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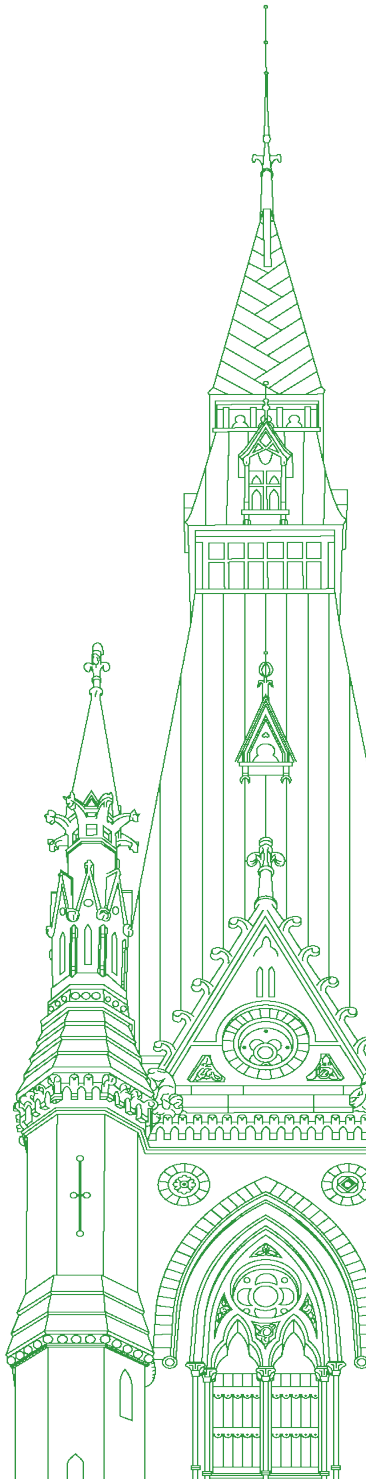
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Standing Committee on Justice and Human Rights

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● (1540)

[*English*]

The Chair (Iqra Khalid (Mississauga—Erin Mills, Lib.)): I call this meeting to order.

Welcome, everyone, to the 41st meeting 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 in a hybrid format, pursuant to the Standing Orders. Members are attending in person in the room, and remotely by using their Zoom application. I would like to confirm that sound tests have been successfully completed for the people who are appearing virtually.

I would also like to make a few comments based on the witnesses who are here, appearing online and in person. Before speaking, please wait until I recognize you by name. For those who are participating by video conference, click on the microphone icon to activate your mic, and then please mute yourself when you're done speaking. For those on Zoom, at the bottom of your screen you have the interpretation icon, which allows you to select floor audio, English or French, based on the language you're most comfortable with. Then you can use the earpiece to make sure that you understand what's happening in the committee.

I remind you that all comments should be addressed through the chair. For members on Zoom, please use the “raise hand” function if you want to speak. The clerk and I will manage the speaking order as best as we can, and we appreciate your patience and your understanding in that regard.

With that, for the first hour, we recognize and we welcome, as an individual, Nicholas Bala, professor, faculty of law, Queen's University, by video conference. We also recognize Rachel Birnbaum, a professor at King's University College; and Alexandra Lysova, associate professor, school of criminology at Simon Fraser University, also by video conference.

I give it to you guys. We'll start with Rachel, because you're here in the room, for five minutes. Please go ahead.

Professor Rachel Birnbaum (Professor, King's University College, As an Individual): Thank you very much.

Thank you for the opportunity to address this committee on a very important subject matter. I'm a social work professor emerita at King's University College in London, Ontario. I understand, from last Thursday's committee meeting, that MP Hepfner has proposed amendments to her private members' bill. I am speaking to the bill as drafted.

I would like to focus my remarks in my brief time on children's participation in the family justice system.

First, I applaud the amendments made to the Divorce Act in 2022, when children were placed front and centre about the importance of hearing their views and preferences during family breakdown.

As many of you know, there are many ways that children can and should be heard, if they wish, in the family justice system upon separation and divorce. While the bill, in its present form, appears to focus solely on judicial interviews, I'd like to advise this committee that our research on judicial interviews, as well as other Canadian research that I've been involved in, demonstrates that not all judges are prepared to interview children. Typically, judicial interviews in family disputes are carried out more often in the province of Quebec than anywhere else in Canada. If Bill C-223 were to pass in its present form, judges would require education and training in interviewing children. In addition, requiring parental consent should not be the basis for children being heard. Rather, children should be asked for their consent to be heard by a judge and told about the confidentiality of that interview.

The research is clear and quite robust that children and young people want to be heard but not make a decision. With respect to parental alienation, our research, as you will hear from Professor Bala, as well as international research, highlights that children want to be heard, even in parental alienation cases.

Professor Bala and I have recently reviewed 67 reported Ontario cases from over 12 years where the court made a finding of parental alienation at trial and reversed custody of those children. I was able to interview six of those children, as well as 19 parents and 46 of the parents' lawyers. From those reported decisions where the court made a finding about alienation, it reversed custody from the favoured parent, which was the mother, to the rejected parent, which was the father, and ordered some kind of counselling or some kind of intervention as well.

The interviews were retrospective accounts by these children after they were court ordered. All of these six children reported a relatively good relationship with the previously rejected parent, but none had a relationship with the previously favoured parent despite significant efforts. That is concerning as well. Custody reversal is considered a last resort by the court in a response to severe parental alienation, though our findings do suggest in these severe cases that it may serve the best interests of the child from the court's perspective.

Bill C-223 would preclude any evidence that a court requires in responding to parental alienation by assuming that the favoured parent, mother or father, is not engaging in poor behaviour and putting their child at emotional and psychological risk, a form of family violence.

Children deserve to be heard by the court. As I stated earlier, there are many ways to hear from children; for example, as you will hear later this afternoon, through child legal representation, views of the child reports, child-inclusive mediation and/or parenting assessments that are being offered by court services across this country. Bill C-223, in its present form, would seriously curtail children's ability to have any meaningful relationship with both parents where appropriate and safe to do so.

● (1545)

The bill takes away the fundamental right of both parents to present their evidence before a neutral arbiter and to make best-interest determinations about children.

Thank you for your time. I look forward to your questions. If you would like any research articles, I'd be more than happy to supply them.

The Chair: Thank you so very much. I really appreciate your words.

We will now move on to Mr. Bala, who is joining us by video conference.

Please go ahead for five minutes.

Professor Nicholas Bala (Professor, Faculty of Law, Queen's University, As an Individual): Thank you.

I'm a professor of law at Queen's University and have done extensive research on many family justice issues, including spousal violence, coercive control and parental alienation. Much of my work is interdisciplinary. I have been honoured to work with people like Dr. Birnbaum, who is with you today. We have submitted a brief, and we've also done extensive research. We'd be happy to share publications, if that would help.

Bill C-223 is well intentioned, but it is a deeply flawed proposal to amend the parenting provisions of the Divorce Act. It is premised on fundamental misinformation about the social science knowledge that exists around how the family justice system in Canada operates and the needs of children. While some small pieces of this bill would improve some aspects of the law, the bill as a whole is deeply flawed and should not go forward.

If you think it is appropriate, I'd be willing to answer questions about why I think the process that was followed by the sponsor was problematic and hence resulted in a very flawed bill.

It's certainly true that, too often, victims of family violence are failed by the justice system in Canada, including both the family law and criminal justice systems. However, those failures relate not to the legislation per se but rather to the kinds of services available, the number of judges we have, the lack of access to legal aid and so on.

The bill deals with legislative change and the interrelated issues related to high-conflict parental separations, family violence and children resisting contact with a parent. These issues are interrelated and complex. It requires a carefully considered process of reform to address these issues, not the slapdash effort that is reflected in this bill.

In my view, the committee should ask the Department of Justice to undertake a proper research and consultation process, first with the federal, provincial and territorial governments and then with professional and advocacy groups and parents, in order to understand the implementation of the 2021 reforms, prior to any amendments being made to the act.

I'd like to very briefly address two of the questions raised at your hearing last week.

The first is the view that parental alienation is junk science. This is contrary to a very significant body of research, which accepts the validity and utility of the concept of parental alienation and recognizes that parental alienation causes profound harm to children. That is to say, parents who are undermining the child's relationship with the other parent may do serious, long-term emotional harm to children, which may affect their physical and mental well-being. While it is true that intimate partner violence imposes a significant burden on society, on victims and on their children, so too does parental alienation. It must be properly addressed.

The second issue I'd like to briefly address relates to statistics and the extent of the problem of parental alienation in Canada. Certainly, we need much better data and research on this, but I'll give you a very back-of-the-envelope estimate based on seven Canadian studies. If you wish, I can send you a paper that summarizes these seven studies. I would guess that we have about 200 family law trials a year that raise the issue of parental alienation. Fewer than half of those result in a finding of parental alienation. That is to say, the issue is often raised but not proven. Among cases where parental alienation is found, about one-third of the rejected parents are mothers and two-thirds are fathers. Although gender is related to this issue, mothers are often the rejected parent.

