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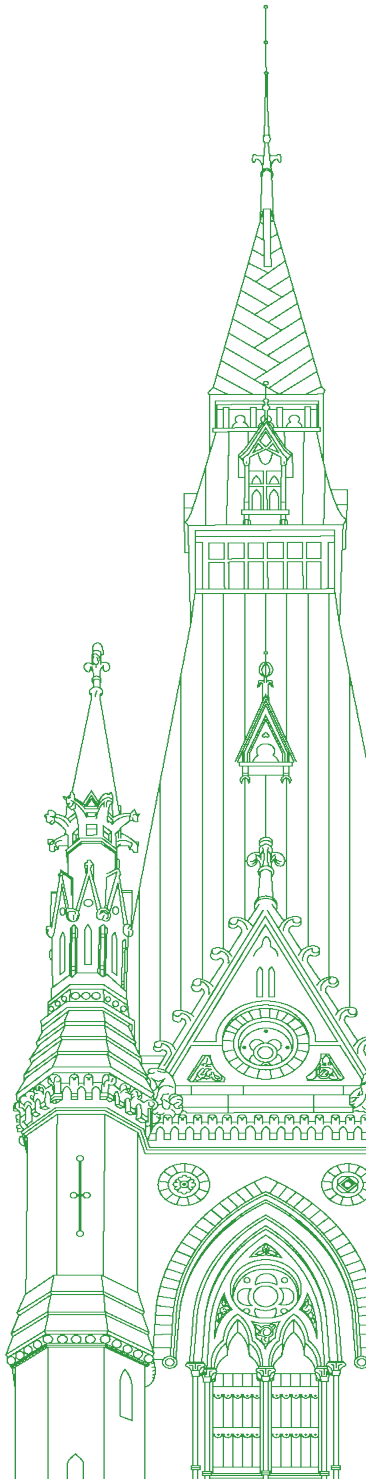
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Standing Committee on Justice and Human Rights

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● (0820)

[*English*]

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

Good morning, all of you beautiful people. Welcome to meeting number 42 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.

We are in hybrid format today, and we have some witnesses who are online. I want to confirm to everybody that we have done our sound tests, and they were done successfully. Please make sure that you have selected the interpretation channel for the language you would like to listen to. Please wait until I recognize you by name before speaking.

For those who are participating by video conference, click on the microphone icon to activate your mic, and please mute yourself when you are not speaking. I know we've been using virtual apps to meet for many years, but I still need to make those reminders.

All comments should be addressed through the chair.

For members on Zoom, please use the raise hand function. The clerk and I will manage the speaking order as best we can, and we appreciate your patience and your understanding in this regard.

In the first hour, we welcome today, as an individual, Susan Chuang. She is a professor at the University of Guelph and is attending by video conference.

We also have the Alberta Family Lawyers Association, represented by Wayne Barkauskas. Thank you so much, Mr. President, for being here today in person.

We also have the Barreau du Québec, represented by Marcel-Olivier Nadeau. He is the president and is joining us by video conference. We also have Valérie Laberge, a member of the expert group on family law, who is attending by video conference, and Nicolas Le Grand Alary, who is a lawyer in the secretariat of the order and legal affairs and is attending by video conference.

Thank you to all the witnesses for being here today.

I will go in the order in which I've acknowledged everyone. You will have five minutes per individual and per organization to make your opening remarks.

We'll start with Professor Chuang.

Please go ahead for five minutes.

Susan S. Chuang (Professor, University of Guelph, As an Individual): Good morning, everybody.

I would like to first thank Chairperson Khalid and the Standing Committee on Justice and Human Rights for critically reviewing the proposed amendments to the Divorce Act in Bill C-223.

As we all can agree, when parents separate, all those involved, including parents themselves, professionals such as family mediators, lawyers and especially our family courts, should and must prioritize the best interests of children. The UN Convention on the Rights of the Child, in article 3, as its key principle, says the following:

> The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable [them] to develop...in a healthy and normal manner and in conditions of freedom and dignity.... [T]he best interests of the child shall be the paramount consideration.

This is Canada's only criterion in the Divorce Act, and rightly so.

Thus, upholding these basic rights to have supportive and loving relationships with their families, including extended families, is paramount to their healthy development.

I would like to mention that I'm neither a therapist nor a counsellor, but I have had decades of research experience and expertise in parenting, fathering and parent-child relationships in various sociocultural contexts. When families are in crisis, individuals, families, social workers and principals reach out me as a last resort to step into the family and help them move positively forward and make positive changes.

In my experience with hundreds of families, regardless of their education, income or social status, many parents do not realize that they, as parents, influence and impact their children's lives. Knowledge is power, and with a bit of information, parents can change 180°. If parents, while co-parenting together, do not fully realize their influence and impact on their children's lives and how their relationship with each other indirectly impacts their relationships with their children, what can we do when families separate and conflicts escalate? A key factor that has transformed families dramatically and may be the most far-reaching in its implications is separation and divorce.

Based on Canada's general social survey in 2011, more than half of parents, 55%, did not have written agreements on their scheduled time with their children. This means that they had to rely on the family courts to intercede and finalize parenting times and decision-making.

Consequently, when conflicts or differences of opinion arise on what really constitutes the best interests of the children and keeping them safe from physical and emotional harm, children are caught in the middle. Moreover, many children and adolescents live their developmental years in litigation, which in turn may significantly impact their lives for many years to come.

According to the 2019 Canadian health survey on children and youth, almost one in five children had experienced separation or divorce. Shockingly, only 21% of the families had equal shared parenting time. More than four in 10 children had irregular visits, remote visits or no contact at all, which is almost one in five children, with the majority of children, 87%, living with their mothers only. The non-custodial parents are most likely fathers.

However, are fathers important? For many decades since the late 1960s, scholars have consistently found that fathers, or the second parent, have a unique contribution to their children's lives. As my report stated, there are numerous studies, hundreds of thousands, that have evidenced the various ways in which fathers directly and indirectly impact children's development.

Focusing on keeping children safe from abuse is a human issue. Children and individuals in general should be protected by abusers and perpetrators, whether or not their motives are intentional or malicious. However, we all know that family violence and abuse have many faces and show themselves in many forms.

The question, and the reason we're talking today, is this: How can abuse be determined in family courts when time and resources are limited? In the last few minutes, I would like to talk about my family court case project, which is ongoing. It may shed some light on our discussions today.

My family court case project uniquely examined Ontario family court cases from 2018 to 2019. The criteria were that the cases occurred between 2018 and 2019, pre-COVID; that they took place in Ontario; that the reason for the court case was related to the children, whether it was parenting time or decision-making; and that a parent had made an allegation against the other parent.

● (0825)

This resulted in 288 cases, which involved 471 minor children. There were 13 forms of abuse that were coded, including coercive control and parental gatekeeping or parental alienation. There were almost 1,500 allegations or events that were coded.

Mothers accounted for 70% of those allegations. The mothers' top allegation was psychological abuse, primarily to her, whereas the fathers' top allegation was gatekeeping, at 31%. We also coded—

The Chair: Thank you, Professor. I apologize. Your time is up, but I'm sure that a lot more of what you have to say will come out through questioning.

We'll now move on to the Alberta Family Lawyers Association for five minutes.

Please go ahead, sir.

Wayne A. Barkauskas (President, Alberta Family Lawyers Association): Five minutes isn't very long, but I'm going to do my best.

My name is Wayne Barkauskas. I'm a family law lawyer in Calgary. I've been practising for approximately 35 years. I'm also a mediator, an arbitrator and a parenting coordinator, and I've been doing that for between 20 and 25 years, so I'm quite often put in the position of having to make decisions about parenting for people. I've probably made hundreds of decisions, if not thousands, in my career in that role.

I represent the Alberta Family Lawyers Association, which has approximately 1,000 members practising family law in Alberta. I'm here in person because this issue and this proposed bill are of such importance. It's been explained by our members that this is a critical item that they want us to appear on.

I attempted to provide my résumé to this committee so that people could understand my perspective. It couldn't be translated in time, but I'm going to give you some highlights.

I'm a past president of the Alberta branch of the Canadian Bar Association. I am the past national chair of the CBA family law section. I was on the federal advisory committee for changes to the Divorce Act in 2021, which included all of the new revisions, including on family violence and coercive control. I was on the committee that helped create the family law tool kit for lawyers, which was approximately a two-year project. The tool kit helps lawyers identify family violence.

I've taught lawyers and judges, both within Canada and outside Canada. I've done that for years, all on the issues of family violence. I also sit on the board of Sagesse. The Sagesse organization assists victims of family violence, and I have been on that board for approximately 25 years.

That's the context that I bring to my comments this morning.

You've heard from many people who are in opposition to this bill, and rather than repeating the things they've said, I want to bring it home for you. I want you all to imagine that you are an arbitrator. You've been hired to make decisions relating to a family and what's going to happen to children. I'm going to keep the facts really simple and really straightforward, not extreme.

We have a family here. The husband and wife were married approximately 20 years ago. They had a good relationship. They had one child approximately six years ago.

Everything was fine until about two years ago. Two years ago, there was an incident because the relationship was getting rocky, and the incident involved alcohol. It escalated, and the husband hit the wife.

The police were called. There weren't any charges laid. It was a single incident. The father got anger management counselling. They went for marriage counselling. They reconciled. Now they're breaking up two years later. They have a six-year-old child.

