of support payments. You said that the determination and settlement of support payments is a source of dispute and a cause of poverty. For example, you talked about the length of the legal process, which is very costly for the parties, and the fact that some people settle for less support than they should receive, in order to avoid conflict.

You proposed federal guidelines for child support and the Divorce Act to help determine the payments in situations where responsibilities are shared. You said that a basic framework and formula must be provided to promote stability and predictability in the best interests of the child, while reducing conflict, emotional harm and the resulting financial burden.

Even if we manage to put in place the fair, proportional, easily understood and easily implemented mechanism that you're recommending, do you really think that this mechanism will help achieve the objective that the bill claims to achieve, which is to reduce poverty?

The people from the department said that the bill would reduce poverty. However, I'm wondering about the families who can't afford these payments. I asked the representatives of the Barreau du Québec the same question, given that we have a somewhat similar system in Quebec.

● (1850)

Mr. Lawrence Pinsky: Thank you for your question. I'll have to respond in English because my French isn't good enough. I apologize.

Ms. Brigitte Sansoucy: That's fine.

[*English*]

Mr. Lawrence Pinsky: There are a number of issues that you raised in that question. The Supreme Court has commented about the feminization of poverty, and historically I don't think there's any doubt about that.

The interesting thing is that in Manitoba, we have a symposium every year from the courts—the bar and the bench—and one year we did it on spousal support. We commissioned a study because we see a different reality today—this was a few years ago—from what we have seen historically. More fathers—let's call a spade a spade—are involved in parenting than they used to be.

The government just came out with certain benefits for both parents for parental leave. We asked the question of whether we are still seeing a feminization of poverty. The answer, surprisingly to me a little bit, was yes. I thought we'd attained a higher level of equality. Apparently that isn't the case.

What we did learn, though, was that it has decreased. I think that in the light of government initiatives and society's evolution, you're going to see a change. One of the key criteria is child care. That leads to poverty, to impoverishment, largely of women, who have been the primary parent.

Do you know what Sweden has for spousal support? Nothing. Zero. They don't have the concept. Do you know what Scotland has for spousal support? They have a maximum of three years. If you're married for 30 years in Scotland, it's three years. That's what you get. Interesting. Do we know this? No, we don't generally know this. I know it because I'm a fellow of the International Academy of Family Lawyers, so we look at other jurisdictions and what happens out there. It's really interesting that this is the case. However, in Sweden, of course, they have great child care for both parents, which we don't have as much. I'm not criticizing anything, although you may take it the way that you choose.

The point is that as more fathers or other parents stay home to help raise the children, I predict you'll see a decrease in the feminization of poverty. It's a long-term prospect, and we're seeing it beginning and it should continue.

In terms of shared parenting child support, which is what I talked about in the letter to the minister and elsewhere, I think that's true. We need that, because people do fight. People can fight about everything, and in family law you see people at their worst. Family violence, by the way, is a spectrum, and at the beginning of a breakdown of a marriage or a relationship, people sometimes do stupid things. However, it's at the low end.

The point is that if we could reduce the fighting by having a predictable shared parenting formula, which hopefully the CBA, which I'm not speaking on behalf of, is going to work toward in the future.... We certainly will. We've talked historically to various ministers about that, and we will try to move that forward. I think it should help.

I hope that answers your question.

[*Translation*]

Thank you again.

Ms. Brigitte Sansoucy: Thank you.

Do I have any speaking time left?

The Chair: You have one minute left.

Ms. Brigitte Sansoucy: I'll now turn to the other witnesses.

You shared some findings. Like many rights groups, you talked about all the myths surrounding domestic violence, which lead certain judges to react in ways that aren't necessarily appropriate. You provided examples.

I want to know whether Bill C-78 will really change the legal culture when it comes to the treatment of family violence?

● (1855)

[*English*]

Ms. Suki Beavers: Thank you for the question.

I think Bill C-78, with the inclusions that we've proposed, will go a long way to changing that culture if a couple of things happen.

The first is that the mandatory screening, using an accepted tool that we've talked about, takes place. Also, you'll see in our brief that we've called for mandatory education of all actors in the family law system, to understand what family violence looks like, to break down those myths, to ensure that even inadvertently there isn't reliance on some of those myths and stereotypes in the context of divorce and beyond. We think that Bill C-78 can make some tangible advances towards substantive equality for women and children, but there are some adjustments that need to be made.

The other thing we will say is that funding for legal aid for support is absolutely necessary, and the education piece for all the actors involved in the family law system is really critical, in order for there to be any kind of systemic change in the way in which the family law system now operates.

Ms. Shaun O'Brien: I just want to endorse the point about education. We need to get the wording of the legislation right, but what we see in the research is that even when the wording's right, judges and others get it wrong because of a lack of understanding. Family violence is complicated. Education is absolutely critical at all levels and really needs to happen.

Mr. Lawrence Pinsky: I can share with you that there's a meeting at the NJI, the National Judicial Institute, to create a mandatory family-justice education model for judges. Every superior court judge is going to have to go through it. That's starting next week, I think.

The Chair: That's excellent, thank you.

Mr. Ehsassi.

Mr. Ali Ehsassi (Willowdale, Lib.): Thank you, Mr. Chair.

Allow me to first thank each one of you for your very helpful testimony.

The first question I have is very general. Last time when we had witnesses, one of them flagged the concern that new terminology adopted in this particular bill could cause problems because the Hague convention obviously would not be using the same terminology. In your opinions, would that be a challenge? Is that something that we should be concerned about?

Ms. Pamela Cross: It would be a challenge. I don't think it's an insurmountable challenge, but I think it's something that speaks to a number of the points that were made briefly a minute or two ago.

First of all, there needs to be a period of time to ensure that other legislation, not just international conventions but provincial legislation.... For instance, Ontario, which is where I work, uses the language of custody and access. What's going to happen if I have one client who's using the Divorce Act to seek her parenting arrangements and has an order that talks about parenting time and decision-making responsibility, and I have another client who's using provincial legislation? It's going to be confusing for people.

We have to rationalize it internally within Canada, but we certainly also have to look at the impact on international laws, where there may be inconsistency in language.

Bear in mind that right now, as I mentioned earlier, we have this inordinately high rate of unrepresented parties in family court. Asking them to understand this term.... Whether people really know what it means or not, they know the word “custody” and the word “access”. Now all of a sudden they're reading something that says, “parenting time” and what on earth does that mean? They don't have a legal adviser to turn to, because their legal aid doesn't cover them, and so on.

We have to address public education around the language. As my colleague has said, we need to look at proper funding for legal aid programs across the country. We have to work with our international partners on things like the Hague convention. It's not insurmountable, but it's a huge amount of work.

Mr. Lawrence Pinsky: I tend to disagree with parts and agree vehemently with other parts of what my friend said.