Regarding cases where there are, on one side, parental alienation claims, and on the other, intimate partner violence claims, it's about understanding an important part of the research. These cases represent fewer than half of those where parental alienation is raised. That is to say, parental alienation often arises without the issue of family violence. It's clear that judges in Canada are not routinely dismissing intimate partner violence claims because parental alienation is raised. It's to the contrary. These claims are carefully scrutinized.

Dr. Birnbaum mentioned the issue of custody reversal. That is certainly an appropriate response in some cases, but it is rarely given. Fewer than 20% of cases result in that.

I think it's important to recognize not only the issue of what's going on in courts but also the effect of legislation on parents in the community. Dr. Lysova will be addressing the fact that parental alienation, while not often an issue in court, is very often an issue in the community. It should be properly addressed in legislation, as it is now in paragraph 16(3)(c).

● (1550)

Thank you.

The Chair: Thank you very much for your remarks.

Now we'll move on to Alexandra Lysova.

Please go ahead for five minutes.

Professor Alexandra Lysova (Professor, School of Criminology, Simon Fraser University, As an Individual): Thank you so much, Chair and members of the committee, for the opportunity to speak.

My name is Alexandra Lysova. I'm a full professor of criminology in the school of criminology at Simon Fraser University in British Columbia. I'm appearing as an individual, and my research in the past 25 years has focused mostly on intimate partner violence, intimate partner homicide, female victimization and, more recently, male victimization and parental alienating behaviours in Canada.

I support the goal of protecting children and parents from family violence. My concern is that Bill C-223's proposed restriction on allegations of parental alienation could prevent courts from fully examining harmful interference with parent-child relationships.

My recommendations draw on Canadian research. I want to emphasize three findings. Both women and men experience intimate partner violence. Both report parental alienating behaviours, and those behaviours can overlap with other forms of abuse.

First, male victimization is a substantial Canadian issue. Statistics Canada estimated that about 279,000 men experienced spousal violence in the five years preceding its 2019 victimization survey. These were experiences involving current or former spouses or common law partners. Recognizing male victims does not diminish women's experiences. It means that courts must examine the evidence without assuming which parent needs protection and which parent is responsible for harm.

Second, Canadian research documents parental alienating behaviours among both men and women. In my recent study on a sample of 1,000 Canadian respondents that we did with Denise Hines, we analyzed a national Canadian survey. Approximately one in five respondents answering the relevant questions about the former relationship reported at least one measured parental alienating behaviour. These included restrictions on time with children and damage to parent-child relationships associated with a parent's negative statements or actions. Both women and men reported these experiences.

Reporting parental alienating behaviours was also strongly associated with legal-administrative abuse, including threats involving children and reported misrepresentation to authorities or professionals. These findings warrant serious assessment. Whether a particular restriction is harmful or justified must be determined from the evidence in that family.

Third, these experiences can occur alongside other forms of abuse. My qualitative research in Canada describes Canadian fathers' accounts of interference with contact alongside emotional, financial and administrative abuse. My published research with another Canadian researcher, Eugene Dim, also documents male victims' accounts of legal processes and barriers to obtaining help.

These studies explain how participants experience overlapping harms. A court may need to assess both family violence and harmful interference within the same case.

This brings me to the proposed legislation. Proposed subsection 16(3.1) would exclude consideration of allegations that a spouse deliberately manipulates a child against the other spouse. Proposed subsection 16(3.2) provides a conditional exception but restricts the purposes for which the evidence may be considered.

I ask the committee to replace this approach with a requirement to assess relevant conduct in context. That assessment must protect reasonable safeguarding actions. A child's reluctance or refusal to have contact should not by itself establish manipulation. An allegation of parental alienation should not by itself discredit a report of violence.

I also recommend retaining consideration of each parent's willingness to support the child's relationship with the other parent with an explicit safeguard for reasonable protective measures.

My central message is straightforward. Both men and women can be victims of domestic violence. Harmful interference and other forms of family violence can coexist. Courts need access to this relevant evidence to distinguish abuse from protection.

Please amend the bill so that no harm is overlooked. The child's safety and best interests must guide this decision.

Thank you.

● (1555)

The Chair: Thank you very much for your remarks.

We'll now go into our first round of questioning, starting with Ms. Jansen for six minutes.

Please go ahead.

Tamara Jansen (Cloverdale—Langley City, CPC): I have to tell you that since sharing my personal story on parental alienation last week at the committee, I am just blown away by the response. I've had over half a million people watch that video just on Facebook. There have been 1,000 comments on Facebook. I've received text messages. I've received emails from people sharing their own experiences. From the texts and the messages, I can see that actually a lot of fathers' voices have been silenced in the debate, and I've had many messages from grandparents as well.

I have to tell you, the night before I shared my story, I actually had to FaceTime my sisters, because I wanted to make sure they were all right with me sharing my story. I can tell you that we shed a few tears together. We're all in our sixties. Even after years, all of us are feeling a lot of pain from what happened. We loved our parents, and we stayed silent for many years, because we hoped to protect their dignity. Now that they have both passed, we felt that in the face of what this bill was intending to do, we wanted to share our story.

Of course, we all want to protect children from harm. That's precisely why I spoke up and will continue to speak up on behalf of the kids who are caught in the middle.

Gaslighting is not a gendered problem. The idea that parental alienation is junk science really disturbed me.

I have a few questions I'm hoping to get answered. I was going to talk to Dr. Lysova.

You spent many years studying children caught in high-conflict family breakdowns. Is that correct?

Prof. Alexandra Lysova: Yes, it was particularly focused on intimate partner violence—men and women who experienced violence.

● (1600)

Tamara Jansen: In our case, there was none of that.

Children can suffer serious emotional harm when one parent deliberately turns them against the other. Is that correct?

Prof. Alexandra Lysova: Yes.

Tamara Jansen: That harm can occur whether it's a mother or a father doing the manipulating.

Prof. Alexandra Lysova: Yes.

Tamara Jansen: A child may genuinely believe that a loving parent has abandoned them, even when that belief has been shaped by the other parent.

Prof. Alexandra Lysova: Yes.

Tamara Jansen: A child may not recognize that manipulation until many years later. Is that correct?

Prof. Alexandra Lysova: Yes.

Tamara Jansen: I didn't realize it until I was way into my thirties.

Would you agree that judges need to be able to consider evidence of that kind of manipulation when determining a child's best interests?

Prof. Alexandra Lysova: Absolutely.

Tamara Jansen: If legislation prevents a judge from considering relevant evidence that could create a risk of harm to a child, should that go forward?

Alexandra Lysova: No.

Tamara Jansen: Would you agree that we can protect children from family violence while ignoring the harm caused when one parent deliberately turns a child against the other?

Prof. Alexandra Lysova: No, we cannot.

Tamara Jansen: Have you seen research demonstrating that the specific changes proposed in Bill C-223 would reduce deaths among children?

Prof. Alexandra Lysova: No, I haven't.

Tamara Jansen: Are you aware of any Canadian study that's measured how many children's lives these particular amendments would save?

Prof. Alexandra Lysova: No, I'm not.

Tamara Jansen: Can you point this committee to evidence that preventing judges from considering certain allegations of parental manipulation will make children safer?

Prof. Alexandra Lysova: No, I can't.

Tamara Jansen: Is it possible that preventing a judge from examining genuine manipulation could leave children exposed to ongoing emotional abuse?

Prof. Alexandra Lysova: Yes.

Tamara Jansen: Will this bill actually save lives, or will it build a bigger wall between children caught in the web of parental alienation?

Prof. Alexandra Lysova: It may create additional problems, yes.

Tamara Jansen: Okay, I'm going to now move my similar questions to Dr. Bala.

Would you agree that judges need to be able to consider evidence of that kind of manipulation when determining a child's best interest?

Prof. Nicholas Bala: Absolutely.

Tamara Jansen: Can you tell me a bit more about that?

Prof. Nicholas Bala: I should say that there is a substantial body of research evidence that the kind of experience you've had, of being alienated and not realizing it into adulthood and then facing long-term emotional consequences from that, is quite substantial. I want to commend you for sharing that story of your experience in a very moving way that I'm sure will influence people who are watching this, as well as members of the committee.

Maybe you can repeat the question.

Tamara Jansen: The question was, would you agree that judges need to be able to consider evidence of that kind of manipulation when determining a child's best interest?

Prof. Nicholas Bala: Absolutely. I think the bill is very problematic and will actually cause harm to children and society.

Tamara Jansen: Dr. Birnbaum, would you agree with that assessment?

Prof. Rachel Birnbaum: Yes, I would.

Tamara Jansen: Thank you.

If legislation prevents a judge from considering relevant evidence, that would create a risk of harm to the child. Is that correct?

Prof. Rachel Birnbaum: Yes.

Tamara Jansen: Would you agree that we can protect children from family violence without ignoring the harm caused when one parent deliberately turns a child against the other?

Prof. Rachel Birnbaum: Yes.

Tamara Jansen: Have you seen any research demonstrating that the specific changes proposed in Bill C-223 would reduce deaths among children?

Prof. Rachel Birnbaum: No, I have not.

Tamara Jansen: Are you aware of any Canadian study that has measured how many children's lives these particular amendments would save?

