HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

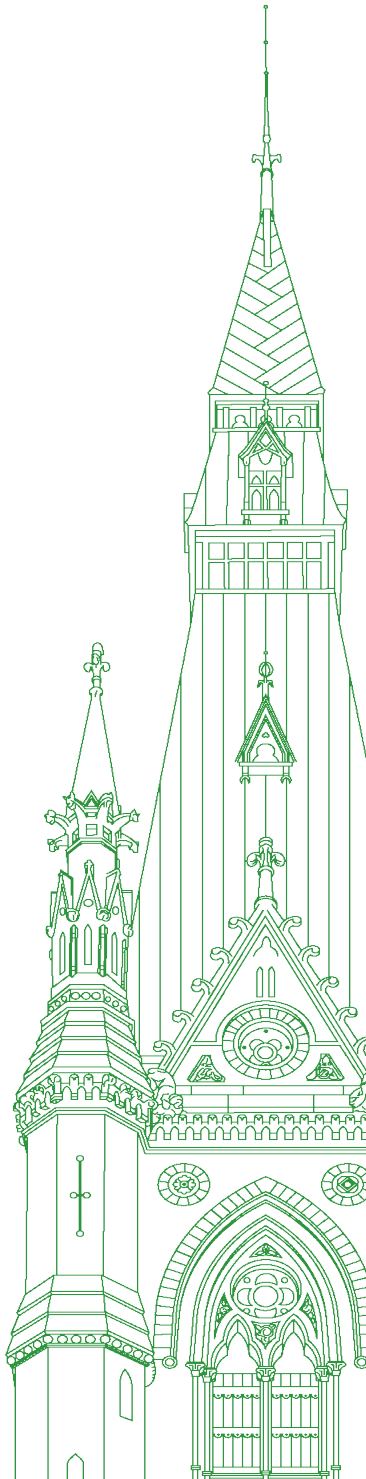
45th PARLIAMENT, 1st SESSION

Standing Committee on Justice and Human Rights

EVIDENCE

NUMBER 040

Thursday, October 22, 2026



Chair: Iqra Khalid

Standing Committee on Justice and Human Rights

Thursday, October 22, 2026

● (0820)

[*English*]

The Chair (Iqra Khalid (Mississauga—Erin Mills, Lib.)): Good morning, everyone. Welcome to meeting number 40 of the House of Commons Standing Committee on Justice and Human Rights.

Pursuant to the order of reference of February 4, 2026, the committee continues its clause-by-clause study of Bill C-223, an act to amend the Divorce Act. Today's meeting is taking place in a hybrid format, pursuant to the Standing Orders, with members attending in person in the room and remotely on the Zoom application.

I'd like to inform all of you guys that the sound tests were made successfully.

I will offer a few comments for the benefit of witnesses and members. Please wait until I recognize you by name before you speak. For those participating by video conference, click on the microphone icon to activate your mic. Please mute yourself when you are not speaking. I will remind you that all comments should be addressed through the chair.

To begin, we welcome today Ms. Lisa Hepfner, member of Parliament from Hamilton Mountain.

Thank you so very much, Ms. Hepfner, for being here today to speak about Bill C-223.

Before we get to opening remarks, I'd like to wish a very happy marriage to Colin Munro, who got married over the weekend.

Voices: Hear, hear!

The Chair: Awesome.

Lisa, you have five minutes. Please go ahead.

Lisa Hepfner (Hamilton Mountain, Lib.): As a point of clarification, Madam Chair, I think I was told by the committee that I had 10 minutes. I may not use all 10 minutes, but....

The Chair: Generally, it is five minutes, but if it's the will of the committee—

Lisa Hepfner: Okay. Maybe you can give me a bit of latitude. I don't think I'll go 10 minutes.

The Chair: Okay. That's fair. Take the time you need.

Lisa Hepfner: Thank you very much.

Madam Chair, I would first tell this committee that I have been absolutely overwhelmed by the response since I introduced the keeping children safe act to Parliament. Literally hundreds of survivors have reached out to share unbelievably tragic stories and explain why the provisions in this bill are critical. I have heard from dozens of parliamentarians from both sides of the aisle who have been approached by their constituents all across this country asking them to support this bill. I've heard from judges and I've heard from lawyers in the family law system. They agree that these reforms are necessary.

This committee has received almost 100 submissions on my bill, more than any other piece of legislation that you have studied to date. I would encourage you to read all those submissions, if you haven't already. For example, one mother wrote this:

> Bill C-223 is necessary because accusations of “parental alienation” are too often used to override abuse disclosures, punish protective parents, and justify drastic child removals under the language of “best interests.”

She also wrote:

> My daughter disclosed abuse. Her disclosures were formally recorded. Police documented that she articulated multiple abusive acts by her abuser. There was a verified sexual-harm finding. Child protection authorities initially directed me to be protective. Then the system reversed course. Instead of protecting the child who disclosed abuse and the parent who acted to keep her safe, it punished us both.

This report out of the Université de Sherbrooke, recently released, looks into the cases of eight children who have been killed in the last few years in Canada after disputes in family court, something this legislation attempts to address. There's lots of evidence that these reforms are necessary to protect children.

Now, I was number four in the order of priorities for private members' bills, so it's a little unusual that we're almost a year later and I'm at committee. This is because I have been working closely with the justice department, the minister and his team doing wide consultations across the country to try to nail down and find consensus on the issues in this bill.

I don't believe the bill is perfectly drafted as it is before you today. It became clear during consultations that some concepts in this bill were too controversial and could impede its passing. I want to be collaborative and I want to find a way to move this bill forward. I have prepared an amended version of the bill. It's really significantly modest. It retains changes that I hope this committee can be confident in and accept after your deliberations. All the proposed changes in this new bill have either been tested already in provincial legislation or have been endorsed by the Canadian Bar Association, which is a national association, as I'm sure many of you know, with 40,000 members. I have copies for everyone here in French and English. I will distribute them, but I'll first go through basically what I intend to retain from the original bill.

First is what's known as the friendly parent rule. It's paragraph 16(3)(c) in the Divorce Act and subclause 4(1) in my bill. This rule doesn't already exist in B.C. or Alberta. It's absolutely not essential to the functioning of the family law system. It asks courts to consider each parent's willingness to support the child's relationship with the other parent, and it's being misused, as we've heard. If a parent has concerns about the safety of their child with the other parent, they are treated as an alienator. The child could be placed with the parent who could do them harm.

Next is subclause 4(4) of my bill. It deals with parental alienation allegations. I would amend this to adopt the proposal that the Canadian Bar Association submitted: Where the court has found family violence, the court would not consider allegations that the non-abusive parent manipulated the child against the other parent. It tells judges what they cannot consider. It doesn't instruct judges on what conclusions to reach and it doesn't take away any judicial discretion.

There are examples of this already in the Divorce Act. For example, under subsection 16(5), already judges can't consider the past conduct of a parent, such as adultery, unless it's relevant to their parenting. Subsection 16.92(2) in the Divorce Act already sets out a factor that judges must not consider in relocation cases. This is not a new concept. It does not affect judicial discretion.

The amended version also replaces subsection 16(6) of the Divorce Act, known as the maximum contact rule. B.C. doesn't have this provision. Since 2013 its Family Law Act has explicitly stated that no particular parenting arrangement is presumed to be in the best interest of the child. In B.C. there's no presumption that the child's time should be split equally between parents. Courts make case-by-case determinations. My amended version uses B.C.'s wording.

I would also include subclause 4(5) of my bill, which says that when a parent has engaged in family violence, the judge should consider whether there's evidence that they've taken meaningful steps to address that behaviour and that their behaviour has changed. It doesn't constrain judicial discretion. It asks courts to look at whether there is evidence of change. The Canadian Bar Association also supports this amendment.

I would keep subclause 4(6) of the bill, on myths and stereotypes, which received broad consensus in our consultations. It prevents judges from disbelieving abuse because a parent didn't leave a relationship early enough, for example, or didn't report abuse early enough. Things like that right now work against women in particular in divorce courts.

I would retain one part of the relocation section of my bill, subclause 6(2), which was supported by the Canadian Bar Association. It says that when one parent wants to move, courts should consider the impact on the child of refusing the move, including the relationship of the child with the parent who wants to move, and not only the impact on the child's relationship with the parent who opposes it.

I'm more than willing, I hope you understand, to work with this committee to improve this bill, but I do urge members to pass it. Children's lives are literally at stake.

Thank you.

● (0825)

The Chair: Thank you very much, Ms. Hepfner.

We'll now go into our first round of questioning, starting with Ms. Kirkland.

Please go ahead for six minutes.

Rhonda Kirkland (Oshawa, CPC): Thank you, Chair. Through you, my questions will be for Ms. Hepfner.

I really appreciate the intent of this bill. It means a lot to me personally. From the outset, I'll just say that I am a single mom and have been for a while. It was a tough road. To protect my kids, I won't say much more than that, other than I understand why we're here today. I truly believe that the Divorce Act needs some changes—absolutely and completely. I am with you there.

I am a little confused. You have an idea with you for an amended bill. I'm assuming that we're still talking to you about the original bill. Are you going to recommend those amendments to the original bill, or are you looking to do something totally different?

