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Chair

Mr. Anthony Housefather

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• (1530)

[English]

The Chair (Mr. Anthony Housefather (Mount Royal, Lib.)): Good afternoon, everyone, and welcome to this meeting of the Standing Committee on Justice and Human Rights.

[Translation]

Ms. Sansoucy is replacing Mr. Rankin. I am very pleased that she is joining us for the consideration of Bill C-78.

[English]

It is a great pleasure to commence our study of this very important bill with the Honourable Jody Wilson-Raybould, our Minister of Justice and Attorney General of Canada, who is testifying.

She is joined by two distinguished representatives of the Department of Justice, Madame Nathalie Drouin, deputy minister of justice and deputy attorney general of Canada, and—this time we have only one Laurie—Laurie Wright, senior assistant deputy minister.

Madam Minister, the floor is yours.

Hon. Jody Wilson-Raybould (Minister of Justice and Attorney General of Canada): Thank you, Mr. Chair.

Of course, thank you to all of the members of this committee for the opportunity to present on an incredibly important bill, Bill C-78, an act to amend the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act and the Garnishment, Attachment and Pension Diversion Act and to make consequential amendments to another act.

I am incredibly proud of the work our government has done to improve the lives of Canadians experiencing separation and divorce, particularly children. Bill C-78 is the cornerstone of this work.

Federal family laws have not been substantially updated in over 20 years. Over the past two decades, families have changed considerably, and so has our justice system. Our government understands that there is much to be done in order to improve federal family laws and family justice systems so that they better meet the needs of Canadians.

Separation and divorce can be incredibly difficult for families, especially children. For most Canadians, their only interaction with the justice system will be through the experience of family breakdown. Two million children in this country are impacted by separation and divorce. With this bill, we are taking concrete steps to

help parents come to a timely and lasting resolution of their disputes, with the primary focus of what is best for their children.

Bill C-78 advances four important goals: promoting the best interests of the child, addressing family violence, reducing child poverty, and improving efficiencies and accessibility to the family justice system.

I will briefly address each of these in turn.

Promoting the best interests of the child is a common theme, tying together all policy initiatives reflected in this bill. The primacy of the best interests of the child is a fundamental principle of Canadian family law. Bill C-78 will further entrench and bolster this principle.

The bill includes a non-exhaustive list of criteria for a court to consider in determining the best interests of the child, including elements such as the child's needs, given the age and stage of development; the child's relationship with people in his or her life, especially parents, but also others such as grandparents; and the child's culture and heritage, including indigenous heritage.

The bill also proposes a primary consideration. Any plans for the child's care, any allocation of time or responsibilities, and any imposition of terms or conditions in a parenting order would have to be made on the basis that the child's physical, emotional and psychological safety, security and well-being must be considered above any other matter.

The bill also removes the archaic language of custody and access that the Divorce Act currently applies to parents' relationships with their children. The Ontario Court of Appeal and several associations of family justice professionals have highlighted that these labels focus more on parents winning and losing rather than on what is best for the child.

Instead, Bill C-78 embraces the principle that children are individuals who have their own needs and rights, and therefore, it proposes clear definitions of "parenting time" and "decision-making responsibility". Children's rights organizations have been particularly supportive of this proposed change.

The bill does not contain any parenting presumptions, such as equal shared parenting. Rather, it focuses on what is best for each child. A presumption would force courts to impose one particular parenting arrangement on every family unless a party could convince the court otherwise. This would mean that judges would have to be actively involved in more cases to hear evidence to displace the presumption, which could increase conflict between parties and place additional and unnecessary pressure on already overloaded family courts.

Moreover, in cases that involve family violence, abused spouses may not have the financial or emotional resources to prove to a judge that the presumption would not be in the child's best interests. Fundamentally, a presumption would detract from the focus on the best interests of each individual child, which the bill aims to promote.

We know that each child and each family is different, and children deserve to have their own unique needs and situations considered. That is why we have taken this approach.

Bill C-78 will still preserve the maximum-contact principle that a child should spend as much time with each parent as is consistent with the best interests of that child. This would not be a parenting presumption, however, and it would be subject to the primary consideration of the child's physical, emotional and psychological safety, security and well-being.

For the first time ever, we are defining family violence in the Divorce Act. In Bill C-78, we have introduced an evidence-based definition of family violence that provides a non-exhaustive list of different forms of family violence and is designed to evolve over time to capture additional behaviours and patterns as our understanding of family violence expands.

This definition explicitly mentions "coercive and controlling" violence, which social scientists believe to be the most dangerous form of family violence. Again, this definition is designed to evolve over time to capture additional behaviours and patterns as our understanding of family violence expands.

The bill also proposes best interests of the child criteria to help courts draft a parenting order where there has been family violence. These criteria will also be subject to the primary consideration that the child's safety, security and well-being would be considered above all else.

The bill introduces other measures to keep family members—especially children—safe. The non-removal provisions will help prevent child abduction in appropriate cases. Another provision will remind courts of the option to order supervised parenting time to promote safety and reduce children's exposure to conflict.

Our government has committed to lifting Canadians out of poverty. In addition to initiatives like the Canada child benefit, we are supporting middle-class families by helping to ensure families facing separation and divorce have the support payments to which they are entitled. We know that families are especially financially vulnerable in these circumstances.

Single-parent families have a significantly lower median net worth than do couples with children and tend to have lower levels of employment. We also know that single-parent families are disproportionately led by women, so these financial pressures contribute to the feminization of poverty. Receiving a fair and accurate amount of child and spousal support can help prevent these families from experiencing poverty. Addressing family poverty helps to target child poverty, which we know can have long-lasting impacts. Bill C-78 therefore proposes several important changes to make it easier for families to receive the support to which they are entitled.