I want to ask you, based on the bill that we have here, what would happen if the wife decided to take the child without any consent from the father and just move to the Maritimes. What would you do under this bill?

You're now the arbitrator. If you take a look at the bill, you see that it says that since there's been family violence, you can't hold it against the wife merely because she decided to abduct the child to the Maritimes. Without this bill, of course, when you look at the facts, it makes no sense that this would happen.

Now let's go back again and imagine that after separation, the wife started saying things to the child like, “Dad's bad. He's a bad person.” That's not because she's using the child as a weapon, but because she actually believes it. She's telling this to the child because she believes it's her duty to teach the child that this father is bad. This is a six-year-old child.

● (0830)

Under this bill, what would you do as an arbitrator? Under the provisions of the bill, you couldn't do anything, because it says that this type of conduct is not going to be held against her.

Okay, now let's go further. Let's say you now have a psychologist telling you that the damage that's been caused can be reversed, but in order to reverse it, the child needs time away from mom—a pause—and the psychologist needs some time in order to reconcile the relationship between the father and the child. According to this bill, you couldn't do it.

● (0835)

The Chair: Thank you very much, sir. I apologize, but your time has concluded. I'm sure the rest will come out as we continue this hour.

Now we go on to the Barreau du Québec. You have five minutes to share among the three of you.

I'll just remind you to please place your boom between your nose and your mouth. That is the best place for it for our interpreters to hear what you have to say.

Thank you very much. Please go ahead.

[*Translation*]

Marcel-Olivier Nadeau (President, Barreau du Québec): Good morning.

Ladies and gentlemen of the committee, thank you for welcoming us here today.

Allow me to introduce myself. I am Marcel-Olivier Nadeau, president of the Barreau du Québec. I am accompanied by Ms. Valérie Laberge, a member of our Family Law Expert Group, and by Mr. Nicolas Le Grand Alary, a solicitor in the Secretariat of the Order and Legal Affairs Department of the Barreau du Québec.

The Barreau du Québec would like to thank you for inviting it to take part in the consultations on Bill C-223, an act to amend the Divorce Act, which aims to better protect children.

It is important to recall that the mission of the Barreau du Québec is to ensure the protection of the public, to promote accessible justice and to uphold the rule of law. It is in this capacity that we present to you the main recommendations from our submission on this bill.

To begin with, I would say that the Barreau du Québec supports the objective of better protecting children and victims of domestic violence. Violence and coercive control must be fully taken into account in decisions affecting families.

To better protect families, clear and enforceable rules are needed. These rules must also comply with Quebec civil law, the rules of evidence and the ethical obligations of lawyers.

Our reservations therefore concern the proposed measures. Several provisions primarily set out principles, without guaranteeing concrete protection. Others raise difficulties in terms of implementation. Our proposals aim to strengthen the protection of children. They also allow for each family situation to be taken into account and ensure the fairness of the proceedings.

I shall focus on four main themes of our submission.

The first theme concerns the role of lawyers. The bill would require them to assess the risk of domestic violence. Where a risk is identified, they would be required to implement an appropriate plan and ensure that the family has a safety plan.

Recognizing the signs of violence is part of the vigilance expected of lawyers. However, risk assessment and the development of a safety plan require specialized psychosocial skills. Entrusting these responsibilities to lawyers risks leading to errors and creating a false sense of security.

We recommend instead that lawyers be required to refer the parties, where necessary, to specialized and competent resources. Everyone must be able to contribute to the protection of families in accordance with their expertise.

We recommend removing all references to marital reconciliation from the Divorce Act. Indeed, simply specifying exceptions to this obligation is not sufficient. This obligation no longer corresponds to the current conception of family law, which is based on individuals' autonomy, dignity, and physical and psychological safety.

The second issue concerns the assessment of evidence. We, too, wish to prevent the misuse of parental alienation against victims of violence. However, the proposed restrictions risk preventing the court from considering evidence relevant to determining the child's best interests.

We favour specialized training, independent expert assessments and the judge's ability to assess each situation on its merits. If the legislature adopts a definition of parental alienation, the criteria must be strict: numerous, systematic and persistent behaviours aimed, without justifiable cause, at severing the child's relationship with the other parent. The presence of domestic violence should not be a prerequisite.

We also welcome the ban on the use of myths and stereotypes in family law. We do, however, have one reservation: the provision on incompatible statements and adversarial evidence should be removed from this list and instead be subject to separate rules on admissibility. The court must be able to consider relevant evidence if it is sufficiently reliable and if its use serves a legitimate purpose of justice. Stereotypes can be combatted while preserving the fairness of the proceedings.

I now turn to the third theme: the best interests of the child. We welcome the intention to clarify that there is no presumption of equal sharing of parental time. Some litigants still believe the opposite. Yet the decision must be guided solely by the best interests of the child. We therefore propose retaining the current rule: The child should spend as much time with each parent as is compatible with their best interests. It would suffice to clarify that this rule does not create any presumption of equal sharing.

The child must also be allowed to have their say. We support this objective, but we oppose the proposed written statement. Such a statement may be subject to a parent's influence, which raises questions of reliability. Challenging it also risks placing the child at the centre of a conflict between their parents.

Finally, the fourth issue concerns significant relocations. The current rules are based on a long history of case law and a 2019 reform. We recommend that they be retained and that the proposed amendments to clause 7 of the bill be withdrawn. If these rules are nevertheless amended, those relating to shared parental time must be preserved.

● (0840)

It is up to the parent wishing to move with the child to demonstrate that the move is in the child's best interest.

Thank you. We are ready to take questions.

The Chair: Thank you very much for your participation today.

[*English*]

We'll go into our first round of questions, starting with Ms. Kirkland for six minutes.

Please go ahead.

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

Thank you to the witnesses for being here.

I'm going to say this from the outset of my questions: We all want to protect children from family violence. I will preface them by saying that I am a single mother, and I have been one for almost six years. I have had, for most of that time, 100% parent time. That's just to give you an idea that I've been in these spaces and understand what they can be like.

The concern I have is mostly about the unintended consequences of this bill. I appreciated Mr. Barkauskas'—

● (0845)

Wayne A. Barkauskas: It's Wayne.

Rhonda Kirkland: Oh, it's Wayne. Thank you, Wayne. I can tell that you're a mediator by the way that you presented, and I appreciate that very much.

I tried to start with the mediation process in my scenario, but I can tell you that some changes to the Divorce Act, and specifically what happened in 2021, with the expanded definitions of family violence, did make a difference in my situation.

I come to this with an understanding of protecting children and also of making sure that parents still get time with their children if it's deemed safe. I find that this can be important, because people change and people grow. I believe strongly that my children would not have been strong teenagers and young adults if I hadn't facilitated, to the best of my ability, a relationship with their other parent.

I did that through a very difficult time, but I still understood the importance of letting them do it so that their boundaries.... One day they were going to be old enough to set their own boundaries, but until that time came, it was my job to do the best I could.

I know that was a long preamble.

I have some concerns about not allowing parental alienation to be considered. Part of my concern is this, and I'll give you a scenario, because that's how I think best. If an abusive father or husband is in court talking about parental time, could this bill, in changing the law so as not to recognize parental alienation, also affect the woman in this situation, the mother? I ask because in my experience, when there's psychological, financial and other abuses that aren't always physical, what comes with that is parental alienation as a part of the psychological abuse. The mother in this scenario is claiming that the father, the abusive parent, is alienating their child against her.

I'm sorry. I'm all over the place a bit this morning. It's early, but I hope that was understood. I'd love to hear your ideas on that and how this could harm the woman who has been abused the entire time in this situation.

Wayne A. Barkauskas: You bring up a couple of things.

First of all, the changes in 2021 have made a sea change in family law. If people are bringing examples to this committee of things that happened in court prior to 2021, yes, I concur that our bench was not terribly well educated on the issue of family violence. The changes in 2021 demanded the legal profession and the courts to become far more familiar with the dynamics of family violence. That's the first thing I'll say.

The second thing is that you bring up a very good point: Every situation is different, and the dynamics are complex. Sometimes you have both parents using different forms, I'll call it, of family violence in an effort to control a situation. Sometimes it's litigation abuse. Sometimes it's physical abuse. Sometimes it's enlisting the children into their fight. It can happen on either side, or both sides at the same time.

I'll give you an example. Early in my career, I had a case in which the father had beaten the wife with his prosthetic leg. This is absolutely true. The reason he had prosthetic legs was that in an earlier dispute, the wife had driven the family vehicle into him and severed his legs. She pinned him up against a wall. They had three children together.

Think about this legislation. What would you do? The proposed bill is built in a binary way—a good person, a bad person. What happens if they're both bad people? What are you supposed to do as an arbitrator or a judge? It means that really, literally, either of them could pick up the child and run away to P.E.I. or somewhere else, and it would be justified. That makes no sense. It's illogical.

Rhonda Kirkland: Thank you.

I think I have a bit of time left.

Professor Chuang, would you please expand on your concept of parental gatekeeping?

Susan S. Chuang: Yes, I wanted to emphasize that as well.

Parental gatekeeping includes one parent cutting down the agreed-upon parenting time, which would breach their agreement, or maybe restricting the child from going to a parent for a certain amount of time, and maybe the frequency of it as well.

I see parental alienation on a continuum, because at the beginning, it starts with the changing of the agreement on parenting time. Maybe it was every weekend, and now it's every other weekend. In my case, a lot of fathers are going to court because they want to see their children more often.