I don't think it will be a problem with any of the Hagues. We certainly canvassed that with the Department of Justice before we raised the very issue. We were assured that wasn't the case. We've spoken to experts on Hague. It's a unique little area of the law, and the general consensus was that it wouldn't be a problem.

I am completely supportive of the notion of education broadly. On the idea of changing to “parenting time”, people don't know now what “custody” means. They have no idea. They come in and say, “I want custody.” What does that mean? They describe a different type of regime. The truth is, if my wife and I were separated, she could have sole custody and I could have access 24 hours a day, seven days a week. What does it mean? Major decisions would be made in a different way, but really, they're empty boxes.

The idea of reducing conflict by having parenting arrangements and what have you is a positive step forward, and I don't think it interferes with Hague.

● (1900)

Mr. Ali Ehsassi: Thank you for that.

The next question, again, is open to all of you. I was really intrigued by the idea of mandatory screening for family violence. Do we know of other jurisdictions that have actually introduced mandatory screening?

Ms. Pamela Cross: What we do know is that many other fields are using mandatory screening. Many health care providers, especially in emergency rooms, do a mandatory screening when any person comes into their facility for attention. Mediators in different parts of the country are regulated differently, but increasingly there is a requirement for screenings. The British Columbia Family Law Act introduces the notion of mandatory screening.

The Department of Justice has, just today, I believe, posted on their website a research report that Luke's Place prepared over the past year, looking at the value of mandatory standardized screening tools for family law practitioners. I think it's something that might be helpful for the committee to review as you're considering possible amendments.

All of the international research—we looked at screening tools from around the world in doing this research—showed that a good tool used properly, which means by a professional who has been trained in how to use and interpret it, leads to more accurate disclosures of family violence. This does not necessarily mean more disclosures—that's not the goal—but it does lead to more accurate disclosures of abuse, and also of the kind of abuse. As Mr. Pinsky has said, family violence exists on a spectrum, and it's important to understand where on that spectrum the client is situated, if at all.

Mr. Lawrence Pinsky: My co-presenters have a particular perspective that they share with you, a perspective of a validity, from their perspective, which is fine—some of which I agree with and some of which I don't—but, interestingly, you hear unanimity on family violence screening tools and education for it. It's very important. As I say, the CBA is actively working on it with the department. I agree with what my friend Ms. Cross said on that point.

Mr. Ali Ehsassi: Madam O'Brien, you were talking about maximum contact in parenting time and some of the concerns, particularly, if there has been violence. You said that research in the social sciences proves that.

Regrettably, we haven't had access to your brief yet, because it hasn't been translated. In your brief, do you cite the latest research that we can look into.

Ms. Shaun O'Brien: The research cited in our brief is more legal research of what legal experts are saying about maximum parenting time, what's working and what's not. There may be research cited as well in the NAWL and Luke's Place briefs which references that.

One of the pieces of confusion that arises with respect to maximum parenting time is that no one is saying that the research doesn't say that contact with both parents can be good and children will request that. It's just that it doesn't necessarily need to be equal. We need to look at that on a case-by-case basis. There's really important caveats to when it's good and when it's not. Those need to be looked at. For example, it can be good, unless it exposes the child to high levels of stress. When there's high conflict, that causes stress. Other factors are in favour of not having maximum parenting time, such as the fact that children are more resilient when they have a stable relationship with a non-stressful....

There are references in our brief to that kind of information. The key point is understanding that it's not that we dispute the idea that it can be good to have contact with both parents. It's understanding how it really needs to be a case-by-case analysis, which means no presumptions.

The Chair: Thank you.

Mr. Lawrence Pinsky: Perhaps I can say one thing about that.

For sure, individualized justice is the way to go with parenting. There's no question about that. The research you want to look at is Joan Kelly's, Dr. Lamb's, Professor Austin's and Marsha Kline Pruett's. You want to look at all of that stuff.

But beware of jargon. For example, Dr. Kelly talks about “shared parenting”. She's in California. That means 30% to 35% of the time in California. Here it means 40% of the time. You have to be aware of those nuances and differences.

I think in that particular proposed section...maximize time “consistent with the best interests” has been around a long time. I think it's the right way to go, because it does say consistent with the child's best interests. You can't read it without that. Changing the title of that proposed section makes sense because it is a little misleading. Most judges in Manitoba—I can't speak about elsewhere—certainly understand that to be the case. It's consistent with the child's best interests, which of course will evolve over time.

High conflict is challenging, because sometimes people—men or women—create high conflict on purpose and then use that as a sword. You have to be aware of that. That can be very problematic.

● (1905)

The Chair: Thank you very much. We have to get to the next panel.

I want to thank each and every one of you. You were fascinating and really helpful to us. It's very much appreciated.

I'd like to take a short recess and ask the next panel to come forward, please.

● (1905)

(Pause)

● (1910)

The Chair: We will now reconvene with our second panel of the day on Bill C-78.

It gives me great pleasure to introduce, from the Canadian Centre for Men and Families, Mr. Robert Samery, chair of the board, and Ms. Jess Haines, associate professor at the University of Guelph. From the National Shared Parenting Association, we have Ms. Heidi Nabert, president, and Ms. Lynda Baracetti, director, LGBTQ Issues. From The Redwood, we have Ms. Abi Ajibolade. Abi is so nice. She said that if anybody has trouble with her last name, they can call her Abi. She is the executive director.

From West Coast LEAF, we have Ms. Elba Bendo, director of law reform, and Ms. Kim Hawkins, executive director, Rise Women's Legal Centre.

Welcome to all of you.

We'll go in the order on the agenda and start with the Canadian Centre for Men and Families.

Mr. Robert Samery (Chair of The Board, Canadian Centre for Men and Families): Thank you very much, Mr. Chair and committee members, for having us here today.

I represent the Canadian Centre for Men and Families, which is associated with the Canadian Association for Equality. With me today is Professor Jess Haines from the University of Guelph.

The Canadian Centre for Men and Families was established in 2014. The centre has grown quickly, with physical hubs now in Toronto, Ottawa, London and Calgary. We offer services focused on the health and well-being of boys, men, fathers and families. The centres are open, inclusive and safe spaces providing therapy and counselling, peer support, a legal clinic, fathering programs, mentorship and support services for male victims of trauma and violence. We provide services, research, advocacy, outreach and public education on all aspects of men's issues. We also focus on children and families, not just on the one demographic we centre on.

It may be a surprise, but we have a lot of agreement with people who sometimes don't agree with us entirely. In this context, let me just say that we agree that removing an individual from a child destroys a relationship. I heard that comment today, and I couldn't agree with it more. Full parenting, equal parenting or maximal parenting is the best outcome for any child.

