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**Standing Committee on
Justice Policy**

Moving Ontario Family Law
Forward Act, 2020

1st Session
42nd Parliament

Monday 19 October 2020

**Comité permanent
de la justice**

Loi de 2020 faisant avancer
le droit de la famille en Ontario

1^{re} session
42^e législature

Lundi 19 octobre 2020

Chair: Roman Baber
Clerk: Thushitha Kobikrishna

Président : Roman Baber
Greffière : Thushitha Kobikrishna

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CONTENTS

Monday 19 October 2020

Moving Ontario Family Law Forward Act, 2020, Bill 207, Mr. Downey / Loi de 2020 faisant avancer le droit de la famille en Ontario, projet de loi 207, M. Downey	JP-593
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
JUSTICE POLICY**

Monday 19 October 2020

**COMITÉ PERMANENT
DE LA JUSTICE**

Lundi 19 octobre 2020

The committee met at 0900 in room 151 and by video conference.

MOVING ONTARIO FAMILY LAW
FORWARD ACT, 2020
LOI DE 2020 FAISANT AVANCER
LE DROIT DE LA FAMILLE EN ONTARIO

Consideration of the following bill:

Bill 207, An Act to amend the Children's Law Reform Act, the Courts of Justice Act, the Family Law Act and other Acts respecting various family law matters / *Projet de loi 207, Loi modifiant la Loi portant réforme du droit de l'enfance, la Loi sur les tribunaux judiciaires, la Loi sur le droit de la famille et d'autres lois en ce qui concerne diverses questions de droit de la famille.*

The Vice-Chair (Ms. Effie J. Triantafilopoulos):

Good morning, everyone. The Standing Committee on Justice Policy will now come to order. We are here for clause-by-clause consideration of Bill 207, An Act to amend the Children's Law Reform Act, the Courts of Justice Act, the Family Law Act and other Acts respecting various family law matters.

We have the following members present in the room: MPP Monique Taylor, MPP Lindsey Park, and the following members participating remotely: MPP Collard, MPP Anand, MPP Bouma, MPP Tangri and MPP Glover.

MPP Kusendova has also joined us. MPP Kusendova, could you confirm that you are the MPP and that you are in Ontario presently?

Ms. Natalia Kusendova: Yes, good morning, Chair. I am Natalia Kusendova and I am in Mississauga, Ontario.

The Vice-Chair (Ms. Effie J. Triantafilopoulos): Thank you very much.

We are also joined this morning by MPP Roman Baber, and I'm going to ask MPP Baber—oh, he's actually joined us in the room, so I won't ask him if he's presently in Ontario.

We are joined by Tamara Kuzyk from the office of legislative counsel, as well as staff from Hansard and broadcast and recording.

To make sure that everyone can follow along, it is important that all participants speak slowly and clearly. Please wait until I recognize you before starting to speak. Since it could take a little time for your audio and video to come up after I recognize you, please take a brief pause before beginning. As always, all comments should go through the Chair.

The Clerk has distributed the amendment packages to all members and staff electronically.

Are there any questions before we begin? We will now begin the clause-by-clause consideration.

Are you ready? Okay, so we're just switching our chairs here. MPP Baber is coming to the chair.

The Chair (Mr. Roman Baber): Good morning, members. The Clerk has distributed the amendment packages to all members and staff electronically.

We will now begin the clause-by-clause consideration. Bill 207 is comprised of three sections, which enact three schedules. In order to deal with the bill in an orderly fashion, I propose that we postpone the three sections in order to dispose of the schedules first. Is there agreement on that? Okay, seeing no objections, we'll now turn to schedule 1 of Bill 207.

I also understand that MPP Gurratan Singh joined the hearing this morning. Is that correct, Mr. Singh?

Mr. Gurratan Singh: Yes, Gurratan Singh, MPP for Brampton East, calling in from Brampton.

The Chair (Mr. Roman Baber): Thank you very much

We shall now consider section 1 to schedule 1. There are no amendments. Any debate? Seeing none, are members ready to vote? All those in favour? All those opposed? I declare section 1 to schedule 1 carried.

We'll now proceed with section 2 to schedule 1. I believe there is an opposition motion. MPP Taylor?

Miss Monique Taylor: I move that section 2 of schedule 1 to the bill be amended by adding "and authority" after "means responsibility" in the definition of "decision-making responsibility" in subsection 18(1) of the Children's Law Reform Act.

The Chair (Mr. Roman Baber): Any debate? MPP Taylor.

Miss Monique Taylor: Thank you, Chair. This amendment makes it clear that the responsibility to making parenting decisions, including the authority to make those decisions—this has particular importance for the benefit of third parties who will be asked to act based on the words of the court orders presented to them.

The Chair (Mr. Roman Baber): Further debate? Madame Collard.

M^{me} Lucille Collard: Thank you, Mr. Chair. I just have a question just to better understand the meaning of the change. Can you give us an example of how it would concretely change matters? Do you have an example?

The Chair (Mr. Roman Baber): MPP Taylor?

Miss Monique Taylor: Thank you, Chair. Yes. So when there are third parties who would be responsible for the child, it would give them the ability for that decision-making. The courts would then put it into place and it would be there that they could follow that rule, I guess.

The Chair (Mr. Roman Baber): Further debate? MPP Park.

Ms. Lindsey Park: Thank you, Chair. I'll say maybe off the top—and you're going to see this rationale in a number of amendments proposed—but the main objective of this section of the changes in the bill is to align with the federal Divorce Act changes. The main objective is to ensure consistency among the provincial laws that apply to separation with the Divorce Act, so you don't find families coming to court and having to navigate two different sets of rules.