The Chair: Thank you.

That was almost a minute over, Ms. Kirkland. Let's—

Rhonda Kirkland: I'm sorry.

The Chair: Thank you. I appreciate that.

We're going on to Ms. Lattanzio.

Please go ahead for six minutes.

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

I'd like to thank the witnesses for your presence and for your insight on this very important private member's bill.

[*Translation*]

I shall address my first questions to the Barreau du Québec, as I am a lawyer from Quebec. I have practised for many years in the field of family law.

Family law falls within both federal and provincial jurisdiction. Furthermore, Quebec has its own civil law framework.

What factors should Parliament take into account when making further amendments to the Divorce Act to ensure its effectiveness within the Quebec legal system?

Marcel-Olivier Nadeau: Thank you for your question.

I shall leave it to Mr. Le Grand Alary and Ms. Laberge to answer the question.

Nicolas Le Grand Alary (Lawyer, Secretariat of the Order and Legal Affairs, Barreau du Québec): I will begin by answering the question, and Ms. Laberge may then add to my response.

In our submission, we highlight certain points, particularly with regard to the child's evidence. There is a proposal to allow written evidence from the child. The president of the bar emphasized, in his opening address, that we do not support this measure, because in Quebec we have, over time, developed a practice whereby children are heard in court or by a judge. This practice works very well. It is something that might be worth adopting elsewhere in Canada. So, these are the realities.

Otherwise, as regards the bill currently under consideration, there are no specific provisions relating to the concept of child custody or parental time. These are matters that have been discussed previously in connection with other bills.

I now give the floor to Ms. Laberge, who will be able to provide further clarification on the differences between civil law and common law.

● (0850)

Valérie Laberge (Member, Expert Group on Family Law, Barreau du Québec): With regard to the mechanism my colleague referred to concerning the child's testimony, for us in Quebec, it is rather surprising to see this suggestion in Bill C-223, namely that there could be a written statement from the child.

In Quebec, the way we operate is that we appoint a lawyer to represent a child in order to be able to obtain the child's opinion. A provision of the Civil Code of Quebec requires us to ascertain a child's opinion whenever an important decision is to be made and the child is capable of expressing that opinion.

Consequently, a lawyer is appointed at a reduced rate for that child through the Legal Aid scheme. So, instead of appearing before the judge, the child will meet with a lawyer who is specially trained to explain and articulate the child's wishes and desires. The lawyer will be responsible for conveying the child's views to the court, which we consider far preferable to making the child write a written statement. Put yourself in the shoes of that poor child who would have to sign a written statement. We do not consider this measure to be particularly appropriate.

Furthermore, under Quebec civil law, our sole criterion when it comes to determining the child's best interests in custody matters is really to consider what is in the child's best interests, taking into account all the circumstances, particularly the occurrence of domestic violence, where applicable.

The aim is to have as much discretion as possible and to ensure that the court has access to all available information so that it can make an individualized and tailored decision in the best interests of the child.

This principle may conflict with certain aspects of this bill, which aims to somewhat limit the evidence that can be presented to the court and to infer certain types of presumptions. In any case, it aims to exclude certain types of evidence.

Patricia Lattanzio: One of the concerns raised during the scrutiny of this bill relates to the importance of preserving judges' discretionary powers.

How can Parliament strengthen protection against domestic violence while ensuring that judges retain the flexibility needed to consider all relevant evidence and take into account the specific circumstances of each child?

Marcel-Olivier Nadeau: I believe I emphasized this in my opening statement, particularly with regard to parental alienation. It is not necessarily appropriate to impose conditions on the initiation of such proceedings, although the evidence must be rigorously examined when parental alienation is at issue.

We believe that introducing exceptions—in particular, the requirement that there must be no domestic violence—is certainly not the right thing to do. In fact, it takes away the judge's discretion, although, in this case, we are aware that we do not want the parent who has committed domestic violence to use the argument of parental alienation in the case. That must be avoided; it must be addressed—and we have said so—but that does not mean that, in every case, we must ensure there is no violence in the case. In our view, that is somewhat restrictive.

I shall leave it to Mr. Le Grand Alary and Ms. Laberge to complete the response on this subject.

Patricia Lattanzio: If I may, I have another question and I would like to put it to another witness.

Thank you.

[*English*]

My last question will be for you, Mr. Barkauskas—Wayne.

The bill also raises concerns about reunification therapy and the appropriate role of courts in ordering therapeutic interventions. What safeguards would you recommend to ensure that children are protected from harmful practices while maintaining access to appropriate supports?

Wayne A. Barkauskas: In my role, I'm often asked to interview children or get them involved in the dispute, and I'm often asked in situations where there's agreement on what the child is going to say. In those situations, I find it important to have it communicated to the child—sometimes through independent counsel, sometimes through a counsellor—that we've heard their voice and we don't need them involved in the litigation, because everyone agrees on what they would say.

Then in other circumstances, you have to take a look at the age of the child and their developmental stage. That's what the UN Convention on the Rights of the Child says. You have to take their age and stage of development into account, and the issue at hand, and how important it might be to them before you get them involved. Then there are many different ways of having them involved—

● (0855)

The Chair: Thank you very much, sir. I appreciate that.

We're now moving on to Monsieur Beaulieu.

[*Translation*]

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

[*English*]

Welcome to our committee.

[*Translation*]

Mario Beaulieu (La Pointe-de-l'Île, BQ): Thank you, Madam Chair.

My question is addressed to the representatives of the Barreau du Québec.

You are proposing to adopt the criteria set out by the Quebec Court of Appeal in the Droit de la famille—24915 decision.

Could you explain to us the criteria used by the Quebec courts for a judge to conclude that parental alienation has taken place?

Marcel-Olivier Nadeau: Thank you for your question, Mr. Beaulieu.

I'll let Ms. Laberge answer the question.

Valérie Laberge: With regard to findings of parental alienation, it is important to note that allegations of parental alienation often arise in legal proceedings, whether or not violence is involved. It is very important to mention this. It is, however, quite difficult for judges, and even for lawyers, to determine who is telling the truth in such cases.

The Quebec Court of Appeal's judgment in Droit de la famille—24915 provides a definition of parental alienation. The context was somewhat different, as this judgment was handed down in the context of a civil liability claim where the aim was to establish the concept of fault. At the very least, it clarified certain points, even though case law did not necessarily always agree on the same definition of parental alienation or on the standard required to conclude that parental alienation was present. It should be noted that this concept is also the subject of some controversy within the field of psychology.

In any case, what we observe is that, in every definition we come across, it really requires behaviour that is inappropriate given the family dynamics, that is systematic, and whose aim is to exclude the other parent.

That said, these are still just labels. It is good to be aware of the issue, and I believe it is a priority to raise awareness among judges and solicitors through fairly in-depth training to help them distinguish fact from fiction. The fact remains that, in every case—whether or not parental alienation is present, whether or not there is domestic violence—we must ask ourselves what is in the child's best interests. In every instance, it is worthwhile, and indeed necessary, to examine all the circumstances.

Mario Beaulieu: Thank you.

The court of appeal says that there can't be parental alienation if the parent making the complaint has engaged in inappropriate behaviour, such as violence.

Can an abusive father successfully claim parental alienation in Quebec?

Valérie Laberge: The court of appeal says that, in order to make a finding of parental alienation, there must be no legitimate reason for the child to distance themselves from their parent. For example, in a case of abuse, a child might sometimes have a perfectly legitimate reason for wanting to distance themselves from the abusive parent. In that case, of course, there wouldn't be a finding of parental alienation. Parental alienation basically means one parent brainwashing the child in order to turn them against the other parent, but without a valid or sufficient reason.

We're seeing something on the ground that raises concerns. I think that the bill is trying to address this issue, but I'm not sure whether it's taking the correct approach. We're seeing that, in cases involving allegations of domestic violence, the parent—the mother—who is the victim of the violence will naturally want to protect the children and certainly limit contact with the other parent as much as possible. The other parent, using parental alienation, will often claim that the mother is making up allegations of abuse and that she wants to keep the children from seeing him. In these cases, we must determine whether alienation or abuse is taking place.

Each time, we need to step back a bit from these labels and from the urge to assign blame. We should look at the situation as a whole and ask what solution serves the child's best interests. Of course, these two concepts often come up as a defence whenever someone refers to these types of situations. I think that we should let the judges hear the evidence so that they can make a decision.

● (0900)

Mario Beaulieu: Why should alienation be regulated by criteria rather than banned entirely?

Valérie Laberge: I think that, if we ban evidence of parental alienation, we'll be harming certain children who are genuine victims of parental alienation and who aren't experiencing other forms of abuse from the parent.

If parental alienation claims are prohibited, some children will be exposed to this type of brainwashing by one parent regarding the other parent. They will have no say in the matter, and their interests won't be protected.

Mario Beaulieu: If the judge can no longer recognize manipulation, what happens to a parent whose child has truly been turned against them, including a mother who is a victim?

Valérie Laberge: If the judge can no longer recognize alienation, and if a parent—for example, a mother who is a victim of abuse—can't argue that the other parent is engaging in parental alienation, we can indeed wonder what would happen.

I believe that alienation must remain an argument for consideration. Otherwise, all the circumstances that the judge must consider in order to render a decision in the best interests of the child would be obscured.

A case-by-case approach is the cornerstone of the system, the Divorce Act and the Civil Code of Quebec when it comes to determining the best interests of the child. I think that this is essential.