We also agree that, in cases of intimate partner violence, the definition should include coercive control and much else that our prior witnesses identified. We decidedly disagree that it should include anything to do with gender. Violence is not a gendered issue, and we would strongly advocate against that. We also agree that there is a distinction, which some of the prior witnesses have raised, between violence and high conflict. They shouldn't be conflated and shouldn't be dealt with in the same way. There are other points of agreement that we can find quite easily as well.

A very large percentage of our work deals with clients who have been embroiled in proceedings under the Divorce Act. Almost all of our separating or divorcing clients have children involved. They are, for the most part, traumatized by their children's experience of being confronted with a court process that is unfriendly towards children's needs to maintain a good relationship with both their loved parents. In short, the system needs repair. That's not news.

The announcement of Bill C-78 was widely praised by a large cross-section of individuals, organizations and stakeholders. We agree with a vast number of those stakeholders that the family law system is in desperate need of deep reform. With the announcement of the bill, the government has indicated a readiness to, at the very least, hear from the above interested parties about how each would suggest that this committee make positive advancements in the legislation governing couples' attempts to reconcile their own breakup while looking after the delicate needs of their children.

Legislation is pivotal in these parent-child relationships. It can grease the improvement of those relationships or help tear them apart. ln either case, the health and well-being of the child can be significantly affected.

We're advocating for an equal shared parenting presumption. Equal shared parenting, from our perspective, means that children have as close to an equal amount of both parents' time as well as being subject to both parents' judgment on long-term and important issues relating to the child.

I'd like to turn it over now to my colleague to talk about why equal shared parenting is most helpful to children.

● (1915)

Ms. Jess Haines (Associate Professor, University of Guelph, Canadian Centre for Men and Families): Thank you so much for the opportunity to be here today.

I'm an associate professor in the department of family relations and applied nutrition. The focus of my research is really exploring how family-level factors influence children's health and well-being.

Historically, research that focused on understanding parental influence on children's health has focused almost exclusively on the influence of mothers. In his seminal work on infant attachment published in 1958, psychiatrist John Bowlby made no mention of fathers. In fact, the title of his work was “The nature of the child's tie to his mother.”

This early research demonstrated the importance of the relationship between the child and their mother. Bowlby showed that children experience distress when separated from their mother, and he hypothesized that these early separations could lead to later maladjustment in the child. Research also showed that children who were well bonded to their mother and whose mother was responsive and engaged with their child had better psychosocial and cognitive outcomes.

As mothers, we received both the credit and the blame for the outcomes of our children, while fathers were largely ignored. This proved to be a mistake, as ignoring fathers failed to acknowledge the important role they play in their children's lives. As recent Canadian statistics suggest, fathers play a key role in the lives of their children.

Since the mid-1970s, the number of dual-earner families with children in Canada has almost doubled, from about 36% in 1976 to nearly 70% in 2014. The number of stay-at-home dads has increased from 2% in 1976 to 11% in 2014. In 2011, over 15% of children in single-parent families lived with their father. In 2010, 81% of fathers reported participating in home-based tasks such as meal preparation and typical housework. Given these significant demographic household shifts, a father's role is a big missing part of the family picture, and researchers are working to address this knowledge gap.

As attachment research evolved, it started to look at how infants connect and engage with their fathers and found that infants bond and connect with both their mothers and their fathers. Moms and dads are both important attachment figures in children's lives, and similar to the results for mothers, there are many positive outcomes associated with children having a secure attachment with their father.

For example, compared to children without a father in their life, children who have a father or a father figure do better in school, and have better social skills and higher self-confidence. These children also have lower levels of depression and anxiety.

The presence of a father may also be associated with a longer life expectancy. A study among nine-year-olds found that children who lost their father due to divorce, incarceration or death had telomeres that were 14% shorter than children who did not lose contact with their fathers. Telomeres are the protective caps of chromosomes, and telomere length in early life is a key predictor of life expectancy. The impact of father presence may be greater for boys. This study also found that compared with girls, the telomere damage from the loss of a father was 40% greater for boys.

Fathers also play a key role in the development of children's health behaviours. Studies in Australia and the U.S. have found strong associations between fathers' eating habits and those of their children. Our own research with Canadian families found that fathers', but not mothers', modelling of healthy food intake was associated with healthier dietary intake among their children.

Fathers also play a key role in children's physical activity. Fathers also seem to play a unique role in children's risk of developing obesity. A Canadian study conducted at the Quebec longitudinal study found that the odds of having obesity at age seven doubled among male children who had fathers with obesity, while there was no association between the mothers' weight and the weight of their male children. For girls, having an obese mother or father was associated with an increased risk of obesity.

A key question arises from these studies. What is the cause of these differences in mothers' and fathers' influence on their children's health and health behaviours? How much of this influence of fathers on their children's health is genetic, and what is related to environmental or behavioural factors?

While additional research is needed to understand these mechanisms of fathers' influence, one potential reason for fathers' unique role with regard to children's health outcomes may be the fact that fathers engage with their children differently than mothers. Compared to mothers, fathers are more likely to use physical play to bond with their children, even in infancy. On average, fathers use more vigorous, stimulating, risky and competitive play with their children. This type of play is thought to help children develop physical skills, learn limits and boundaries, as well as develop social skills and emotion regulation.

● (1920)

Fathers may also differ from mothers in the way that they feed their children. Research suggests that fathers are more likely to focus on children's overall diet, as compared to the specific nutrient quality of foods, which may provide a more holistic or balanced approach to eating.

In summary, the results of this research are clear. Fathers are important to children's health and well-being. They play a distinct role in psychosocial development and long-term health outcomes of their children. Given this evidence, we recommend a family law that promotes equal shared parenting in families. An equal shared parenting approach recognizes the importance of both mothers and fathers and will support the best interests of the children.

Thank you.

The Chair: Thank you very much.

We'll next go to the National Shared Parenting Association.

Mr. Robert Samery: Is there any time left?

The Chair: No, there is not. You exceeded your time.

Ms. Heidi Nabert (President, National Shared Parenting Association): Thank you, Mr. Chair and committee members. We appreciate this opportunity.

First I'd like to address the areas of agreement. The National Shared Parenting Association applauds the adoption of new terminology to describe child custody, access and support relating to children and families post-separation and post-divorce. Although the terminology does not address some of the key issues that continue to face children of divorced families, the new terms “parenting order”, “contact order”, “parenting time” and “decision-making responsibility” better reflect that the Divorce Act and its enforcement are for families, and the new family-friendly language is more appropriate to describe Canadian families that are facing separation and divorce.

Our overview and analysis of Bill C-78 are based on the justice department's press release of May 22, 2018. The National Shared Parenting Association is going to address the four key objectives of the bill, namely, the best interests of the child, addressing family violence, helping to reduce child poverty, and making Canada's family justice system more accessible and efficient.