So with that, it's our view that this proposed amendment is inconsistent with the definition of "decision-making responsibility" that's used in the Divorce Act, and in particular, one of the key purposes of changing much of the terminology in the Divorce Act changes, as well as the mirrored changes we're making, is to make the language more neutral. It's our view that this language change, using the word "authority," is not in line with that objective of trying to use neutral language. So I'm going to recommend that my colleagues vote against this.

The Chair (Mr. Roman Baber): Further debate? Seeing none, we will now vote on MPP Taylor's motion. All those in favour? All those opposed? I declare the motion lost.

Seeing no further amendments, we will now consider section 2 to schedule 1. Any debate? Seeing none, are members ready to vote on section 2 to schedule 1? Shall section 2 to schedule 1 carry? All those in favour? All those opposed? I declare section 2 to schedule 1 carried.

0910

There are no proposed amendments to section 3 through section 5, inclusive, to schedule 1. Would it be the will of the committee that I bundle them for consideration? We will now consider section 3 through section 5 to schedule 1. Any debate? Seeing none, are members ready to vote? Shall section 3 through section 5, inclusive, to schedule 1, carry? All those in favour? All those opposed? I declare section 3 through section 5, inclusive, to schedule 1, carried.

We will now proceed with section 6 to schedule 1. I understand that there is quite a number of motions pending. First, motion number 2, being an independent motion: Madame Collard.

Mme Lucille Collard: I move that section 6 of schedule 1 to the bill be amended by adding the following subsection to section 24 of the Children's Law Reform Act:

"Presumption

"(1.1) In the absence of evidence to the contrary, equal entitlement to decision-making responsibility for the parents and equal entitlement to parenting time are presumed to be in the best interests of the child."

The Chair (Mr. Roman Baber): Any debate on motion number 2? MPP Taylor.

Miss Monique Taylor: The proposal of equal access and equal parenting time is directly in opposition to the submissions that we heard from organizations that protect survivors of family violence. It's already available for the court to make an order such as this based on evidence. There's no need to introduce a new presumption, so we'll be voting against.

The Chair (Mr. Roman Baber): Any additional debate? MPP Park.

Ms. Lindsey Park: Thank you, Chair. I think you'll find my comments align with Monique Taylor's. Parenting arrangements for a child are intended to reflect what's in the best interest of the child in that child's particular situation. To add to what the member opposite said, the Special Joint Committee on Child Custody and Access noted in its report in 1998—the report was called For the Sake of the Children—that a presumption in favour of a particular parenting arrangement is likely to be not in the best interest of children.

Subsection 24(6) of the bill already states, "In allocating parenting time, the court shall give effect to the principle that a child should have as much time with each parent as is consistent with the best interests of the child."

We heard from stakeholders that maximum contact is not always in the best interest of the child and should not be presumed. And of course, there are all sorts of evidentiary consequences to putting a presumption like this in legislation. Our recommendation is going to be that my colleagues vote against this.

The Chair (Mr. Roman Baber): Any further debate? Are members ready to vote on Madame Collard's motion, motion number 2? All those in favour of the motion? All those opposed? I declare the motion lost.

We now move on to NDP motion number 3.

Miss Monique Taylor: I move that section 6 of schedule 1 to the bill be amended by striking out clause 24(3)(f) of the Children's Law Reform Act and substituting the following:

"(f) the child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage, and in the case of a First Nations, Inuk or Métis child, the importance of preserving the child's cultural identity and connection to community given the uniqueness of First Nations, Inuit and Métis cultures, heritages and traditions;"

The Chair (Mr. Roman Baber): Thank you very much, MPP Taylor. Debate? MPP Taylor.

Miss Monique Taylor: These are just more specific considerations that are already included in the Child, Youth and Family Services Act, and they're changes requested from stakeholders.

The Chair (Mr. Roman Baber): Thank you very much. Further debate? MPP Park.

Ms. Lindsey Park: Our particular view of this proposed amendment—while I think I understand the objective of it, our view is that the provision, as proposed, is already overly broad enough to include all of these factors. The court clearly, in the provisions in the bill, has the ability to consider all of these factors, and the weight

to be given to such factors, of course, will depend on the importance of that factor to a particular child's well-being.

The reference to Indigenous upbringing and heritage is broad and includes identity, culture, tradition and connection to community. It's a recognition of the unique considerations in relation to Indigenous children. For example, in the case of Indigenous children there may be parenting arrangements that reflect cultural aspects of Indigenous communities, such as the involvement of extended family.

I'm going to recommend that we vote against this particular amendment. As well, I just want to reiterate that that recommendation achieves the goal of making sure we're keeping consistent language with the federal Divorce Act changes.

The Chair (Mr. Roman Baber): Further debate?

Miss Monique Taylor: Thank you for the explanation, but we still feel that with the overrepresentation of Indigenous and Black youth within the child welfare system and the families that are impacted by social-economic reasoning, it is important that we are naming the situations that families face and that we're putting it in legislation—not just expecting, right? If we're going to change the conversation, if we're going to change the way forward, then we have to put strong words and meanings into legislation to make them meaningful.

The Chair (Mr. Roman Baber): Further debate? Seeing none, we'll now proceed to vote on motion number 3, being an opposition motion. Are members ready to vote on MPP Taylor's motion? All those in favour? All those opposed? I declare the motion lost.

We'll now proceed to the next motion pending, also by the opposition party, NDP motion number 4. MPP Taylor?

Miss Monique Taylor: I move that section 6 of schedule 1 to the bill be amended by striking out clause 24(3)(h) of the Children's Law Reform Act and substituting the following:

“(h) the ability and willingness of each person in respect of whom the order would apply to care for and meet the needs of the child, particularly as may be relevant to,

“(i) the child's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs,

“(ii) the child's level of physical, mental and emotional development, and

“(iii) the child's race, ancestry, place of origin, colour, ethnic origin, citizenship, family diversity, disability, creed, sex, sexual orientation, gender identity and gender expression;”

The Chair (Mr. Roman Baber): Thank you, MPP Taylor. Debate? MPP Taylor.