We can only ensure that decision-makers and counsel have the tools needed to receive specialized training and to recognize this type of situation or trend. They must be able to make the best possible decisions.

Of course, in light of all the evidence, I don't think that anything should be prevented.

[*English*]

The Chair: Thank you. That concludes your time.

Moving to our second round of questions, we'll start with Mr. Khanna.

You have five minutes. Please go ahead.

Arpan Khanna (Oxford, CPC): Thank you, Madam Chair, and a big thank you to the witnesses for coming today.

My questioning will be for Wayne.

How many members do you represent?

Wayne A. Barkauskas: There are 1,000.

Arpan Khanna: Are they all in family law?

Wayne A. Barkauskas: I believe that almost all of them are family law lawyers. Other counsel support our organization even though they're not family lawyers, I believe.

Arpan Khanna: Has your organization been part of consultations on this bill?

Wayne A. Barkauskas: Yes. As far as I know, we're the only organization that polled its members on this bill before writing submissions. We've provided the detailed results of that poll. The overwhelming majority of them are opposed to this bill.

I need to point out that our members and I are proponents of protecting victims of family violence. We're not opposed to that. We're simply saying that this bill is not the right way to do it.

The right way to do it is the way they made the last changes to the Divorce Act. You start from the bottom up. You bring together a whole group of people with diverse backgrounds and as a group build legislation from the bottom up. That will work. Doing it from a single perspective is bound to fail if you don't get everyone onside at the front end.

Arpan Khanna: Since you work with provincial counterparts closely, do you have any idea what the provinces think on this? Do you know what the Alberta government thinks on this? Do you have any thoughts on their perspectives?

Wayne A. Barkauskas: I am not aware of any position taken by any province with respect to this legislation. In my communications with our justice minister, it's never been brought up.

Arpan Khanna: Look, lawyers do a lot of challenging work. Obviously, they're faced with pressures—time pressures and deadlines. Even some of the best lawyers sometimes can make mistakes. In adding that extra scope of developing a family plan, do you think mistakes could happen?

Wayne A. Barkauskas: People are human. Families make mistakes. Parents make mistakes. Lawyers make mistakes. I'm sure everyone sitting in this room will admit that they've made mistakes. The way to avoid mistakes is through education and understanding.

As I said, since 2021, as a result of the changes to the Divorce Act, the amount of education going on within the profession on this particular issue has been enormous.

● (0905)

Arpan Khanna: With the way this bill is written today, do you think your members, if asked, could sufficiently do a family plan today that would assess the risks and dangers to the child?

Wayne A. Barkauskas: If you're talking about safety planning, no, absolutely not.

I've had decades of training. I might be able to create a safety plan, but I would never do it. There are organizations—community organizations—and that's their specialty. They will know the local resources. They will be able to determine the specific needs of an individual client and tailor the safety plan for the client. Not only that, but a safety plan shouldn't be done once. It should be done on an ongoing basis.

For a lawyer like me who does only family law.... I won't touch it. What do you do about the lawyers that practise in Hanna, Alberta, or Flin Flon, Manitoba, and do three divorces a year? You cannot expect them to have the level of knowledge to create a safety plan or even to properly screen clients. The screening probably should be done by an outside organization. That's my belief.

Arpan Khanna: Indirectly, do you think that by giving lawyers that extra responsibility, more children could be at risk?

Wayne A. Barkauskas: Not only would more children be at risk, but the victims.... It's not just children. The spouse is most likely to be at significant risk.

You're also limiting access to justice, because as I said, lawyers in Flin Flon or Hanna may not have the capability of doing it, which means that people won't have a lawyer at all because a lawyer is not going to take training to do this if they only do three divorces a year.

Arpan Khanna: That's the concern we have. Again, the intentions are good. We want to protect children and protect partners from violence, yet the practicality of it, putting responsibility on lawyers to assess something that's outside their scope, is obviously a concern for us. I think it will lead to the unintended consequence of potentially more children and more partners being put in a position where there is some violence.

Are there any major—

The Chair: That concludes your time. I appreciate the enthusiasm, though. Thank you.

We are moving on to Ms. Gladu for five minutes.

Please go ahead.

Marilyn Gladu (Sarnia—Lambton—Bkejwanong, Lib.): Thank you, Chair, and thank you to all the witnesses for being here today.

I'm going to start with Professor Chuang.

I am very interested in the research you were talking about. You didn't get time to finish talking about the results and how they might inform us on this bill, so please go ahead with that.

Susan S. Chuang: I appreciate that. I should have spoken faster.

I was saying that when we coded for who made the first report and when, it turned out that the majority—more than half—of the mothers made the allegations first in court and 76% of the fathers mentioned the allegation of abuse in court. Mothers were also more likely to formally report to child services or to the police than were fathers, but the majority of the formal reports were not verified. After the investigation, no evidence was found.

In terms of the credibility of the evidence provided in court, judges, in the end.... That's the big thing: Did judges believe these allegations? Fewer than half of the allegations made were actually believed by judges. Out of all those allegations, the most credible allegation was only gatekeeping—restricting one parent from seeing the children, or breaches—so that became an issue.

Also, when there are allegations of abuse, in the court documents we've seen, the other parent is also claiming extreme gatekeeping or breaches of parenting time, or one parent is requesting supervised visits, which is also a barrier for a lot of people because they cost money and take time. There might be a relocation, which is another way of creating distance from the other parent.

There are many forms of parental alienation; there are other ways of doing it. Judges did not believe more than half of these claims, these allegations, so that's an issue.

Marilyn Gladu: Thank you.

We've heard a lot of witness testimony that the parental alienation measures in this bill are problematic. Are there measures in this bill that you think are worth retaining?

I'll ask that question of Wayne, first of all, and then we'll go to Valérie Laberge.

● (0910)

Wayne A. Barkauskas: I believe that judges need to be educated on some of the unique characteristics of victims of family violence when it comes to being witnesses. In fact, Dr. Rachel Birnbaum and I wrote a paper on that, and you've already heard from her. There are unique characteristics. I don't think the language in the bill addresses it in the way I would address it. Raising the issue for the consideration of judges so that they're aware of it, but without limiting their discretion on how to deal with it, I think makes sense.

A lot of the aspects of this bill to raise the issue...like family violence. The current Divorce Act lists the type of family violence for consideration by the judge, but without limiting their discretion. That has gone a long way to improving justice, and I think that might be a good way of getting some of these things in front of the courts and front of mind.

[*Translation*]

Marilyn Gladu: Ms. Laberge, does the bill have any good aspects?

Valérie Laberge: Yes. I think that Mr. Barkauskas summed it up quite well. We share exactly the same concerns in this area and we see things the same way.

That said, one section of our brief focuses on myths and stereotypes. In my opinion, this is the best improvement in this bill. However, one exception stands out. In the clause on myths and stereotypes, paragraph (e) of the bill prohibits the introduction of evidence regarding “inconsistent statements or conflicting evidence in relation to incidents of violence.” We find that this runs contrary to the rules of evidence. Once again, we strongly support the idea that the judge should hear as much evidence as possible in order to render a decision.

We believe that shedding light on these myths and stereotypes in the Divorce Act isn't a bad idea at all.

[*English*]

Marilyn Gladu: Thank you.

Wayne, the relocation provisions in this bill changed what was put in place in 2021. What do you think about them?

Wayne A. Barkauskas: I can tell you, from sitting in the room while we came up with the relocation provisions in the current Divorce Act, that there was a lot of debate going back and forth. Eventually a consensus was reached after a lot of work creating the provisions that we have now.

The problem you have is that if you change it to 51%, as I understand the bill is suggesting, so that a parent has 51% time, the other parent has to prove that it would be a negative event for the child to move. You reverse the onus. Well, 51% can occur when people have fifty-fifty shared parenting but decide that on Wednesday evenings, the child is going to stay with one parent because there's an extracurricular activity. Suddenly, the entire field has shifted. That parent, because they're doing the Wednesday evenings, can now move. You've upset the balance.

That is not logical. It doesn't make sense. It's not good for the child.

The Chair: Thank you so very much.

That was almost a minute over. Come on, folks. Let's make it tighter.

Last but not least, we'll go to Monsieur Beaulieu, please, for two and a half minutes. Then we will conclude this hour.

[*Translation*]

Mario Beaulieu: I'm still speaking to the Barreau du Québec representatives.

Is counsel trained to assess the risks of violence and to develop a safety plan?

Marcel-Olivier Nadeau: I can answer part of your question, Mr. Beaulieu.

Obviously, counsel must remain vigilant as part of their job. However, do they have all the skills needed to develop a plan, recognize the signs, and so on? We don't think so. We believe that this could create a false sense of safety.

A number of people, such as psychosocial workers, should be able to look at this issue. As Mr. Barkauskas said, people who specialize in this type of assessment should be able to step in. The burden shouldn't fall entirely on counsel.

● (0915)

Mario Beaulieu: Is there any risk in entrusting this task to counsel rather than to a specialized worker?

Marcel-Olivier Nadeau: I think so, for the reasons that I just provided. Counsel doesn't have all the skills. Counsel does have some. Counsel can identify certain issues and can make disclosures and referrals. Yet to go from there to thinking that counsel should be the key player—or even the only player—no, that isn't appropriate.

Mario Beaulieu: Is there a presumption of shared custody under Canadian law?

