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Standing Committee on Justice Policy

Moving Ontario Family Law Forward Act, 2020

1st Session
42nd Parliament

Tuesday 13 October 2020

Chair: Roman Baber
Clerk: Thushitha Kobikrishna

Journal des débats (Hansard)

JP-22

Comité permanent de la justice

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

1re session
42e législature

Mardi 13 octobre 2020

Président : Roman Baber
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

COMITÉ PERMANENT DE LA JUSTICE

Tuesday 13 October 2020

Mardi 13 octobre 2020

The committee met at 0905 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 Chair (Mr. Roman Baber): Good morning, everyone. The Standing Committee on Justice Policy will now come to order. We're here for public hearings on 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.

As a reminder, the deadline for written submissions is 7 p.m. on Thursday, October 15, 2020. The deadline for filing amendments to the bill is 5 p.m. on Friday, October 16, 2020.

We have no members other than myself present in the physical room. We have the following members participating remotely by Zoom: MPP Will Bouma, MPP Parm Gill, MPP Suze Morrison, MPP Gurratan Singh, MPP Effie Triantafilopoulos and MPP Monique Taylor.

Are there any other MPPs who have joined us, other than the Attorney General, who is appearing in his capacity as a witness? Thank you.

We also have legislative research, Hansard, interpretation and recording.

I ask everyone to speak slowly and clearly. Are there any questions or business before we begin?

MINISTRY OF THE ATTORNEY GENERAL

The Chair (Mr. Roman Baber): I now call on the Honourable Doug Downey, Attorney General.

Attorney General, good morning and welcome.

Hon. Doug Downey: Good morning.

The Chair (Mr. Roman Baber): You'll have 15 minutes for your presentation, followed by 45 minutes of questions from the members of the committee. The questions will be divided into three rounds of six minutes for the government members, three rounds of six minutes for the opposition and two rounds of four and a half minutes for the independent member. I'll give reminders of the time during the presentation or just alert you when I ask you to conclude.

Minister, thank you for your attendance this morning. Please commence.

Hon. Doug Downey: Thank you, Chair. I'm pleased to come before the committee today to present on a bill that would, if passed, move family law forward for Ontario's children and families. It's a bill that demonstrates our government's commitment to supporting families and children when they need help the most.

Families across the province count on our justice system to provide resolutions to matters of critical importance and significant issues. In many of these situations, like ensuring child protection, they rely on our family law system. That's why we've introduced the Moving Ontario Family Law Forward Act. This legislation will help improve the system so that families are able to have their family law matters addressed in a timely and just way. The legislation, if passed, will address aspects of the family law system in Ontario that have historically slowed and reduced access to justice for families. The changes we'll be discussing today are tangible solutions to obstacles that pose unnecessary challenges for families during some of life's most difficult moments.

The current system is complex and outdated; it's difficult to navigate for families seeking resolutions. For justice sector professionals who are dedicated to supporting families through these difficult moments, these cumbersome processes challenge their efforts and slow down their work. As a result, Ontarians are left waiting longer to access the system to resolve their matters. I'm sure everyone participating in this hearing has encountered families who have experienced the stress and anxiety of resolving matters like these—whether it's a member of the committee or a local representative, as a professional in the field or as an observer at home.

Our government is working to address the aspects of the family law system that make law matters in the justice system more difficult than they need to be. We know the system can be improved so that it is less challenging for families. The legislation proposes common-sense changes to a dated system so that it is easier, faster and more affordable for Ontarians to resolve family legal matters.

If passed, the legislation would bring changes that would build on our work to move family law forward in the province by supporting families and vulnerable children, simplifying a complex and outdated justice system, and making it easier for people to resolve their matters. Throughout our consultations with families and legal professionals, we heard that changes need to be made to the family law system so that it becomes more accessible, it becomes more responsive and it becomes more resilient.

We travelled across the province to seek out this feedback. We listened intently and heard about aspects of the system that could be improved to eliminate unnecessarily complicated processes that make the system less accessible for those who interact with this part of our justice system. I'll talk later about parliamentary assistant Lindsey Park's work all over the province, gathering input and information, as we did centrally as well.

Our consultations focused on identifying ways to enhance family law in Ontario and make it more affordable and less susceptible to delays that slow down the resolution of family disputes. I'm pleased to say that the feedback we received on the family law system's legislative, regulatory and procedural framework allowed us to bring forth the practical changes that would improve the experience of Ontarians who need to access the system.

The Moving Ontario Family Law Forward Act, if passed, will make the family law appeals process clearer and easier to navigate. It will harmonize Ontario's family laws and federal legislation to make it easier for Ontarians to navigate the system and understand their rights. It will allow parents and caregivers to request certified copies of child support notices made by the online Child Support Service, so child support amounts can be more easily managed and enforced outside of the province. It will remove the requirement for family arbitrators to file arbitration award reports with the ministry, saving time and money across the system.