A significant impediment to families receiving the child support they need is parties' failure to disclose incomes, despite their obligation to do so. The bill will amend the Family Orders and Agreements Enforcement Assistance Act to allow the federal government to provide information from a party's tax returns to a court as well as other provincial services such as maintenance enforcement services and provincial child support services.

There are currently billions of dollars in unpaid child support payments in Canada, the vast majority of which are owed to women. With this bill, we are giving provinces, territories and individuals more tools to ensure that those obligations are being paid. The bill includes rigorous privacy protections to support this change. If this information were released to a court, it would have to be sealed and kept inaccessible to the public.

The bill's fourth priority is increasing access to justice and improving efficiency. Bill C-78 will provide parents with more options to resolve family law disputes. While the courts may be the best route for some families, others may benefit from out-of-court dispute resolution processes as a lower-conflict, more expeditious and lower-cost option. These processes enable parents to play an active role in crafting their own agreements, which increases compliance and makes for better agreements that are uniquely adapted to each family's situation.

However, Bill C-78 does not make family dispute resolution mandatory. Situations of family violence or power imbalance can make some mediation or dispute resolution processes inappropriate. What Bill C-78 does is require that lawyers must now inform their clients of all their options, both in and out of court, so that families are sufficiently informed of all available options.

In conclusion, Bill C-78 includes a number of other important changes that I'm happy to discuss further, but for now I would like to thank all the members of the committee for the meaningful work that you will undertake in studying this bill and for the ongoing dedication to making Canada's laws as strong as they can be.

• (1535)

Through Bill C-78, we have an important opportunity to make a real difference in the lives of Canadian children and families. Separation and divorce are among life's most challenging events, and I am proud that Bill C-78 proposes significant ways to make these processes a bit easier for all involved.

Thank you, Mr. Chair.

The Chair: Thank you very much, Minister. We really appreciate that.

We will now go to Mr. Clement.

Hon. Tony Clement (Parry Sound—Muskoka, CPC): Thank you, Chair, and thank you, Minister, for being available for this important bill.

I want to convey to committee members that I have two notices of motion, and I will read them now. We won't debate them now, as I understand it. I don't want to cut into the minister's time, but I did want members to be aware of these notices of motion.

The first one says:

That the Committee invite the Minister of Justice and Attorney General of Canada to appear to answer questions with respect to any rules, precedents, or procedures related to the invocation of cabinet confidence to prevent the disclosure of information as requested by counsel in a trial process.

This, obviously, relates to the Norman issue.

My second notice of motion is:

That, pursuant to the Order of Reference of Wednesday, October 24, 2018, the Committee consider the Supplementary Estimates (A) before the reporting deadline set out in Standing Order 81(5); and that the Committee invite the Minister of Justice and Attorney General of Canada to appear in view of this study.

I want to get that on the record and proceed with a few questions and answers, if you don't mind, Minister.

First of all, I note that there's quite an increase in the judicial system when it comes to self-represented litigants. That's true of many courts, not just the family court, of course. Bill C-78 is now four times longer than the previous act, so non-lawyers are going to have difficulty, I would say, digesting all of that and making sense of it.

I wanted to get your thoughts, Minister, on how this will impact case management and not lead to a further bogging down of the family court system, which, I think you will agree, is somewhat overburdened right now.

•(1540)

Hon. Jody Wilson-Raybould: Thank you for the question. It's a pleasure to have you at this committee.

As to the further bogging down of the family justice system, I will answer that by reference to a number of tools we're working on to provide information and resources not only to self-represented litigants but also to individuals, legal agents and lawyers involved in the family justice system.

Of course, our department is going to work very diligently to provide information and materials to the public on the various aspects of Bill C-78. We are in the process of working on that and will do so in conjunction with our colleagues in the provinces and territories, who are also responsible for the shared administration of justice in the family courts.

Beyond that, I'm pleased that in the previous budget we were able to receive endorsements for 39 new judges, who will comprise an expansion of the unified family courts in four jurisdictions, which will help to streamline the process. By introducing changes to the Divorce Act and the other acts, we are updating and modernizing the acts. We have been doing so in concert with my colleagues in the provinces and territories. I look forward in the next week to sitting

down with my colleagues to discuss Bill C-78 and the tools we are going to be making available.

Hon. Tony Clement: Given the, I must say, poor track record on judicial appointments of this government to date, how can Canadians be sure that these promises will be fulfilled?

Hon. Jody Wilson-Raybould: I would say that I'm incredibly pleased with the track record of our judicial appointments. Since I became minister, we have made over 235 appointments or elevations of extremely meritorious individuals, who now sit in the superior courts across the country and reflect the diversity of Canada.

We are continuing to work very diligently with the judicial advisory committees to process applications. I would urge you, my colleague, and all of the other members around this table to encourage individuals who would qualify as judges to put their applications forward.

Hon. Tony Clement: The issue is not the applications, it's the actual process by which you decide and determine....

However, let's leave that and go on to the children, Minister, because you did highlight the importance of protecting children and their well-being and how that is obviously of primary importance.

I do want to comment, though, that this committee has just been through Bill C-75. Of course, that bill proposes summary conviction options for very serious crimes, including the abduction of a child under the age of 14, participating in activities of a criminal organization, forced marriage, and marriage under the age of 16. These are all hybridized offences now.

How do you square what we saw in Bill C-75 with your rhetoric today about children's protection?

•(1545)

Hon. Jody Wilson-Raybould: I appreciate the question. I completely disagree with the characterization of rhetoric.