Prof. Rachel Birnbaum: No, I am not.

Tamara Jansen: Can you point this committee to evidence that preventing judges from considering certain allegations of parental manipulation will make children safer?

Prof. Rachel Birnbaum: No, I cannot.

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

We're now moving on to Ms. Gladu for six minutes.

Please go ahead.

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

Thank you to the witnesses for being here today on this very important topic.

I'm going to start off by recapping.

Professor Bala, you said that this was a “deeply flawed” bill and that the bill “should not go forward”.

Ms. Birnbaum, do you agree with that?

Prof. Rachel Birnbaum: Yes, I do.

Marilyn Gladu: Thank you.

Ms. Lysova, I believe you have also pointed out some of the flaws in the bill. Do you believe that the bill should go forward?

● (1605)

Prof. Alexandra Lysova: No, it should not go forward.

Marilyn Gladu: Thank you.

Professor Bala, you mentioned that you could send the committee a summary of seven studies that we might find informative on this topic, and I would welcome you to send that to the clerk.

I want to ask you a couple of questions. Here's the first one.

There are legitimate concerns from people who have experienced parental alienation because this bill would not allow it to be considered by the courts. Can you describe anything you think we could do to ensure that judges retain the ability to consider the relevant evidence when determining what's in the child's best interests?

Prof. Nicholas Bala: I think we're very fortunate in this country to have, on the whole, very good family judges and a good process of appointment of judges. We don't have enough family court judges, but the ones we have are generally very good. I should say that much of the evidence that was cited by the sponsor is from American studies, and even in the United States, those studies are highly controversial.

I think one of the features we have is, frankly, probably a stronger bench, starting at the top and in family court as well. That may affect the research from some other jurisdictions. Having said that, there's an international body of research about the importance of the concept of parental alienation and how important it is for the interests of children that judges be able to receive that in specific cases.

One of the challenges that I think parents face is that the cost of marshalling evidence about this can be very substantial. I think a partial way of dealing with this is through more judicial education about parental alienation as well as family violence. Indeed, I think parental alienation is a form of family violence, but it's not always focused on in judicial education programs.

Marilyn Gladu: Ms. Birnbaum, in your research, have you come across ways that family courts can better distinguish between legitimate safety concerns and situations that involve deliberate interference with the parent-child relationship?

Prof. Rachel Birnbaum: Parental alienation is a complex phenomenon, and its assessment requires a multicausal framework. That requires clinicians and parenting evaluators to be able to do that kind of work in order to even say whether it is present or not. We sometimes use labels, and all of a sudden they become real. Judges would not know that, and they would need some assistance.

Marilyn Gladu: You support Professor Bala's suggestion, then, that judicial education would be needed if this type of legislation comes forward.

Prof. Rachel Birnbaum: As one part of it, yes.

Marilyn Gladu: That's very good. Thank you.

Ms. Lysova, you talked about your concerns with proposed subsections 16(3.1) and 16(3.2). Could you elaborate on those?

Prof. Alexandra Lysova: Yes. The problem I see is that it's restricting the discretion of judges to consider the complexity of intimate partner violence cases. My research, and the research of my colleagues, not only in Canada but in other countries, finds that intimate partner violence is an extremely complex phenomenon, including multiple overlapping forms. It will be psychological abuse, coercive control, physical violence, sexual violence and, when there are children in the family, parental alienation.

I think the problem is that we're dealing with a relatively newly recognized form of violence, which is parental alienation. It meets this type of resistance to or misunderstanding of what it is. We clearly see that this is a form of family violence and one of the most difficult and damaging forms for the child and for child relationships in the family. I think we need to deal with the issue of educating judges and the community about this form of abuse.

There are many myths and stereotypes. In the hearing on October 22, I heard some people mention some of these stereotypes. I would love to ask what they mean by these. Some stereotypes are that we still think about intimate partner violence as an extremely gender-based violence. While it's true that most forms of severe violence affect women, especially intimate partner homicide and domestic homicide, most of the forms of general intimate partner violence that include psychological abuse and physical abuse in more minor forms affect both men and women. I think it's very important to acknowledge that complexity.

My issue with these two proposed subsections and the proposed changes deal with the issue of limiting judges in their vision of the entirety of the case. What our research shows is that looking at the dynamics of violence and its complexities will help prevent the escalation of violence in the future and will deal with other aspects of violence.

● (1610)

The Chair: Thank you very much.

That concludes your time, Ms. Gladu.

We're moving on to Monsieur Fortin.

[*Translation*]

Mr. Fortin, you have the floor for six minutes.

Rhéal Éloi Fortin (Rivière-du-Nord, BQ): Thank you, Madam Chair.

Ms. Birnbaum, thank you for being here. I would also like to thank the other witnesses who are participating in the meeting by video conference.

I understand that the witnesses agree that the bill should not go forward. I was listening to my colleagues Ms. Jansen and Ms. Gladu, and I think we're all pretty much on the same page. That means there won't really be any conflict on the management of this bill.

However, there are still some problematic aspects. Personally, I am among those who believe that the courts should be able to assess all the evidence that can be submitted. When we talk about custody and access, among other things, I think it's important for the judge to be able to hear all the allegations and all the evidence to make an informed decision. We are talking about our children, and this is a serious matter.

That said, there is one aspect of the bill that has not been addressed and that bothers me a bit. It's subsection 2, which imposes duties and responsibilities on legal advisers.

Professor Bala, since you are a member of the faculty of law at Queen's University, you may be able to enlighten me. The new section 7.7, specifically subsection 2.1, says the following: “It is the duty of every legal adviser who undertakes to act on a spouse's behalf in a divorce proceeding to consider whether there are reasonable grounds to believe that there is a risk of family violence towards the spouse or another family member that could adversely affect…”.

In your opinion, does a jurist who has obtained a bachelor's degree or a law degree have the expertise to assess the risk of family violence?

[*English*]

Prof. Nicholas Bala: Thank you for your question. I'm happy to answer it. I should say that members of the Bar Association will be testifying later and may have a slightly different view.

In my view, if people are going to practise family law, they have to be educated to deal with both the substantive and the social context questions.

The Department of Justice provides significant information and instructional videos on how to deal with family violence. Having said that, of course, starting one's career preferably will be under mentorship. However, anybody who takes a family case, in my view, needs to be aware of and understand family violence issues, at least to the point of raising them with their client, whether the client is an alleged perpetrator or an alleged victim.

As I say, there are very good materials that can help young lawyers. Certainly, in my family law course, it's something that we spend time on. Our materials also address the issue of family violence. Having said that, I think there's a difference between raising the issues and, if you want, screening for them and developing a safety plan. This bill talks about lawyers being responsible for making a safety plan, which I think will be highly problematic.

[*Translation*]

Rhéal Éloi Fortin: That's exactly where I wanted to go. Thank you, Professor Bala.

I have something to say about that. I'm a lawyer, but I have always felt that I have no expertise in psychology or these things. I did my best to raise my children. I'm not sure I was perfect; I would even say I'm pretty sure I wasn't. In the course of my work, if I had been told that I had to assess whether there were grounds for my client to become violent towards the former spouse, the children or a third party, I would have found that to be a bit of a bother. I think that most family litigation cases involve a degree of aggression between the partners. People don't divorce because they get along. People usually divorce because they don't get along anymore, and there are grounds, fears or criticisms to be levelled at the other person. It seems quite difficult to me. Personally, I would have had trouble determining whether I should put my foot down, whether this is a case where the violence is really greater or more dangerous. There are obvious cases; that goes without saying. However, in most cases, I don't think I would have been able to do so. I might even have been afraid to misread the situation and potentially be held responsible for acts of violence when I had not suspected or noticed them.

You also mentioned the famous appropriate plan. Not only can I say that I would have had trouble determining whether the risk was enough for me to put my foot down, but I would have been even less able to put a plan in place.

I understand that you're quite in favour of that aspect of the issue. In some cases, lawyers may perceive the possibility of violence, but implementing an action plan would go beyond the expertise of the average lawyer.

● (1615)

[*English*]

Prof. Nicholas Bala: Family lawyers should be expected to screen for family violence, which is not in the.... This, by the way, would be one of the few welcome provisions in this legislation: to require them to raise issues of family violence. There are, as I said, very good materials from the Department of Justice to help them do that. That's very different from safety planning, which I think requires referral to a domestic violence shelter, for example.

[*Translation*]

Rhéal Éloi Fortin: Thank you, Professor Bala.

Ms. Birnbaum, do you agree with what Professor Bala just said?

[*English*]

Prof. Rachel Birnbaum: I apologize, but unlike my colleagues, I don't have that little button that says “translation.”

The Chair: I'm so sorry. My sincerest apologies.

Prof. Rachel Birnbaum: It says “English”, but I don't hear it.

The Chair: It was backwards earlier, and we didn't mention it. I'm sorry.

Prof. Rachel Birnbaum: It's not a problem.

The Chair: I'm going to suspend for a second to make sure that you have it.

● (1615)

_____(Pause)_____

● (1615)

The Chair: We have success.

Monsieur Fortin, you will get an extra 30 seconds and no less, after you spent five minutes trying to figure this out.