Marcel-Olivier Nadeau: I'll let Ms. Laberge answer that question. Her response will be more comprehensive than the one that I could provide.

Valérie Laberge: The response is quite short. No, there isn't any presumption of shared custody under Canadian or Quebec law.

Mario Beaulieu: Okay.

What are the risks posed by the new wording when it comes to the best interests of the child and shared custody?

Valérie Laberge: Do you have the clause on hand?

Mario Beaulieu: No.

Perhaps I'll move on to another question.

Valérie Laberge: You can ask me the other question. However, as far as I recall, the clause states that there isn't any presumption of shared parenting time. That said, we know this fact. It could remain in the bill, but the matter shouldn't be taken any further.

Nicolas Le Grand Alary: I think that there may be some confusion regarding the proposed wording and the fact that there actually isn't any presumption. Perhaps including in the legislation that there isn't any such presumption—that it doesn't exist—serves an educational purpose. It could reassure people who mistakenly believe that the presumption does exist. However, there's something to consider regarding the wording to ensure this.

[*English*]

The Chair: Thank you very much.

I really want to thank all of the witnesses for your testimony today. If there are any additional facts, figures or opinions that you would like to provide, please don't hesitate to send in your written submissions via our phenomenal clerk.

I'm going to suspend while we switch witnesses. Thank you.

● (0915)

_____(Pause)_____

● (0925)

The Chair: Welcome back, everyone.

We have with us, in this second hour of the meeting, the Canadian Centre for Men and Families, represented by Bijan Rafii, who is appearing by video conference. We also have the National Association of Women and the Law, represented by Suzanne Zaccour, director of legal affairs. Lastly, we have Regroupement des maisons pour femmes victimes de violence conjugale, represented by Elise Brien, co-lead on political affairs, and Mathilde Trou, head of the Institut Écho, both of whom are appearing by video conference.

Thank you to all of the witnesses for being here today.

We'll start with Mr. Rafii for five minutes.

Please go ahead, sir.

Bijan Rafii (Executive Director, Canadian Centre for Men and Families): Madam Chair and committee members, thank you for inviting me to speak to you today.

As a child and family advocate and the executive director of the Canadian Centre for Men and Families, York region, I support families navigating high-conflict divorce, where people may often employ every tool possible to hurt their partner. We support clients and their children who are victims of all types of intimate partner violence, including parental alienation and false allegations.

I'm here to provide my insight and deep concern regarding Bill C-223, especially regarding four specific provisions of this bill.

Proposed subsection 16(3.1) of the bill intends to remove judicial discretion regarding parental alienating behaviour, assuming it is merely a manipulative tool used to deceive the courts. However, alienating behaviours are real and they harm victims and their children. This assertion is supported by a large body of peer-reviewed research, including a very recent publication by Drs. Hines and Lysova, who appeared recently. It showed that 6.3% of Canadians report their father was a victim of a mother's alienating behaviour, while 4.5% report that their mother was a victim of a father's alienating behaviour. This demonstrates that parental alienation is real, that it affects both fathers and mothers at similar rates in Canada and that this bill will hurt women as well if passed.

Proposed subsection 16(5) limits judicial discretion to evaluate intimate partner violence claims, even when evidence is lacking or victim behaviour strongly suggests otherwise. This is predicated on the assumption that intimate partner violence victims are mainly women. In reality, the 2025 survey of safety in public and private spaces by Statistics Canada indicated that men comprised exactly 50% of physical intimate partner violence victims in the past year and 48% of emotional abuse victims during the same period. Furthermore, a study by Drs. Lysova and Hines, which is currently submitted for publication, found that 11% of Canadians knew a man who was falsely accused of spousal abuse, compared to 1% for women, and 9% knew a man who was falsely accused of child abuse, compared to 3% for women. Not only will stripping judges of the ability to properly evaluate these allegations be unjust to these victims; it will only increase conflict between divorcing parents.

Proposed subsection 16.93(1) makes it too easy for a custodial parent to relocate, which can have devastating consequences for children by severing the bond with a loving parent. Children who unnecessarily lose meaningful contact with a parent—that usually means a father—are four times more likely to attempt suicide, two to eight times more likely to commit a crime and be incarcerated, five times more likely to commit rape, three times more likely to have drug addictions, eight times more likely to become pregnant as a teen and twice as likely to drop out of high school.

We must ensure that abuse allegations are real to prevent the justice system from becoming an instrument of revenge and, ultimately, hurting our children.

Proposed subsection 16(6) limits the presumption of equal parenting time and responsibility, contradicting the latest trend in international family law and best practices. In fact, implementing a rebuttable presumption of equal shared co-parenting in the absence of abuse and neglect is the only proven method to reduce intimate partner violence. It lowered intimate partner violence incidence by 45% in Spain and 70% in Kentucky—there is a chart below my notes—after the introduction of equal parenting legislation in these jurisdictions. Equal parenting legislation also reduced intimate partner homicide in Spain by 8% in a very short period. This subsection takes us backward.

This bill will neither make children safe, nor reduce rates of intimate partner violence. It will instead increase conflict. In the best interests of our children, my request to the committee is to please focus on data and peer-reviewed research, not stories, emotions or outdated stereotypes. The stakes are too high.

Thank you.

● (0930)

The Chair: Thank you very much for that, Mr. Rafii.

We're now moving to the National Association of Women and the Law.

Please go ahead, Suzanne.

Suzanne Zaccour (Director, Legal Affairs, National Association of Women and the Law): Thank you, Madam Chair.

My name is Suzanne Zaccour. I am a lawyer with a Ph.D. from the University of Oxford, and I have spent nearly a decade researching issues of parental alienation, domestic violence and family law. I represent the National Association of Women and the Law, whose recent and current projects on family law and parental alienation have included interviews with lawyers, service providers and professionals in seven provinces and territories.

Several members and witnesses have expressed concerns that it is harmful to cut off a child from a safe and loving parental figure. We agree. That's why we're here echoing the voices of nearly 300 mothers—some here today with us and some watching from home—who have shared their stories with us. Many of them have had no contact with their children for 50 days, 300 days, 500 days and even up to five to seven years.

One survivor, whose children were flown to the U.S. for forced reunification therapy and who had no contact with her children for over 500 days, wrote to us after listening to this committee. She said, “The risk of losing contact with a child cannot be considered from only one side.”

Contrast these extreme no-contact orders with research documenting how reluctant the courts are to sever contact with fathers who are proven abusers. As one parenting assessor we interviewed in Nova Scotia expressed, “It would be really, really extreme for me to recommend no access at all [for an abusive father]. Like, axe murderer extreme.”

To understand these outcomes, we need to look at how alienation arguments shift the focus away from evidence of family violence. My study of 10 years of appellate jurisprudence in Quebec found that in alienation cases, domestic violence can disappear completely from the file, meaning that the judge made no mention of domestic violence allegations, evidence and even admissions.

A finding of alienation can be based on almost anything. Mothers are blamed for unconsciously transmitting their fear of the father, for breastfeeding, for being too rigid in following the court order, for hiring a babysitter, for not having a photo of their ex on display in their home or for not inviting the father, who assaulted them while pregnant, to the newborn's baptism party. These are all real examples.

Another real example is a published 2021 Ontario decision where the father had pleaded guilty to assaulting the mother, yet the judge wrote that the father had never been violent toward the mother. The judge gave no consideration to any family violence factors and reversed custody immediately. That meant the child had to have no contact whatsoever with the mother, not even to say goodbye, and no contact with anyone else who was close to the mother. The father was allowed to prevent the child from using any electronic devices. Police were allowed to physically enforce the order. The mother was ordered to pay up to $35,000 in reunification therapy costs and $175,000 in legal costs to the father, who pleaded guilty to assaulting her.

In this case—and others—what's interesting is that the judge criticized the mother for both alleging that the father was dangerous and supporting the father-child relationship, which a lot of victims of abuse do. As we've heard from many survivors, experts and shelters, the law gives victims no viable solution. If they support father-child contact, their allegations of violence are not credible, but if they don't support father-child contact, it's alienation. It's a real catch-22 in our Divorce Act that needs to be reformed.

Shelters report that many survivors are choosing to return to their abuser rather than face family courts, because at least then they can see their child and try to protect them and deflect abuse. Even in cases where the protective parent “wins”, it's after years of abuse. In a 2025 New Brunswick case, the court dismissed the father's alienation claim, but only after six years of litigation, and by that time, the child had been sexually abused by the father during the forced contact with him.

When survivors say, “I wish I'd never left” or “I wish I'd never called for help”, we know we've failed as a society, because no matter what GBV policies we put in place, they're doomed to failure if the law actively dissuades victims from speaking up. Our children deserve better. They deserve solutions. This is why NAWL has supported Bill C-223. I'll be very happy to take any questions on its measures or any proposed amendments.

● (0935)

Thank you.

The Chair: Thank you very much. I really appreciate how you timed that perfectly.

We're now moving to our last organization, Regroupement des maisons pour femmes victimes de violence conjugale.

Please go ahead. Collectively, you have five minutes.

[*Translation*]

Mathilde Trou (Head of Écho Institute, Regroupement des maisons pour femmes victimes de violence conjugale): Thank you, Madam Chair.

Thank you for inviting me to participate in this meeting.

The Regroupement des maisons pour femmes victimes de violence conjugale comprises 47 shelters located across 16 regions of Quebec. Every day, our members take in women and children who are victims of domestic violence and help them navigate the process. Our workers have key knowledge of how the systems responsible for providing protection operate, particularly the family courts.