Miss Monique Taylor: Again, these are specific best-interest considerations that are already included in the Child, Youth and Family Services Act and things that we think once again need to be in legislation to be clear—suggested changes from stakeholders.

The Chair (Mr. Roman Baber): Thank you. Further debate? MPP Park.

Ms. Lindsey Park: It's our view that the current clause in the bill, as proposed, uses the same language as the federal Divorce Act. The goal is to make the test for determining the best interests of the child in both the federal and provincial legislation as consistent as possible. Again, this is taking principles from case law that we're now codifying in legislation, and I think it's very important that that test in legislation is consistent between the federal and the provincial pieces of legislation.

0920

This amendment would reiterate considerations that a court must already consider in determining the best interests of the child. The additional clauses, sub (i), (ii) and (iii), proposed in the motion are arguably already in the best-interests-of-the-child test at the following clauses: “(a) the child's needs, given the child's age and stage of development, such as the child's need for stability;” as well as “(e) the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained.”

The factors listed under section 24 are not exhaustive. There are countless numbers of factors that may need to be considered that may not be explicitly in this list because of the uniqueness of each child's circumstance.

The Chair (Mr. Roman Baber): Further debate? MPP Taylor.

Miss Monique Taylor: Just respectfully, Chair, I think, once again, making our legislation stronger and truly in the best interests of the child, naming reasons why a child may need specific guidance—we can't just say, “Well, people will see it.”

We know that moving forward we have to be bold in the language that we use, and this is a way forward that many of our stakeholders believe is the right thing to do.

The Chair (Mr. Roman Baber): Thank you very much for the debate. Madame Collard.

M^{me} Lucille Collard: I'm in support of this change. My question is, is there any legal reason why the provincial legislation can't be more generous than the federal one? We keep hearing that we need to align with the federal Divorce Act, but are there any legal reasons that would prevent us from doing better?

The Chair (Mr. Roman Baber): Further debate on the motion? Seeing none, are members ready to vote on NDP motion number 4? All those in favour—sorry, MPP Glover? MPP Collard?

M^{me} Lucille Collard: Yes, thank you.

The Chair (Mr. Roman Baber): I apologize.

M^{me} Lucille Collard: My question was for somebody maybe from the Legislature, the minister's office that could answer my question, which is, is there any legal reason that would prevent us from including in the bill a more generous provision than the federal one?

The Chair (Mr. Roman Baber): Two ministry staff on the line. We have Sunny Kwon.

Ms. Sunny Kwon: Hi. In response to your question, there is no legal reason that would prevent having the provincial legislation different from the federal legislation. There are other considerations.

M^{me} Lucille Collard: Thank you for the answer.

Ms. Sunny Kwon: You're welcome.

The Chair (Mr. Roman Baber): Thank you. And I'd like to apologize to the members. I don't have my glasses with me this morning, which is sometimes why I consult for the result of the vote.

Further debate on the motion? Mr. Bouma.

Mr. Will Bouma: Sorry; I apologize, Mr. Chair. This isn't a point of order, but I was wondering if staff might be able to turn up the room volume there. I don't know if anyone else is having this issue, but I'm having a very difficult time hearing testimony from inside of the room there, especially MPP Taylor. The members on Zoom are easy to hear and quite a bit louder.

The Chair (Mr. Roman Baber): MPP Taylor, would you be able to turn up your microphone as well? Is there such an option?

Okay. Mr. Bouma, we made best efforts to increase everyone's volume in the room.

Mr. Will Bouma: Thank you.

The Chair (Mr. Roman Baber): Any further debate on NDP motion number 4? Seeing no further debate, are members ready to vote on motion number 4? Shall the proposed amendment carry? All those in favour? All those opposed? I declare the motion lost.

I understand that there is yet a further NDP motion, motion number 5, pending. MPP Taylor.

Miss Monique Taylor: I move that section 6 of schedule 1 to the bill be amended by adding the following subsection to section 24 of the Children's Law Reform Act:

"Factors in cases of family violence

"(3.1) If a judicial determination has been made that family violence has occurred regarding the child or other family member, clauses (3)(c) and (i) do not apply to the extent that the incidence or incidences of family violence render the application of those clauses inappropriate in the circumstances."

The Chair (Mr. Roman Baber): Any debate? MPP Taylor.

Miss Monique Taylor: Encouraging communication and co-operation between parents as well as penalizing mothers who have been subjected to abuse and cannot communicate safely with their former partner is not appropriate. This provides a clear exception to this rule.

The Chair (Mr. Roman Baber): Further debate? MPP Park.

Ms. Lindsey Park: I'll reiterate again that the current clause uses the same language as the federal Divorce Act. The goal that we're trying to achieve with this legislation is to make the test for determining the best interests of the child in both the federal and provincial legislations as consistent as possible. It's generally important that each parent support the child's relationship with the other parent. A positive relationship with both parents provides stability for the child.

Previously, the Divorce Act federally included a similar principle about contact with each spouse along with what is known as the "friendly parent rule." The friendly parent

rule is now included in the list of best-interests-of-the-child factors. It requires that courts consider each parent's willingness to support the child's relationship with the other parent, and it must be considered along with the other relevant factors in determining parenting arrangements.

In some situations, it may be inappropriate for one parent to support a child's relationship with the other parent, such as in situations of family violence, where there are safety concerns. In cases involving family violence, courts must consider the impact of the violence on all of the best-interests-of-the-child factors set out in section 24, including on the willingness of a parent to support the child's relationship with the other parent. In every case, the court must give primary consideration to the child's safety, security and well-being.