Bill C-78 is a very substantial, significant piece of legislation. It seeks to update the Divorce Act, which hasn't been updated in two decades, as well as to ensure that we are putting in place factors that will enable and assist a judge to determine the best interests of the child, and factors around domestic violence and relocation, all of which are to protect and put a child first.

In terms of Bill C-75, which is our criminal justice reform bill, I am very familiar with the 136 offences that we're seeking to hybridize in that piece of legislation. I will say, as I've said many times before this committee, but particularly in the House, nothing in terms of the hybridization of offences changes the fundamental principles of sentencing. Serious offences will still be prosecuted in a serious manner, due to and having regard to the proportion of the gravity of the offence and the degree of responsibility of the offender.

We are not reducing sentences. We're providing prosecutors with the necessary tools and discretion that they need to proceed in the manner that is most appropriate in the individual circumstances of a particular case.

The Chair: Sorry, you're over the seven minutes now.

Hon. Tony Clement: Okay. Thank you.

The Chair: Thank you very much.

We're going to go to Mr. Ehsassi.

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

Thank you, Minister.

Hon. Jody Wilson-Raybould: Thank you.

Mr. Ali Ehsassi: It's great to have you back. Thank you so much for this incredible bill.

As you rightly noted, this is the first substantial update of the family law regime that we've had in over two decades. It was incredible to see all the changes that are being made.

My first question has to do with the fact that this proposed bill will incorporate the Hague conventions, more specifically the 1996 Hague convention, and the 2007 one. In addition, finally, we will come into full conformity with the UN Convention on the Rights of the Child.

Would you mind sharing with us how significant this is?

Hon. Jody Wilson-Raybould: Thank you for the question.

In terms of the last convention you mentioned, the rights of the child, we're pleased, in terms of being able to assess the best interests of the child. One of the factors for a court to consider or individuals to consider in terms of the best interests of the child is the child's interests and the child's views, in appropriate circumstances. That brings us into compliance with what has been asked for in that particular convention.

In terms of the other two conventions, Bill C-78 provides us with the steps to be able to accede to those other two conventions, as you say the 1996 Hague convention on the protection of children, and the 2007 convention on child support. As you probably know, these are significant conventions, and we will be able to move forward with signing on to these conventions.

Briefly, the 1996 convention sets out rules to clarify issues, such as what country's courts can make decisions about parenting arrangements for a child, and what law should apply when a child lives in one country but also has close connections to one or another country. The 2007 convention is an international agreement that provides a low-cost and efficient way for people to get family support across international borders.

This enables us to move forward with respect to these two conventions.

Mr. Ali Ehsassi: Thank you very much for that.

A second really important aspect of this bill is promoting access to justice and, to the best of our abilities, ensuring that we're alleviating pressure on the family court system. One thing this bill does is encourage Canadians to resolve divorces and divorce-related issues by way of alternative dispute resolution. One of the concerns is that the mechanism for ADR isn't necessarily readily available all across the country.

What would you say to that particular concern?

● (1550)

Hon. Jody Wilson-Raybould: I would say, first of all, that I'm really encouraged by the member having obviously reviewed our bill very closely.

In terms of alternative dispute resolution, of course, this is something we're encouraging. We're also putting a positive obligation on lawyers and other individuals to recommend alternative dispute resolution processes where appropriate. We have, in working with the provinces and territories, made financial commitments to the provinces and territories. In budget 2017, we committed \$16 million per year for family justice services on an ongoing basis. Of those dollars, \$15 million goes to provinces and territories for their family justice activities and \$1 million, yearly, goes to support innovative programming in the provinces and territories.

Mr. Ali Ehsassi: Excellent. Thank you so much for that.

The last question I have is this. Some people are quite concerned that this particular bill does not incorporate the equal parenting presumption. Could you kindly inform us why you decided not to do so?

Hon. Jody Wilson-Raybould: Sure. That's a great question and one that we've had many times.

The central premise of Bill C-78 is to put the child first, and we purposely did not put any presumptions, in terms of equal parenting, in this legislation because of that very fact.

Children are different. Family situations are different. We wanted to ensure that the primary consideration was around the best interests of the child, and not the consideration of what's in the best interests of a particular parent. We provided many different factors around what could be determined and weighed, in terms of the best interests of the child. To have a presumption would put individuals in a place where they rebut that presumption in favour of one parent or the other. We want to ensure in every way possible that the focus is on the best interests of the child.

Mr. Ali Ehsassi: Thank you very much. That was very helpful. That concludes my questions.

The Chair: Thank you very much, and you were perfect. You hit it right at six minutes.

[Translation]

Ms. Sansoucy, please go ahead.

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

Madam Minister, thank you for being here. Thank you also for introducing this bill, which the legal community and parents have been awaiting for a long time.

I have six questions for you. If I don't have time to ask you all of them, could I send you the questions through our clerk so your departmental officials can provide the answers in writing? I would appreciate that.

I would like to continue with my colleague's question about the Convention on the Rights of the Child. This convention is mentioned in the preamble to the bill only. Would you agree to amendments so that it is included in the bill?

[English]

Hon. Jody Wilson-Raybould: Thank you for the questions, and yes, we are very happy to provide comprehensive answers to the six issues you put forward.

I would say at the outset that we are open to any proposed amendments that come from the committee, but I was just conferring with Laurie, my official, and it's not our practice to put the text or the substance of the convention within the body of the legislation. We put in place the principle of that convention, which we have done in the factors around the best interests of the child, to take into account the child's desires and the child's interests.

[Translation]

Ms. Brigitte Sansoucy: I don't mean the entire text, just mentioning the convention within the body of the bill and not just in the preamble. That is what I was getting at.