0910

Our government has been clear: Whenever we find red tape, if it's getting in the way of providing better services for Ontarians, we will find a way to find solutions that will benefit the people of this province. This commitment to making life easier for Ontarians has focused our work as we develop this proposed legislation.

The Moving Ontario Family Law Forward Act includes important improvements to outdated processes that can delay family law professionals and in turn leave families waiting longer to access the help they need. With this legislation, we will eliminate a dated reporting requirement that required arbitrators to submit detailed reports on every family arbitration award they decided. As we looked into the measure, we could not find a single other jurisdiction in Canada that had this reporting requirement, and in this regard, it is time for Ontario to catch up with the other provinces and focus on delivering the justice services that Ontarians expect in 2020.

This change will serve the dual purpose of making the government more efficient and saving valuable time for our family arbitrators and our front-line workers. Eliminating this unnecessary requirement will free up more capacity in the system so arbitrators are able to focus on families and their needs, and less time on paperwork. This is yet another piece of the legislation that will make it easier and faster for people in Ontario to resolve their legal matters.

In addition, this legislation will introduce changes to improve online child support services in Ontario. Families are already able to use online services to quickly and easily set up or change child support payments without needing to set foot in a court. This has been a bright spot in today's family law system, but as I've said, we know we can do better.

Parents who use this online service cannot easily have child support payments enforced if they move outside the province. Currently, they need to obtain a certified paper copy of the support notice in person in order for it to be enforced. This is a serious limitation, and this legislation will address it. The Moving Ontario Family Law Forward Act, if passed, will allow for the certification of child support notices that are issued through the online Child Support Service, regardless of where they reside in Canada. This change supports one of the main goals of the bill: to allow parents to spend less time on the cumbersome procedures and paperwork, and more time providing care and support for their children and families. This is what moving family law forward in Ontario is all about.

As I mentioned earlier, many of the proposed changes in the legislation were born out of consultations that we held across Ontario with families and family law professionals. One concern we heard continually was that the family law appeals processes were unclear and difficult to navigate. To give you a sense of the complicated systems that families and family lawyers need to navigate, one practitioner told me that the appeals system would sometimes even confuse senior counsel.

Three different courts hear family law cases in Ontario: the Ontario Court of Justice, the Superior Court of Justice and the Family Court branch of the Superior Court of Justice—and that's just who hears them. This poses challenges for the countless families who move through the appeals system every day.

As we looked at improving the process, we spoke directly with the Chief Justices of Ontario, the Superior Court and Ontario Court, and the Court of Appeal. We needed to find a better way.

To make the appeals system easier for families and family lawyers to navigate, we're proposing to clarify where the appeal of family law cases goes to and increasing the consistency and fairness, regardless of where a case is heard. If this legislation passes, the appeals process will be more consistent for families, regardless of what court hears their matter, resulting in a clearer, faster road to resolutions. This is critical.

Members of the committee, as you may be aware, last year the federal government made wide-ranging changes to the Divorce Act. These changes are the first substantive changes made to the legislation in 20 years. As part of the

comprehensive changes that were introduced, the new legislation included an update to legal terminology, as well as the common use of family dispute resolution processes, such as mediation. These changes will be implemented by the federal government when the legislation comes into effect on March 1, 2021.

In consultation with our family justice partners, we closely reviewed the federal amendments to determine how the changes would impact Ontario's system. In our review, we set out to prevent any unnecessary confusion for Ontario families with respect to those changes introduced by the federal government. Our government sought to make changes that align with the implementation of this law to make things as easy as possible to understand for the public. This is particularly important given that family law is an area where people often represent themselves.

That is why, in response to the modernization of the federal Divorce Act, our government is proposing an update to our laws to reflect these changes. This includes updating parenting terminology in Ontario's legislation to match the terminology put forth by the federal government. For example, we will be removing terms like "custody" and "access." Instead, these terms will be replaced with terms like "decision-making responsibility," "parenting time," "contact," in order to move away from the perception that one parent wins a custody dispute and the other parent loses. I will note that these changes don't just affect our courts and family law sector. This terminology is present in education, medical fields and many others, and we'll continue to work with those sectors to ensure they're aware of the change when they come into effect next spring.

Furthermore, in our work to align with the new federal legislation, we are proposing changes to provide further clarity around the best interests of the child. This legislation will adopt a more comprehensive list of factors for the court to consider in determining the best interests of the child, as set out in the federal Divorce Act. This includes asking the court to consider the stage of development of the child; the nature of their relationship with the child's parents, siblings and grandparents; history of care and plans for child care as factors to consider when determining those best interests of a child.