Lisa Hepfner: I'm happy to work with the committee. You have the original bill in front of you. I can distribute the amended copies now, and you can take time to look at it.

I'm not sure how it works procedurally—whether I could submit amendments or not. I'm not typically a member of this committee. I'm just trying to work and be collaborative, because I know parts of the original bill were really controversial. I want to keep kids safe, so I'm trying to find a solution on just the parts that are the least bit controversial.

Rhonda Kirkland: Okay, thank you.

Lisa Hepfner: I will add that I'm happy to answer questions on the original bill and the intent that we were trying to hit there.

Rhonda Kirkland: We agree. We're trying to keep kids safe. This is the end goal.

I personally am happy to hear that you're open to changes and amendments, because I think part of the reason there were so many submissions to this bill is that it's such a charged and difficult topic for moms, dads, kids and lot of adult children who could speak to what their experiences were like when they were young.

I think we can agree that protecting children from family violence must always be a priority. Of course, we have to make sure any changes to the Divorce Act are really carefully considered because they can tend to have ripple effects, which I could see.

One concern I have is about ensuring that good, loving parents aren't unfairly separated from their children as a result of the changes. Probably some of the questions that came up in the submissions were around that. Do you think that your proposed changes would protect children from abusive situations without unintentionally.... I'm worried about the unintended consequences, I guess, of making it more difficult for a good parent—father or mother—to maintain a meaningful relationship with their child.

Lisa Hepfner: Absolutely. Any time you make changes to the law, there are unintended consequences. The law is also a living thing. It's something that we change all the time. I'm not sure how many times we've changed the Criminal Code already in this Parliament. It's our job as legislators to have these discussions, change the law and continue to amend and update the law as we find problems. I think we should always be looking at the laws and the ways it can be improved. That's why we're here.

Rhonda Kirkland: Are there any safeguards in the current legislation that we're looking at today that would ensure that loving abusive parents can't unfairly lose parenting time because the other parent has deliberately interfered with the relationship? Are there any protections currently in the drafted bill?

● (0830)

Lisa Hepfner: I believe that my bill allows judges the discretion to look case by case and consider factors, leaving out certain myths and stereotypes of family violence, but really consider more deeply the opinions of the child and the factors in every case rather than what seems to be right now a tendency of the courts to want to split children into two as if they were property in a divorce. Divorce court is often adversarial. You're splitting—

Rhonda Kirkland: Thank you.

Help me understand something. I have this much time, and I'm trying to wrap my head around so much.

My concern is with the definition.

The bill effectively treats parental alienation as a discredited or non-existent concept, so it really takes power away from the judges, from what I can tell, because they're not allowed to consider parental alienation. How would you define “parental alienation”? Does it exist?

Lisa Hepfner: I would say that I have heard lots of different stories on both sides about this. What we're trying to get to is asking judges not to consider certain things in parental alienation. The amended version comes from the Bar Association's version, and it prevents parental alienation from being used as an excuse to get away from domestic violence allegations.

Right now, when they go through a divorce, women are being told not to disclose domestic violence by women's shelters, by police and by lawyers because, if they do, they could lose their children. I'm trying to prevent the misuse of that term in family court situations, which we've heard over and over again is happening in divorce court now.

Rhonda Kirkland: The statutory definition of “family violence” in Canada's Divorce Act explicitly includes psychological abuse, emotional abuse and coercive control. How do we juxtapose and differentiate when a parent is using those abusive techniques to create the parental alienation concept?

The Chair: Be very brief, Ms. Hepfner.

Rhonda Kirkland: That's a tough one to do briefly, I know.

Lisa Hepfner: Judges should consider all the evidence but not reverse custody based on an allegation of parental alienation, especially when there are already allegations of family violence.

The Chair: Thank you very much. That concludes your time.

We're moving on to Mr. Chang for six minutes.

Please go ahead.

Wade Chang (Burnaby Central, Lib.): Thank you, Madam Chair.

Good morning, Lisa.

While we appreciate that you have brought forward a revised version of this bill, we are here today to study Bill C-223 as it was introduced and referred to this committee. We haven't had the opportunity to review the new proposal, and our questions today have been prepared based on the legislation currently before us. We certainly look forward to reviewing the proposed changes, but for today's discussion, our questions are on the bill that's currently before the committee.

Thank you again for bringing forward this bill and for your advocacy on behalf of children and survivors of family violence. I think we can all agree that protecting children and survivors of family violence has to be a priority. At the same time, each family has a very different situation.

Where do you see this bill fitting in with the current rules around the best interests of a child, and how can we make sure that judges can still look at each family's unique situation?

Lisa Hepfner: I think the bill absolutely supports judges in taking all the evidence and making the best decision case by case rather than relying on myths and stereotypes that often inform judges today in the family court process. That's exactly what I want judges to do: listen to all the evidence and weigh the factors that are important.

Wade Chang: Thank you.

I understand the intention of the bill, particularly the need to protect children from abuse and family violence. At the same time, the family situation can be very complex.

As you put this amendment forward, how did you think through the different situations a family might face and how the changes would work in practice? From your very own perspective, are there any unintended consequences?

Lisa Hepfner: Discretion is paramount, particularly in family law. The law tells judges what factors to consider and what evidence is admissible. It doesn't tell judges how to decide. For example, our law doesn't tell judges they can't give parenting time to a violent parent, but it says they should consider violence.

What the bill does cannot be done by judges alone, because judges don't have the ability to change the factors they have to consider. Only Parliament can do that. The things in my amended bill are things that can only happen in the Divorce Act, which is under the purview of the federal government.

● (0835)

Wade Chang: Your bill proposes changes to the use of reunification therapy. I understand the concern that these interventions can be harmful in certain cases, particularly when family violence is involved.

How did you approach deciding which practices could be harmful to children and which might be helpful in certain situations?

Lisa Hepfner: It's a great question. I will note that I've removed this section from the amended bill.

Forced therapy for children has been shown not to work. I would encourage you to read the brief from psychologist Jean Mercer, which you have in your files, who has studied this and found that forced reunification therapy typically does more harm than good. It has the goal of re-establishing the relationship between a child and a parent they have rejected. It doesn't support a child's perspective and wishes.

The bill would never have prevented therapy that everyone agrees on, but it prevents forced therapy.

What we've seen in several states in the United States is that they've enacted Kayden’s law. They've already cracked down on forced reunification therapy. We heard at the status of women committee that a lot of the actors that were making a lot of money on forced reunification therapy, once that law was enacted in the United States, started moving into Canada. We're seeing forced reunification therapy exacerbated in Canada more and more because other jurisdictions are clamping down on the practice.

Wade Chang: Given the complexity of these issues, it's important that we hear people's different experiences and expertise. What else do you think we should hear or learn about, as we start this bill, to make sure that we are doing our best to protect the children and families?

Lisa Hepfner: That's a great question.

You should listen to some of the people who sent briefs, like Jean Mercer. You should listen to people from the women's shelters across Canada who are all calling for these reforms, because so many women are trying to flee abusive relationships and they encounter situations.... If they go to a shelter, they're considered alienators and could lose their children, so while they seek safety, they're considered not to be encouraging the relationship with the other parent. Therefore, they're alienators. They could lose their children just by seeking safety.

I'll leave it at that.

Wade Chang: What gaps do you believe remain in the current law, and what evidence have you seen that suggests further legislative changes are needed?

Lisa Hepfner: The government updated the Divorce Act in 2019 and it came into effect in 2021. There were gaps identified during that process. Particularly, there were gaps pointed out by the Senate. We haven't done the work to look at how the 2021 changes have affected the divorce court system at all, and we haven't addressed certain things like the friendly parent rule and the maximum contact rule, which the Senate of Canada already told Parliament it should start investigating.

The Chair: Thank you very much.

That concludes your time, Mr. Chang.

[*Translation*]

Mrs. DeBellefeuille, you have the floor for six minutes.

Claude DeBellefeuille (Vallée-du-Haut-Saint-Laurent, BQ): Thank you very much, Madam Chair.

Ms. Hepfner, thank you for being here. Having been in your shoes, I know that introducing and championing a bill is always a bit stressful. I can certainly relate because I know it's not easy.

I have a number of questions for you. In my former life, I was a social worker and family mediator recognized by Quebec's Ministry of Justice. In my private practice, I met many couples with children who were separating, and I encountered a number of cases involving parental alienation. I also observed many loyalty conflicts, where one parent used their children against the other parent, creating an extremely tense situation for the children.

All that to say, I understand the objective of your bill: to protect children, remove them from abusive situations or help them cope with their parents' separation without undue suffering, because we often see one parent using a child against the other to serve their own interests.

Your bill nevertheless represents a significant change. I believe our responsibility here is to examine the issue thoroughly. I'm pleased to see that amendments have been proposed. The Bloc Québécois will also be proposing amendments to improve the bill because I think we all agree that, as it stands, it needs amending.

In the time I have left, I would like to ask you about the data. When amending the Criminal Code or an important piece of legislation—in this case the Divorce Act—we must be guided by the evidence. If we rely solely on anecdotal accounts or individual experiences, we can sometimes be led astray, because those experiences are not necessarily documented more broadly or gathered with methodological rigour.