The Canadian Coalition for the Rights of Children recommends that awareness and legal training about the process for determining the child's best interests should be based on the convention and on the general observations of the Committee on the Rights of Child, which provides additional guidelines on implementing this principle.

What does the government intend to do to increase awareness about this fundamental principle of children's rights?

• (1555)

[English]

Hon. Jody Wilson-Raybould: I think it touches on the previous answer that I gave around what our department is going to do and the commitment that we have to make sure that we are using the resources, updating our website in terms of the tools that are available around family law, and helping to explain the provisions that are contained in Bill C-78, so that, hopefully, when it becomes law, we can provide those tools to practitioners to explain various factors that are in the best interests of the child.

As you will note from the legislation, there are many factors there to assist practitioners, lawyers and CYS courts in interpreting the law.

[Translation]

Ms. Brigitte Sansoucy: When parents separate, children have rights. In a conflict between parents, it would be helpful for the child to be represented by a lawyer, if necessary, to assert the child's interests, without of course reducing the three parties' access to legal aid.

UNICEF Canada recommends that the child's opinion be considered, based on criteria other than the child's age.

We think that would make the child's best interests the central concern in divorce cases. Would you agree with the proposal that the government should provide for representation for the child, if necessary?

[English]

Hon. Jody Wilson-Raybould: First of all, the whole premise of Bill C-78 is to ensure the best interests of the child are paramount and central to any considerations.

I know that this representation of the child and the child's interests was something that was raised by a colleague of yours. This falls within provincial and territorial responsibility around representation, but again, I suspect this is an issue that will come up when I have conversations with my counterparts in the provinces and territories.

Rest assured, in terms of the best interests of the child, this is central to the legislation. It's the central premise we uphold.

[Translation]

Ms. Brigitte Sansoucy: You talked about the need to reduce child poverty, which is an objective of Bill C-78, specifically through measures to facilitate the enforcement of support orders. Such measures are clearly very helpful in reducing the impact of divorce on the parent who has custody of the children. Some people argue, however, that their effectiveness is limited, especially for families with low socio-economic status.

I have three sub-questions.

What percentage of parents in Canada do not meet their support obligations? Do we have that data?

[English]

Hon. Jody Wilson-Raybould: We do have that data—

[Translation]

Ms. Brigitte Sansoucy: Perhaps you can provide that information later on? I see that you agree.

To what extent can we reduce child poverty by more strictly enforcing support orders if the parent who has to pay has limited financial resources? That is what worries me. Support orders are fine, but if the parent's resources are limited, they might not be able to meet their obligations. Have you made any provisions for that?

[English]

Hon. Jody Wilson-Raybould: We are seeking to provide additional tools in this legislation.

There are, as I said, billions of dollars of outstanding child support that has not been paid. We're providing, by way of this bill—if it becomes law—the ability to gain access to income tax returns to have a better idea of the amount of money an individual has and to be able to collect and garnish income, potentially.

As you say, that doesn't answer all family situations where individuals live in poverty. That's why our government has sought to take other measures to address the poverty that children live in through the Canada child benefit and through various other means. This is poverty with respect to children. Having the ability to be raised in a comfortable manner is a broader issue that can be addressed in this piece of legislation.

What we're seeking to do in the changes that we're proposing in Bill C-78 is to provide the tools to enable, as much as we can, billions of dollars of unpaid child support to be paid.

• (1600)

The Chair: Thank you.

[*Translation*]

Ms. Sansoucy, your time is up, but if you send us your questions, we will forward them to the minister so you can get written answers.

Ms. Brigitte Sansoucy: Thank you very much.

The Chair: Thank you.

[*English*]

Ms. Khalid.

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

Thank you, Minister, for coming in today and talking about this very important legislation.

Minister, this is a topic that comes up very often among my constituents, especially those who are women who are finding it difficult to really even start divorce proceedings or to get themselves out of a bad marriage or a bad home, just because of the financial implications.

Can you help us understand how Bill C-78 would really help those who are in the middle class—and those who are working hard to join it—be able to go through this process, liberate themselves and their families, and get themselves out of those bad situations?

Hon. Jody Wilson-Raybould: Thank you for your question. I guess the premise of your question is that, in your riding and in ridings across the country, Canadian families are incredibly different. Individuals find themselves in difficult situations. As I said in my opening remarks, individuals' first and possibly only interaction with the courts is through the breakdown of a marriage: separation and divorce.

What we're seeking to do, based on advocacy over many decades, is to ensure that where there's a child of a marriage, we put the best interests of that child first in terms of parental orders. We also, for the first time ever, in Bill C-78 seek to amend the Divorce Act to account for particular circumstances where there is family violence and to put a definition of family violence into the Divorce Act, as well as factors that will determine and assist in determining the severity of the family violence to which we know many women are subject. That needs to be taken into account, especially in terms of the relationship with the children.

To the affordability question, in terms of efficiencies and in terms of access to justice, we're trying to encourage alternative dispute resolution processes, as we talked about earlier, that take us out of the courts and are, for the most part, lower cost for individuals who seek to find parenting arrangements in a less combative environment but also a less costly one.

We do know—as I said in my remarks—that there is a feminization of poverty. Some 96% of the unpaid family support orders are for women. They don't receive those orders. We need to make sure we can do everything to provide the necessary tools to

gain access to the financial information of a parent who owes those support orders and to make the correct determinations for what those orders should be, as well as additional tools like being able to garnish a parent's wages, to be able to comply and reduce as much as we can the billions of dollars of outstanding child support payments.

Ms. Iqra Khalid: Thank you, Minister.

You touched briefly on the changed definition of family violence, which I believe is from British Columbia's definition. There's a 2013 report that says that the courts still too often underestimate the consequences of family violence or being exposed to abuse.