Clause 24(3)(j)(ii) currently already requires a judge to consider any family violence and its impact on the appropriateness of making an order that would require co-operation with the other person.

The Chair (Mr. Roman Baber): Thank you very much. Any further debate? Seeing none, are members ready to vote on NDP motion number 5? All those in favour of the amendment? All those opposed? I declare the motion lost.

We have yet a further proposed amendment by the independent member, Liberal motion number 6. Madame Collard.

M^{me} Lucille Collard: I move that section 6 of schedule 1 to the bill be amended by adding the following subsection to section 24 of the Children's Law Reform Act:

"Shelter or transitional housing

"(5.1) In determining what is in the best interests of the child, the court shall not assign any negative value to a parent's past or current residency in a shelter or in transitional housing."

The Chair (Mr. Roman Baber): Any debate? Madame Collard.

M^{me} Lucille Collard: I think the suggested change is self-explanatory. A lot of vulnerable parents may need to flee home and find themselves in a shelter, pending a determination of the court to determine where the child will be. The fact that someone needs to get help shouldn't weigh negatively in the decision of the court to decide on the best interests of the child.

0930

The Chair (Mr. Roman Baber): Thank you. Further debate? MPP Park.

Ms. Lindsey Park: Thank you, Chair. I won't reiterate again the overall goal of consistency with the federal Divorce Act, but I will say the list of factors to consider in determining the best interests of the child, again, is not exhaustive. There are many factors that some may argue are not appropriate in determining the best interests of the child—for example, a parent's income or education. In every case, the court must give primary consideration to the child's safety, security and well-being, and we think the act, as proposed, achieves that.

The Chair (Mr. Roman Baber): Thank you. MPP Taylor?

Miss Monique Taylor: Thank you, Chair. We support this amendment because there is a stigma attached to shelter and transitional housing. So by changing the conversation and changing the way that we do things, they have to be spelled out. I understand the wanting and the need to have legislation mirror the federal legislation, but we can do better in Ontario, and we can make it somewhat Ontario-made and ensure that we are taking the stigma out of the system for the best interests of the children and the family.

The Chair (Mr. Roman Baber): Thank you. Further debate on Liberal motion number 6? Seeing none, are members ready to vote on the proposed amendment? All those in favour of the amendment? All those opposed? I declare motion number 6 lost.

We will now proceed with yet a further proposed amendment by the independent member, Liberal amendment number 7. Madame Collard?

M^{me} Lucille Collard: I move that section 6 of schedule 1 to the bill be amended by adding the following subsection to section 24 of the Children's Law Reform Act:

"Decision not to use alternative dispute resolution process

"(5.2) In determining what is in the best interests of the child, the court shall not take into consideration any decision by a parent to not participate in, or to withdraw from, an alternative dispute resolution process related to the issue in dispute."

The Chair (Mr. Roman Baber): Thank you. Any debate on Madame Collard's motion, that being motion number 7? Madame Collard.

M^{me} Lucille Collard: Yes, again, I think this one is also self-explanatory. I think there are multiple reasons why a parent could decide not to pursue ADR, and that shouldn't be taken as a negative factor because reasons cannot be apparent to a judge, but it's important that they consider the fact that mediation is not always the right thing to resolve issues. So it's just that it's not a negative factor, and for the same reason as the other one. I understand that the factors are not exhaustive, but pointing it out and making it expressed would force a judge to actually consider it expressly, and I think it's a good thing. Thank you.

The Chair (Mr. Roman Baber): Thank you very much. Further debate on Madame Collard's motion number 7? MPP Park.

Ms. Lindsey Park: Thank you, Chair. I'll admit I was having difficulty understanding what this provision was trying to achieve. It's already sort of common practice that alternative dispute resolution processes are confidential, are without prejudice, and there are agreements, in most cases, signed by the parties up front setting that out. The judiciary are very careful to not involve themselves in any factors such as someone's decision to participate or not or what might have happened in that out-of-court process. This seems to be almost asking the judiciary to turn their

mind to those processes, and I worry that it would actually work against, maybe, what the member is trying to achieve.

The Chair (Mr. Roman Baber): Further debate? Seeing no further debate on Liberal motion number 7, are members ready to vote on the proposed amendment? All those in favour of amendment number 7? All those opposed? I declare the motion lost.

We will now proceed with the final proposed amendment for section 6 to schedule 1, NDP amendment number 8. MPP Taylor.

Miss Monique Taylor: I move that section 6 of schedule 1 to the bill be amended by striking out subsection 28(6) of the Children's Law Reform Act and substituting the following:

"Parenting time, day-to-day decisions

"(6) Unless the court orders otherwise, a person to whom the court allocates parenting time with respect to a child has authority during that time to make day-to-day decisions affecting the child but may not make decisions that conflict with decisions made by another person, if any, who primarily has decision-making responsibility with respect to the child."

The Chair (Mr. Roman Baber): Debate? MPP Taylor.

Miss Monique Taylor: This is based on feedback that we heard from stakeholders that suggested that the present language with respect to decision-making is somewhat vague, creating an opportunity for an abusive partner to manipulate the intention of the legislation in order to intimidate and control the child's other parent.

The Chair (Mr. Roman Baber): Further debate on NDP motion number 8? MPP Park.

Ms. Lindsey Park: Parenting time, which is what we're talking about here, and the ability to make day-to-day decisions has to be consistent with any orders for decision-making responsibility with respect to a child. For example, decision-making responsibility can be allocated to one parent for religion and another parent for everything else. The order would set that out in the particular case. The parent who has parenting time should be able to make a decision regarding religion in relation to the child. This provision would mean that because the other parent primarily has decision-making responsibility for the child, the parent with parenting time could not make a decision with respect to whether the child should go to church with him or her on Sunday.