We begin with best interests of the child. Currently, the Divorce Act bases the best interests of the child on a series of questions that are open to interpretation by a family court judge. Although most often the family court judge will review the past and present parenting arrangements when a family separation occurs, it can often become a wake-up call or a signal for some parents to the importance of exercising the maximum contact rule with their child. Even though the parenting time history of that parent is not consistent with the rule, it should not penalize the child from benefiting from the maximum contact rule with that parent.

Under these circumstances, the court should not infer a negative view of the parent seeking to expand the parenting time with his or her child based solely on the history of the parent-child relationship prior to the family breakup. A child's needs are paramount under all circumstances, and if one parent who has not been involved prior to separation shows a genuine interest in expanding their parenting time post-separation, ultimately this is of great benefit to the child and should be considered to be such.

Children of divorced and separated families face difficulties stemming from the loss of consistent and predictable parenting time with both parents. Often, after a family separates, the child spends the majority of parenting time with one parent—usually the mother—and very limited parenting time with their father. Parents are the foundation of a child's well-being. Their feelings of security and safety stem from the consistent time they spend with each parent and the benefits of the parenting they receive from each parent.

Although the maximum contact rule is cited, it is most often not incorporated into final court orders for parenting time with the non-custodial or non-primary parent—usually the father. With flextime, many more professionals are able to work from home, allowing for working parents to care for their children with a shared parenting schedule. Assuming that family violence is not present or has not been an issue in the past, a shared parenting court order is what is best for our children.

According to the Public Health Agency of Canada, of all reported violent crime in 2016, approximately 26% resulted from family violence in which 67% of the victims were women and girls, and 33% were men and boys. While family violence can be very detrimental to children, thankfully it remains a relatively small percentage, but nonetheless needs to be taken seriously within the family court proceeding.

Of equal importance is when a false allegation of abuse has been made in order to gain the upper hand in family court proceedings. Criminal proceedings can take up to 18 months to resolve for the accused—usually the father—all while a status quo has been established with the children and the accuser—usually the mother. The children are the biggest losers in this scenario. The family courts have an obligation to help re-establish the parenting relationship between the children and their father, assuming he has been exonerated of all charges.

While the percentages imply that the violence is most often perpetrated by men, interestingly the statistics for those in same-sex partnerships, in particular women who self-identify as lesbian or bisexual, show significantly higher rates of violence by partners than did those for heterosexual women.

● (1925)

Next we will focus on reducing child poverty.

While child poverty is an ongoing concern, according to the Department of Justice, studies have identified that child support is a key factor in lifting families out of poverty following a separation or a divorce. There are no easy answers. However, the child support enforcement process appears to be working to help with that issue.

In regard to the objective of making Canada's family justice system more accessible and efficient, the current family court process is complex, slow and costly, which accounts for the increase in self-represented litigants in family court. According to Justice Canada, the number of self-represented litigants has increased over the last five years to between 50% to 85%, primarily because they are unable to afford legal counsel for family court proceedings.

Self-represented litigants are often identified as being the main source of clogging the family courts, as judges are faced with having to explain the process rather than preside and make decisions. It is of paramount importance for the justice department to simplify the family court process, allowing for the large number of self-represented litigants to better understand what is required and how to prepare.

For example, when it comes to a child support obligation, when a payer's income increases, it is a relatively simple process to amend the amount being paid. However, when a child support payer loses his or her job, the process to vary child support in a court order can take several months and up to a year to amend the court order. While the legal proceedings are going forward at a snail's pace, the child support collection agency begins the process of implementing punitive measures such as confiscating a driver's licence or passport, which ultimately makes it much more difficult for that payer to find a job.

From a logical standpoint, when a person does not have a regular income due to job loss, they are unable to afford a lawyer to help amend their child support obligation, all while they're struggling to pay the court-ordered support, which no longer reflects their current income level.

In closing, the process to vary a child support order when a payer faces a job loss should be as simple as when a payer's income increases. It is incumbent upon the justice department to implement measures that help make that possible so that the payer can focus on getting back into the workforce rather than dealing with the related stress of proceeding to family court for up to a year as a self-represented litigant.

The end result would be that the child support is paid based on the current income and reduces the number of self-represented litigants in family court, thereby speeding up the process for all Canadians in family court.

Thank you.

● (1930)

The Chair: Thank you very much. At seven minutes and 55 seconds, you came really close.

Ms. Heidi Nabert: Oh, I'm up for that prize.

The Chair: Absolutely. Well done.

Ms. Heidi Nabert: Thank you, Chair.

The Chair: Ms. Ajibolade, the floor is yours.

Ms. Abimbola Ajibolade (Executive Director, The Redwood): Thank you, Mr. Chair and honourable members.

As an advocate for women and children survivors of domestic violence, I believe the introduction of Bill C-78 is significant and long overdue. In the proposed Divorce Act, the best interests of the child take centre stage and key considerations of family violence, child poverty, accessibility and efficiency are taken into account. This new legislation will serve as a much-needed benchmark for family law practice Canada-wide, an exemplar for amendments to provincial and territorial legislation.

Finally the voices of survivors are being heard. Failing to take into account the impact of family violence has been a grave injustice and the fallout has been profound. We are now at a turning point in family law history and I applaud the justice minister for these progressive reforms and commend her commitment to protecting the best interests of the child.

This evening, I would like to make a number of recommendations, as my colleagues in the violence against women sector have made. I believe they would further improve the proposed legislation. Firstly, for a more timely, effective and easier approach to navigating the family court system, recommendation one calls for a unified family court system that permits all aspects of family law to be dealt with in a single court. The one court could determine all the legal issues in a family dispute related to property matters, divorce, custody and child protection.

Secondly, I call for the removal of the 40% rule in the federal child support guidelines. Given that women continue to disproportionately represent primary caregivers and carry the majority of children's expenses, this 40% rule will only continue to intensify the feminization of poverty. In addition, having time as a determinant to shared custody is inconsistent with upholding the best interests of the child as it can lead to a parent demanding more time with the child in order to avoid paying child support.

A much critically needed reform that we are pleased to see is the less onerous notice requirements for mothers forced to move location with their children because of safety concerns. The period of separation is particularly dangerous for those leaving abusive relationships. The intensity of violence escalates at this time as does the risk of domestic homicide both for women and children.

However, to enhance this amendment's efficacy, I recommend that greater structure and predictability is required for these relocation cases. The act does outline notice periods, jurisdiction and paramount consideration, but it may not go far enough for lawyers to give their clients a better idea of whether they will be successful or whether they are gambling with much-needed financial resources.

Unlike many other survivor advocates, I champion the measures that encourage alternative non-litigation processes. The dominant critiques are valid and definitely must be kept in mind to inform best practices to mitigate risks and ensure fairness. However, I believe that there is great potential so long as there is intentional forethought into how best these alternative approaches can be applied. I know that many of my colleagues did mention this screening, which is very critical.