How will the family violence provisions set out in Bill C-78 change the courts' approach to that, if at all?

Hon. Jody Wilson-Raybould: What we've sought to do broadly in Bill C-78 is to provide as much information as possible to enable courts and other legal agents to be able to make determinations. We have taken the lead of other jurisdictions that have proceeded ahead of us in this regard. You mentioned British Columbia. Another jurisdiction, I would say, is Alberta.

We have, in terms of the definition around family violence, also put in place a list of the types of conduct that may constitute family violence. It's not an exhaustive list, but it provides a bit more detail or various situations that the court could consider in making the determination of a situation of family violence and being able to determine what is in the best interests of a child in those particular situations.

• (1605)

Ms. Iqra Khalid: Minister, do you think that this statutory change could really impact the occurrence of family violence within Canada, or do you think that other measures are also required?

Hon. Jody Wilson-Raybould: I believe, in terms of family violence, and violence generally, the more we are aware and the more we provide individuals and the court system with the necessary tools to be able to identify when it has occurred and understand the definition of family violence, and that it goes beyond physical violence. It can include financial violence and coercive behaviour. Understanding various situations and having examples or lists of factors around what violence can mean.... That list, as I've said, is evolving.

This definitely helps. These lists of various types of conduct have been discussed over the years and have led to changes in legislation in provinces. We want to ensure, with the changes to the Divorce Act, that we elevate and raise the issue of family violence as a really substantial challenge that comes into play at marriage breakdowns, separation and divorce, and that needs to be considered to ensure that, where it occurs, the best interests of the child are provided for. That's what we've sought to do in this legislation.

Are there other ways that we can address family violence? Absolutely, and, beyond Bill C-78, we have sought to provide a list and to ensure that we elevate this conversation, because we know that this is an incredibly destructive factor that happens, and children find themselves in the middle of those conversations. We want to make it as easy for the children as possible and provide the best parenting order for them.

Ms. Iqra Khalid: Thank you for this important bill, Minister.

The Chair: Thank you so much.

We'll move to the second round of questions. So that the minister is finished by 4:30, I just want to remind everyone in this round that the Liberals and the Conservatives have five minutes each, and the NDP has three minutes each. This is a different order, so we'll start with Liberal, Conservative, Liberal, Conservative, and then NDP.

Mr. Boissonnault.

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

Minister, thank you for being here, and thank you for making 230 judicial appointments on your watch, a hundred in 2017, and the most of any minister of justice in over 20 years. I think it's also worth congratulating you that over half are women, eight are indigenous, 20 are from visible minority communities, 13 identify as LGBTQ2 and three identify as persons with disabilities. Bravo, that's a lot of work, and it's nice to see that people will be sitting on the bench for many years.

I also want to thank you for understanding in this legislation, though it's not explicit, that families come in all shapes, sizes and configurations. I went to my iPhone once and wanted to text David an image of what our family could look like at some point. He's Jamaican. There's no emoji that exists for a white man and a black man to have two kids, so I said, "Maybe some day when we have kids, we'll just send the image of our family into Apple and they'll give us a new emoji in the future".

Hon. Jody Wilson-Raybould: I bet they will.

Mr. Randy Boissonnault: The gender-neutral language is really appreciated. I thank you for that and for understanding LGBTQ families. The sad thing is, when we got equal marriage, it also meant we got equal divorce. We have people whose relationships don't work on the same-sex side of the ledger as well. That also means that families need to be supported, and the courts need to understand that same-sex couples are going to be coming forward to them.

I just want to thank you for the work on this bill. I hear about it at doors, and I get correspondence on it. From a franco-Albertan perspective, I know that you've made great strides as minister to make sure we have functionally bilingual Supreme Court justices in our nomination process. In my own province of Alberta, organizations have received over a million dollars to support the important purpose of making sure that francophone Albertans can access divorce proceedings.

Could you chat a little more and share with us more information on that?

●(1610)

Hon. Jody Wilson-Raybould: Thank you for talking about our judicial appointments. I really appreciate it. I would again underscore that families come in all shapes and sizes, so thank you for your comments around that.

In terms of official languages—and I know that there are other members of this committee who are concerned about access to justice in both official languages—that is a priority for me and it definitely includes being a priority in terms of the family justice system.

With that in mind—and I wrote this down because I suspected you would ask this question around bilingualism—we have expanded the scope of our support programs for the purposes of bilingualism through the Canadian family justice fund. One of the fund's priorities is to extend the reach of the family justice program services and information to meet the needs of diverse and underserved populations, including official languages minority communities in Alberta and other places.

In budget 2018, our government also increased access to justice in both official languages by more than 25%. In addition to that, finally I would say that, again, we are working with the provinces and territories recognizing that provinces come in many different shapes and sizes. Since justice is a shared responsibility, we're working with the provinces to ensure access to justice as much as we can in both official languages.

[Translation]

Mr. Randy Boissonnault: Thank you, Madam Minister.

I know that my colleagues and friends with the *Association des juristes d'expression française de l'Alberta* also appreciate your work on this file.

I have noted that more of the appointed judges are completely bilingual, and I thank you for that.

[English]

Before I run out of time, could you share with us a little of how the prioritization of family debt comes into this bill and the understanding of where different debt levels come in for families? I understand that's also an important consideration in this legislation.

Hon. Jody Wilson-Raybould: Do you mean priority around debt in terms of the Crown priority?

Mr. Randy Boissonnault: Yes.

Hon. Jody Wilson-Raybould: The Crown would come first as it is considered a debt to all Canadians, but then after that it would be the collection of debt in child support payments.