The Institut Écho operates under the umbrella of the Regroupement. It supports professionals, particularly in the socio-judicial field, who work with victims of domestic violence. It provides training and tools to help them better identify and document coercive control, as well as opportunities for collaboration in order to strengthen the safety net around victims. We're in close contact with these socio-judicial stakeholders.

We would like to point out that, in Canada, exposure to domestic violence accounts for 34% of cases handled by child protection services. International studies also show that children exposed to domestic violence face an increased risk of physical abuse or neglect by the abusive parent, as well as sexual violence, particularly incest.

Bill C-223 is pursuing essential goals with regard to child safety.

First, when legal counsel screens for domestic violence risks, they can make informed decisions that protect the rights of mothers and children who are victims. However, these legal experts must be properly trained to identify and document coercive control and its impact on victims. Only through proper screening can legal counsel request appropriate protective measures for women and children. These measures include safe temporary arrangements, protection orders, supervised contact and exemption from mediation.

Second, the courts must carry out a more thorough assessment of the effects of coercive control on the parent-child relationship in order to better protect the child.

The abusive parent's coercive control undermines the mother-child relationship. The roles of spouse and mother within a family are inseparable in daily life. Why should it be any different in the eyes of the law? Behaviours that seek to control, belittle and isolate the mother undermine her ability to parent and thereby harm her relationship with her child.

● (0940)

Elise Brien (Co-Lead on Political Affairs, Regroupement des maisons pour femmes victimes de violence conjugale): Mothers are having to contend with impossible orders from an institution that is supposed to protect them. If these women don't say something about the violence they and their children are experiencing, their behaviour is seen as neglect, and if they do say something, their behaviour is seen as alienation. Recently, a woman receiving support from one of our member shelters sought legal help to initiate divorce and custody proceedings. When she told her lawyer she was seeking a divorce because her partner was abusive towards her, the lawyer advised her not to talk about the partner's behaviour, because she could be accused of parental alienation.

Countless studies have shown that, in domestic violence cases, the abuser alleges parental alienation as a way to conceal the violence and keep the victims, the mother and children, quiet.

When one parent is dangerous and one parent is protective, it is essential to prevent the dangerous parent from doing harm and to ensure the safety of the protective parent in order to keep the child safe. That means allowing contact to be cut off and providing for that possibility, so the child can live without being afraid all the time, so they can be a child and focus on growing up, learning and playing, instead of dealing with the anguish caused by the contact with the violent parent. That means doing away with the presumption that parenting time and decision-making responsibility should be shared equally by both parents.

Third, the bill gives children the right to express their views freely and to be heard in all legal proceedings that affect them, by requiring that the information be obtained directly from them.

Bill C-223 compels us to take a long, hard look at how the justice system treats children. What if it recognized the right of the child instead of the right to the child? Bill C-223 compels us to move beyond the “childist”, or ageist, mindset, where the child is viewed as the possession or extension of the adult. The best interests of the child should be based on the needs of the child, not of the adult. Those working at our member shelters, as well as other professionals, bear witness daily to the fact that abusive spouses are men who put their needs first, not their children's. Most of them are incapable of putting their children's basic needs first.

To the outside world, when a child appears in court, it's just a hearing, but to the child, it's their whole life hanging in the balance, being decided by someone else. It is essential to talk to them at their level, to listen to them and, above all, to hear what they have to say. I repeat, that means accepting that parenting time and decision-making authority should not always be shared equally by both parents.

[*English*]

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

We'll go into our first round of questions for six minutes, starting with MP Cody.

Please go ahead.

Connie Cody (Cambridge, CPC): Thank you, and through you, Chair, thank you to the witnesses for being here today.

I believe everyone shares the same goal—protecting children and ensuring their safety and well-being.

Before I ask my question, I would like to share something very personal. My husband and I spent a long time discussing whether we should tell this story. It is not easy to revisit, and even today it remains painful, but we ultimately decided that if sharing our family's experience could help another child, then it was a story worth being told.

When we discuss family law, court processes and legislation, it can be easy to lose sight of the child at the centre of those decisions. My husband had a son from a previous relationship. I came into his life when he was very young, and I loved him as my own. In our home, he was simply our son. A relationship between adults can end. A loving and non-violent parent-child relationship should not.

When I read Bill C-223 and saw the section that recommended parental alienation be inadmissible in family court proceedings, I immediately thought of our son and our family's experience. Our story did not happen all at once. It happened slowly over many years.

At first, we believed that if we followed the court's directions, respected the process and continued doing everything we were supposed to do, our son would be able to have a healthy relationship with both parents. That's not what happened. Visits were deliberately missed. Court-ordered access was denied. Communication became increasingly difficult. We found ourselves returning to court over and over again, simply trying to preserve the relationship between a father, his son and a second family. What made it so difficult was that nothing ever seemed to change. We would go back to court, obtain another order and hope things would get better. Before long, we would find ourselves right back where we started.

Meanwhile, our son was the one caught in the middle. One of the only ways to stay connected was through phone calls. The court had ordered that we could speak with our son once a week at a specific time. We looked forward to those calls all week. Sometimes hearing his voice for a few minutes was all we hoped for, but there was never an answer. Our son told us that he could hear the phone ringing. He could see our names on the display. He knew we were calling, but he was not allowed to pick up the phone.

As parents, that was heartbreaking to hear. We knew he wanted contact. He knew we were trying, yet even something as simple as answering the phone became a source of stress and conflict for him.

There eventually came a point where we struggled with whether continuing to make those calls was helping him or hurting him. We wanted him to know that we loved him and that we would never stop trying to be part of his life. At the same time, we could see the emotional toll this was taking on him. He was the one living with the conflict. He was the one carrying feelings of guilt and responsibility that no child should ever have to carry.

As the years passed, we watched the relationship between our son and his father become weaker and weaker, not because the love was gone but because barrier after barrier kept being placed between them. There was a point when our son's mother wanted to relocate to Alberta. After reviewing the history, a judge determined that it was in our son's best interest to remain in Ontario with us. For the first time in a long time, it felt as though someone had finally understood what was happening and recognized how important it was to protect that father-son relationship.

Not long afterward, the judge who had reversed custody retired. The matter was then brought before a new judge, and everything changed. The years of history, the repeated interference with the father-son relationship, the manipulation and even the fact that our son had previously been abducted and hidden in another country carried no weight with this new judge. She decided these were not matters to be considered and never even looked at the file.

The previous decision was reversed. Permission was granted for our son to live with his mother in Alberta. The reality was that once relocated, there was very little we could do. The Ontario order existed, but it was meaningless in another province.

We took him to the airport because that was what the court required from us. I can still see that moment as clearly as if it happened yesterday. When it was time for him to leave us, he wrapped his arms around my neck and started to cry. He told me he did not want to go. He told me he had only said he wanted to because if he didn't, it would hurt his mother's feelings. As adults, we understood what those words meant. As parents, they broke our hearts.

We stood there, knowing what he was telling us yet powerless to change what was about to happen. All we could do was hug him, tell him we loved him and watch him walk toward the plane. As he disappeared from sight, I could never have imagined that it would be the last time we would see him.

It was a few years later we received a phone call from a friend. He asked if we had heard the news. We did not know what he was talking about. He told us that someone had said that our son had died. We couldn't believe it. We thought surely someone would have called us. Surely someone would have told his father that his son was gone. We began making calls, trying to find out whether it was true.

Eventually, the police had to contact his mother and advise her that she had to answer the phone and tell us what had happened. That is how we learned how our son had died.

● (0945)

The tragedy had had happened two weeks earlier—two weeks. Not only had we lost our son, but we had been denied the opportunity to attend his funeral. We did not get to see him one last time. We did not get to say goodbye. After years of fighting to remain part of his life, we were excluded in death as well.

We lost the battle, and we lost our son to suicide. That is why I'm sharing the story today. It's not because I can change what happened to our family. I'm sharing it because I hope that our story does not become someone else's story. Parental alienation is real. I hope that another child does not lose a loving parent because important information was never considered in court. I hope that another family does not spend years watching a parent-child relationship slowly disappear while court orders go unenforced. I hope that no parent ever experiences the heartbreak of wondering whether more could have been done to save their child.

Mr. Rafii, here is my question: What needs to be done to ensure that our story doesn't become someone else's story?

● (0950)

The Chair: Ms. Cody, my sincerest apologies, but that concluded your six minutes. I really want to say thank you for sharing your very empowering story.

We are going to Mr. Housefather for six minutes.

Go ahead.

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

I think that was absolutely a heartbreaking story.

Ms. Cody, thank you for sharing that with us. Thank you for letting everybody understand why the best interests of the child need to be at the heart of the Divorce Act and all things related to the breakup of a relationship. That being said, I want to turn to Ms. Zaccour.

Ms. Zaccour, when we first met about this bill—you and I and Ms. Hepfner—one of the things I told you was that I didn't agree with the relocation provisions in the bill. However, whether I agree with them or not, I don't want them to be misrepresented. I think in the first panel there was some discussion of the fact that a child could be abducted and brought to another province and that nothing could be done about that, even if the other parent didn't give consent and the court never approved it.

Can you talk to me about whether the bill actually says that? I don't think it does.

Suzanne Zaccour: Unfortunately, sometimes some of the criticism of the bill is about things that have been said about the bill rather than what is in the bill.