I don't know if you have any data for Quebec. We've been discussing this bill for a long time. In your study, how many decisions involving allegations of parental alienation did you identify, and in how many cases did the courts reject the allegations? Do you have figures or data that convey the scope of the problem?

● (0840)

Lisa Hepfner: I'm proud of how comfortable I am speaking French, but, as you noted, this is a stressful situation, so I will answer in English instead.

[*English*]

I would say that, yes, there has been a lot of consultation and discussion about this bill already. Parliamentary committees have studied this issue. There have been recommendations from the United Nations. There are recommendations from other committees on the Hill.

There is a risk to children if we do not act and we spend too much time trying to consult and reach consensus. In the meantime, children are left at risk.

I will again point out this study that was released by the Université de Sherbrooke. I would encourage everyone to read it. We can give it to the committee. I can get you the data that you asked for.

[*Translation*]

Claude DeBellefeuille: Excuse me, but I'm the one asking the questions.

It's important for me to have data on which to base our analysis. I took a look at the data from Quebec. The Paquin-Boudreau and Poitras study examined 164 decisions in Quebec. Of those 164 decisions, the court found parental alienation in only 24% of cases. That's a scientific study documenting court decisions in Quebec on this issue.

The other thing I wanted to share with you is that the study found that 24 mothers and 16 fathers were involved. So, you're right: Mothers are affected. However, fathers are affected too. In the study I'm referring to, it's clear that the numbers are almost equal.

You've been placing considerable emphasis on mothers. Do you make a distinction based on gender? Is that important to you? Can you explain that? Statistically speaking, that's not the conclusion that emerges from the Quebec data.

[*English*]

Lisa Hepfner: What I was about to say about the Sherbrooke study is that seven of the eight children who are dead and are documented in this study are from Quebec. It is an issue all over the country. We can give you more information and more examples of this.

Yes, I would say this is seen to be a gendered issue. Typically, mothers who have suffered domestic violence are the ones affected by this issue in the work we have seen.

● (0845)

[*Translation*]

The Chair: Thank you.

[*English*]

That concludes your time, Madame. Thank you very much.

We're moving on to our second round of five minutes.

Ms. Jansen, please go ahead.

Tamara Jansen (Cloverdale—Langley City, CPC): Thank you.

Through you, Chair, I want to begin by explaining why this bill is so very personal to me. I'm a child of divorce. I'm also a survivor of deliberate parental alienation, and I'd like to share my story for context.

My dad was a baker, and he tried numerous times to make a go of being a restaurateur. He was handsome, artistic and hard-working, and he was a loving father. My mom was a psychiatric nurse whom I absolutely adored. She was smart and funny and was loved by everyone, and as a little girl, I idolized her.

As my father's restaurant began to fail, their marriage began to fall apart, and when I was about six or seven, my father moved out. Neither of my parents was perfect. They had both made mistakes, but my mother became so consumed by her anger toward my father that she created a world in which he was the ultimate evil and she was the victim.

When family court got involved, our family was split in half. Two older sisters went to live with dad, and my younger brother and I stayed with my mom. Things continued to deteriorate. As the bills piled up, my mom told me repeatedly that my father refused to support us financially. Our fridge was regularly bare, and there were many days when I went to school with nothing to eat. I remember finding her sobbing in the kitchen because she couldn't afford groceries, and there I was, a little girl trying to comfort her, assuring her that the Lord would provide. All the while, my anger toward my father continued to grow because I believed he was unwilling to keep food in our cupboards.

I remember a particularly terrible Christmas when my sisters came to visit. We couldn't afford a Christmas tree, so I popped popcorn and strung it around a tropical plant in our living room to bring a little Christmas cheer to the house. Late that night, my mother flew into a rage, grabbed my sisters by their arms and refused to let them go. Eventually, the police came, and they took my two older sisters back to my father, leaving me and my little brother behind. I learned to sleep with one foot on the floor, always ready to run, never knowing what exactly might happen next. Eventually we moved to Edmonton, and with the distance between my parents, things began to calm down.

When one of my sisters came to visit, my mother took her to a lawyer and insisted she sign an affidavit saying she didn't want to return to our father because she didn't get along with his new wife. Just last night, my sister told me how bad she felt for signing that document, because it wasn't true, but mom had insisted, and she was a child.

A year later, my older sister came to stay as well. I remember my father travelling all the way to Edmonton and coming to our church one Sunday because he knew we would be there. He just wanted to see us and make sure that we were all right, but my mother had convinced everyone that he was someone to fear. When he arrived, she ran us all out of the sanctuary in the middle of the service as though we were running from an axe murderer. I remained estranged from my father until I was almost 30 years old.

That year, he nearly died of pneumonia, and when he recovered, he decided he wanted to rebuild relationships with his children if he could, before it was too late. I cannot tell you how grateful I am that he did, because when I finally got to know my father, I was absolutely shocked to discover how alike we were. We thought the same way, we shared the same passions for entrepreneurship and creativity, and I discovered a relationship I never could have imagined. I had lost almost 25 years with my dad, years during which I could have had his love, his guidance and his encouragement as I was growing up.

This brings me to your bill, Ms. Hepfner. I listened to the way you presented parental alienation and the impression that you've left—that it's not real and that this is something only abusive fathers do to protective mothers. I'm here to tell you that this is very far from the whole story. Today I want to be a voice for the fathers who love their children and want to be part of their lives but who have been pushed out by parents determined to turn those children against them. I know what it looks like, because I was one of those children.

I absolutely agree that children must be protected from family violence and abuse. Their safety must always come first, and no child should ever be forced into a relationship that puts them in danger, but I'm deeply concerned that this bill would restrict the ability of judges to consider deliberate parental manipulation even when it's causing real emotional harm. Family situations are complicated, and judges need to be able to hear all the evidence, recognize manipulation by either parent and make decisions based on the safety and best interests of the child.

Fathers have an incredibly important role to play in the lives of their daughters. I know that, because I finally had the opportunity to discover what I had been missing. I was fortunate enough to get my father back, but I will never get those lost years back, and I don't want another little girl to lose the love and guidance of a good father because our laws fail to recognize that mothers too can deliberately alienate their children.

● (0850)

Surely we can protect our children from that kind of abuse. Wouldn't you agree? Why didn't you bring more fathers with you?

The Chair: Thank you very much, Ms. Jansen, for that really moving sharing of your personal life. We appreciate it. Unfortunately, that does conclude your time.

We'll move to Ms. Begum for five minutes. Please go ahead.

Doly Begum (Scarborough Southwest, Lib.): Thank you very much, Chair.

First, I want to take a moment to thank MP Jansen for sharing her personal story. It takes a lot of courage to come forward and share a personal story. Sometimes it's almost forgotten that we, as legislators, are also human beings who have lived stories and families...and what we go through on a day-to-day basis. It also allows us to be better policy-makers.

I want to commend you for that courage, for sharing about your parents and your sister. Thank you.

Of course, I also want to thank all the witnesses who have come forward to share their testimonies. There were a lot of testimonies that were in our package for this bill.

Before I even ask my questions, I know that there was a question at the end of Ms. Jansen's remarks. Would you like to take a moment to address that first?

Lisa Hepfner: I absolutely would. I really appreciate the opportunity. I was going to ask you if I could take a moment to respond to MP Jansen first.

I also want to thank you, MP, for sharing your story. It's a very moving story. You're clearly an incredibly strong woman. I have so much admiration for you, for sharing those details.

This bill would not affect good fathers like yours. The amended version takes the advice from the Canadian Bar Association, which would recommend only that judges not consider parental alienation when there's evidence of family violence. It wouldn't apply in your case.

Doly Begum: Thank you very much for that.

I assume MP Jansen would also like to know if you could talk about the concept that has been brought within the framework of this bill in terms of family violence. How would you describe it?

Lisa Hepfner: I'm sorry. I don't know if I understood the question.

Doly Begum: Does the bill describe family violence within the framework of this legislation?

Lisa Hepfner: I don't believe the bill does describe family violence. That's already described in the legislation, so I haven't looked to make any changes to that.

Doly Begum: You spoke about the changes that were made in 2021. This bill aims to address some of the gaps you've highlighted. Would you elaborate on some of those gaps? How would your bill address them?

Lisa Hepfner: Absolutely.

The Senate committee observed particular problems with paragraphs 16(3)(c) and 16(3)(j) of the Divorce Act. It recommended that the justice department consider reviewing these sections quickly.

Paragraph 16(3)(c) is the “friendly parent rule”. The Senate found that it may have a silencing effect, because women and children who allege parental behaviour that is not beneficial to the child are met with allegations that mothers are poisoning the children against their fathers or not facilitating contact with their fathers. I heard this from witnesses over and over again. Children weren't listened to when they alleged abuse. Mothers were considered alienators when they expressed fear for their child in the custody of the other partner.

Those reforms have not yet happened, as recommended by the Senate. The problem is getting worse, as I've said. Hundreds of women have come forward. There are 300 women's organizations across this country that are actively pushing for this legislation to be adopted.

● (0855)

Doly Begum: Do I have some time left?

The Chair: You have 30 seconds.

Doly Begum: I want to follow up. In terms of parental manipulation or interference, how can we ensure that children are protected from harmful allegations while still allowing judges to consider relevant evidence when determining their best interests?