[*Translation*]

Rhéal Éloi Fortin: Thank you, Madam Chair.

Ms. Birnbaum, I won't repeat my entire question. I hope you heard and understood the testimony of your colleague Professor Bala.

● (1620)

[*English*]

Prof. Rachel Birnbaum: Yes, I did.

[*Translation*]

Rhéal Éloi Fortin: My question was this: Do you agree with his answer about the lawyer's role in detecting the risk of violence and implementing an action plan? In my opinion, that goes beyond a lawyer's expertise.

Do you agree with your colleague Professor Bala or not?

[*English*]

Prof. Rachel Birnbaum: I agree, and I agree that it's extremely problematic, as they have no training or education, and it requires another set of skills they do not have.

[*Translation*]

Rhéal Éloi Fortin: Thank you, Ms. Birnbaum.

[*English*]

The Chair: Thank you very much, Monsieur Fortin.

Thank you to our witness for having patience with our translation.

We're moving to our second round of questions, and we're going to Ms. Cody for five minutes.

Please go ahead.

Connie Cody (Cambridge, CPC): Thank you.

I want to thank all the witnesses for being here today.

I think everyone here shares the same objective: ensuring that children's voices are heard, that children are protected from harm and that courts have the information they need to make decisions that are truly in a child's best interests.

I want to start off with questions for Nicholas Bala, if I might.

A child should never feel responsible for deciding which parent they will have a relationship with. When a child begins rejecting one parent after a separation, how can a court determine whether that rejection stems from the child's own experiences or from influences in the other parent's household? What evidence should guide that assessment to ensure that children are heard without making them feel any guilt about the final outcome?

Prof. Nicholas Bala: There is significant literature about how professionals—psychologists and social workers—should be interviewing children, both to allow them to be heard and also to not place the burden of the situation on them. It obviously requires training and a thoughtful, nuanced approach to interviewing children to come to that point.

I think children understand the difference between being asked their views and being asked to decide. For example, in provinces like Quebec, where there are a lot of judicial interviews, one of the key things judges do is say, “I want to hear from you, but I'm making the decision. I don't want you to feel burdened to make this decision.”

It's a question of training and education, clearly, and of resources. Dr. Birnbaum mentioned voice of the child reports, which are an extremely valuable and relatively inexpensive way of hearing the child's views. In many provinces, there is not access to those kinds of reports, which is largely a matter of provincial responsibility. We need more resources for the family justice system in general and certainly for hearing the voice of the child.

One of the things a study Dr. Birnbaum and I are still working on found was that when children either are being interviewed by the judge or have a lawyer, there's a lot more likelihood the court will give effect to their views and give weight to understanding their views.

Connie Cody: Family court decisions can shape a child's relationship with a parent for years to come. If a court reaches the wrong conclusion about why a child is refusing contact with a parent, what safeguards exist to identify and correct that mistake before lasting harm is done to the child's relationship with that parent?

Prof. Nicholas Bala: There are risks on both sides, and we see this in some of the literature and some of the public statements that have been made.

If the judge fails to identify family violence, it is certainly conceivable, and has happened in a very small number of cases, that the child may be left to an abusive parent and killed by that parent. Some of those parents are fathers, and some of them are mothers. It's a huge burden, being a family court judge.

On the other side, if a judge inappropriately terminates a relationship because of unfounded allegations and parental alienation, the child will also suffer.

We have to recognize that being a family court judge is a very challenging job. Certainly, to the extent that the legislation takes away tools from family court judges, in terms of evidence and the kinds of remedies that can be imposed, it is highly problematic.

Connie Cody: Bill C-223 proposes changes to how courts hear children's views, assess family violence and evaluate family dynamics. Looking specifically at the measures contained in this bill, what evidence exists that they will reduce serious harm to children?

Prof. Nicholas Bala: In my view, there is no evidence that this will reduce harm to children.

As I said, there is a literature that is critical of the concept of parental alienation. Many others consider that literature to be highly problematic.

One of the problems or one of the realities is that people who are unsuccessful in their family court case usually say that the system was biased, the judge was poorly educated or whatever. They wonder what they can do. They have the right to appeal, but if they're not happy, they may phone an MP and start telling their story. Then, the MP doesn't go beyond that and says that this sounds like a terrible injustice that is very bad for children and that we need to change the law, without doing appropriate, balanced research into what caused the problem.

● (1625)

Connie Cody: Okay.

I was hoping I could ask a question of Rachel Birnbaum about—

The Chair: You have 10 seconds or less.

Connie Cody: What training or expertise should be required for the person speaking with a child, so they can make that assessment reliably?

Prof. Rachel Birnbaum: I would highly recommend that it be a professional who has academic qualifications and, more importantly, that they be a member of a regulatory college in Ontario, such as the College of Psychologists and Behaviour Analysts of Ontario or the Ontario College of Social Workers and Social Service Workers.

The Chair: That concludes your time, Ms. Cody.

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

Please, go ahead.

Anthony Housefather (Mount Royal, Lib.): Thank you so much, Madam Chair.

Thank you very much to the witnesses for being here today. I appreciate it.

I'm going to start by saying that it's clear that all the members of the panel come to this bill from one side. I generally prefer panels where you have people from both sides mixing it up rather than members of the committee having to do that job of prodding at the witnesses. This seems to me to be one of those panels where everybody is on one side. We'll probably have other panels where everybody's on the other side. I think the goal is to try to find where we can we look at the bill and find improvements versus just panning the bill.

Professor Birnbaum and Professor Bala, you guys published a study that I just read. It's from May 2024. It's entitled “Children Resisting Contact & Parental Alienation”. It shows that there is indeed a problem. There are claims of domestic violence in the majority of cases where parental alienation is alleged. The allegation of parental alienation is successful in over a third of the cases. There's custody reversal in about 14% of the cases where parental alienation is found, including children being forbidden from having any contact with their primary parent for a period of time. Only in 12% of the cases did they include a voice of the child report, meaning the children are not heard in a lot of the cases. The parent found to be alienating was the mother in 68% of the cases. When it's the father, it generally relates to domestic violence.

I don't want to look at this from the perspective that this is just bad and we should reject it. I'm wondering what your opinion is of the Canadian Bar Association proposal that where a parent has abused the child, and it's proven that the parent has abused the child or the other parent, there should be a precluding finding of a court finding parental alienation when it's claimed by the person who's been shown to have abused the other parent or the child.

I'll direct that to either of you, Ms. Birnbaum or Mr. Bala.

Prof. Nicholas Bala: I should say, just by way of your introductory comment, that there is a kind of dynamic here, because this is a private member's bill. The kind of balanced inquiry that you are advocating, which I think is clearly necessary, is absent because it's a private member's bill. That may speak to the process. In fairness to the sponsor, she's raised some very important issues, you're right, that require careful, balanced study and consultation with, for example, the provincial and territorial governments.

To speak to the issue, one of the challenges, and I think this has come up in all our testimony, is that family violence is a very nuanced and complex issue. One says, “Exactly where or what is abuse, and how far do we have to go?” I would not like to see a strong presumption saying...of course if there is serious family violence, yes, that should be a factor, or indeed could be the determinative factor. The Supreme Court of Canada, citing my own work and that of many others, has said that. The question is, how serious is the family violence?

When you start having very blanket and unnuanced legislative rules, such as saying, “If this happens, then automatically we're into a different situation,” I think that's highly problematic. I have a lot more confidence, frankly, in the judges who deal with these cases, starting at the Supreme Court and working down to the family courts, than I do in a group of politicians in Ottawa drafting clumsy legislation that purports to limit or direct how judges should deal with individual cases.

● (1630)

Anthony Housefather: Okay. Well, I mean, a bunch of politicians in Ottawa are the people who are elected to actually draft that legislation, so I find that a bit weird as a comment, Professor. Do you believe professors should be drafting the legislation, as opposed to politicians?

Prof. Nicholas Bala: I'm very comfortable....

I'm sorry if that sounded arrogant or offensive.

Anthony Housefather: It did.

Prof. Nicholas Bala: I very much respect democracy, and I respect the process that's going on now. What I would suggest is that whoever is drafting legislation—clearly, it is politicians assisted by legislative draftspersons—should not have clumsy rules that purport to make absolute decisions, but rather allow judges to make the kind of nuanced decisions based on all the evidence that largely we have now.

Anthony Housefather: I understand that. There are people on this committee who oppose that in other cases related to criminal law. They want judges to be forced and coerced into minimum mandatory sentences and so forth, yet in this case they embrace the position you're taking now.

I do understand that, Professor. What I was talking about before was that many people do support Ms. Hepfner's private member's bill. Normally, a panel would have some people against it and some people for it. On this panel, I understand why you and Ms. Birnbaum are placed together, but it would have been preferable in all cases to have some people on one side and some people on the other side, so that experts such as you could challenge one another versus us doing it.

While I have you, though, I also looked at the part of that study where you talked about—

The Chair: Thank you, Mr. Housefather. I apologize, but your time has concluded. We're running a bit behind schedule as it is.

Monsieur Fortin, you have two and a half minutes. Please go ahead.