The bill does not change the notice requirements for relocation. It changes the burden of proof, which takes place if all else is equal. That's what a burden of proof or presumption does. It clarifies that courts cannot tell parents where to live; they can only tell the child where to live.

The section that was referred to is about inferences that courts may or may not make from certain circumstances. It does not prevent any evidence from being admitted, as was said about evidence of prior inconsistent statements. There is nothing like that in the bill.

The notice requirement for relocation stays the same. The bill only says that, in and of itself, taking a child out of a home where there is violence is not against the child's best interests. It doesn't say that the court can't order the return of the child. It doesn't say that a parent doesn't have to give notice if they want to actually, in law, relocate the child.

Thank you for giving me the opportunity to clarify.

Anthony Housefather: I want to give you another opportunity.

A lot of hypotheticals have been tossed out over the days of hearings. I know you've been listening to them attentively. Are there any hypotheticals that have been answered—or, in your view, incorrectly answered—that you want to clarify in terms of how they would play out?

Suzanne Zaccour: A few witnesses and comments have said that if we don't allow judges to infer that a child is being brainwashed, courts won't be able to do anything about parents withholding contact or denigrating. This is incorrect. Courts commonly give orders to parents that will say, “You're not allowed to denigrate” or “You can only communicate through these means” or “You have to give contact in this way.” The orders are not optional. Parenting orders are mandatory. If someone does not respect them, they can be fined, and they can even go to jail.

It's not true that the only way to address problematic behaviours is through custody reversals, assuming a child is brainwashed, and reunification camps. There are many other tools that courts have for addressing them.

Anthony Housefather: My colleague Ms. Hepfner advised that she's brought a number of amendments to this bill to clarify various provisions and to deal with certain concerns that have been addressed. Two of the provisions that have received tons of attention are the parental alienation provision and the question of relocation.

Can you talk to us, though, about other provisions of the bill that are simple, common-sense provisions adopted by provinces like British Columbia and are not controversial or are much less controversial and much more agreed upon by virtually the entire family law membership of people working in this area?

Suzanne Zaccour: There are a lot of provisions in the bill beyond the specific alienation provisions, including the removal of what has been called the maximum contact provision, which the Supreme Court has recognized that judges mis-characterize as a presumption of shared custody, and the removal of the friendly parent rule, which doesn't exist in B.C.

That is what I was referring to when I talked about a court that receives allegations of violence from a parent who says that she is prepared to support the relationship with the father. The court will say, “She thinks it's only bad for her if I don't believe her, but it's also bad for her if I believe her that the father was abusive, because then why is she supporting a relationship?” This provision is highly problematic, as was noted by the Senate in 2019, when the amendments passed.

I think it's really important to focus on what the bill does and not what is said about the bill. For example, the bill does not prevent evidence of any behaviour from being put forward to the judge, including withholding behaviours and denigration. It only talks to the inferences or the allegations that can be made.

I want to reassure the committee that this bill would in no way prevent parents from providing evidence that visits were missed or that there's denigration. The idea is that children are their own people. The argument shouldn't be that they have been brainwashed so we shouldn't listen to them, but rather that we should listen to what the child says and evaluate the allegations based on the normal credibility assessments that judges do.

● (0955)

Anthony Housefather: Do I have any time left, Madam Chair?

The Chair: You have 30 seconds.

Anthony Housefather: In some of the studies that have been raised, a very limited number of children have been interviewed for the study. For one, in Ontario, I think there were six children.

Can you talk to us a little about whether or not it's possible to retain a relationship with both parents in the event that...? You know what I'm talking about, so quickly jump in.

Suzanne Zaccour: Unfortunately, the orders that are made in situations of alleged parental alienation do not typically result in the children having a good relationship with both parents. Even the witnesses who have brought the contrary perspective by saying that they believe they were alienated have said themselves that the system did not work for them.

Unfortunately, the law cannot mandate love. The research also shows that sometimes what is best for children is to give them space to repair relationships rather than keeping children in court for five years, 10 years or 11 years, forcing a child to have a relationship with one parent to the detriment of the relationship with the other parent.

The Chair: Thank you.

Ms. Zaccour, I recommend slowing down a bit so that the interpreters are not chasing after you to interpret.

Mr. Beaulieu, please go ahead for six minutes.

[*Translation*]

Mario Beaulieu: Thank you, Madam Chair.

My first question is for the representatives of Regroupement des maisons pour femmes victimes de violence conjugale.

You write that an abusive father can turn the child against their mother. Under this bill, the judge would no longer be able to recognize that. How, then, will the mother be able to defend herself?

Elise Brien: Thank you for your question.

Actually, the bill says that, instead of working from the assumption that the child is being manipulated, the judge has to look at the actual behaviours in question. Therefore, any behaviour that seeks to disparage, humiliate or isolate the other parent warrants consideration under Bill C-223.

Mario Beaulieu: Under the bill, a parent will be allowed to leave with the child without notifying the other parent, if they claim it is to flee violence. An abusive father could do the same.

What's stopping him from posing as the victim in order to take the child?

Mathilde Trou: Again, as other witnesses have said, training on intimate partner and family violence is really the most important thing. The ability to document and identify coercive control is paramount, and that applies to all the actors in the legal system, from legal advisers and lawyers to judges. That knowledge is necessary to properly differentiate between false allegations and domestic violence. That's really the best way to protect women and children.

Mario Beaulieu: The bill applies only to parents who are married. Therefore, two children staying at the same shelter in Quebec would not be entitled to the same protection, simply because their parents were or weren't married.

Do you think that's okay?

Elise Brien: In the past, judges have applied the best interests of the child principle in a consistent way, such that the children of both married and common-law parents enjoyed the same rights. You're right that children really have no control over their parents' marital status, so why should they have different rights?

The rights available to children whose parents are married could organically be extended to those whose parents are not, and vice versa. Provincial laws could follow suit if the federal government took the first step, obviously.

Furthermore, protecting one-third of children is still protecting a lot of children, so it's a positive step forward. If that creates the momentum to protect the remaining two-thirds of children, we would of course welcome that. It would be a good thing.

● (1000)

Mario Beaulieu: Thank you.

My next question is for Mr. Rafii.

How does Bill C-223 undermine judicial discretion?

[*English*]

Bijan Rafii: In multiple provisions, in all four of the provisions I mentioned, the fact that they don't have discretion on parental alienation is real. It affects both men and women. They need to have discretion to assess on an individual basis.

On the issue of claims of intimate partner violence, a very significant percentage of claims of child abuse and intimate partner violence are in fact false, to get an upper hand in child custody cases. I'm not saying that's a majority, but it's a very significant percentage. Judges need that assessment. On the issue of having maximum contact, it's absolutely critical that judges are able to assess that.

As I mentioned, we know about the rate of intimate partner violence in jurisdictions that have a rebuttable presumption of equal share co-parenting. They have reduced intimate partner violence by 50% to 70%, and domestic homicide by 8%. That's not a surprise, because we're reducing conflict. By limiting a judge's discretion, you're in fact increasing conflict, and conflict increases intimate partner violence. That's the reason that jurisdictions with better equal parenting have reduced conflict and reduced intimate partner violence. It affects everything.

[*Translation*]

Mario Beaulieu: Thank you.

My next question is again for Mr. Rafii.

What are the dangers of this bill, specifically for children?

[*English*]

Bijan Rafii: Well, there are the dangers we just mentioned. I really appreciated honourable member Cody sharing what she did. The fact that children commit suicide when they lose a father is very common. Children who lose a father are four times more likely to attempt suicide and have a whole bunch of other outcomes. The example that the MP mentioned is very common for children who lose a father. The examples are absolutely horrible.

My suggestion is to not go by anecdotes and stories only. Basically, all the peer-reviewed data says that if somebody loses a father unnecessarily, there is a huge impact on those children.

The Chair: Thank you, Mr. Beaulieu. That concludes your time.

Moving to our second round, we will begin Ms. Kirkland.

You have five minutes. Please go ahead.

Rhonda Kirkland: Thank you, Chair.

Ms. Zaccour, did your association have a large part to play in helping to draft this bill?

Suzanne Zaccour: My association launched a campaign, supported by 300 women's organizations across Canada, that advocated for this reform—

Rhonda Kirkland: I'm sorry. I have such a short time.

Did your organization help with this bill?

Suzanne Zaccour: We made recommendations that are reflected in some of the provisions.

Rhonda Kirkland: You said earlier that a lot of things being said about the bill are not actually in the bill. I'd like to read a section directly from the bill on factors not to be considered. It says very clearly:

> Factor not to be considered
>
> (3.1) In determining what is in the best interests of the child, the court shall not take into consideration any allegation that a spouse has, or is likely to, through deliberate manipulation, persuade or encourage a child to become estranged from or resist contact with the other spouse.

You gave some examples in your testimony that were extremely heart-wrenching and horrible. It is my opinion that those are examples of bad decisions made by bad judges. That does happen, absolutely. Of the examples you gave, did any of them occur after 2021?

● (1005)

Suzanne Zaccour: Yes, absolutely. Both the New Brunswick and the Ontario examples I gave were after 2021.

Rhonda Kirkland: Is it possible that if we change the law the way this bill would, it could force good judges to make bad decisions, based on the part I just read from the bill?

Suzanne Zaccour: I believe this will lead to better decisions because it doesn't prevent the admissibility of evidence of concrete behaviours, but does prevent the focus on brainwashing.