Lisa Hepfner: Judges should look at all the relevant evidence when they're making their decision.

I'm someone who covered criminal court as a journalist for more than 20 years. I've spent a lot of time in courtrooms.

I have a lot of respect for the judicial system and for judges, but our job as legislators is to set parameters over what they can and cannot consider. However, if there's evidence of family violence, for example, it is our job as legislators to put parameters around that and say that you can't consider parental alienation allegations in the context of family violence.

Doly Begum: I want to end by saying thank you so much for bringing this forward and for advocating for survivors and for children and their best interests.

The Chair: Thank you very much.

Madame DeBellefeuille, you have two and a half minutes.

Please go ahead.

[*Translation*]

Claude DeBellefeuille: Thank you very much, Madam Chair.

Ms. Hepfner, I also want to thank you for your testimony. It confirms that, if we conduct interviews, especially as parliamentarians, we find that everyone has their own story. I am among those who believe that parental alienation exists, that it is not necessarily gendered and that it affects fathers as well as mothers.

What matters, and what brings us together today, is finding a way to draft legislation that protects children while also ensuring that fathers and mothers do not lose their relationship with their children because of a bill that may be overly restrictive.

On that note, your bill repeals paragraph 16(3)(c), which prohibits consideration of parental alienation. The question is, how will a non-violent parent who really is the victim of parental alienation be able to protect their bond with their child? Does your bill prevent that or allow it? This is unclear to us. You're telling us about your bill and you're familiar with the proposed amendments, but we're not.

Let me put it this way: Knowing that paragraph 16(3)(c) prohibits consideration of parental alienation, how can a non-violent parent who is genuinely a victim of alienation prevent their bond with their child from being severed? What protection is available to such a parent?

[*English*]

Lisa Hepfner: In this bill, if there were evidence that there's absolutely no family violence, then the judges could consider parental alienation. I want judges to have all the evidence before them to be able to make good decisions. I want them to stop falling for the myths and stereotypes that are often found in courts now. They should be able to hear all the evidence before they make their decisions.

I agree with you that family law cases are really complicated and really traumatic and each case is different. I want to support judges in making good decisions based on the evidence before them.

The Chair: That concludes your time.

Thank you very much.

[*Translation*]

Claude DeBellefeuille: Thank you.

[*English*]

The Chair: We're moving on to Ms. Cody for five minutes.

Please go ahead.

Connie Cody (Cambridge, CPC): Thank you.

Through you, Chair, I first of all want to say thank you to my colleague for her very personal story and for defending the fathers who have found the court systems to be not very favourable to their situations and to the many families that have been separated due to false allegations and through parental alienation.

I myself have a very personal story. I'm not willing to share it today, but I need to say that it ended in tragedy, and our son is no longer with us. I'll leave it at that.

I want to look more at the summary of your bill. It says that the courts would "assess the impact of coercive control on a parent-child relationship".

Can you clarify exactly what you mean by that? Are you talking about coercive control by one spouse against the other and the effect it has on the child, or are you also talking about coercive control exercised directly by a parent against a child?

● (0900)

Lisa Hepfner: I'm not sure I perfectly understand the question. This issue first arose for me when I was a member of the status of women committee and we were studying coercive control. To me, the misuse of parental alienation was an extension of coercively controlling relationships after a divorce. A coercive, controlling person doesn't stop trying to control the relationship if one partner leaves. That's why I was trying to incorporate coercive control into the legislation.

I will also say that judges don't need to use this parental alienation allegation to stop a parent who's doing bad things like the one.... They can order a parent to stop denigrating the other parent. If the parent, after several tries, doesn't stop denigrating the other parent, the court can throw the parent in jail. It has a lot of discretion and a lot of things that it can look at. It doesn't have to use parental alienation. Judges can use the evidence before them, and they have a lot of tools in their tool kit.

I'm concerned about the explosion in the use of parental alienation in cases and the fact that it's so often misused. I don't want to take away from anybody who's had experiences like the ones we have today. I think they're absolutely valid.

Connie Cody: Thank you.

I want to go on because I don't have a lot of time to ask questions.

Your bill would also allow the court, in certain circumstances, to hear directly from a child about the child's views and preferences. If one parent has been coercing that child against the other parent, how does the judge distinguish between the child's independently held views and views that have been shaped by coercion, intimidation or deliberate manipulation?

Lisa Hepfner: I have taken that out of the amended version of the bill because it was controversial. The intent was to hear from children, because I heard over and over again from kids who had gone through the divorce process that nobody listened to them. It was as if they were kept out of the whole process. Even when they made submissions to a court that they had experienced abuse, they weren't believed. The court system was more concerned about allowing access to both parents than protecting the child.

The intent behind that was really to allow children's voices to be more often heard and considered during the divorce process.

Connie Cody: Right now, the alienation claim is only allowed to be considered if the parent accused of the alienation had already been found by the court to have engaged in family violence. Can you explain that?

Lisa Hepfner: I've amended the bill to—

An hon. member: Unbelievable.

The Chair: Order, folks.

Connie Cody: I'm sorry. I don't know what questions to ask if there's an amended bill.

Lisa Hepfner: I'm just trying to explain to you that I agree that those types of things were controversial, and I want to work with the committee to find a solution that is good. I'm trying to work with you in that way. I apologize if my answers aren't satisfactory.

Connie Cody: Okay. I'd like to continue with another question.

We can all agree that a child's emotional and psychological well-being should be a priority in the courts. If the courts are to consider domestic violence but not parental alienation, should there be more of an assessment of alleged coercive control and its impact on children? What happens to a child who is genuinely being turned against a safe parent, and what remedy remains if reunification therapy is prohibited?

Lisa Hepfner: There are a lot of remedies that courts can use. As I've told you, they can make orders against a parent, and they can stop those behaviours. I have a problem with children being forced into reunification therapy.

At the status of women committee, we heard about a case in which children were sent across the border. They had to change custody several times to go across the border and see a therapist. It seemed as though they had gone through brainwashing techniques. It seemed like conversion therapy. There are a lot of examples of this happening to kids. I'm trying to prevent the misuse of those practices that I see happening in the system.

● (0905)

The Chair: Thank you very much. That concludes your time, Ms. Cody.

Ms. Gladu, please go ahead for five minutes.

Marilyn Gladu (Sarnia—Lambton—Bkejwanong, Lib.): Thank you, Madam Chair.

Thank you, Ms. Hepfner, for being here today.

As you know, I was also on the status of women committee, and we've heard a lot of testimony about parental alienation. I have two questions. I'm going to ask my questions first, and then I'll let you take the rest of the time to answer them.

In terms of parental alienation, there are two things that I think need to be addressed in the law that are not today. One of them is when there is evidence of abuse and that parent tries to make an argument in the courts that the other partner is deliberately alienating. The second one is malicious other partners who are going against a safe parent and really alienating, resulting in the kind of situation that Ms. Jansen shared, which is not a rare occurrence. It is a very common occurrence.

One of the difficulties I see in the bill is that Parliament can't tell the courts what they have to do. It can provide parameters around what they should look at. They should be looking at abuse. They should be looking at whether there's malicious prosecution, and they should be respecting the court's jurisdiction. Could you talk a bit about that?

My second question has to do with the equity with respect to the relocation issue. As I understand it, today the women are not allowed to take the children away from the father, but that same reciprocity is not there for the men. I think there should be equality in that. Does this bill address that?

Lisa Hepfner: Your first question was about...? I'm sorry, it was a lot to take in all at once.

Marilyn Gladu: It was about parental alienation, the malicious charges from one parent and sometimes the charges from an abusive parent who tries to use this argument in court. As for the courts, we can't tell them what to do, but we can suggest that they take into consideration whether there's malicious intent, whether there's evidence of abuse, etc. Also, we have to make sure we respect the jurisdiction, because we legislate, but the provincial courts are the ones that do the thing. How does your bill address that?

Lisa Hepfner: We have purview over the Divorce Act; provinces have purview over separation. There's overlap in the family court system that way. The purpose of legislation is to give judges parameters in what to consider or not consider. As I said, legislation is a living thing, and it's our job as legislators to look at the law, see where there are gaps, try to address those and continue to try to do that. I don't think any law is perfect when it's passed in Parliament. We should constantly be looking at the impacts of everything that we pass. I don't think this bill would impact judges' discretion whatsoever, so judges would still be able to act to clamp down on any troubling behaviour by a parent. I think they should take those things into consideration. As I said, I'm concerned about the overuse of parental alienation allegations and how it has become an automatic counterclaim to domestic violence in the court system.

Marilyn Gladu: What about the relocation question?

Lisa Hepfner: What I tried to do in my bill was clarify relocation, because I think it's very misunderstood across the country. A judge can't tell a parent that they can't move. All they can do is determine where and in whose care the child better off if they can't be with both parents. It's often being misinterpreted so that a parent who applies for relocation is considered a bad parent if they would move even if they couldn't take their kid with them. This bill is trying to fix what a lot of people, I think, don't understand about relocation.

A lot of times, women move with their partners into a community and they know nobody else in that community. If there's a divorce, they want to move back to their home community with their child, but if the other parent opposes it, what's best for the child? I think the judge should consider what the relationship with the child is with the parent who wants to move and what the relationship with the child is with the parent who opposes relocation. Look at both of those relationships, and make your decision based on the best interests of the child.