The Chair (Mr. Roman Baber): Further debate? Miss Taylor.

Miss Monique Taylor: The bill must be clear on the day-to-day decisions that cannot conflict with decisions made by the parent with primary decision-making responsibility. As it's currently worded, section 28(6) may provide abusive fathers with the opportunity to exploit decision-making responsibilities to make decisions not in the child's best interest and to undermine and threaten or otherwise exert control over the mother. This was requested by Luke's Place and is supported by other organizations that support survivors of family violence.

Other practitioners see this as over-broad in terms of its application to cases where family violence is not present.

The Chair (Mr. Roman Baber): Further debate? Seeing no more debate on NDP motion number 8, are members ready to vote on the proposed amendment? All those in favour of NDP motion number 8? All those opposed? I declare the motion lost.

We shall now proceed to consider section 6 to schedule 1. Any debate? Are members ready to vote on section 6 to schedule 1? Shall section 6 to schedule 1 carry? All those in favour? All those opposed? I declare section 6 to schedule 1 carried.

There are no amendments to section 7 through section 9 to schedule 1. Is it the will of the committee that I bundle them together for consideration? Thank you. Any debate on section 7 through section 9, inclusive, to schedule 1? Seeing none, are members ready to vote on section 7 through section 9 to schedule 1? Shall section 7 through section 9, inclusive, to schedule 1 of the bill carry? All those in favour? All those opposed? I declare sections 7 through 9, inclusive, to schedule 1 carried.

0940

We'll now proceed to section 10 to schedule 1. I understand there's a number of amendments pending. First, we'll proceed with independent amendment number 9. Madame Collard?

M^{me} Lucille Collard: I move that section 10 of schedule 1 to the bill be amended by adding the following subsections to section 33.1 of the Children's Law Reform Act:

"Consent required

"(3.1) The parties must provide clear and informed consent before participating in an alternative dispute resolution process.

"Required training

"(3.2) Every person who provides an alternative dispute resolution process for the parties must be trained to detect the presence of family violence in accordance with the regulations.

"Regulations

"(3.3) The Lieutenant Governor in Council may make regulations requiring persons who provide an alternative dispute resolution process for the parties to receive specified training in detecting the presence of family violence."

The Chair (Mr. Roman Baber): Further debate? Madame Collard.

M^{me} Lucille Collard: Yes. Just to explain a little bit: I think everyone will remember the witnesses that we heard last week who provided very compelling arguments about the effectiveness and the necessity to provide appropriate training for people that are coaching any kind of resolution between two parents, because it's been recognized that an abusive partner can actually coerce another parent to participate in mediation. So it's important that consent is clear and that the person who's coaching that has the acquired training to recognize the signs of any family violence that would be used against not the "weaker" but the other partner. That's the explanation. Thank you.

The Chair (Mr. Roman Baber): Further debate?

Ms. Lindsey Park: With respect to the requirement for consent to alternative dispute resolution, in Ontario, there is no mandatory mediation. We actually heard from a number of witnesses why it was important that it wasn't mandatory. It's not appropriate in every case, particularly in cases where there's family violence involved. The parties are not required to use alternative dispute resolution processes. Section 33.1 is what sets out the parties' duties. This amendment deals with the duty of a person providing ADR processes, which is different from the parties.

In addition, persons providing ADR processes are not regulated in Ontario, Chair, so we have a concern that there would be no regulating body that could enforce a requirement for training like this at the current time.

The Chair (Mr. Roman Baber): Further debate on Liberal motion number 9?

Miss Monique Taylor: I think that they're not regulated and that there's no governing body is probably the first issue. The general public doesn't typically understand whether bodies are regulated or whether they have governing bodies, so they're expecting to go into a process that they're protected under. When they go into that process and there is no protection and there is no awareness for things such as violence, to be able to use those tools—I mean, we heard from the mediation folks that they are already doing it. But anybody can go and put up a shingle and say they're able to do this work and yet they're not qualified to do so. That's where we could have people falling through the cracks.

I will be supporting this amendment because I think it is important that people do get the training they need and that we look at the regulation of that system to ensure that when people are going to these folks in their most trying times, they can actually be trusted and are reliable.

The Chair (Mr. Roman Baber): Further debate on Liberal motion number 9? Madame Collard.

M^{me} Lucille Collard: I just want to add that while I agree that mediation is not mandatory, the legislation still encourages it, and it's very often the first step in any kind of family dispute resolution. Whether it goes before the court, they always explore ADR. Even though we've heard that some training is provided, it's not provided by all organizations that provide ADR. That's the importance, to actually make it mandatory by expressly putting it in the legislation. The fact that it's not regulated is also addressed by this amendment, where we are asking for regulations to be made.

Again, there's nothing wrong with making the provincial legislation stronger and more protective of vulnerable people.

The Chair (Mr. Roman Baber): Further debate on Liberal motion number 9? Madame Collard.

M^{me} Lucille Collard: I'd like a recorded vote, please, Mr. Chair.

The Chair (Mr. Roman Baber): A recorded vote is being sought. Are members ready to vote on Liberal motion number 9?

Ayes

Collard, Glover, Taylor.

Nays

Anand, Bouma, Kusendova, Park, Tangri, Triantafilopoulos.

The Chair (Mr. Roman Baber): I declare motion number 9 lost.

A further amendment proposed to section 10 to schedule 1, NDP amendment number 10. MPP Taylor.