The Chair: Mr. Cooper.

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

Thank you to the minister for being here.

First, it's encouraging that the best interests of the child is a centrepiece of Bill C-78. The best interests of the child is well established in Canadian family law. Under Bill C-78 proposed section 16 provides that only the best interests of the child shall be considered in respect of orders applicable to children in family situations.

While that's encouraging, I want to follow up with the line of questioning from Mr. Clement. It relates to how we square Bill C-78 on the one hand, which puts the interests of the child first, with Bill C-75 that hybridizes a number of serious indictable offences, including offences that relate to crimes against children.

Mr. Clement referenced kidnapping a minor under the age of 16 as well as the offence of kidnapping a minor under the age of 14. I want to raise the issue of the hybridization of individuals who breach long-term supervision orders. These are individuals who have received sentences of more than two years. They're deemed to have a substantial risk of reoffending. The offences for which they were convicted involved a range of sexual offences, often against children. They're considered to be a serious risk of reoffending, so serious that they can be subject to up to 10 years, subject to an order that imposes a whole series of very strict conditions. We're really talking, Minister, about the worst of the worst when it comes to offenders who are at risk of offending again, often against children.

How does that square with putting the interests of the children first by hybridizing the offences related to those breaches, which are often the first sign that these bad actors are going back into their history of violence and escalation toward that? It's a serious public safety concern.

• (1615)

The Chair: I'm going to note that question for the record. I'm not taking from your time. I'm stopping the clock for a second. I waited to the end to see if it related to Bill C-78. It seems to relate to how a principle in Bill C-78 squares with Bill C-75, which is not what the minister is here to testify about today.

I'm going to ask the minister if she wishes to respond to that question or if she prefers not to. It's up to her.

Hon. Tony Clement: Chair, I want to take issue with your—

Hon. Jody Wilson-Raybould: I'm happy to respond to that question.

As the member noted, the best interests of the child is the basic premise of Bill C-78. I'm really pleased to hear, right around this table, that everyone embraces the best interests of the child. I hope that the study from this honourable committee will proceed expeditiously to ensure that we update our divorce laws.

In terms of the member's comments around Bill C-75 and the hybridization of offences, I will go back to my previous answer to our honourable colleague. The answer is the same. Bill C-75 is a very bold piece of significant legislation that seeks to address delays in the criminal justice system. This is a piece of legislation developed very closely with my counterparts in the provinces and territories. The comprehensive nature of the legislation will reduce the delays in the criminal justice system.

One of the pillars of the reform in that bill is around the hybridization of offences. I'll say again that hybridizing offences in no way changes the fundamental principles of sentencing. Serious crimes will continue to be prosecuted in a serious manner. Through the hybridization of offences, prosecutors will be given the tools, or the ability to use their discretion, to proceed in the manner that they deem appropriate given the circumstances of a particular case. In no way are we reducing or diminishing the serious nature of offences. Once a conviction is put in place, a court will determine the sentences based on the proportion of the gravity of the offence and degree of responsibility of the offender. It does not change the sentencing principles.

Mr. Michael Cooper: Madam Minister, I understand that you're going to say that the sentencing principles....

It's my time, Mr. Chair.

The Chair: We're going to Mr. Fraser because your time expired. I'm sorry.

Mr. Fraser.

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

Thank you, Minister, as always, for being here with us and answering our questions on the relevant bill to our study.

I'm glad to hear that the Conservatives don't seem to have any substantive questions to ask on Bill C-78. I'm assuming, then, that they'll be supporting the bill.

Getting to the substance of this bill, I would like to acknowledge and thank you for highlighting in your remarks the fact that the terminology often used in family court cases relating to custody and access is problematic. It does oftentimes pit the parties against one another in a win and loss sort of atmosphere. That is not in the best interests of the child.

I applaud you, Minister, for highlighting that in your remarks and in the bill. It ensures that parenting orders reflect it and the terminology is updated to ensure that the true, best interests of the child are at stake, and also that parents see that what's important in these tough decisions is what is best for the child.

In one of the items in the non-exhaustive list that can inform a court on what the best interests of the child are, you mentioned heritage and cultural considerations, including children of indigenous backgrounds. Can you expand a bit about why that would be important in ensuring those considerations are taken into account by a court to determine the best arrangement for a child?

• (1620)

Hon. Jody Wilson-Raybould: Certainly, and thank you for the comments around the change in terminology.

The change in terminology from stakeholders, from individuals whom we've talked to, presents a significant change in terms of how we proceed. Many provinces have been out in front of us and other jurisdictions in terms of the change in terminology, again, as you said, moving from a win or lose situation to one that focuses on the responsibility of parents and parenting orders, decision-making and parenting time. It actually moves beyond the premise that children are possessions and that children should be at the centre in terms of separation and divorce, and the considerations around that.

This is why we thought—as you talked about—to put in place criteria or factors around what is in the best interests of the child or what should be considered. I was pleased to be able to put in the child's cultural, linguistic, religious and spiritual upbringing, including indigenous upbringing and heritage, as one of the factors to be considered in terms of the best interests of the child.

As we said, children are different. Children have different identities and identify with particular groups, parents and religions. We want to ensure in the breakup of a marriage or a divorce that this identity of what the child feels and where he or she is tied to is taken into account. It's one of the factors to be considered, but it's an incredibly important factor. I suspect many individuals around this table, including me, who identifies very closely with an indigenous heritage, consider that it's incredibly important to maintain the child's well-being.

Mr. Colin Fraser: Thank you.

I'd like to follow up on that as well with the fact that the relationship with other people in the child's life can be taken into account in determining what is in the best interests of the child, such as a grandparent or another person. Could you touch on what this bill does for people other than the parents who are close to the child, who have a relationship with the child? How is that taken into account in determining an arrangement that works best for the child?