● (0910)

Marilyn Gladu: Thank you.

With my final seconds, I just want to say how important this principle is to get into law. We've seen deaths. We've seen Keira's law—you remember that situation—and I see the report. Thank you for bringing this important issue to us today.

Lisa Hepfner: I would recommend that you bring Keira's father to testify at this committee on this bill.

The Chair: Thank you very much, Ms. Hepfner. That concludes our first hour. I really want to thank you for your amazing testimony today and for your advocacy on this very important issue.

I'm going to suspend the meeting as we bring in our next hour of witnesses.

● (0910)

_____(Pause)_____

● (0920)

The Chair: I'm calling this meeting back to order.

Welcome to the second hour of our meeting.

We have with us, from the Department of Justice, Claire Farid, director general and senior general counsel, family law and youth justice policy section, policy sector; Martha Butler, deputy director and senior counsel, family law and youth justice policy section, policy sector; and Geneviève Laurence, counsel, family law and youth justice policy section, policy sector.

That's quite a mouthful, I would say.

You will have, collectively, five minutes for opening remarks. Please go ahead.

Martha Butler (Deputy Director and Senior Counsel, Family Law and Youth Justice Policy Section, Policy Sector, Department of Justice): Thank you very much for inviting us, Madam Chair.

My name is Martha Butler, and I am here with my colleagues from the family law and youth justice section. Our team provides policy and legal advice on federal family law to the Minister of Justice, including on the Divorce Act.

I will note that, although the sponsor was very kind and provided us with a copy of suggested changes to her bill, we will have to speak to the bill as drafted. That is what we have prepared our remarks for.

[*Translation*]

The department recognizes the importance of the work of the sponsor of Bill C-223 and the bill's critical objectives, including enhancing children's safety and strengthening the family justice system's response to family violence. Bill C-223 raises important issues about the safety of children and families, the impact of family violence and the way allegations of what is often called “parental alienation” may be used to undermine the concerns of victimized parents. These are serious issues that warrant careful consideration.

[*English*]

Bill C-223 proposes wide-ranging changes to the Divorce Act that raise significant legal and policy concerns.

These relate primarily to three areas. The first is the scope of federal jurisdiction over divorce. The second is the impact on courts' ability to consider evidence and make parenting orders in the best interest of the child. The third relates to the implications for provinces and territories, given their responsibility for the administration of justice.

[*Translation*]

A central concern is that changes of this scope should be developed with careful consideration of their interaction with existing laws, including meaningful engagement with provinces and territories. This was an important feature of the collaborative process that preceded the 2021 amendments to the Divorce Act. I will illustrate these concerns through three examples, while remaining available to answer further questions.

[*English*]

I will begin with division of powers issues.

First, the bill would require legal advisers to assess the risk of family violence and develop safety plans for their clients. There is a strong policy rationale for ensuring that legal advisers raise family violence with their clients. This could support the Divorce Act's objectives and help ensure that clients are aware of appropriate services and supports.

However, developing safety plans is beyond a lawyer's scope of practice and beyond the jurisdiction of the federal government. Lawyers can play a very important role in identifying concerns and referring clients to qualified professionals, but they're generally not equipped to provide specialized safety planning services themselves.

This is an example of a very important policy objective with a proposed legislative mechanism that may not be appropriate.

● (0925)

[*Translation*]

Second, Bill C-223 proposes changes to how courts address cases where a child resists or refuses parenting time. The bill would prohibit courts from considering allegations that a parent has encouraged a child to resist parenting time with the other parent, except in cases where that same parent has also engaged in family violence. The current Divorce Act requires courts to consider all relevant evidence and to make individualized assessments of the child's best interests. There may be a need to provide further direction to courts about family violence but a categorical restriction risks limiting the evidence courts can consider and their ability to make orders in the best interests of children.

[*English*]

The bill would also prohibit courts from ordering reunification therapy. It would add a very broad definition of “reunification therapy” to the Divorce Act that could be interpreted to include common interventions in divorce cases intended to help children cope with the impact of divorce. It would also prohibit courts from making any changes to parenting time with a preferred parent to improve the child's relationship with the other parent.

Limiting these tools available to courts could reduce their ability to respond effectively in complex cases. It could prevent children and families from accessing remedies that, in appropriate situations, support healing and safety.

Finally, as I alluded to, family law is an area of shared jurisdiction. Provincial and territorial laws apply to separating but not divorcing parents. The 2021 amendments I mentioned were developed following extensive discussions with the provinces and territories. This was to ensure that amendments considered issues such as the division of powers and eventual implementation issues.

Because of this close collaboration, most jurisdictions mirrored the federal amendments. This helps to ensure that we do not have significantly different laws for parents depending on whether they are separating or divorcing.

[*Translation*]

The bill would amend, repeal or introduce more than 20 provisions into the Divorce Act. Changes of this breadth would have implications beyond the federal statute. They would affect provincial and territorial legislation, court processes, services and implementation requirements.

[*English*]

I will jump ahead to the end, given that I've run out of time.

The Chair: You really have run out of time, Madame.

Martha Butler: Okay. I apologize.

The Chair: Thank you so much. I hope that, from the questions, you can finish your thoughts.

Martha Butler: Absolutely.

The Chair: We'll start with Ms. Kirkland for six minutes.

Please go ahead.

Rhonda Kirkland: Thank you. If you could finish your thought, I would allow you to do that.

Martha Butler: Sure, absolutely.

The position of the department is that these are critically important issues affecting children and families, but there are concerns with how the bill seeks to address them. The question is not whether the issues deserve attention but whether the approach in the bill is the right one to address them.

Rhonda Kirkland: Thank you so much. I appreciate that.

Through you, Chair, I do have one question of clarification from the first hour.

Is it not true that the existing Divorce Act already contains no presumption of equal parenting time?

Martha Butler: Madam Chair, I will be happy to respond to that. The Divorce Act does not currently have a presumption of equal shared parenting time.

There is a proposal in the bill to make that explicit and, in some ways, that could provide helpful guidance to some courts, because we have heard from experts in the area that sometimes courts act as though there is such a presumption. However, as I've mentioned, we need to consider FPT issues, the division of powers, what is provincial versus federal jurisdiction and the interaction of the federal legislation with provincial legislation.

In Quebec, there is a presumption that there is shared decision-making responsibility for parents. They have the concept of parental authority in the Civil Code of Québec that essentially directs courts to allow parents to share decision-making for their children. If there were a provision in the Divorce Act that said that there is no presumption of equal, shared parenting, it would conflict with existing Quebec law.

● (0930)

Rhonda Kirkland: Thank you. That is helpful.

I found, when I was going through the process myself, that people are still catching up with the difference between the words “custody” and “decision-making”. We're all still catching up on the wording of the most recent changes, which were good, and I'd like to see some changes to the Divorce Act, absolutely. I think we're pretty much in line here.

I thank you for the clarification that we're speaking just to this bill as we see it right before us.

Under the current Divorce Act, judges must determine parenting arrangements based on the best interests of the individual child. From your perspective, could the restrictions in proposed subsection 16(3.1) prevent a judge from considering evidence that would otherwise be relevant to determining a child's best interests?

Martha Butler: The position of the department and, in fact, the position that we have heard from many stakeholders is that it is always important for courts to consider the full picture of each child's individual circumstances and that limiting the court's ability to consider certain aspects could be quite problematic.

One important addition to the Divorce Act in the 2021 amendments was the primary consideration that requires courts to consider a child's physical, emotional and psychological well-being ahead of any other consideration, so our position is that generally, if there are certain provisions, if there are considerations that are potentially less relevant for a child or in the context of family violence, we would expect that courts would consider the child's safety ahead of anything else.

Rhonda Kirkland: Effectively, this bill treats parent alienation, for example, as a discredited or essentially non-existent concept. I understand there's a narrow carve-out. However, I asked in the previous hour how that juxtaposes with the family violence definition, including psychological abuse, emotional abuse and coercive control, because parent alienation is often psychological abuse. Is it too difficult to just blanket ban considering parent alienation?

Martha Butler: The breadth of the current definition of family violence in the Divorce Act is considerable. It is a very broad definition. It was drafted that way intentionally, to allow courts to consider a very broad range of behaviours that could be relevant. If we were to look at a blanket prohibition that was still subject to family violence, even that family violence piece could open the door to considering many issues. Courts have, in some cases, considered parental alienation as an extreme form of family violence. However, there has been some academic criticism of this analysis.

● (0935)

The Chair: Thank you very much. That concludes your time, Ms. Kirkland.

We're moving on to Mr. Maloney for six minutes.

Please go ahead, sir.

James Maloney (Etobicoke—Lakeshore, Lib.): Thank you, Madam Chair. I want to thank the witnesses for being here.

I want to start with thanking Ms. Hepfner for putting this bill forward. In listening to everybody here today and in having discussions about this legislation, one thing is clear: This is a critically important issue that needs to be thoroughly discussed and addressed, but it also has some challenges, which we've heard today. Nobody disagrees with the concept. Everybody agrees that there needs to be a solution. It's just finding out how.

I want to thank Ms. Jansen for her remarks earlier. In my view, her situation summed it up rather succinctly and identifies the challenges.