Recommendation four calls on the federal government to increase its efforts towards greater innovation in the planning and implementation of these alternative family dispute resolution processes. Adaptations to best accommodate the needs of vulnerable parties may include mediation with a support person, and shuttle or caucus mediation where parties remain in separate rooms and the mediator acts as an information conduit. In high-risk cases, parties can be asked to visit the facility on different days or possibly there would be telephone or online mediation in some circumstances.

These considerations essential to safeguard survivors' needs lead me to my next recommendation, which calls for specialized training in family violence and cultural competence for mediators, family courts, judges, lawyers, custody evaluators and other court workers. Furthermore, there needs to be greater commitment and assurance for the betterment of education on these issues in Canadian law schools.

As you can all imagine, the impact of family violence further compounds the adversity and stress inherent to a family breakdown. Exacerbating these challenging times is trying to navigate the family court system, especially for those litigants having to self-represent. With that said, recommendation six calls for improved access to services and resources that could help and assist families throughout the separation process. This may include the provision of a free advocate, who would provide guidance and support, easy to access information and tools, and improved access to legal aid.

● (1935)

I thank you for this opportunity to share my thoughts on this incredibly valuable reform to family law in Canada.

The Chair: Thank you very much.

We'll now go to West Coast LEAF.

Ms. Elba Bendo (Director of Law Reform, West Coast LEAF): Good evening and thank you for inviting us to make submissions on Bill C-78.

My name is Elba Bendo and I'm the director of law reform at West Coast LEAF. West Coast LEAF is a B.C.-based feminist legal advocacy organization. Our mandate is to use the law to create an equal and just society for all women and people that experience gender-based discrimination.

Right now, I'd also like to introduce Kim Hawkins, who's the executive director of Rise Women's Legal Clinic. Rise is a student clinic that provides legal services to low-income women on family law and related issues and we've asked to share our time with Ms. Hawkins.

Like many before me, I would like to say that West Coast LEAF welcomes the important amendments proposed by Bill C-78. We are very glad that the intended purpose of the legislation—to promote faster, better and more cost-effective solutions to family law disputes—recognizes the difficult reality that many people across this country are alone in navigating the legal system during what is often one of the most difficult times in their lives.

Earlier today, you heard from NAWL, who brought to your attention the fact that 31 organizations representing women in all their diversity share in the view that a robust framework around family violence is needed to collectively advance the four goals of this legislation, including that of promoting the best interests of the child.

The reason that I believe you are seeing such a strong and uniform showing on the issue of family violence is that, for decades now, there's been clear and well-documented evidence of the links between family violence, marriage, parenting and divorce. What this evidence has been clearly telling us is that, in some circumstances, increased communication and co-operation among spouses is not in the best interests of the child, and in fact can have dire consequences for women and children.

In our brief, we set out the provisions regarding communication and co-operation that are at the greatest risk of producing harmful outcomes in the context of family violence. In an effort not to duplicate our brief, I will focus my submissions on only two. First, the maximum parenting time provision and also what is commonly referred to as the “friendly spouse” provision, set out in proposed paragraphs 16(3)(c) and (i).

These provisions prioritize paternal rights over the best interests of the child. While these two interests often coincide, this is rarely the case in the context of family violence. In fact, research shows that contact with a violent parent is often not what is in the best interests of the child and can have dire and, at times, lethal implications for children. In practice, these provisions perpetuate problematic myths that suggest that women have malicious intentions to alienate fathers in divorce proceedings. Despite having been firmly debunked, these myths have been relied on to discredit women's legitimate claims of violence over the years, and are, sadly, alive and well in family law proceedings today.

Contrary to these myths, studies show that mothers overwhelmingly want fathers to spend time with their children. Studies also show that there are an increasing number of joint custody and shared parenting arrangements in Canada and that statistics that, at first glance, appear to indicate a bias in the system are really more reflective of the number of fathers that seek custody. In fact, fathers are awarded primary or joint physical custody a majority of the time, when they actively seek it. This is often the case, even when there are allegations of family violence.

These concerns were recognized in B.C., where the new Family Law Act not only excludes these presumptions about what is in the best interests of the child, but specifically directs the courts to not presume that shared parenting time is in the child's best interests. In turn, the act emphasizes that some of the circumstances that are relevant to what is in the best interests of the child include the nature and strength of the child's relationship with significant persons in the child's life, the history of the child's care and the impact of family violence on the child's safety.

We strongly believe that the objectives of the act will be better served with the incorporation of similar language and recommend the removal of the maximum parenting time and friendly parent provisions from this bill.

Due to time constraints, I will end it here and pass it over to Ms. Hawkins.

● (1940)

Ms. Kim Hawkins (Executive Director, Rise Women's Legal Centre, West Coast LEAF): Thank you. I will try to be brief.

As everyone here I'm sure is aware, in 2013 British Columbia updated its family law legislation and adopted the new Family Law Act, or FLA. The Family Law Act changed the law in B.C. by providing a consistent approach to the identification and assessment of family violence and created new duties for family dispute resolution professionals to assess for the presence of family violence. The reason I expect you're aware of this is that many of the ideas and the provisions in the FLA have influenced the amendments being proposed in Bill C-78, so that places those of us who work in B.C. in a unique position to comment on how these provisions are being interpreted and developed.

Unfortunately, our experience as family lawyers shows and research from B.C. confirms that, in many cases, despite the very positive legislative changes, judges are not, first of all, getting relevant information about family violence, which they're required by law to consider. Even where that information is available and judges find as a matter of fact that family violence has occurred, misinformation and stereotypes about family violence continue to influence outcomes of cases. While judges have been very receptive to applying an expanded definition of "family violence", lawyers and judges continue to make a number of problematic assumptions about family violence.

For example, in some B.C. cases courts have continued to effectively read in a friendly parent rule and emphasize maximum contact, even though there was a deliberate decision in B.C. not to include those Divorce Act norms. This approach can and does end up privileging contact time at the expense of reviewing the best interests of the child and considering family violence, and in some cases, ends up ignoring the actual imperative in section 37 of the Family Law Act, which emphasizes that a child's safety is to be protected to the greatest extent possible.

We continue to see cases where judges assume that because a child was young when the family violence occurred, it will not affect them, despite the fact there is evidence that family violence can harm even infants and toddlers. We continue to see cases where it is assumed that abuse that is directed at one of the children's parents has little to do with overall parenting ability.

We continue to see an unwarranted optimism that violence ceases upon separation and that, in spite of a history of violence, it's appropriate to require victims of that violence to now work co-operatively with the abusive spouse, and that this can be done without risk. We continue to see myths about women's credibility, for example that credible women will disclose violence early, will report violence to the police, and will leave their relationship and not return, even though we know that it often takes women multiple attempts to leave abusive relationships.