Hon. Jody Wilson-Raybould: Absolutely.

In our legislation we have put in place a provision that provides for contact orders for a grandparent or somebody who is close to the child, who contributes to the well-being of that child. An individual on leave of the court can apply for a contact order. We hope in separation and divorce that parents will not have such an acrimonious relationship wherein they can't determine the individuals who are important to that child and provide the ability of those people to have access to the children, but in cases where there is a significant relationship between a child and a grandparent, or a child and an uncle, or a child and a long-time family friend, there is a provision to enable a contact order.

Mr. Colin Fraser: Thank you very much.

The Chair: Thank you so much.

Mr. Clement.

Hon. Tony Clement: Thank you.

Just on Bill C-78, obviously you've made reference, Minister, to changing the descriptors from custody to decision-making responsibility, as an example. I would hope that makes a difference, but being realistic, parents will continue to battle over custody and control of their children, sometimes tooth and nail. That's the unfortunate reality of the situation, human nature being what it is.

I know the intentions here are to lower the temperature and to focus the bill, but is there any real change we're expecting in terms of how parents behave in this system when it come to their kids?

Hon. Jody Wilson-Raybould: I appreciate the question.

We do not know, nor can we know, the situation of an individual family in an acrimonious reality, where there's a battle over the child. What we have sought to do in Bill C-78 is to legislate what courts have told us around the best interests of the child. We've sought to, again, change the terminology to move beyond a win or lose situation.

To your point, in discussions I've had, individuals who have been involved in family law and are family law advocates actually have spoken to me about the fact that changing the terminology is a start to actually changing the culture of family law situations and the resolutions of those situations. We have other jurisdictions that have changed the terminology, but again to your question, we're seeking to try to do everything we can to provide factors and as much information for courts to consider for individuals in alternative dispute resolution situations to move beyond the focus on individual parents and to focus on the children.

What we sought to do, by way of providing factors around the best interests of the child, around the definition of family violence, around relocation and setting a framework, was to ensure that in any of these discussions the child's interest is kept.

• (1625)

Hon. Tony Clement: I'm a little bit limited on time so I am going to—

Hon. Jody Wilson-Raybould: You asked me a question. I was just answering it.

Hon. Tony Clement: I know, but now there are another 10 seconds gone.

I think it is important that this bill send the right signals to parents and to children, which is why on this side of this committee we raised not only Bill C-78 but were talking about signal creating in Bill C-75 as well and trying to square the two. The signal of this bill is the children, but the signal of the other bill, Bill C-75, was lessening.... I know you say that it's not lessening the sentences, but allowing the opportunity....

The justice system takes its signal from you, Minister, and the signal you have sent is that these serious offences are going to be treated less seriously. My colleague Mr. Fraser and others on the other side changed their minds on the terrorism. The reason they gave was that it's a serious offence. Well, kidnapping a child is a serious offence. You were quoted in the National Post, I believe—

An hon. member: Mr. Boissonnault was.

Hon. Tony Clement: Mr. Boissonnault was—

Mr. Colin Fraser: On a point of order, Mr. Chair, this is not relevant to the bill that the minister is here to discuss today.

Hon. Tony Clement: Mr. Fraser, I already connected it to Bill C-78.

Mr. Colin Fraser: On a point of order, it's not relevant. The discussion that's happening is not relevant.

Hon. Tony Clement: I already connected it to Bill C-78.

The Chair: [*Inaudible—Editor*] characterization that Mr. Fraser actually said about terrorism and genocide.

Hon. Tony Clement: I—

The Chair: You have the floor, Mr. Clement. Go ahead.

Hon. Tony Clement: In the minute that's left, can you try to help us understand why it's okay under Bill C-75 to treat children's offences less effectively, but it's not okay under Bill C-78?

Hon. Jody Wilson-Raybould: I'm happy to respond to that. I'll respond to it in a different way than I responded to the hybridization of offences.

I completely disagree with your characterization of the signal that I am seeking to send with Bill C-75 and Bill C-78.

The signal that I am trying to send with Bill C-75 is to ensure that we do everything we can to address the delays in the criminal justice system. I am not sending the signal that there are offences that are less serious offences that warrant a less punitive measure. With respect, that is the signal that you are trying to send. You are mischaracterizing the hybridization of offences in Bill C-75. I think it does a disservice. What we are trying to do is to ensure that prosecutors are provided with the necessary tools.

With respect, again, to my honourable colleague, you are mischaracterizing the hybridization of offences. I believe it does a disservice to Canadians, and you are working very diligently to create fear in Canadians where fear should not exist, because we are not reducing sentences in Bill C-75.

The Chair: Thank you very much.

Thank you, Mr. Clement.

The last question is for three minutes.

Madam Sansoucy.

[*Translation*]

Ms. Brigitte Sansoucy: Thank you.

Before I get to my question, I would like to pick up on something my colleague Mr. Fraser said, namely, that the term “custody order” is replaced by “parenting order”. In its brief, the *Barreau du Québec* asks us to identify the cases covered by this provision in order to resolve any clarity issues and reduce the potential for unnecessary litigation.

Now to my question. You talked earlier about the reality of indigenous children. The risk of serious domestic violence with fatal consequences is apparently much higher among indigenous Canadians than the rest of the population in Canada. In your opinion, to what extent will Bill C-78 help indigenous Canadians who face domestic violence?