[*Translation*]

Rhéal Éloi Fortin: Thank you, Madam Chair.

Professor Lysova, I'd like to hear your thoughts on the issue of parental alienation. How is that assessed? The judge hearing the case has to be left to make a decision, but is it possible to set guidelines and determine the best way to prove the presence of that? Obviously, expert evidence immediately comes to mind. Do you think that's necessary, or is it better to rely on facts? How do you view that aspect of the issue?

[*English*]

Prof. Alexandra Lysova: I believe this is challenging, of course. However, here I would say that it is challenging with other cases of intimate partner violence or domestic violence. It's important to examine the relationship between the partners and all the complexities to try to address the biases and stereotypes that the judges may have. That is why I think education is very important.

What I find the most difficult are these kinds of biases that may keep the professionals and judges from even looking into the case in which it can be an issue, and knowing—

[*Translation*]

Rhéal Éloi Fortin: I don't mean to be rude, Professor Lysova, but there are only a few seconds left. Who do you think is the appropriate expert, the person best placed to assess whether there is parental alienation? Is it a psychologist or social worker? Who do you think could do that?

[*English*]

Prof. Alexandra Lysova: I think it can be a social worker, a psychologist and individuals working with the case.

[*Translation*]

Rhéal Éloi Fortin: Thank you.

Professor Bala, is your answer about the same as Professor Lysova's?

[*English*]

Prof. Nicholas Bala: Yes. I think it has to do with the training and education of the professional, rather, and that they are a member of a regulated college is critical. It's not that it's a social worker as opposed to a psychologist: We have people with expertise in both areas. For that matter, we've had cases when people who have high professional qualifications were not properly trained and educated.

[*Translation*]

Rhéal Éloi Fortin: Wouldn't it be a worry that the cost—

[*English*]

Prof. Nicholas Bala: It requires individualized decisions about experts as well as individualized decisions about children.

[*Translation*]

Rhéal Éloi Fortin: Wouldn't it be a worry that the cost—

[*English*]

The Chair: Thank you very much, Monsieur Fortin. You are so patient with me. I really appreciate it.

We move to Ms. Kirkland for five minutes. Please go ahead.

Rhonda Kirkland (Oshawa, CPC): Thank you, Chair.

Thank you to our witnesses for joining us today.

I think we can all agree, and I think it's important to reiterate this, that our priority is protecting children from family violence and abuse. However, we also have to consider the abuse of being unfairly alienated from a potentially loving parent.

I want to focus on what the research tells us and whether the legislation will actually keep children safe. Some have said that without this legislation, the continued use of parent alienation accusations will lead to survivors of intimate partner violence being silenced.

Is it possible that the opposite could be true, that barring the use of parent alienation accusations could also lead to survivors of intimate partner violence being silenced? Sometimes it's reversed, and sometimes the abuser is accusing the other parent and creating that scenario of parent alienation.

Professor Birnbaum, we can start with you.

● (1635)

Prof. Rachel Birnbaum: You're absolutely correct. It's not one side only; it's both. There could be issues around family violence and parental alienation, which sometimes coexist, and it could be on both sides. We need that information. You cannot tie a judge's hand behind their back and say, “No, you can hear only one piece of evidence but not the other piece of evidence.”

Rhonda Kirkland: Thank you.

Prof. Nicholas Bala: Could I just add to that?

Rhonda Kirkland: Please do.

Prof. Nicholas Bala: We have a significant number of cases in which someone, most often the father but sometimes the mother, is both abusing their spouse and alienating the children. They can come together, and so the problems and issues overlap. That's the problem with the legislation or the kinds of rules that say, “If this happens, then that happens.”

I think that, particularly in family law cases, there's a need to give significant discretion and resources to the family court judges and, for that matter, to family lawyers and to the mental health professionals who work with them, rather than having these black and white rules, particularly given the nuance and complexity in having these kinds of rules.

Rhonda Kirkland: Thank you so much.

Ms. Lysova, I think you would probably agree.

It feels to me that the word “overlap” is very important, and I appreciate your bringing it up, Professor Bala.

I felt, as I was looking at this, that the overlap feels like a conundrum and a little perplexing, because psychological abuse is family violence, and sometimes we're not seeing it founded. Psychological abuse could be alienating a child from another parent, couldn't it?

Prof. Alexandra Lysova: Yes, it can be. That is why we're talking about overlapping extremely complex forms of abuse. It may be psychological abuse directed at the child and more direct alienation from another parent—what we call “parental alienation behaviours”. We see it in Canadian samples: We see both men and women express that it happened to them.

Rhonda Kirkland: Thank you.

I appreciate your bringing that up. I have a few friends—a couple, actually—I could think of, men who have experienced severe trauma because of intimate partner violence. It happens, and we know it happens.

I guess what I want to get to—and I'll come back to you, Professor Birnbaum—is this: The fear that has been presented is that, without this legislation, children are at a greater risk of being harmed or even killed. Do you feel that's true? Do you think, without this legislation, that the risk is greater? Do you think there's something that can be done to this legislation, to amend it to get it to where it needs to be? Is that possible?

Prof. Rachel Birnbaum: Thank you for that question. It's a complex one. It's not an easy answer. I wish I had a solution, and I don't. I don't want to be another person added on to say, “It would be a horror if we have this legislation,” or, “It would be a horror if we didn't have this legislation.” This is a very difficult topic.

Children should be at the forefront. My only advice would be that this committee take a very cautious approach to this bill. It is well-meaning and well-intentioned, but it has significant problems, as we've identified this afternoon.

Rhonda Kirkland: I think that you.... It encapsulates what we have said are the unintended consequences.

Prof. Rachel Birnbaum: Absolutely.

Rhonda Kirkland: Although we can all agree that, perhaps, something should be changed in the Divorce Act to help mitigate those issues of children going back to abusive parents, perhaps something needs to happen so that the greatest of these unintended consequences aren't happening. Is that correct?

The Chair: Thank you.

Be very brief, and I'm sorry.

Prof. Rachel Birnbaum: My concern is that, when you do piecemeal legislation without looking at the entire Divorce Act and...the preamble focused on children, you may create more unintended consequences.

● (1640)

The Chair: Thank you very much.

We now move to our last questioner, Patricia. Ms. Lattanzio, please go ahead for five minutes.

Patricia Lattanzio (Saint-Léonard—Saint-Michel, Lib.): Thank you, Madam Chair.

Thank you to the witnesses for partaking in this very important study. I appreciate your insights.

My first questions will be for Professor Bala.

Professor Bala, you've raised concerns about this bill as it is currently drafted. At the same time, we know that there are legitimate concerns about parental alienation allegations being misused in family court proceedings, particularly in cases that involve family violence. How, in your opinion, can Parliament address that misuse, while ensuring judges retain the ability to consider all relevant evidence when determining a child's best interest?

Prof. Nicholas Bala: This goes back to what I was discussing with Mr. Housefather, which is this: There's a limit to what legislation can do or should try to do. I think that, if I were advising the government, I would say we need more family judges, we need more education for family judges, we need more support for family judges, and we need more resources for family legal aid, particularly for abused women. In my view, those kinds of issues, the resource issues, are really, by far, the biggest things Parliament can do.

Patricia Lattanzio: With regard to judicial discretion, can you explain why that discretion is particularly important in complex family law cases, and how Parliament can provide stronger protection for children without limiting the court's ability to respond to individual circumstances?

Prof. Nicholas Bala: Dr. Birnbaum touched on this. Legislation could promote the receipt of evidence about children's views in the family justice process. The issue of judicial interviewing of children, for example, which I think should be encouraged—with appropriate training and resources—could be encouraged by legislation, although I have to say that right now, in Canada, even without this legislation, many judges—not a majority of them, but across Canada, particularly in Quebec—already interview children. Should we be encouraging that in appropriate cases? Yes. That would require more education, training and support. Similarly, I think counsel for children is very important, and gaining more resources to allow that is essential, as opposed to changing the legislation.

As I said, there's a limit to what can be done by legislation. That's not to say the legislation shouldn't be amended. I identified this issue: Should lawyers be required to engage in some discussions, some screening for family violence in all cases? Yes. Most good family lawyers do that already.

Patricia Lattanzio: To look beyond the specific provisions of this bill, if Parliament were to undertake further work to strengthen the protections for children—which is what I think the objective of this bill is—and survivors of family violence, what would you identify as the most important priorities? What additional evidence or consultation would be needed to get those reforms done correctly?

Prof. Nicholas Bala: I would suggest, and a number of briefs—not just ours—have suggested that the Department of Justice, or it could be some other body—it could be the Law Commission of Canada—undertake a serious study of the implementation. The reforms came into force in 2021. It has been five years. It would be very appropriate to undertake consultation, certainly including the territorial and provincial governments and professional organizations.

I agree with people who work with victims of family violence. I think that the members of this panel.... Each one of us has done some work with victims of family violence. There are other people who specialize in that exclusively. They should be heard from as well.

I think it has to be seen in an appropriate context, and the context, I think, has been lost in this bill and in this process.