Ms. Butler, I'll start with you with my questions.

You identified three challenges or difficulties with this legislation. I'm going to talk about the second one predominantly. That's about parental alienation. I'd like you to define, for the layperson who's not familiar with family law and who hasn't gone through this, what parental alienation is in a family law context.

Martha Butler: Thank you.

Parental alienation remains a somewhat controversial topic in the literature, so it's not a term that the department tends to use. Essentially, what social scientists are describing when using that term is a situation in which one parent has encouraged a child to become estranged from the other parent without a reasonable cause.

James Maloney: I have not been divorced. I have not lived through a personal family divorce and I'm grateful for that, but what you just described seems to me, from my experience with friends, family and others, to be pretty commonplace in every single situation. The challenge then becomes how you use that in the context of a family law proceeding. That's what we're talking about here. That's when we get into the whole judicial discretion piece.

This is why Ms. Jansen's point is so pertinent. Physical violence is one thing, but there are financial suggestions.... I've seen many cases of, “Your father's a bad guy. All he does is go out golfing and hang out with his buddies. He does this, that and the other thing”, or vice versa. Under this legislation, that type of information would not be available to the court. Is that correct?

Martha Butler: That's correct. The bill would prevent allegations of parental alienation from being heard. Yes, there are certainly circumstances in which the sorts of behaviours that the concept of parental alienation is trying to address do arise in contexts of separation and divorce in the absence of family violence, as we heard from the member. The significant challenge with the bill, which many stakeholders raised, was that it would tell courts what they may or may not consider.

In the context of determining the best interests of the child, the Divorce Act leaves the test very broad, so courts may consider anything that is relevant. Especially outside the family violence context, in which we are dealing with parents who are otherwise treating their children well, for one parent to be actively undermining the relationship with the other could be very problematic and may be something that a court should be considering in making a determination about parenting time or decision-making responsibility.

James Maloney: That's my point. I for one have great difficulty any time governments try to limit judicial discretion. That should be done in extremely rare circumstances, in my personal opinion. That's what we're talking about.

Resisting parenting time is something the courts wouldn't be able to consider under this bill. I see that as a massive problem because, for a judge presiding over a family law case, if there's a situation in which the child doesn't want to spend time with one parent, the judge needs to know why that is. There can be all kinds of wild, false allegations that can range from minimal to serious, but if they're made over a period of time, they have a significant impact on the child's decision, a parent's ability to deal with the situation and the court's ability to deal with it. That's really what you're trying to say—why you think that the provision is problematic. Is that fair?

● (0940)

Martha Butler: Yes, the department has concerns about telling courts what they may consider in the context of making parenting orders. Stakeholders have raised this as one of their primary concerns with the bill.

James Maloney: Okay, thank you.

I believe Ms. Gladu wants to ask a question.

Marilyn Gladu: Indeed.

Following on from that point, I am very concerned that the federal government is telling the courts and judges what they can or cannot consider. That's a provincial jurisdiction issue as well. Have you heard input or communication from the provinces and territories? If we run out of time to have you tell me all about it, could you send any of that to the clerk so that we can have an idea of what that is?

Claire Farid (Director General and Senior General Counsel, Family Law and Youth Justice Policy Section, Policy Sector, Department of Justice): Thanks. I'll take this question, Madam Chair, if that's okay.

The Chair: You can, in 10 seconds or less.

Claire Farid: Given the scope of this bill and the interaction with provincial and territorial responsibilities, the department has undertaken discussions with our provincial and territorial colleagues. Again, given the scope of the bill, they would certainly like to have more of an opportunity to discuss and analyze the implications of reform in this area.

The Chair: Thank you very much.

We're moving to Madame DeBellefeuille.

[*Translation*]

You may begin. You have the floor for six minutes.

Claude DeBellefeuille: Thank you very much, Madam Chair.

I would like to thank the witnesses for being here.

Ms. Farid, you touched on an issue that has been on my mind. Your people amended the Divorce Act in 2021. You told us that amending the Divorce Act isn't easy because the provinces and territories have to be consulted. You succeeded because you devoted time to consultation and collaboration. My understanding is that the provinces and territories had adopted the amendments and incorporated them into their practices.

You said that you've begun discussions on this matter. I'm no expert, but how long do you think it might take to negotiate and determine whether the provinces and territories are in favour of this bill? Do you have any idea?

Claire Farid: I'll answer in English.

[*English*]

Generally, in the area of family law, as we noted, because we have jurisdiction in relation to divorce—parenting in relation to the divorce—the provinces have very similar legislation that applies to unmarried parents or parents who are married but separating. In an area in which substantial reforms are suggested, we generally talk to them about issues in terms of the practices in their particular province. We look at their legislation and what services they have in place. The family justice services are not identical across the provinces because of particular needs and resources. Also, we have very substantive policy discussions.

[*Translation*]

Claude DeBellefeuille: So you need a lot of time.

In Quebec, the situation is unique because 65% of children are born to unmarried parents. It is not that Quebeckers are opposed to marriage, but common-law unions are more prevalent than marriages. Therefore, if the bill before us were passed, you would need to have extensive discussions with Quebec, which is affected somewhat differently because fewer children are covered by the Divorce Act.

How do you see your discussions with Quebec unfolding? I know that Quebec's Minister of Justice has opposed this bill. I also know that the Barreau du Québec is not supportive of it. Moreover, I believe that one of the Canadian Bar Association's arguments was that judicial discretion should not be restricted.

As it stands, this bill is a major undertaking. There may also be amendments, but, like you, we haven't seen them yet, so we can't analyze them.

Ms. Butler, fundamentally, we all agree on the need to protect children and provide them with a safe environment. We need to determine the best approach and what changes should be made. That's what we're trying to figure out.

I have a lot of questions about this bill. You've answered quite a few. As I understand it, there will be extensive discussions with the provinces and a number of bilateral agreements to negotiate, since each province is different.

Another thing you said that really struck a chord with me as a former social worker was how a legal adviser could assess whether a person or a child is a victim of violence. I don't actually know if your training as a lawyer included clinical courses that equipped you to make such an assessment. The ability to make that kind of assessment is a skill that takes a lot of work to develop.

Does that mean Bill C-223 would require the involvement of other professionals to support legal counsel in assessing whether violence is occurring?

● (0945)

Martha Butler: I completely agree with you. Again, some of these issues fall under provincial jurisdiction. Yes, professions are regulated by the provinces and territories. In addition, as you noted, assessing the risk of violence is not a skill that lawyers normally develop in their training. You're right in saying that mental health professionals are in a much better position to do this kind of analysis and to provide their clients with appropriate tools.

Claude DeBellefeuille: I'm no expert, but I imagine that if a judge, with their expertise and experience, believes that a child is a victim of violence, they can order assessments by external experts and get a report that informs their decision. Am I wrong about that?

Martha Butler: The court can issue orders. Lawyers may also suggest that their clients see professionals, such as social workers or mental health experts, who will be able to help them in a much more targeted way.

The Chair: Thank you very much.

[*English*]

That concludes your time.

Now we're moving on to our five-minute rounds, starting with Mr. Khanna for five minutes.

Please go ahead.

Arpan Khanna (Oxford, CPC): Thank you, Madam Chair.

Thank you to the witnesses for coming today.

I want to thank the sponsor of the bill for her remarks earlier on.

I agree with what Mr. Maloney said in his intervention today. I think there are some real concerns with this bill.

I think everyone in this room today wants the best interests of the child looked after. I think we all, irrespective of party, want to make sure that parents and families who are subjected to violence are protected and safe, irrespective of their gender.

I've seen stories. I've heard stories. I've met with folks who have gone through this and lived through this. We've heard from my colleague Tamara Jansen today as well. In her powerful story, sometimes it's not gender-based.

I could say what the stats show, which is that women are primarily the target, and we condemn that. That's why we've put forward legislation to protect those who are being targeted. However, we also want to make sure that the law we're proposing gets the results we intend to achieve.

It gets very charged. Colleagues who are in family courts all the time.... I've heard nightmare stories of how families are really destroyed and how the proceedings take forever. That's a huge problem. As for discretion, I personally believe judges should have discretion when it comes to matters of any type of law. Judges are given a position of power, in which they use all tools to make a decision.

In the first hour, the sponsor said judges will get more discretion with this bill, but now I'm hearing they won't. Can you confirm whether they will get more discretion or less discretion with this bill?

Martha Butler: Yes.

The bill, as enacted, would limit courts' discretion in two ways.

The first is in what they're able to consider in situations in which there are allegations of what we call parental alienation. They wouldn't be able to consider those allegations at all if they come up in the context of an application for parenting, or custody. The terminology is changing, so a parenting order is one that deals with parenting time and decision-making responsibility, or what we might have called custody and access before the Divorce Act amendments. Courts would not be able to consider those allegations.

Then, when they're making parenting orders, they would have restrictions on what they can order there too. We've mentioned the reunification therapy orders. Also, it would restrict courts from ordering changes in parenting time from the preferred parent to the other parent in order to repair that child's relationship.

● (0950)

Arpan Khanna: Is the concern with using the term “parent alienation” in your view? If I were a family court lawyer, could I not talk about parent alienation without mentioning the term “parent alienation” and say it's psychological violence toward a person? Would that be acceptable or not?