• (1630)

[*English*]

Hon. Jody Wilson-Raybould: Again, this is a more fulsome question that I would be very happy to respond to with the member, but in terms of family violence with respect to the indigenous family or indigenous community, again, in terms of the Divorce Act, what is proposed is to introduce a definition around family violence and a list of considerations or examples of what family violence means.

This applies not only to indigenous communities but to other communities. I'm not 100% familiar with the recommendation from the Barreau du Québec, but I'm happy to consider that and, again, to respond in a fulsome way to your six issues. I'm not sure if that was one of your six issues; maybe there are seven. I'm happy to respond to seven.

[*Translation*]

Ms. Brigitte Sansoucy: Indeed, I think a program to address family violence would help all Canadians. As you pointed out, however, if we can offer such programs, they should be tailored to indigenous culture and communities right across Canada.

[*English*]

Hon. Jody Wilson-Raybould: I couldn't agree with you more. We do have programs at the Department of Justice that specifically look to providing indigenous... The indigenous justice program is a program through which we provide dollars to indigenous communities and organizations across the country to address specific issues that seem to befall indigenous communities, through various measures of restorative justice initiatives and looking at addressing and collecting data in individual communities.

There are measures within the Department of Justice and its programs that assist in community-specific challenges, but also provide resources to come up with solutions to address them.

[*Translation*]

Ms. Brigitte Sansoucy: As you said, there is a lot of work to be done with the provinces, especially if a child is going into a foster home or cannot live with one of the parents in the case of divorce. We have to make sure that, if the parents are having difficulties, the children are not uprooted too much from their community and their culture.

[*English*]

Hon. Jody Wilson-Raybould: The great thing about having amazing public servants is that mine wrote me a note about the victims fund that the Department of Justice also administers, which releases significant dollars every year to assist with addressing the rights of victims and ensuring we're responsive to those rights. I'd be happy to talk with you further.

The Chair: Thank you very much, Minister. Your testimony was very helpful to the work of the committee. We really appreciate it.

[*Translation*]

Thank you also, Ms. Drouin.

[English]

Ms. Wright, thank you very much. I really appreciate all of you being here today.

We'll take a short pause while the Minister leaves, and we'll resume in four minutes.

•(1630) _____ (Pause) _____

•(1640)

The Chair: We will resume.

Basically, as we've agreed, there are two motions by Mr. Clement. We'll let him do them successively. We'll vote on the first one and then we'll move to the other one.

Mr. Clement.

Hon. Tony Clement: Thanks, Chair.

I'll start with the more mundane one. I move:

That, pursuant to the Order of Reference of Wednesday, October 24, 2018, the Committee consider the Supplementary Estimates (A) before the reporting deadline set out in Standing Order 81(5); and that the Committee invite the Minister of Justice and Attorney General of Canada to appear in view of this study.

It's a fairly standard motion to get the minister before us for supplementary estimates (A). This is done all the time and, hopefully, not controversial.

The Chair: Is there any discussion or debate on that motion?

(Motion agreed to)

Hon. Tony Clement: I move:

That the Committee invite the Minister of Justice and Attorney General of Canada to appear to answer questions with respect to any rules, precedents, or procedures related to the invocation of cabinet confidence to prevent the disclosure of information as requested by counsel in a trial process.

This obviously relates to the Vice-Admiral Norman issue, where there's been considerable debate over what documents are made available. I know there has been a submission of documents to the team of the vice-admiral, but there are still outstanding issues that deserve clarification. It's a matter that the justice committee should look into, in a sense, to find out on a general level—this is not specific to Vice-Admiral Norman—what procedures are in place that prevent disclosure.

The Chair: Mr. Fraser.

Mr. Colin Fraser: With regard to this motion, I will not be supporting it. There are problems with it for a few reasons.

First of all, basically, it's asking the committee to invite the minister to seek what amounts to a legal opinion on the procedures, practices and precedents dealing with cabinet confidences. I don't think it would be appropriate for us to have the minister come here and give us her opinion on this. If the members want to get a legal

opinion on such things, of course, they're entitled to do so, but it wouldn't be appropriate for our committee to undertake that type of work, in my view.

With regard to the Norman matter, it's obviously the subtext here for the rationale of this motion. I appreciate what my friend has said, that this would be in general terms and wouldn't be specific. It could easily stray into that type of discussion. The *sub judice* principle applies, that if there is a matter currently before the courts, it would be inappropriate for any member of cabinet to discuss this matter, or to make any types of submissions on that basis outside of the court process.

In addition to both of those excellent reasons, I would submit, we also have a lot of important work that this committee is doing. We started Bill C-78 today. We have Bill C-84 coming to this committee, an animal cruelty bill. It will be important for Canadians to see justice done to that bill. We have a human trafficking report that we're currently putting together to send back to the House. We have, in our agenda, a new study on the criminalization of HIV. We have lots of other important work to do.

For all of those reasons, it would be best to not support this motion. That's why I will be voting against it.

•(1645)

The Chair: Mr. Clement.

Hon. Tony Clement: I understand where the member is coming from, but these matters are before the public. I believe they have a right to know the rules, precedents and procedures. I believe it's the highest person in the land, in terms of justice issues. The Minister of Justice is responsible for articulating those rules, precedents and procedures. It is a matter of public concern.

The Chair: Thank you.

[Translation]

Ms. Sansoucy, is the interpretation working properly?

Ms. Brigitte Sansoucy: Yes.

The Chair: Okay, perfect.

[English]

Is there any further discussion? If not, we will move to a vote on the motion proposed by Mr. Clement. All those in favour of that motion?

(Motion negated)

The Chair: Now we will be moving to an in camera session to discuss our agenda for Bill C-78. I will have a brief pause of 30 seconds to allow the room to rejig for an in camera meeting.

[Proceedings continue in camera]

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