Patricia Lattanzio: Professor Birnbaum, if the objective of this bill were to better protect children from family violence and harmful family court practices, what evidence-based reforms would you recommend that Parliament pursue, whether through legislation, professional training or improvements to how children's voices are heard?

Prof. Rachel Birnbaum: It's also a very good question.

I would agree with Professor Bala that there needs to be.... Before you can jump to what needs to happen or what should be done, there needs to be more investigation as to what the issues are and how best to meet the needs of children. Whether or not that's the Department of Justice working with academia on both sides of this debate—not just one but both sides of this debate—it would be extremely important.

I would be loath to just be jumping in with, “You should do X, Y and Z, and that's going to solve it all.” I don't believe that it will. This is a very complex issue, and we're dealing with the most vulnerable population: children.

● (1645)

The Chair: Thank you very much.

That concludes our first hour.

Thank you so much to the witnesses for presenting today.

We are going to suspend briefly as we bring in our next witnesses for the second hour. Thank you.

● (1645)

_____(Pause)_____

● (1655)

The Chair: I call this meeting back to order for the second hour of this meeting on Bill C-223. We have appearing before us in this second hour as individuals, Monique Dietvorst, and Linda Goold, who is barrister and solicitor. We also have the Canadian Bar Association, represented by Tracy Brown, past chair, national family law section; and Caterina Tempesta, past chair, national child and youth law section. Both of them are appearing by video conference. Each individual and organization will have five minutes to bring their opening remarks.

We'll start with Ms. Dietvorst. Please go ahead for five minutes, and please correct me if I'm not saying it right.

Monique S. Dietvorst (Founder, Parental Alienation Canada, As an Individual): It's a Dutch name, Dietvorst.

The Chair: Okay. I got you.

Monique S. Dietvorst: It means Dutch king. It was a joke for Napoleon's era. It's a joke name.

Voices: Oh, oh!

Monique S. Dietvorst: Good afternoon, Madam Chair and members of the committee.

My name is Monique S. Dietvorst. I am the founder of Parental Alienation Canada, a peer support and education group, and the Canadian Child Protection from Alienation Foundation. I hold a postgraduate certificate in parental alienation studies from IFT Malta, which constitutes the first year of their master's in parental alienation studies.

I'm not a lawyer or a clinician. I am a grassroots advocate who has submitted briefs to this committee and two others and presented at the Department of Justice round table on this bill. I'm also publishing a peer-reviewed paper in the European Journal of Parental Alienation Practice.

I'm here to speak against Bill C-223. Bill C-223 would prevent courts from even considering evidence that a parent is deliberately manipulating a child to reject the other parent. It would prohibit reunification therapy. It would assume that when a child resists contact, the parent being rejected is the danger and the parent doing the rejecting is the protector.

The bill is based on a claim that parental alienation is a pseudo-concept. This claim is false.

The bill relies heavily on a study by Joan Meier. The study fails every basic standard of scientific rigour. It is not pre-registered, it had no replicable definition, it has no transparent coding and it has no accessible data. When researchers attempted to replicate it, they failed. The study is not a reliable foundation for federal legislation.

The bill also misrepresents the United Nations. Proponents cite a report by the UN special rapporteur, but the UN Human Rights Council never adopted the report. It carries no formal UN authority. It was a thematic report by an independent expert, and the council declined to act on it.

Here is the evidence that matters.

Parental alienation is real. It is a form of child psychological abuse. There are over a 1,000 peer-reviewed articles, chapters and books documenting it. Since 2015, more than half of all the rigorous research on the subject has been published.

The Parental Alienation Study Group is an international organization of hundreds of professionals. They have submitted a proposal to the DSM for a new listing, parental alienation relational problem. That listing would finally capture the systemic reaction of what happens in these families. It would distinguish alienation, which is coercive control, from estrangement, which is justified rejection due to abuse or neglect.

The bill ignores this. It also ignores a larger crisis. Divorced men are roughly 90 times more likely to die by suicide than be involved in a spousal homicide. Divorced women face a suicide rate 10 times higher than the rate at which they are killed by a spouse. A policy that focuses only on spousal homicide and domestic violence is dangerously incomplete.

The bill ignores the research on who alienates. The study of Ontario cases by Nicholas Bala and Rachel Birnbaum found that in more than one-third of the cases where courts find alienation, it is the mother who has been alienated from her children, often by an abusive husband. Bill C-223 would ignore these women and their children.

This is the solution. I'm not here to oppose, I'm here to propose.

First, amend the Divorce Act to explicitly recognize parental alienating behaviours as a form of coercive control under the existing family violence provisions.

Second, require courts to use validated assessment tools before making alienation findings—tools like Bernet's five-factor model and the Parental Acceptance-Rejection Questionnaire. These tools exist. They are peer-reviewed and validated. They can distinguish alienation from estrangement.

Third, preserve court discretion to order reunification therapy when it is in the child's best interest. Programs like Family Reflections and Family Bridges are peer-reviewed and effective. A blanket ban removes a tool that judges need.

Madam Chair, children deserve better than a bill based on a flawed study and a misrepresented UN report. They deserve evidence-based policy. They deserve judges who can consider all the evidence and not politicians who tell them to ignore it.

I urge the committee to reject the restrictive approach in Bill C-223.

Thank you and I welcome your questions.

● (1700)

The Chair: Thank you very much, Ms. Dietvorst. I really appreciate that.

We'll go on to Ms. Goold for five minutes.

Please go ahead.

Linda V. Goold (Barrister and Solicitor, As an Individual): Good afternoon, Madam Chair and honourable members.

I've been a family lawyer in Calgary for 29 years. I take high-conflict files. I go to all the conferences—or many of them—dealing with things like parental alienation and domestic violence. I routinely screen for domestic violence.

I'm here today to advocate for legislation that protects children and families from all forms of domestic violence: physical abuse, emotional abuse, coercive control and parental alienation. Pretending that any of these forms of violence do not exist or do not matter is inconsistent with the social science evidence and with the lived experience of children and parents. That kind of wilful blindness helps no one but the perpetrators.

Now, I see this as a non-partisan issue. I think we're all on the same side. We just want to help children.

I sympathize with concerns that parental alienation as an allegation can be used to deflect attention from allegations of other forms of domestic violence. I have seen that. I have also seen allegations of domestic violence used to deflect attention from alienating behaviours in the evidence. On high-conflict parenting files, all kinds of allegations get weaponized and exaggerated and flat out fabricated.

That does not mean we should prevent people from making those allegations. It means we should give judges the tools they need to sort through them, and we should give families the tools they need to move forward.

Whether it be women's groups, men's groups or any organization promoting a particular viewpoint, those viewpoints are, of necessity, limited and partial. We are all here to protect children. Let's not be selective about what we protect them from.

It's extraordinarily difficult for a judge to sort through this kind of evidence. In terms of the belief that there is sometimes a domestic violence allegation and sometimes parental alienation, in fact, usually in a high-conflict file, both parents are accusing the other of something, which, if true, would make them a dangerous parent.

When judges have to sort through that kind of conflicting evidence, they need more evidence, not less. When you take tools away from those judges, you make it much more certain that injustices will happen.

I would ask every committee member to consider what it's like to be a child in the following circumstances. This is a mild example.

Your parents have separated and they're fighting about parenting schedules. The parent you live with is telling you that they don't want you to go and see the other parent until it is safe. You've never felt unsafe with that parent, but now you wonder if maybe the other parent knows something you don't know. You weren't abused by either parent, and you trust your primary parent.

Weeks go by. Months go by. You find out that your primary parent has told the court that the other parent is abusive. You hear your primary parent telling someone on the phone that to keep the other parent away from you, they will do anything they have to. You call that parent on your cellphone because you miss them. That parent says they miss you, too, and they're trying to see you. A few days later, you find out that parent was blamed by the court for that communication. You try to tell your primary parent that it was you, but they're too upset to hear you.

The primary parent starts telling you that the other parent is not seeing you because they don't want to and they don't care enough. You wonder if that's true, and your feelings are hurt, but the other parent told you that they were trying to see you. You love and trust both of your parents. Who do you believe?

Now, ask yourself whether you would like to have all of that evidence in front of the decision-maker who's going to determine your future, or just your primary parent's evidence.

I understand that there is concern by proponents of this bill that judges are overlooking certain domestic violence allegations when alienation is raised. That has not been my experience. My experience has been quite the opposite, and I think something similar was found by Dr. Bala in one of his pieces of research: that in fact the opposite is true. When we have a domestic violence allegation, at least in my jurisdiction, it's parental alienation that gets ignored out of a concern that the domestic violence should be seen as more important.

Frankly, how are people coming to this conclusion that things are being overlooked? As one of the speakers said earlier, when somebody loses a parenting fight, they tend to blame everyone but themselves. You're going to see a lot of people claiming that things were overlooked when, really, there was just no support in the evidence for what they were claiming.

There's a wealth of research on these subjects. Looking at that research selectively will lead to distorted and partial knowledge. Surely, we owe it to our children to ensure that decisions about them are made with the broadest possible knowledge available to us, and only after careful consideration of all of that information, not just some of it.

Thank you for your time.

● (1705)

The Chair: Thank you very much for that.