Martha Butler: It's a bit of a charged term.

There have been associations with what has been called parental alienation syndrome. There is significant debate in the mental health community and legal community about the terminology, but the concept of encouraging a child to become estranged from their other parent, without valid reasons, is certainly something that has been seen.

Arpan Khanna: You said that you had consultation with provinces. I've been speaking to provinces as well. For the most part, they don't seem to be in support of the bill as it currently stands. Is that the feedback you're receiving as well?

Claire Farid: Thanks.

We've had a lot of discussions with the provinces, and I think it's better not to get into particular specifics, given that those discussions are generally confidential. What I can say is that there are concerns about process and the need to examine these issues in a more in-depth way and include all the levels of government.

Arpan Khanna: I appreciate that, but it's also important for us to know where the provinces stand with the current bill.

Can you indicate whether it's been negative or positive and give some sort of indication to us? They'll be the ones helping to implement this. It's important for us to know whether they support this bill, because without that, we can't really justify it.

Claire Farid: I can say that the majority of the provinces have mirrored the 2021 amendments, but some provinces and territories have just recently done that. There are concerns about significant amendments that would be made at this particular juncture without more study.

Arpan Khanna: Thank you so much.

The Chair: Thank you very much.

We will move on to Ms. Begum for five minutes.

Please go ahead.

Doly Begum: Thank you very much, Chair.

Thank you to all of you for being here this morning.

I really appreciated your initial remarks, and you alluded to the legal community's—or even the lawyers'—responsibility, that the bill would put the onus on them in terms of family planning or safety and security.

You also spoke to the concept of family violence. One of the things I am a little conflicted with, within just my understanding, is in terms of family violence. Is it actually defined within the parameters, and if so, how?

Martha Butler: Madam Chair, my colleague Claire would like to respond to this question.

Claire Farid: There is a definition of family violence in section 2 of the act.

I would say that it's really important to understand that the core of the definition has four components. For something to be family violence, it does not have to be a criminal offence, so we're dealing on the civil standard. That's important because we need to consider everything related to the best interests of the child.

It's behaviour “that is violent or threatening or that constitutes a pattern of coercive and controlling behaviour or that causes [a] family member to fear for their own safety or for that of another person” or is threatening toward them.

There are examples given in the list of family violence, but ultimately, in order for something to constitute family violence, it needs to meet that threshold.

● (0955)

Doly Begum: Thank you so much for that.

I know MP Hepfner, the sponsor of the bill. I think the intention is so pure and genuine and really reflects the needs of children and their best interests. Of course, this issue, as we agree on all sides, is such an important one. It requires a lot of discussion and, of course, coming up with the best solution needed to address this and include all of it.

The bill would remove the courts' ability to consider parents' willingness to support.... Not all cases have family violence specifically defined in ways we may understand. If this repeals the courts' ability or parents' willingness to support a child's relationship with another parent who may have gone through different aspects of it....

Can you explain the purpose of the existing provision in the legal framework and what legal implications might arise by removing it?

Claire Farid: I'll let my colleague Ms. Butler speak to that.

Martha Butler: The sponsor spoke to the potential removal of paragraph 16(3)(c) from the current Divorce Act. As she mentioned, I believe it's called the “friendly parent rule”. It used to be part of a larger provision in the Divorce Act called the “principle of maximum contact”, whereby a court would order as much time with each parent as was consistent with the best interest of the child. As part of that, it would consider each parent's willingness to support the child's relationship with the other parent.

When the department was working with stakeholders, provinces and territories to develop the amendments that came into effect in 2021, we were aware of concerns about that provision. What we did with the amendments was separate the maximum contact principle into pieces. The concept of supporting a child's relationship with each parent became a best-interest factor, but only one of many. As I've mentioned, we created, at the same time, the primary consideration so that courts must consider the child's safety, security and well-being above any other consideration.

The element of each spouse supporting the child's relationship with the other spouse is still subject to the child's safety. Yes, it can be an important consideration for some families, but if you're dealing with a situation of family violence, for example, it may not be appropriate for a parent to support the child's relationship with the other parent.

Doly Begum: Thank you very much.

The Chair: Thank you very much.

We're moving on to Madame DeBellefeuille for two and a half minutes.

Please go ahead.

[*Translation*]

Claude DeBellefeuille: Thank you very much, Madam Chair.

Ms. Farid, let's consider a hypothetical situation. If Bill C-223 were to pass with amendments and receive royal assent, your department would have a mandate to negotiate with all the provinces. My understanding is that no work has begun on that front yet because the bill is not very far along in the legislative process. This is important because that part is often overlooked. Legislation we pass here at the federal level can have major implications for Quebec's laws and those of the other provinces, as well as on practices and culture. The changes being proposed here are not minor; they are fairly significant.

I just want to make sure I have this right. If some amended form of the bill were adopted, would your department have a mandate to collaborate with the other provinces?

Claire Farid: Normally, if it's a government bill, we work with the provinces before the bill is introduced. Of course, that depends on the number of amendments proposed. For this bill, there are quite a few. Yes, we have had discussions with the provinces, but, for something like this, it is very important to continue those discussions and gain a better understanding of the bill's impact.

● (1000)

Claude DeBellefeuille: For more than a year now, all parliamentarians in the House of Commons have been receiving a lot of documentation and correspondence. We've heard from representatives of women's associations and parents who are advocating for Bill C-223 and calling for change. There is growing public pressure. Our job is to clarify things, study the issue, determine whether the time has come to address what I would describe as broader societal questions and figure out the best way to do so.

From what I understand today, the concerns have been brought to light, but this bill may not be the best vehicle for achieving those objectives. It's possible that some groundwork still needs to be done before proposing federal amendments aimed at protecting children while ensuring that parents don't lose contact with their children in the event of a separation.

[*English*]

The Chair: My sincerest—

[*Translation*]

Claude DeBellefeuille: I gather that we're not quite there yet.

[*English*]

The Chair: Thank you so very much.

Unfortunately, that was way over time. If the witnesses want to provide a written response, the committee would be more than happy to receive it.

We're moving on to Mr. Lawton for five minutes.

Please go ahead, sir.

Andrew Lawton (Elgin—St. Thomas—London South, CPC): Thank you, Madam Chair.

In the time since this meeting started, we have had some rather significant breaking news. The Supreme Court has just announced that it will be hearing the Liberal government's appeal of the Emergencies Act case. This is despite the fact that two courts, the Federal Court and the Federal Court of Appeal, found that the Liberal government violated the charter rights of Canadians by restricting the right to legally protest and by freezing the bank accounts of people based on their political views and political activities.

James Maloney: I have a point of order, Madam Chair.

How is this possibly relevant to this piece of legislation?

The Chair: Mr. Lawton, please get to the point of what this meeting is about today.

Andrew Lawton: Thank you. I will, because this is a matter at hand that has just come up. I will note that I have a motion on notice that deals with this very subject, and this is my time, Madam Chair.

The Chair: Have you sent the text of the motion to—

Andrew Lawton: There is already a motion on notice that is relevant to this.

The Chair: Okay.

Andrew Lawton: Thank you.

The point I'm trying to make is that it's ironic: Even now, the Liberals are still trying to silence discussion about this issue.

The Liberal government has spent millions of dollars litigating this despite clear findings by two courts, and now, by bringing this to the Supreme Court of Canada, it will spend millions of dollars more rather than just accepting what the Federal Court and the Federal Court of Appeal have said. This is now taking time, years after the fact, from a government that claims it is a new government. It is still fighting the old battles.

The Chair: I'm sorry to interrupt you, Mr. Lawton. We're looking for the text of the motion. Can you please advise us of when you sent it to the clerk?

Andrew Lawton: Absolutely. There is a motion that was put forward April 29, 2026.

The Chair: Thank you.

Andrew Lawton: Thank you.

That motion, in the bipartisan spirit, acknowledges my colleague Ms. Gladu's strong advocacy for charter rights and opposing the Liberal government's usage of the Emergencies Act. I'm very glad that so many Canadians from different parties and from different parts of the country have acknowledged what the Liberal government refuses to acknowledge.

In the interest of a clean start, because I want to get back to the issue at hand, I will put a new motion on notice—

Doly Begum: I have a point of order.

The Chair: Please go ahead.

Doly Begum: Thank you very much, Chair.

I find it profound that we are debating and discussing a bill that is for the safety of our children, of our families and—

Andrew Lawton: That is a point of debate.

Doly Begum: We have witnesses here to testify on this really important piece of legislation, the importance of which I think we all agree on, on all sides. It is so disappointing that a completely different topic that is not of relevance to this issue would be brought up here.

The Chair: Thank you, Ms. Begum. I think your point of order is on relevance.

Again, Mr. Lawton, do we have relevant questioning for our witnesses, or is there something else you'd like to propose?

● (1005)

Andrew Lawton: I'm going to be questioning the witnesses in a moment. I am getting to the end, and I was about to wrap up before Ms. Begum made her point of order.