The critical lesson to take from the B.C. experience is that to ensure the changes that are being made to the legislation have their intended effect, you must go further than simply directing courts to consider family violence.

First, we fully support the requirement that our colleague spoke about earlier, which is that family law professionals obtain mandatory training in the dynamics of family violence, including how to screen effectively for family violence.

I can promise you that understanding of and sensitivity to family violence did not crystalize in B.C. overnight when the Family Law Act came into effect. Lawyers do not, in my experience, have any special insight into the dynamics of family violence without some form of ongoing training. At our student clinic we regularly have women attend the clinic who tell us that their counsel didn't ask them about family violence and told them not to speak about family violence because it would be messy, would raise issues of credibility, and often they already have orders in place.

As you all know, to change a family law order often requires showing a material change in circumstance, so the decision not to disclose early can have very important implications on the ability to change that order later. Without mandatory education on family violence, the legal system will respond much more slowly, despite the best of intentions, including those provisions.

Second, we support the approach that was proposed by NAWL earlier tonight about including specific provisions in the family law act that would prohibit courts from making certain inferences about abused parents that are based on specific identifiable myths and stereotypes. You already have that brief. I'm not going to go through the various stereotypes and inferences they discussed. This approach does have a clear precedent in section 276 of the Criminal Code, which stipulates that evidence of prior sexual activity is not admissible to support the twin myths often found in sexual assault discourse. Those twin myths are that somebody who's had prior sexual relations is more likely to have consented and is less credible as a result. Those provisions have had a really important influence on the development of sexual assault law in Canada.

● (1945)

Like sexual assault, family violence is a practice of inequality and is one of the clearest expressions of discrimination against women in society. As in the Criminal Code, clear direction in family law acts and in amendments to the Divorce Act would have the effect of refocusing family law cases on evidence that is actually relevant to the material issues in the case and the outcomes, and supports equality of outcomes rather than allowing essentially misinformation and myths to distort the legal process. It would be incredibly helpful in ensuring that the provisions that everybody is working so hard to put in place are fully realized.

The Chair: Thank you so much. We will now go to questions.

Mr. Cooper.

Mr. Michael Cooper: Thank you. I'll direct my questions to the Canadian Centre for Men and Families and the National Shared Parenting Association, whichever group wishes to respond.

On Monday at committee Professor Irvine made a statement on the issue of shared parenting, where she said, " I don't know what the issue is. We had shared parenting at 13% in 1995. It's gone up to 70%". I would take it, Ms. Nabert, based on some of your testimony, that you would agree that the statement made by Professor Irvine does not really tell the full picture.

Would you agree with that?

Ms. Heidi Nabert: Yes.

Mr. Michael Cooper: Yes...in light of what you just provided to the committee in terms of some of those statistics.

What would you say, however, to respond to Professor Bala, who submitted a brief to the committee, who asks, first of all, why have a presumption, inasmuch as it's really quite artificial? It doesn't really reflect the situation in most families, where parents don't have shared or equal parenting time. Sometimes there are vast differences in the amount of time that parents spend with the child.

Why not just take the interests of the child approach, as opposed to imposing at the outset this presumption? What's the benefit?

Mr. Robert Samery: I have a couple of comments to make about that. There are presumptions currently in place. The presumption, for example, of the best interests of the child, that's a presumption that we take. The presumption that the parents will work together is also a presumption we take, that you have whatever shared time together on a co-operative basis.

The distinction between parents who no longer get along or who aren't constantly co-operating with each other, as opposed to intact families, where they have to co-operate, is a significant one. The equal shared parenting presumption would impose, on both the parents and the child, access to the parents on as much of a basis as possible, which is what happens now in intact families, except it doesn't always get divided fifty-fifty. As much time as you want with any one of those parents, you get with those parents.

● (1950)

Mr. Michael Cooper: Professor Bala also noted that in jurisdictions that have had shared parenting legislation, or the presumption of shared parenting, one of the consequences is an increase in litigation, particularly among parents who don't get along.

Mr. Robert Samery: He may have been referring to Australia. I believe he might have been. Australia's shared parenting legislation was, as you said earlier, not fifty-fifty, but anywhere from 35% and up, and the vast majority of those shared parenting circumstances were at the lower end. There were very few, and I think the number was in the order of 10% to 15%, which were anywhere close to approximating 50% shared parenting.

One of the reasons that shared parenting is helpful is that it gives you the certainty that one of the other witnesses was talking about earlier. You know that you will get it when you go to court, unless there are certain extenuating circumstances, and you don't fight over who is the better parent and who is the worse parent.

When you have something that's less than fifty-fifty, there's the opportunity to continue to fight over that. We currently see fathers increasing their access to court in order to fight for more parenting time. In my opinion, that will stop or significantly slow down with the presumption of fifty-fifty parenting.

Mr. Michael Cooper: What are your thoughts on the recommendation of the special joint committee of the House and the Senate back in 1997 or 1998, which was chaired, I think, by Senator Anne Cools? The recommendation was not to impose a presumption, but to enumerate factors respecting the best interests of the child, which this bill does, and include in that language such that the court would be directed to give that consideration when looking at the totality of what is, in fact, in the best interests of the child in each individual case.

Would that be a step in the right direction? Would that be helpful or not at all?

Mr. Robert Samery: I acknowledge that it would be helpful, but it doesn't go far enough.

We see constant denigration of relationships between parents with the current regime. There's nothing guaranteeing that will change just by enumerating the factors to consider in the child's best interests. In fact, it may just give a platform to acknowledge why 35% is a better outcome.

That's my opinion.

Mr. Michael Cooper: Do any of the other witnesses have any comments?

Ms. Heidi Nabert: Yes, I'd like to chime in on this.

In all honesty, by starting with a presumption of shared parenting, you take the fight out of the process. I believe that children absolutely deserve to have both parents on a level playing field when it comes to what they benefit from by having both parents involved to the maximum of their ability.

Comparing what occurred in 1997 and the way we live today, it is dramatically different. There are so many more parents of both genders who work from home with flextime, or have the ability to attend a meeting over video conferencing, that the opportunity to be at home with a child has increased dramatically. There is even less of a reason to say no to this.

Whether you are an intact home with father and mother at home 50% or 100% of the time is of no relevance. The point is that the child can depend on one of those parents being there from one moment to the next. Having that security of knowing that both of those parents are there at any given time solidifies a foundation for a child. That doesn't exist in a separated home. When children know they only get to see—in most cases—their father on weekends, that's not enough time to be a parent. In fact, 35% is not enough time, either.