Now we go to the Canadian Bar Association.

You have five minutes collectively. Please divide them as you wish.

Caterina Tempesta (Past Chair, National Child and Youth Law Section, Canadian Bar Association): Thank you, Madam Chair.

My name is Caterina Tempesta, and I'm appearing for the CBA's child and youth law section.

While the CBA has not formally endorsed Bill C-223, we support aspects of the bill, as well as its goals: a stronger response to family violence, and safer outcomes for children that put their best interests first. Our written submissions recommend specific amendments to help the bill achieve these goals. In her testimony, MP Hepfner identified some of the provisions where there is alignment with the CBA.

Today I'll be focusing on children as people with rights of their own. Our message is simple: To keep children safe, we need to listen to them. The CBA welcomes the bill's reference to the UN Convention on the Rights of the Child. It should, however, reference both article 3 and article 12, reflecting a clear understanding of the rights at issue. How children are being heard in court is a key part of this bill.

The bill would let a judge interview a child directly. If this occurs, the bill needs stronger safeguards.

First, the child's consent should be the only threshold for speaking with the judge. Right now, the bill gives either parent a veto over whether the child is heard.

Second, the bill says nothing about lawyers for children. The UN Convention on the Rights of the Child identifies legal representation as an essential safeguard. Courts should be required to consider whether a child needs their own lawyer and, if so, direct that representation be provided.

Third, any interview with the judge must include the child's right to have a lawyer present, and it must be recorded. Children need to know what may be disclosed to whom before they consent to speak to the judge. Listening matters most when a child is resisting contact with a parent. Alienation claims can be used to dismiss a child's concerns. Whatever the parents allege, the child's own views and reasons must be given real weight.

The same applies to therapy. Children may be ordered to attend therapy to repair the relationship with a parent—this is often called “reunification therapy”. Forcing a child into it can cause harm, including when there is family violence and the abusive parent has not taken responsibility. The bill does not address the child's own consent to this therapy, which is inconsistent with provincial consent-to-treatment laws and with children's rights.

Madam Chair, with our recommended amendments, this bill could strengthen children's right to participate, enhancing their protection.

I now turn it over to my colleague Ms. Brown.

Tracy Brown (Past Chair, National Family Law Section, Canadian Bar Association): Thank you, Madam Chair and Ms. Tempesta.

My name is Tracy Brown, and I'm appearing today from Edmonton, Treaty No. 6 territory, on behalf of the national family law section of the Canadian Bar Association.

Our primary message, as family lawyers, is that child safety in separation and divorce is best achieved when courts can and do assess all the unique circumstances of each family and each child. The Divorce Act provides the framework to ensure that family violence is not missed or overshadowed in the determination of best interests.

Our brief addresses many of the proposed amendments, as my colleague stated, but I will now highlight one with respect to allegations of parental alienation.

As drafted, the bill, at proposed subsection 16(3.1) and proposed subsection 16(3.2), would prevent judges from considering evidence that a parent deliberately influenced a child to reject the other parent, with very narrow exceptions.

The CBA shares concerns about the abuse and misuse of alienation claims in the context of family violence, but it proposes language that is perhaps better at targeting the desired outcome of the bill by protecting children where the risk is greatest, without stopping courts from considering all relevant evidence in a best-interest analysis. Where a court finds family violence after assessing the evidence, including the child's views and experience, the CBA supports an amendment that the court not consider counterallegations that the non-abusive parent has alienated or deliberately turned the child against the abusive parent. Where there is no family violence, but where a child resists contact with a parent and alienation is alleged, the court should not be restricted in considering all relevant evidence and making an individualized assessment of best interests.

Family law cases with parent-child contact problems are inherently complex, and there are many reasons a child may resist contact with a parent. It's hoped that our recommendations will support the important objectives of strengthening systemic responses to family violence and keeping children safe.

We welcome your questions.

● (1710)

The Chair: Thank you very much to all witnesses for your testimony.

We're moving right into our first round of questions, starting with Mr. Khanna for six minutes.

Please, go ahead.

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

Once again, thank you to all the witnesses for joining us today and providing your insights.

I first want to start off by saying that it's good to see Madam Hepfner here today as well. I know she's very passionate about this topic, and I know she's worked extremely hard to address a very complicated and complex issue. It's hard to legislate human behaviour. It's a very complex thing, and I think it's a tough task, but I agree with my colleagues from the Liberal side. There are some concerns that they've raised in the first hour.

I want to start with Madam Goold first.

You have a lot of experience, almost 30 years, practising family law. In terms of scope, do family lawyers have the extra bandwidth, the knowledge, the understanding to make these safety plans that are mentioned in the act?

Linda V. Goold: I would say this. I like to say that we should all stay in our own lanes. I'm not a psychologist or a social worker. I actually have a bit of background in that, so I know that I don't know enough to do certain things. While I could certainly do a safety plan—and I'm sure many of my colleagues could as well—that's not our job. That should be something done with a women's shelter or some other group that can assist. I think I say in my written submission that I applaud any family lawyer who wants to go that extra mile and has the skill and the ability to do that.

I do some of those things myself. I know Tracy Brown, and I know that she does some of those things herself, but not all of our colleagues have that background. To tell us that we should now develop social work and psychology skills on top of legal skills, when we have perfectly good clinicians.... As one of the speakers said earlier, it should be somebody—in a relevant college—who's regulated, such as social workers, psychologists, etc., doing psychological and clinical work.

Arpan Khanna: I'll send the same question to the CBA. Do you have an official position on where you stand as an organization when it comes to safety plans?

Tracy Brown: With respect to the proposed amendment as it relates to safety plans, the CBA has urged caution and identified several specific concerns that would flow from an amendment to the Divorce Act, expecting lawyers to implement safety plans. We have raised concerns around inconsistencies with the “Model Code of Professional Conduct” and the need to coordinate with both the Federation of Law Societies and the provinces. We've also, of course, raised concerns around safety planning being outside the scope of the current competence of a family lawyer.

In general, on this issue of subsection 7.7(2.2), the proposed amendment as it relates to safety plans, while we—as my colleague indicated—support and endorse the goals of the bill, being that we all do better in terms of identifying and responding to family violence, this specific legislated requirement for lawyers has certainly raised a number of concerns that are practical and that would complicate implementation in several significant ways.

● (1715)

Arpan Khanna: Thank you for that.

In terms of jurisdictional challenges, there are provincial and federal jurisdictions that are obviously involved with family law. Does this bill provide clarity, or does it provide challenges when it comes to those jurisdictional responsibilities, Madam Goold?

Linda V. Goold: I guess I would say the only thing that struck me about the bill and that could run into some conflict, is when we talk about children's participation. For example, in Alberta, our Law Reform Institute is currently looking at changing the provincial legislation or adding to it in some fashion to deal with that. That could end up being inconsistent, then, with something in the Divorce Act.

I don't think there's a jurisdiction issue, because both Parliament and various provincial legislators have every right to legislate on that issue, but I would echo what was said in the first panel. It's probably better to stick to putting some criterion into legislation. Legislation can't do everything, and the more specific you get, the more you are tying people's hands, both lawyers and judges. That's probably not helpful.

I'm not sure if that answers your question.

Arpan Khanna: Thank you for that.

Obviously, our goal is to find the best interests of the child and to protect partners from intimate partner violence. Can we fix some of the challenges you see in this particular bill? Can we make amendments to resolve some of the challenges you see when it comes to lawyers and when it comes to discretion for judges, and still achieve the objectives we're trying to achieve?

Linda V. Goold: I wish I could say yes.

I've gone over that bill with a number of my colleagues at great length. By the time you take out the inappropriate interference with judges, lawyers and their clients—telling us that we should now be ignoring instructions if we think somebody isn't able to stand up for themselves—and by the time you get rid of all the problematic pieces, I'm not sure you have much left.

I hate to say that, given that I know the sponsor is immediately to my left over here. I'm very sympathetic to the concerns, but I don't think this bill will help anybody.

Arpan Khanna: The reason I ask is that Madam Hepfner is very willing to work with all sides to find a solution. Again, it's a real problem that exists, and we want to find the best approach possible.

It's the same question for the members of the CBA: Can amendments be made to resolve some of the legal, technical or operational challenges that you think might come up?

Tracy Brown: Go ahead.

Caterina Tempesta: I would say that yes, I think there are amendments that can be made. The CBA has in fact proposed a number of specific amendments.

As I noted in my opening comments, the revisions that MP Hepfner mentioned last week with respect to alignment with the CBA do exist. In the two submissions that the CBA submitted, there are further provisions in which there is alignment.

The Chair: Thank you very much. I believe that we have received your submissions. They're in translation and will be circulated to members very shortly, as soon as they're translated.

That concludes your time, Mr. Khanna. Thank you.

We're moving on to Mr. Chang. Go ahead for six minutes, please.

Wade Chang (Burnaby Central, Lib.): Thank you, Chair, and thank you to my colleague Lisa for being here.

I believe this bill is very well-intentioned, but I do have some questions for the Canadian Bar Association.

In its March 2026 submission, the CBA recommended a stage-gated model to parental alienation allegations. Can you confirm whether the CBA continues to support this recommendation? Has the CBA undertaken any further study, analysis or consultation since making its submission?