Miss Monique Taylor: I move that section 10 of schedule 1 to the bill be amended by adding the following subsection to section 33.2 of the Children's Law Reform Act:

“Duty to assess re family violence

“(2.1) It is the duty of every legal adviser who undertakes to act on a person's behalf in any proceeding under this part to assess, in accordance with the procedure prescribed by the regulations,

“(a) whether family violence may be present; and

“(b) the extent to which family violence, if present, may adversely affect,

“(i) the safety of the person or a family member of the person, and

“(ii) the ability of the person to negotiate a fair agreement.”

The Chair (Mr. Roman Baber): Any debate? MPP Taylor.

Miss Monique Taylor: Those involved in the family law system should have the duty to prevent violence against women and their children. Before advising in favour of any particular legal process, legal advisers should be required to screen for family violence.

The Chair (Mr. Roman Baber): Further debate? MPP Park.

Ms. Lindsey Park: This amendment is about the duties of lawyers. I think it's important to note that any training required by lawyers rests most appropriately with the Law Society of Ontario. That's what they're set up to do. That's what the Law Society Act says that their job is. They're responsible for regulating lawyers, including determining requirements for licensing. They have very thorough rules of professional conduct; any lawyers on this committee will know that.

It's not that this may not be an important thing, but I think it's more appropriate that the members opposite bring this to the Law Society for their consideration. That's really the appropriate mechanism for this kind of training requirement.

The Chair (Mr. Roman Baber): MPP Taylor.

Miss Monique Taylor: I think, once again, if we don't make rules bold, we'll never get through. This is a recommendation by Luke's Place. This is an establishment that deals with women who have been abused, with family violence, and they have noted how important this is.

I think that telling someone once again to do the right thing isn't the way that we move forward. I think that putting it in legislation and ensuring that the language is there and that we're forcing the law association to enact this is the right thing to do.

The Chair (Mr. Roman Baber): Further debate on NDP amendment number 10? MPP Park.

0950

Ms. Lindsey Park: Chair, to be honest, I'm just trying to understand what the proposal is from the New Democrats. Are they saying that the law society should no longer be a self-regulating organization?

The Chair (Mr. Roman Baber): MPP Taylor?

Miss Monique Taylor: No, that's not what I'm saying.

The Chair (Mr. Roman Baber): Further debate on NDP amendment number 10? Seeing none, are members ready to vote on proposed amendment number 10? All those in favour of opposition amendment number 10? All those opposed? I declare the motion lost.

We'll now proceed to consider section 10 to schedule 1. Any debate? Seeing none, are members ready to vote on section 10 to schedule 1? Shall section 10 to schedule 1 carry? All those in favour? All those opposed? I declare section 10 to schedule 1 carried.

There are no amendments to sections 11 to 27, inclusive, to schedule 1. Is it the will of the committee that I bundle them together for consideration? Any debate on sections 11 through 27 to schedule 1, inclusive? Seeing none, are members ready to vote on sections 11 through 27, inclusive? Shall sections 11 through 27 to schedule 1, inclusive, carry? All those in favour? All those opposed? I declare sections 11 through 27 to schedule 1, inclusive, carried.

We'll now proceed to deal with section 28 to schedule 1. I understand that there is a government motion pending, being motion number 11. MPP Park?

Ms. Lindsey Park: I move that subsection 28(3) of schedule 1 to the bill be amended by striking out “respecting decision-making responsibility” in section 47 of the Family Law Act.

The Chair (Mr. Roman Baber): Debate? MPP Taylor.

Miss Monique Taylor: Chair, I would just like to ask for clarification of why this is here. Is this not in line with the federal bill that was already written?

The Chair (Mr. Roman Baber): MPP Park?

Ms. Lindsey Park: Actually, it was the Ontario Bar Association that brought this to our attention in the drafting. This was mistakenly inconsistent with the federal Divorce Act changes, and so this is really an administrative cleanup of the bill.

The thought behind it is a court should be able to stay a support application until an application for a parenting order, which includes parenting time, has been determined. The current provision leaves out parenting time. By taking out reference to decision-making responsibility, the term “parenting order” may refer to either parenting time or decision-making responsibility. That's the rationale behind this amendment, in cleaning it up.

The Chair (Mr. Roman Baber): Any further debate on government amendment number 11? Seeing none, are members ready to vote on proposed amendment 11? All those in favour of amendment number 11? All those opposed? I declare the amendment adopted.

We have a further amendment to section 28: This is an independent amendment to subsection 28(4) to schedule 1 of the act. Madame Collard.

M^{me} Lucille Collard: Thank you, Mr. Chair. I will actually withdraw this motion.

The Chair (Mr. Roman Baber): Thank you very much.

We will now proceed to consider section 28 to schedule 1, as amended. Any debate? Are members ready to vote? Shall section 28 to schedule 1 of the bill, as amended, carry? All those in favour? All those opposed? I declare section 28 to schedule 1, as amended, carried.

There are no amendments to section 29 through section 31, inclusive. Is it the will of the committee that I bundle them together for consideration?

We will now proceed to consider section 29 through section 31, inclusive, to schedule 1. Any debate? Seeing none, are members ready to vote? Shall section 29 through section 31 to schedule 1 carry? All those in favour? All those opposed? I declare section 29 through section 31 to schedule 1, inclusive, carried.

We will now proceed to consider schedule 1 as a whole, as amended. Any debate on schedule 1, as amended, as a whole? Seeing none, are members ready to vote? Shall schedule 1 to the bill, as amended, as a whole, carry? All those in favour? All those opposed? I declare schedule 1 to the bill, as amended, as a whole, carried.

We will now proceed with schedule 2 to the bill. We have a number of government motions to begin with on section 1 to schedule 2 of the bill. Government motion number 13, MPP Park.