Being able to step up and do the lion's share that's down the middle gives a child an opportunity to see how each gender would address how to do laundry or how to take care of a meal. These are all important life lessons for a child, and I think both men and women address those issues differently.

● (1955)

The Chair: Thank you very much.

We'll now go to Mr. McKinnon.

Mr. Ron McKinnon (Coquitlam—Port Coquitlam, Lib.): Thank you, Mr. Chair.

I'm going to start with Mr. Samery. In the beginning of your remarks you said that violence is not a gendered issue. I found that interesting, because that's certainly not my observation or experience. I wonder if you could elaborate on what you meant by that.

Mr. Robert Samery: What I meant was simply that a victim is a victim and not a member of a particular group. Men are equally victimized in family violence. It's not my number. I didn't pull it out of a hat. It's a number that comes from a long line of Stats Canada surveys over many years. In fact, I can quote you the lines. It also comes from most western countries. The Atlanta Centers for Disease Control has similar numbers.

When you look at domestic violence in terms of death rates, you're looking at an extreme end of the bell curve. When you look at domestic violence in terms of verbal abuse, you're looking at the other end of the bell curve. The centre of the bell curve is where most of the domestic violence occurs. Most of the domestic violence is bilateral, with each partner at times initiating and at times responding over long periods of time.

I'm happy to give you the large studies and the many studies that say that.

Mr. Ron McKinnon: If you would like to supply that to the committee, that would be great.

Mr. Robert Samery: We have it.

Mr. Ron McKinnon: I'm going to move on a little bit.

Ms. Haines, your testimony was about the value and the worth of having a father around. That's good to hear.

I don't see where that is in dispute in any way in this legislation. I think this legislation does tend to move towards a recognition that the roles are changing and that fathers are involving themselves more in parenting and in different roles. Why is that is your focus?

What do you see about this legislation that is putting that into question? How would you change it?

Ms. Jess Haines: I wouldn't say that we're saying it calls it into question. We're just highlighting the importance of focusing on the thought of shared parenting, and then the argument for equal shared parenting as the presumption, which currently isn't in the bill.

Mr. Ron McKinnon: Okay.

I'm going to move to the west coast now, the best coast—no preferences here.

Ms. Hawkins, you spoke about judges not getting relevant information about violence. Of course, I immediately thought to ask you about mandatory screening, and then you said it's a good idea. I guess I'll ask you more about mandatory screening. Who would do this? You said lawyers often don't ask about violence. Are you aware of any good tools or best practice approaches? Who would administer this kind of screening? Would that actually be available and useful for judges?

Ms. Kim Hawkins: In British Columbia we have a requirement for family law professionals to assess for family violence. We don't have a requirement to screen, but we have this order that we're supposed to assess and then make recommendations based on that. There is no mandatory process to do that, so that's pretty much left up to individual lawyers to assess in the manner they think is appropriate, including getting training if they think that is appropriate. Many people don't.

There's not a requirement to screen using an accredited tool, which is what was proposed by NAWL. There are a number of tools across the country in development. There are relatively few, I think, that are specific to law. A lot of them have been developed in other areas. I understand that there is one being developed with the CBA, and I believe Luke's Place is also working on trying to take some of the best practices and come up with a tool that can be used. Right now, in B.C., we don't have a standard tool.

I think that, in terms of being able to understand family violence, it is important that training of some description happen across the board, so that it happens with lawyers who are going to be meeting with clients and it happens with mediators. Mediators in B.C. are required to have family violence training. They are the group that is actually required to have some training. You then start to have questions about who is doing the screening, whether the mediator's going to do it or whether the mediator relies on the lawyer's assessment and just takes that as good enough, in cases where people are represented. There's not very much standardization in B.C. Some direction and clarity on that would actually be very helpful, as well as making sure it actually happens.

● (2000)

Mr. Ron McKinnon: If there were mandatory screening—or if there's any screening at all done by one party or another—it seems to me it would have to be done by a neutral third party or some friend of the court, so that the information would be available to the court and not be privileged information. Would you say that?

Ms. Kim Hawkins: In B.C. we have a serious problem that a lot of family law litigants aren't represented, but in cases where people have lawyers representing them, it would make sense for lawyers to be able to do that screening and present that evidence to the court. In cases where people aren't represented, or in cases where that information just hasn't been brought to the attention of the judge, Donna Martinson has done a number of papers around specialist training for judges, or using judges who have access to specialized training and also talking about the role of judges and giving them the ability to ask those questions if they're not receiving the information from the parties or the lawyers.

Mr. Ron McKinnon: Thank you.

The Chair: Thank you very much.

I'd like to ask everybody to please put on your headphones for translation, in the event that you are not fluent in French.

[*Translation*]

I'll now give the floor to Ms. Sansoucy.

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

My first two questions are for Ms. Ajibolade.

In your conclusion, you said that the government must support the organizations that assist less fortunate families with the divorce process. You also talked about improving access to legal aid. In light of your experience, I want you to share your views on a recommendation made by a witness, Ms. Irvine, at a previous meeting. She said that children must be represented on a legal, medical or psychological level by a professional who would take only their needs and interests into account, separately from the needs and interests of each parent.

Have you ever heard of this type of support?

[*English*]

Ms. Abimbola Ajibolade: Within the shelter where I work, we do have child advocates. It is really important for the child to have support in place, someone who can do a bit more assessment. We've seen a lot in terms of behavioural changes with children when they first come to the shelter. The impact of abuse is just a lot. It's way more than I can even describe in this room today. We've seen lots and lots of changes in children when they come. It has been a lot of work to get them to unlearn some behaviours they have learned as witnesses or as people who have experienced abuse.

Definitely it would be beneficial to the child if there was an advocate or some form of support for the child. Maybe it even makes it less adversarial between the two parents that this child has a voice through this advocate or this independent support.

[*Translation*]

Ms. Brigitte Sansoucy: You said in your presentation that, unlike many other groups, you're in favour of dispute resolution alternatives. This issue is addressed in Bill C-78. We're talking here about out-of-court settlements.

Many of the people who have spoken to us on behalf of their organizations consider that this poses a risk to the safety of victims of violence. Therefore, I want you to explain how you think it would be possible to avoid creating disparities, based on the socio-economic background of the families, in terms of safety or access to justice.

● (2005)

[*English*]

Ms. Abimbola Ajibolade: Thank you.

The concerns of my colleagues are really valid. Safety is important, and I will not sit here and minimize that at all. It is important that women and children continue to be safe, that people continue to be safe.

I'm leaning towards creating more alternatives apart from the regular traditional family court system because of what I'm hearing women say. Some women say they don't want to go through the rigorous family law court system. They say, “This relationship has broken down. There is abuse. I don't want to get into more adversarial situations with my partner. I just want there to be a way for us to resolve child custody issues and child support.”