Tracy Brown: I'm not sure if I completely understand your reference to a stage-gated approach to parental alienation. We have provided suggested wording with regard to what might be of assistance in cases in which there's a finding of family violence. Perhaps you could clarify what exactly you're referring to in the submission. It's not immediately clear to me. To better address your question—

● (1720)

Wade Chang: It's mentioned in your March 2026 submission.

Tracy Brown: I have it in front of me.

Are you referring to the approach to proposed sections 16(3.1) and 16(3.2), or are you referring to another...?

Wade Chang: Yes.

Tracy Brown: On that specific proposed amendment to Bill C-223, we took great time and attention to try to provide a helpful friendly amendment to achieve what we understand to be the intended outcomes. That's what I was referring to in my remarks just now.

We proposed very specific wording in the instance of a finding of family violence. We've essentially tied the proposed amendment to only the circumstance of a finding of family violence. In those circumstances, after a thorough assessment of all of the evidence, including the views of the child, the CBA would be prepared to support an amendment.

I believe I referred specifically to the wording of "In determining what is in the best interests of the child, where the court has found family violence, the court shall not take into consideration any allegation that a non-perpetrator spouse has through deliberate manipulation, persuaded or encouraged a child to become estranged from or resist contact...." That was the recommendation that was in our March submission.

I'm not sure if I'm fully answering your question. I apologize. Perhaps you could elaborate.

Caterina Tempesta: I could perhaps elaborate a bit.

Everything that Ms. Brown indicated reflects the CBA's position, and that's in our first submission in March and repeated in the more recent October one.

The difference is that in the October submission, we provided a bit more elaboration on some of the factors that a court can consider if there are allegations of alienation or if a child is resisting or refusing contact but there is not family violence.

Those factors, which are found on pages 2 and 3 of our October submission, are intended to help guide the court with respect to the determination of the best interests of the child when children are resisting and refusing contact but family violence is not the issue.

Tracy Brown: Thank you for that further clarification.

I would add that this is not what I understand to be a stage-gating approach to the issue of determination of best interests in a context with no family violence.

Wade Chang: Thank you.

The Divorce Act adopts a deliberately broad definition of family violence, encompassing physical, psychological and financial abuse, harassment and coercive and controlling behaviour. Given this broad definition, how would the CBA's proposed approach account for differences in the nature, severity and circumstances of family violence? Also, how would it apply when both parents have been found to have committed family violence?

Tracy Brown: Our entire submission is oriented to a fulsome consideration of all the evidence and unique circumstances of each family and each child. That would obviously include all circumstances and all evidence that relate to differing kinds of family violence.

We know that these cases are complex. Family law is complex, families are complex and, certainly, family violence—with all of the myriad types of family violence overlapping and with interrelated family violence, is complex.

The overall submission has endorsed the notion that an individualized assessment under the best interests test is very important, yet we've also aligned with the proponents of the bill around the need to strengthen the language and the intent of ensuring that family violence is never overshadowed or missed in that analysis.

Wade Chang: Thank you.

Given the complexity of this issue, the unintended consequences for survivors and children and the CBA's concerns about preserving judicial discretion, before Parliament proceeds with additional changes, would the CBA support further study on the 2021 Divorce Act reforms and the circumstances in which children resist or refuse parenting time?

● (1725)

Tracy Brown: The CBA, with its myriad of recommendations and suggestions with respect to many aspects of the bill, has indicated, both directly and indirectly, that further work may be needed. I think that's implied in all of the various recommendations.

One would not want to rush into a major overhaul of the Divorce Act without being certain in terms of what exactly is being proposed. We've certainly heard that there are amendments on the table, so those would be part of—

The Chair: Thank you very much.

That concludes your time, Mr. Chang.

Lastly, but definitely not the least, we turn to Monsieur Fortin.

[*Translation*]

Mr. Fortin, you have the floor for six minutes.

Rhéal Éloi Fortin: Thank you, Madam Chair.

First, thank you, Ms. Goold and Ms. Dietvorst, for being here today.

Thank you, as well, to the two witnesses from the Canadian Bar Association, who are participating by video conference.

I believe this bill could be a game changer in family law cases, particularly when there are children, which means that custody and access rights have to be decided. That worries me a bit.

Ms. Brown and Ms. Tempesta, I'm pleased that you are here to represent the lawyers of the Canadian Bar. From what I checked, there are around 38,000 lawyers who are members of the Canadian Bar. Am I wrong?

[*English*]

Tracy Brown: Sir, I'm under the impression that there are just over 40,000. It may be less.

[*Translation*]

Rhéal Éloi Fortin: Forty thousand works for me as well.

Does the Canadian Bar Association have a consultation process with members who practise family law, for example, to find out what they think of the various aspects of the bill? Has a consultation or anything like that been set up?

[*English*]

Tracy Brown: Sir, I have no hesitation in telling you that this bill so far has elicited the most incredible conversations over an entire year. There have been more conversations about the issues addressed in this bill than I have seen in the last 16 years of working exclusively in family law.

Yes, within the CBA, of course, there was a long process of formally discussing the issues, not just within the family law section, which brings together the family lawyers, but of course, with our colleagues in child and youth, and these debates continue—

[*Translation*]

Rhéal Éloi Fortin: I have to interrupt you, Ms. Brown. What I'm doing is very rude. I hope you'll forgive me, but we have so little time.

I understand that the lawyers have been consulted.

There's one aspect of the bill that bothers me. I'm a lawyer myself. I can see the responsibilities that are being placed on family law lawyers to identify—I'll put it in my own words—the risks of violence and determine whether or not to adopt or propose an action plan in that regard. That seems to be outside my own area of expertise. I'm speaking for myself, but I suspect that I'm not the only lawyer who feels that they aren't a psychologist and that they have a bit of a hard time assessing cases of violence and all that. Maybe I'm wrong. You will have to let me know.

Won't that scare off family law lawyers a bit? At some point, won't they think to themselves that if they take a family law case, they must first ensure, almost beyond a doubt, that no instances of violence are involved, which is virtually impossible from the outset? Wouldn't they prefer to do something else rather than take on a family law case? How do you assess the responsibility that this bill places on lawyers? Isn't this a trap that will ultimately mean that Canadians don't get the effective representation they want or deserve?

[*English*]

Tracy Brown: I think it's clear to say that the evolving definition of what competencies a family lawyer should have includes the ability to identify and understand family violence. That is an evolution we have seen in our duties and our responsibilities.

There's no question that family lawyers, generally speaking.... The CBA has found in its consultations thus far that there's support for the notion that family lawyers should be screening, but there is much concern with respect to the practical application of that duty, the need for additional federal and provincial resources and the fact that there is no mandatory uniform training across the country or in any jurisdiction.

Issues and concerns have been raised, as you rightly note, but the principle of family lawyers screening for family violence has been largely embraced. Where there is a divergence and where concerns are noted is when we get an expansion of those duties into safety planning and a much more complex type of assessment, but we cannot do family law in this day and age without at least being able to identify and understand the basics of what family violence is.

● (1730)

[*Translation*]

Rhéal Éloi Fortin: What do you think is the best way to detect potential violence? Is there any particular expertise, such as that of a psychologist, social worker, criminologist or lawyer, that would be better able to identify solutions to violence and put action plans in place?

[*English*]

Tracy Brown: Would you like me to answer that as well, sir?

[*Translation*]

Rhéal Éloi Fortin: Yes. I would like to know what you think about this, even though I understand that you aren't a psychologist.

[*English*]

Tracy Brown: Very briefly, obviously in an ideal world, in every family law matter and every case involving family violence and children resisting contact, we would have mental health professionals to assist us. We don't have that luxury—oh, were it so—so family lawyers have learned, with tools provided by the Department of Justice through the HELP tool kit and many others, to increase our competence in working with people and families in separation and divorce to be able to at least better understand how to identify when family violence occurs.

There's no question, though, that we can always benefit from the expertise of others if that expertise is available to us.

[*Translation*]

Rhéal Éloi Fortin: I'm out of time. Thank you.

[*English*]

The Chair: Thank you very much.

That concludes our meeting for today.

I have two quick things on the agenda. Before I get to them, I want to say my sincerest thank you to our witnesses today for their testimony.

If there are any additional items you want to bring up, please provide written submissions to the committee.

I'm going to recognize Mr. Khanna now for a quick routine motion.

Please go ahead.

Arpan Khanna: Thank you, Madam Chair.

I wanted to propose a motion on some housekeeping regarding associate members. I understand the clerk has distributed the motion to all the members. I'm seeking unanimous consent to get that motion approved.

(Motion agreed to [*See Minutes of Proceedings*])

The Chair: The motion is approved with unanimous consent.

Wow, is this the justice committee? I don't know.

The second thing is that we have a Mongolian delegation that is visiting Canada under the equal justice for all in Mongolia project, which is a government-funded initiative. If it's okay with the committee, I will work with the clerk to schedule an informal meeting between the delegation and committee members. It will probably be on November 26.

All right. That's solid.

With that, the meeting is adjourned.

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