Ms. Lindsey Park: I move that section 1 of schedule 2 to the bill be amended by adding the following subsection:

“(1.1) Section 6 of the act is amended by adding the following subsection:

““Leave not required for second appeal

“(1.0.1) Despite clause (1)(a), leave of the Court of Appeal is not required in the case of an order of the Divisional Court on an appeal under part V or VIII of the Child, Youth and Family Services Act, 2017.””

The Chair (Mr. Roman Baber): Thank you. Any debate on government motion 13? MPP Taylor.

Miss Monique Taylor: We definitely heard a lot from folks regarding the leave and the appeal process, so I'm pleased to see it here. But I'm wondering, could it be more broad? Do we squeeze ourselves in for this amendment?

The Chair (Mr. Roman Baber): Thank you very much. MPP Park.

1000

Ms. Lindsey Park: I'm pleased to go into a bit of the rationale and how we landed on this particular amendment. It was in discussion with not only the child protection stakeholders that appeared at committee, but the Ministry of the Attorney General team was hard at

work, between the hearings and submitting this amendment, to make sure we reached out to groups of all different kinds of stakeholders that are involved in these child protection court processes, including, of course, the child protection lawyers and family lawyers but also the children's aid societies and the Office of the Children's Lawyer.

We've received buy-in for where we've landed. This seemed like a balanced proposal to everyone we spoke with. It would enhance access to justice to make it easier and less expensive for child protection cases to be appealed to the Ontario Court of Appeal, removing that leave requirement, which is what this does. The decisions made in child protection cases, as we heard at committee, involve unique issues that have profound impacts on the lives of parents and children. This motion recognizes the need to treat these cases differently. I don't know if you remember; at committee, I was asking, “Why are these cases different? Why should they be treated differently?” This would mean that child protection cases started at the unified Family Court and the Ontario Court of Justice would have the same procedural requirements for an appeal, regardless of where a family lives in the province of Ontario.

The Chair (Mr. Roman Baber): MPP Taylor.

Miss Monique Taylor: I think the problem and the reason why we have this in front of us is because many of those stakeholders who were interested in this and who recognized this were not consulted as the bill was being processed, particularly the child protection lawyers who we had heard clearly from and who had given us written submissions. Quite frankly, they're the ones who raised my attention to this issue. Then we've seen from the children's lawyer that they were also interested in this.

It's really unfortunate that the minister, the AG, just kind of fluffed it off on the first day when I asked him the question. I'm happy to see that you have changed your direction on this, but it wouldn't have been this way if people were consulted properly from the beginning.

The Chair (Mr. Roman Baber): MPP Park?

Ms. Lindsey Park: I take exception to how the member opposite has characterized the minister's response. I certainly didn't receive it that way or read it that way. In fact, these consultations were open to members of the public. Anyone could participate. That was made very clear. It was published in law journals, it was published in legal publications, and it was put out by almost every local law association. So if they didn't know that it was going on, they frankly just weren't paying attention. We had many child protection lawyers come and participate in the round tables.

Of course, you can't force people to participate if they don't want to and they don't see it as worth their time. But we're always happy to speak with stakeholders of all different backgrounds, and that remains the case to this day and it will be going forward.

The Chair (Mr. Roman Baber): Thank you very much. Further debate on government amendment number 13? Seeing none, are members ready to vote?

All those in favour of government amendment 13? All those opposed? I declare the amendment carried.

We will now proceed with a further proposed amendment by the government, amendment number 14. MPP Park.

Ms. Lindsey Park: I move that subsection 1(2) of schedule 2 to the bill be amended by striking out paragraph 2 of subsection 6(1.2) of the Courts of Justice Act.

The Chair (Mr. Roman Baber): Thank you. Any debate? MPP Park.

Ms. Lindsey Park: This is really an amendment that goes together as a package with the previous amendment we just voted on, with the same rationale. This is part of achieving that.

The Chair (Mr. Roman Baber): Further debate on government amendment number 14? Seeing none, are members ready to vote? All those in favour? All those opposed? I declare amendment 14 carried.

We have an NDP proposed amendment, amendment number 15, also to section 1 of schedule 2. MPP Taylor?

Miss Monique Taylor: As this was dealt with under government amendments number 13 and 14, I will withdraw this as it will be out of order.

The Chair (Mr. Roman Baber): Thank you.

We will now proceed to consider section 1 to schedule 2, as amended. Any debate? Seeing none, are members ready to vote? Shall section 1 to schedule 2, as amended, carry? All those in favour? All those opposed? I declare section 1 to schedule 2, as amended, carried.

There are no proposed amendments to sections 2 through 8 to schedule 2. Is it the will of the committee that we bundle them together for consideration? Okay.

Any debate on section 2 through section 8, inclusive, to schedule 2? Seeing none, are members ready to vote? Shall section 2 through section 8, inclusive, to schedule 2 carry? All those in favour? All those opposed? I declare section 2 through section 8, inclusive, to schedule 2 carried.

We'll now proceed to consider schedule 2, as amended, as a whole. Any debate on schedule 2, as amended, as a whole? Seeing none, are members ready to vote? Shall schedule 2, as amended, as a whole carry? All those in favour? All those opposed? I declare schedule 2, as amended, as a whole carried.

There are no proposed amendments to section 1 through section 4 to schedule 3, which we'll now proceed to deal with. Is it the will of the committee that we consider section 1 through section 4 to schedule 3—that we bundle them for consideration? Yes?

Is there any debate on section 1 to section 4 of schedule 3? No? Are members ready to vote on section 1 through section 4, inclusive, to schedule 3? Shall section 1 through section 4, inclusive, to schedule 3 carry? All those in favour? All those opposed? I declare section 1 through section 4 to schedule 3 carried.