In the interest of moving on, I will put a fresh motion on notice that can be revisited at a future meeting as follows:

> That the Standing Committee on Justice call on the Liberal government to accept the Federal Court and Federal Court of Appeal decisions that it violated the charter rights of Canadians by unlawfully invoking the Emergencies Act to freeze Canadians' bank accounts and restrict the constitutional right to protest, and that it call on the Liberal government to drop its appeal before the Supreme Court.

That is the motion I'm putting on notice.

Minus the points of order, how much time do I have left, Madam Chair?

The Chair: You have one minute and a half.

Andrew Lawton: Thank you.

For the officials, we heard from Ms. Hepfner earlier today that she has a new version of the bill. You were very clear—and I appreciate it—that you can speak only to the version that is before us.

Was the department involved in any way in drafting the new version or the amendments that Ms. Hepfner referred to earlier?

Martha Butler: I would say no. We had not seen these amendments at all until this morning. We were not aware that they were going to be shared.

Andrew Lawton: Okay. We can only really, as a matter of course, deal with the bill we have before us, and we shouldn't take from the way those amendments were presented that the department has endorsed those changes in any way.

Martha Butler: No.

Andrew Lawton: Okay.

Based on what you've seen in the course of your review of the bill, is what this bill is doing limiting judicial discretion in a substantial way?

Martha Butler: Yes. We believe that this would limit judicial discretion in this limited number of cases.

Oh, I have 30 seconds. Excellent.

Voices: Oh, oh!

Martha Butler: We do not have a huge number of parental alienation allegations in family law. There was a recent study by an academic, who will be coming to appear before this committee—Nicholas Bala—and the committee will have an opportunity to talk to him in more detail about his research.

He was looking at cases post 2021, when the Divorce Act amendments came into force, and he was looking at 172 cases. Yes, in those cases, there would be significant limitations on judicial discretion, but this is a small proportion of family law cases overall.

The Chair: Thank you very much.

Our last questioner is Ms. Gladu.

Please go ahead for five minutes.

Marilyn Gladu: Thanks, Chair.

Thank you to the witnesses for being here.

My first question has to do with the part of the bill that talks about how lawyers will be responsible for risk assessment and safety plans. I'm not sure that this is their area of expertise. Have you heard from any law associations or any concerns on this matter?

Martha Butler: Yes. You will see in the briefs that the committee has received that this has been flagged as a significant issue. The Canadian Bar Association has expressed concerns, and groups working on behalf of mental health professionals have also expressed concerns, because it does fall more within their scope of practice than it does for lawyers.

As I was mentioning to the member earlier, this is not the sort of training that lawyers typically receive. The Department of Justice does make training on family violence available to lawyers. We've developed the HELP tool kit, which provides lawyers with a lot of very practical tips on how to support clients who have experienced violence, but it doesn't go as far as telling lawyers how to develop safety plans. This is a very specialized area of support that must be provided to victims and that lawyers simply do not have the training for.

Marilyn Gladu: Thank you.

Let's talk about relocation. There are provisions in this bill about the relocation of one parent or another. I'd like to understand better how that compares to what's in the existing law and whether you have any concerns about the recommended change.

Claire Farid: I will take that question. Thank you.

The existing provisions on relocation were introduced in 2021, and there were two components relating to those provisions. Process requirements were introduced for notice, and there were exceptions in relation to family violence cases. Substantive rules were then introduced in terms of how a court should determine whether a relocation should be permitted. There are a number of aspects to that.

Ultimately, the determination is a “best interest” determination. However, there is some guidance given to the courts. In cases in which the parents substantially share time, the onus is on the person proposing the move to demonstrate that it's in the best interests of the child. Conversely, when the parent proposing the move has the vast majority of the time with the child, the onus is on the other parent to prove to the court why the move should not be permitted. There is also an additional consideration that the court cannot consider, which is, essentially, whether the person proposing the move would still move if the child's relocation was prohibited.

Our understanding of what is proposed in Bill C-223 is that there would be substantial changes to the burden of proof. According to Bill C-223, if a parent has the majority of the parenting time, which is 50% plus one, and there is an application to move, the onus would be on the other parent. That would include some shared parenting situations. The parent who is the left-behind parent would still have the onus to demonstrate that the move is not in the best interests of the child. Similarly, if the parent proposing the move does not have the majority of the time and is proposing to move the child, they would have the onus to demonstrate why the move should be permitted.

There are substantial changes proposed to the existing burdens in the Divorce Act.

● (1010)

Marilyn Gladu: This is my last question. Bill C-223 would restrict courts from considering certain allegations of deliberate parental manipulation, which I've seen numerous examples of. Obviously, that's not in the best interests of the child.

Do you see any conflict with the judge's duty of care to protect the best interests of the child if they're not allowed to consider that?

Martha Butler: We've talked about the impact of limiting a court's ability to consider some of these issues, but it's probably an important point to add that these cases are particularly complex ones. When children are refusing time with a parent, the cases may involve higher conflict, or they may involve family violence, so they are very difficult. It's important that the courts consider all the relevant....

I'm sorry. My time is up.

The Chair: Thank you very much.

With that, I will say thank you to our witnesses for appearing today and for sharing your great wisdom on Bill C-223.

Before committee members disperse, I have a couple of administrative items to go over with you. First, on the budget for Bill C-223, an act to amend the Divorce Act, the amount requested is $8,400. You would have had it in your emails. Are we good to go with this?

Some hon. members: Agreed.

The Chair: Second, we have a number of deadlines coming up. The deadline to submit amendments for Bill C-223 is on October 27, which is Tuesday, at noon. Please make sure that you get your amendments in.

I will give a quick rundown of the next couple of weeks for us. We have Bill S-233, which is MP Doherty's bill. The last day to report on that is December 10. We have Bill C-240. The last day to report on that is January 26. We have Bill S-226. The last day to report on that is February 23. We're also dealing with Bill C-29.

With the will of the committee, I'll be making adjustments to our calendar accordingly until the end of the year.

Thanks, everyone. The meeting is adjourned.

Published under the authority of the Speaker of the House of Commons

SPEAKER'S PERMISSION

The proceedings of the House of Commons and its committees are hereby made available to provide greater public access. The parliamentary privilege of the House of Commons to control the publication and broadcast of the proceedings of the House of Commons and its committees is nonetheless reserved. All copyrights therein are also reserved.

Reproduction of the proceedings of the House of Commons and its committees, in whole or in part and in any medium, is hereby permitted provided that the reproduction is accurate and is not presented as official. This permission does not extend to reproduction, distribution or use for commercial purpose of financial gain. Reproduction or use outside this permission or without authorization may be treated as copyright infringement in accordance with the Copyright Act. Authorization may be obtained on written application to the Office of the Speaker of the House of Commons.

Reproduction in accordance with this permission does not constitute publication under the authority of the House of Commons. The absolute privilege that applies to the proceedings of the House of Commons does not extend to these permitted reproductions. Where a reproduction includes briefs to a committee of the House of Commons, authorization for reproduction may be required from the authors in accordance with the Copyright Act.

Nothing in this permission abrogates or derogates from the privileges, powers, immunities and rights of the House of Commons and its committees. For greater certainty, this permission does not affect the prohibition against impeaching or questioning the proceedings of the House of Commons in courts or otherwise. The House of Commons retains the right and privilege to find users in contempt of Parliament if a reproduction or use is not in accordance with this permission.

Also available on the House of Commons website at the following address: https://www.ourcommons.ca

Publié en conformité de l'autorité du Président de la Chambre des communes

PERMISSION DU PRÉSIDENT

Les délibérations de la Chambre des communes et de ses comités sont mises à la disposition du public pour mieux le renseigner. La Chambre conserve néanmoins son privilège parlementaire de contrôler la publication et la diffusion des délibérations et elle possède tous les droits d'auteur sur celles-ci.

Il est permis de reproduire les délibérations de la Chambre et de ses comités, en tout ou en partie, sur n'importe quel support, pourvu que la reproduction soit exacte et qu'elle ne soit pas présentée comme version officielle. Il n'est toutefois pas permis de reproduire, de distribuer ou d'utiliser les délibérations à des fins commerciales visant la réalisation d'un profit financier. Toute reproduction ou utilisation non permise ou non formellement autorisée peut être considérée comme une violation du droit d'auteur aux termes de la Loi sur le droit d'auteur. Une autorisation formelle peut être obtenue sur présentation d'une demande écrite au Bureau du Président de la Chambre des communes.

La reproduction conforme à la présente permission ne constitue pas une publication sous l'autorité de la Chambre. Le privilège absolu qui s'applique aux délibérations de la Chambre ne s'étend pas aux reproductions permises. Lorsqu'une reproduction comprend des mémoires présentés à un comité de la Chambre, il peut être nécessaire d'obtenir de leurs auteurs l'autorisation de les reproduire, conformément à la Loi sur le droit d'auteur.

La présente permission ne porte pas atteinte aux privilèges, pouvoirs, immunités et droits de la Chambre et de ses comités. Il est entendu que cette permission ne touche pas l'interdiction de contester ou de mettre en cause les délibérations de la Chambre devant les tribunaux ou autrement. La Chambre conserve le droit et le privilège de déclarer l'utilisateur coupable d'outrage au Parlement lorsque la reproduction ou l'utilisation n'est pas conforme à la présente permission.

Aussi disponible sur le site Web de la Chambre des communes à l'adresse suivante : https://www.noscommunes.ca