I look back and statistics show that since the beginning of this year, we've lost over 70 women already to domestic homicide. That breaks my heart. That keeps me awake every night. Therefore, my question is, are we getting everything we want to get within the traditional family court system? How about creating alternatives that women can access?

If some women still want to go to the family court, I am all for that. I want to support their choice. However, if they choose to say, "I want to do something a bit different; I just want to get this out of the way and have a less conflicting way of resolving child custody and support, and all those issues, a way that I feel keeps me a bit safer," then I also want to support that. The voices of women should be heard, and that is what I bring here in terms of championing that cause.

[*Translation*]

Ms. Brigitte Sansoucy: Thank you...

The Chair: Unfortunately, your speaking time is up. We'll now move on to Mr. Fraser, who will share his speaking time with Mr. Virani.

[*English*]

Mr. Colin Fraser (West Nova, Lib.): Yes, I'm going to share with Mr. Virani, but he will go first.

The Chair: Okay, sure.

Mr. Arif Virani (Parkdale—High Park, Lib.): I want to start by saying thank you to all of the witnesses. It's been informative and you've come here on a very cold evening. Thank you for doing that.

I will focus my questions with Ms. Ajibolade, partly out of gratuitous self-interest. I'm very proud of the work you do in the riding I represent, Parkdale—High Park, with The Redwood shelter for women and children. It's incredible the amount of support that you offer to the community and the entire city of Toronto. Thank you for that incredible work.

I'm splitting my time with Mr. Fraser, so I'll ask you a couple of questions consecutively. If possible, would you respond trying to leave him some time to also ask a question.

We've heard some discussion about equal parenting. There was a reference made to a 1998 report of the special joint committee called "For the sake of the children". That actually didn't include a presumption on parenting, and as was noted by one of the other witnesses, there is no equal parenting presumption in this legislation. That was very deliberate.

First, I would like to hear your views, Abi, on how the work you're doing to combat family violence relates to equal parenting, because it is our view very clearly in this bill that equal parenting wouldn't account for the family violence that is involved in many of the domestic marital breakdowns that occur. You need to treat each case on a case-by-case basis. Is that important to address the family violence you're combatting?

Secondly, we had this on Monday. Do you feel that the definition of "family violence" as it currently stands is inclusive enough? I'm asking specifically because another witness raised this idea about harassment through cyber-bullying and things like threatening to post pictures on Facebook and spread rumours about a woman through social media. Would you comment on that? Do you think there needs to be a change in the "family violence" definition in the legislation, or is it broad enough, from your perspective?

● (2010)

Ms. Abimbola Ajibolade: Thank you.

On the presumption of equal shared parenting, I completely commend and applaud that it is not in this divorce bill. I think, as you said, it should be treated case by case. Especially in cases of family violence and power imbalance situations, it is appropriate that it is not there. My belief, and what I've heard women say, is that it forces them to have to prove a lot to the courts, prove that the father or the other parent is an unfit parent. It gets messier. I think it should be treated case by case, as you rightly said. I think the intention behind intentionally not including it in this bill is commendable. I'm happy about it.

On the issue of....

Mr. Arif Virani: It's whether the definition of family violence is inclusive enough.

Ms. Abimbola Ajibolade: Yes. I completely agree with my colleagues who talked about the different forms of abuse. It's quite wide, and cyber-bullying is actually a lot.... One of our sister shelters recently put out a public service announcement just about a month ago. It was all focused on a woman persistently being abused through technology, cyber-bullying and all of those things.

Yes, I believe family violence should include all of that and even more. I think it's a step in the right direction, what we have now, but I also think that a little more in terms of language...and the definition needs to be expanded.

Mr. Arif Virani: Mr. Fraser.

Mr. Colin Fraser: Thanks very much.

Thank you to everybody for being here today. I appreciate your input.

Mr. Samery, you said something and I want to make sure I understand. You alluded to the best interests of the child being a presumption. I would suggest to you that it's far more than a presumption in family law. It's long been known in case law, and this bill codifies the fact, that it's the overriding consideration that should be in place in order to determine parental arrangements.

Would you agree with that or did I misunderstand what you were saying about it being just a presumption?

Mr. Robert Samery: I hope you misunderstood because I agree with that completely.

Mr. Colin Fraser: Okay. Thanks.

Ms. Bendo, I will take a slightly different angle from my colleague a moment ago. You had indicated that your organization is against putting the "maximum parenting time" principle into the bill even though it says that it has to be consistent with the best interests of the child. You came at it from the angle that this is because of family violence that occurs in many instances and that may not come forward otherwise.

If there was no family violence at all in a particular case, no possible evidence that was even remotely true, would you then still be against the principle of maximum parenting time?

Ms. Elba Bendo: I know that in the panel before me, Ms. O'Brien referenced all durations in parental responsibility post-separation. All I can do in answering your question specifically is to leave it at that, because I don't have any further comments on whether, if there were no family violence, we would still not want the provision in the bill.

I would like to restate what Ms. Hawkins stated, which is that this provision has been removed from the B.C. Family Law Act explicitly. Despite clear provisions in the act that suggest that this should not be considered by judges at all, judges do consider it. They consider it very often. It is a presumption that lies very closely to the way they determine parental responsibility, custody and time.

● (2015)

Mr. Colin Fraser: How was that removed from the B.C. legislation? Was it removed by another statute, or a committee?

Ms. Kim Hawkins: In section 40 of the Family Law Act, it explicitly states that no parenting arrangement is presumed to be in the best interests of the child. There's also explicit direction that parenting time and parenting responsibilities should not be presumed to be allocated equally. The idea of maximum contact was not included, and there was also a specific direction saying that there is not a presumption.

Mr. Colin Fraser: Thanks.

Ms. Elba Bendo: May I just make one final comment in answering?

You posed a question about when there is no family violence. One thing I thought of is that in the B.C. Family Law Act, a provision has been added that says that some of the circumstances relevant to what is in the best interests of the child include the nature and strength of the child's relationship with significant persons in the child's life, as well as the history of the child's care.

To me, that indicates that when considering what is in the best interests of the child, the legislature clearly found that some stability in the child's relationship with each parent was important. I think that goes to what Ms. O'Brien mentioned regarding the maximum parenting time.

Mr. Colin Fraser: Thank you.

The Chair: Thank you very much.

I want to thank our panel of witnesses. You've been very helpful. I'm very appreciative of your time here.

Before we conclude this meeting, we have to elect the Conservative vice-chair of our committee. I believe we're going to be electing Mr. Cooper.

Can I have a motion to nominate Mr. Cooper for vice-chair?

Perfect. It looks as though everyone is moving that.

(Motion agreed to)

The Chair: Congratulations on that illustrious move from that chair to this one.

Some hon. members: Hear, hear!

The Chair: Thank you again. The meeting is adjourned.