We'll now consider section 4.1, adding a new section. That would be NDP amendment number 16. MPP Taylor.

Miss Monique Taylor: I move that schedule 3 to the bill be amended by adding the following section:

“4.1 The act is amended by adding the following section:

“Parenting agreements

“51.1 Despite anything else in this part, parents of a child, persons who are cohabitating, persons who are married to each other, or former spouses may reach an agreement under this part with respect to parenting, property or support.”

Ms. Lindsey Park: Point of order, Chair?

The Chair (Mr. Roman Baber): Yes?

Ms. Lindsey Park: The way I read this, it does not relate to a section of the Family Law Act that is already being amended. As a result, the committee is not empowered to consider this motion, and it should be ruled out of order.

1010

The Chair (Mr. Roman Baber): I apologize. I was dealing with a scheduling matter of the committee and so I wasn't able to fully appreciate the motion. One second.

Having considered the matter, I believe that the objection is out of order, respectfully. However, the motion isn't out of order since, even though the proposed change may deal with an entirely different matter, it is still within the ability of a committee member to propose an amendment to the bill before the committee. I cannot preclude that.

Ms. Lindsey Park: Chair, is it possible to comment further?

The Chair (Mr. Roman Baber): Sure.

Ms. Lindsey Park: Thank you, Chair. In the alternative, hearing the Chair's ruling, our reason for recommending voting against this amendment would be that it would lead to confusion as to the interpretation of part IV of the Family Law Act. The proposed amendment contradicts sections 52(1)(c) and 53(1)(c) which prevent people who are entering marriage and cohabitation agreements from determining decision-making responsibility and parenting time with respect to a child. Furthermore, parenting agreements typically determine parenting time, not support and property issues.

The Chair (Mr. Roman Baber): MPP Taylor?

Miss Monique Taylor: Section 54 of the current Family Law Act limits separation agreements to “two persons who cohabited and are living separate and apart,” which excludes two or more persons who are the parents of a child from being able to enter into a domestic contract. Section 59 of the current Family Law Act limits paternity agreements to one man and one woman, but does not allow for parenting issues to be agreed upon.

The provisions with respect to domestic contracts regarding the broad range of issues that parents, cohabiting people, spouses and former spouses deal with, including parenting, support, property etc., should be amended to allow for domestic contracts to be available to people to settle their affairs more easily without court involvement.

The Chair (Mr. Roman Baber): Further debate on NDP amendment number 16? Seeing none, are members ready to vote on NDP amendment number 16? All those in favour? All those opposed? I declare the motion lost.

Members, before we proceed on section 5, I believe that we only require another few minutes to complete the bill.

It's approximately 10:13. I'm wondering if we could indulge the committee and stay a couple of minutes past 10:15 to complete our work.

Miss Monique Taylor: I have a member's statement.

The Chair (Mr. Roman Baber): Okay. We'll try very, very quickly.

We'll proceed with considering section 5 to schedule 3. Any debate? Shall section 5 to schedule 3 carry? All those in favour? All those opposed? I declare section 5 to schedule 3 carried.

We'll now proceed to consider schedule 3 as a whole. Any debate? Seeing none, are members ready to vote on schedule 3 as a whole? Shall schedule 3 as a whole carry? All those in favour? All those opposed? I declare schedule 3, as a whole, to the bill carried.

We'll now proceed back to sections 1 through 3, dealing with the title, the bill and reporting.

We will now proceed to consider sections 1 through—
Interjections.

The Chair (Mr. Roman Baber): Are members okay to stay for another few minutes? Yes, thank you very much. We'll just stay put.

We will now consider section 1 through section 3 to the bill. Is it the will of the committee that I bundle them together for consideration? Thank you. Shall section 1 through section 3 to the bill carry? All those in favour? All those opposed? I declare section 1 through section 3 to the bill, inclusive, carried.

MPP Bouma?

Mr. Will Bouma: Yes, thank you, Mr. Chair. I was going to request that we have a recorded vote on the next three votes: the title, the bill, and should it be tabled in the House.

The Chair (Mr. Roman Baber): Absolutely. For procedural purposes, may I ask that you raise that request every time I call the vote?

Mr. Will Bouma: Yes.

The Chair (Mr. Roman Baber): Thank you. We will now consider the title of the bill. A recorded vote being sought, shall the title of the bill carry?

Ayes

Anand, Bouma, Glover, Kusendova, Park, Gurratan Singh, Tangri, Triantafilopoulos.

The Chair (Mr. Roman Baber): I declare the title of the bill carried.

We'll now consider Bill 207, as amended, as a whole. Any debate?

Mr. Will Bouma: Recorded vote, please, Chair.

The Chair (Mr. Roman Baber): Thank you. Seeing no debate, are members ready to vote? A recorded vote being sought, shall Bill 207, as amended, as a whole, carry?

Ayes

Anand, Bouma, Kusendova, Park, Gurratan Singh, Tangri, Triantafilopoulos.

The Chair (Mr. Roman Baber): I declare Bill 207, as amended, as a whole carried.

I shall now ask the committee whether I should report the bill to the House. Any debate?

Mr. Will Bouma: Recorded vote, please, Chair.

The Chair (Mr. Roman Baber): Seeing no debate, are members ready to vote? With a recorded vote being sought, shall I report the bill, as amended, to the House?

Ayes

Anand, Bouma, Kusendova, Park, Gurratan Singh, Tangri, Triantafilopoulos.

The Chair (Mr. Roman Baber): I declare that it is the will of the committee that I will report the bill to the House. Thank you very much.

Members, we have now concluded clause-by-clause of Bill 207. Any further business? Seeing no further business, the committee is adjourned.

The committee adjourned at 1019.

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