Rhonda Kirkland: But it does prevent that. It says very clearly in what I read that those factors must not be considered.

We know that sometimes there's no founded family violence when there is, in fact, family violence. This happens especially with narcissistic abusers. They can make it seem like the woman is the problem. My conclusion is that this could harm more women and children unintentionally through these portions of this bill.

The Alberta Family Lawyers Association, other family lawyers, professional researchers and researchers have said that they believe this bill would result in the opposite intention of the bill, which would increase violence against women and children. How do you square that circle?

Suzanne Zaccour: I'm here to present my opinion based on my expertise of nearly 10 years of research.

We see—as we've also heard from the Regroupement and so many other associations—how the litigation tactic of alienation leads to unsafe outcomes. The systematic studies show that it's not just a few bad decisions or a few bad judges. It's very common.

We believe this would improve outcomes.

Rhonda Kirkland: Have you ever practised family law?

Suzanne Zaccour: I'm a family law researcher. I've testified before the Supreme Court, but I haven't represented family law clients.

Rhonda Kirkland: On the idea of not considering parental alienation, which is absolutely part of the bill and is one of the harshest criticisms of the bill, could it not also harm victims of intimate partner violence? As I said previously in the first hour, an abuser, especially a narcissistic one, can also alienate a child from a victim. Could they not?

Suzanne Zaccour: I was looking forward to that question. We've often been asked what a victim of abuse is going to argue if she can't argue parental alienation. The answer is abuse. We believe that in cases of family violence, we should focus on the "family violence" factor that Parliament adopted in 2021—

Rhonda Kirkland: I'm sorry. Thank you. I appreciate that. That's the answer I was thinking you would give, but parental alienation is sometimes an example of abuse. It can be part of psychological abuse.

Sometimes when we're talking about that, parental alienation will come up. As soon as that comes up, if this bill bars judges from considering it, how does that work for an arbitrator?

Suzanne Zaccour: Once again, this section says that the inference of manipulation, the claim of manipulation, cannot be considered, but it says nothing of particular behaviours, and of course, any behaviours can be put into evidence to argue other things. For example, if a parent is disrespecting a court order or denigrating in any form, that is family violence. It doesn't affect the behaviours that courts will have discretion to consider.

Rhonda Kirkland: Essentially, then, it will have no effect at all. That's how I'm seeing this.

Suzanne Zaccour: It will have the effect of preventing judges from inferring that a child has been brainwashed and then disregarding their perspective and the evidence of family violence.

Rhonda Kirkland: How can a judge make an appropriate decision if they're not allowed to consider all pieces of information? That's really the concern I have. A judge, an arbitrator or a mediator has to consider every nuance of what is happening. We have to leave some things to their discretion.

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

We're now moving to Mr. Chang for five minutes.

Please go ahead.

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

It's good to see you again, Ms. Zaccour. Thank you so much for your advocacy on behalf of children and survivors of family violence.

In your written submission, you suggest changes to the original parental alienation provision in this bill. Could you explain why you're recommending these changes and how they would help to protect children and survivors from unintended harms?

Suzanne Zaccour: NAWL has suggested different ways that provisions to curtail allegations of alienation to protect victims of violence can be introduced. One is preventing the allegations, as in the bill.

Another approach would be to prevent certain inferences—as in the "myths and stereotypes" provision—and say that courts should not be able to infer that just because a child is afraid, the mother is alienating, for example. One of the proposals we make is to do it a different way, and the committee will judge whichever way is most appropriate. There are many techniques for this, as long as the outcome is preventing these really problematic decisions.

● (1010)

Wade Chang: We have heard that judges need more training or education on family violence, coercive control and situations where children resist contact with a parent. How much of a difference would better training or education make in addressing the concerns you have raised?

Suzanne Zaccour: Very little, in my opinion, and the reason is that court of appeal decisions in provinces are finding that the mother is alienating despite a finding of family violence, including criminal convictions in some cases, or admissions of violence.

For judges, their responsibility is to follow the law. That takes precedence over training. Even if you give them training that says they should not find, for example, parental alienation if they also find domestic violence, they're just going to turn to the law. The only way to change the law is through legislation. Once the law is changed, training will be essential.

Wade Chang: Are you saying that further training is not helping the situation?

Suzanne Zaccour: The problem is that further training cannot change the law. Training can only explain the law. It cannot substitute a change in legislation or achieve the same things. It can achieve other things, like getting judges to apply the law or—

Wade Chang: Can it change judges' perspectives?

Suzanne Zaccour: That's unlikely, because judges who sit on these cases are hearing the parental alienation experts testify daily. That's extremely common. It's unlikely that an hour-long training a year ago would have changed the culture of the courts, compared with what they're seeing in the decisions rendered by a court of appeal—which they have to follow—or the arguments or expertise they hear.

No one is ever against training, but it will not accomplish what this bill seeks to accomplish. It can accomplish other things. For example, regarding relocation, some of the changes in the bill are to codify things that are already in the law that judges may misapply. In that sense, education can be helpful for things that are already in the law but that judges are misapplying. However, if the state of the law is, for example, the friendly parent rule, you can't educate judges out of applying the law as it is.

Wade Chang: The Divorce Act already requires judges to consider children's views and preferences. What more do you think is required to make sure children's voices are heard fairly and safely in those cases?

Suzanne Zaccour: There's jurisprudence in several provinces. Even though the Divorce Act says that they have to consider children's views and preferences, judges have decided there's an exception. If there's parental alienation, they don't have to consider their views—which is, in my view, problematic, but that's where the jurisprudence has gone.

That needs to be changed so judges always consider children's views and preferences, which is different from children deciding. They don't decide, but they are entitled to their views.

Wade Chang: Thank you very much.

Mr. Rafii, when family violence is alleged, how can we make sure children are protected while allowing judges to look at the full picture of each case, rather than relying on assumptions about either parent?

Bijan Rafii: Number one, we have to ensure that we are not relying on stereotypes. Both men and women are victims of intimate partner violence. Surprisingly, even to me, it's at about the same level, although men report intimate partner violence at about one-third the rate of women.

We have to make sure every allegation of intimate partner violence is validated. We can't say that if one person says it, it has to be true. We have to make sure there is evidence of it, and the evidence has to be overwhelming. Also, as MP Cody mentioned, people change. If something happened 10 years ago, we cannot hold that it's still true. We have to make sure the evidence is still valid.

Wade Chang: Thank you very much.

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

Finally, Monsieur Beaulieu, you have the floor for two and a half minutes.

Please go ahead.

[*Translation*]

Mario Beaulieu: Thank you.

Ms. Zaccour, my first question is for you.

Bill C-223 eliminates the friendly parent provision and prohibits consideration of parental alienation.

How will a non-violent parent who is the victim of parental alienation still be able to protect their relationship with the child?

Suzanne Zaccour: Thank you for your question.

In order to protect the relationship with the child, judges use orders that aren't required to be based on the determination that the child was brainwashed, which is what this bill captures. That means judges can issue an order imposing a schedule for parenting time. They can also order that a particular method of communication be used.

Those are some of the ways judges can still protect parenting time under this bill.

● (1015)

Mario Beaulieu: According to both the Canadian and Quebec bar associations, the measures in Bill C-223 unduly limit the judge's discretion.

What do you say to that?

Suzanne Zaccour: I did hear the testimony of the Canadian Bar Association, which is recommending that allegations of parental alienation not be allowed in cases involving violence, which, according to the Quebec bar, is consistent with the case law. There is some disagreement on that.

The judicial discretion issue comes up a lot, and people tend to think that the decision-maker should have full discretion and that no factor should be eliminated, because it makes for worse decisions. However, the Divorce Act already limits what the judge can consider.

Previously, it was within the judge's discretion to consider violence, but now that is mandatory. What's more, the Divorce Act explicitly stipulates a factor not to be considered.

Accordingly, it is the role of Parliament to tell judges how to use their discretion, not that they must use it.

Mario Beaulieu: In the Bloc Québécois, we are in favour of protecting children and victims, but we have heard from hundreds of victims of parental alienation and survivors of domestic violence. We recommend listening to all those victims, not disregarding them. Parental alienation is real. I don't think any one person is the sole possessor of the truth.

That's basically where we stand.

Suzanne Zaccour: What's interesting is that people who tell the court that they experienced parental alienation almost always speak negatively about the courts in their accounts. They say that they weren't properly listened to, that they weren't protected, that the decisions weren't in the best interests of the child.

That tells me that there is a consensus that the way the courts handle these cases isn't working. The research also shows that.

Mario Beaulieu: I'd like to know whether Mr. Rafii agrees.

[*English*]

The Chair: I'm so sorry. That is the conclusion of your time, sir.

As I say to all witnesses, if there's additional information you'd like to provide the committee, please do so in writing through our clerk.

With that, I want to say thank you to all witnesses for sharing their insights with us today on this very important bill.

I believe Mr. Maloney has a very quick motion to move.

James Maloney (Etobicoke—Lakeshore, Lib.): I do, Madam Chair. Thank you.

I would like to move, pursuant to Standing Order 97.1, that this committee request an extension of 30 sitting days to consider Bill S-233, an act to amend the Criminal Code regarding assault against persons who provide health services and first responders, referred to the committee on Wednesday, May 27, and that the committee require additional time to hear from witnesses and complete the study on the bill.

The Chair: Is that okay with everybody?

(Motion agreed to)

The Chair: Thank you.

With that, the meeting is adjourned.

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