We're also proposing changing to ensure Ontario's family laws are equipped to better address family violence by providing greater clarity regarding what constitutes violence, through the adoption of the definition of "family violence" and "family member" set out in the federal Divorce Act.

We've also identified opportunities to provide more clarity and guidance around circumstances that require the relocation of a child by adopting a statutory framework for when a person with decision-making authority relocates with or without a child.

Finally, through the Moving Ontario Family Law Forward Act, we will reduce the burden on our court system by adopting the obligations in the federal Divorce Act that encourage the use of alternative dispute resolution processes. Whenever appropriate, we want these used, as well as the duties, of course, to consider the existence of other proceedings.

These changes would not have been possible without the contribution of our justice partners.

Also, I would like to take the opportunity to thank and recognize our partners who contributed to our proposed amendments and are publicly supportive of this part of the bill: the Ontario Bar Association, Middlesex Law Association, Legal Aid Ontario, Family Dispute Resolution Institute of Ontario and the Ontario Association for Family Mediation.

Members of the committee, the proposed amendments to align Ontario's legislation with the federal changes to the Divorce Act reinforce our goal of making it faster and easier for families to navigate courts.

I recognize I am coming to the end of my allotted time, Mr. Chair, and I just want to conclude by thanking the members of the committee and all our participants for taking time to consider this legislation. As we've done throughout the process, we've undertaken to advance family law in Ontario. I look forward to reviewing the valuable input you provide.

The common-sense changes that we've put forth in this legislation are tangible solutions to problems that have historically hindered the family law system in Ontario. These changes will simplify a complex, outdated system and, should they pass, will make family justice systems easier to navigate, while reducing the need for court intervention.

As we contemplated the contents of this legislation, improving access to justice for families and children was our number one priority. With this in mind, we put forth a bill that will make the system more accessible, responsive and resilient.

I'd also like to extend my thanks to the many organizations that are leaders in Ontario's family law system and that have expressed their support for this legislation and that I look forward to continuing to engage with as we strengthen this sector. In particular, I would like to recognize the Family Dispute Resolution Institute of Ontario and the other groups that I previously mentioned. There are so many that came to the table to help us do this.

I ask all participants in this committee to consider supporting the Moving Ontario Family Law Forward Act. I look forward to continuing to engage with members of this committee and the rest of our colleagues here at Queen's Park and Ontarians on this important legislation. Thank you. Merci. Meegwetch.

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

Before we proceed with questioning, I'd like to welcome—joining us in the room physically is MPP Lindsey Park. Good morning.

We also have, joining us on Zoom, MPP Natalia Kusendova. Good morning, Ms. Kusendova. Would you kindly confirm your attendance and current location?

Ms. Natalia Kusendova: Good morning. This is Natalia Kusendova, and I'm calling in this morning from Vaughan, Ontario.

The Chair (Mr. Roman Baber): I'd also like to confirm the joining of MPP Nina Tangri. Good morning, Mrs. Tangri.

Mrs. Nina Tangri: Good morning. This is MPP Nina Tangri, and I'm in Mississauga, Ontario.

The Chair (Mr. Roman Baber): We'll now proceed with questions. For this particular round with the Attorney General, we'll have three rounds of six minutes for each of the recognized parties and two rounds of four and a half minutes for the independent member.

0920

I invite the government to begin their six minutes of questions. MPP Gill.

Mr. Parm Gill: My apologies in advance: I am in a vehicle, so just in case there is some background noise, please forgive me.

I also want to thank and welcome our minister for taking the time and appearing before the committee. Thank you for all the hard work you've done in terms of putting this piece of the legislation together.

Minister, you've said since the outset of the pandemic that Ontario's justice system has moved decades in only a matter of months. Your track record of significantly investing in the justice system to modernize it, not automate it, has benefited families, children and justice sector partners in every corner of the province.

Can you please describe how our government has modernized the family law system in the past few months and how we have made it easier, faster and more affordable to resolve family legal matters on those grounds?

Hon. Doug Downey: Absolutely, and thank you for the question.

I can tell you, when the pandemic came—and the justice system is very complex, because there are a lot of people running different parts of it. We're running the system. We partner with our chief justices and with our courts.

I'm just going to start back a couple of years ago, when the Auditor General said that 95% of transactions in the court system happen on paper. Just think about that for a moment: Of the entire process, 95% of it was happening on paper. So when the pandemic came, we were faced with an absolute stop in some areas. Others kept moving along, and we did them as we could, but we had to automate. So I have been moving forward with my team and with our government to not just automate but to transform the system. Ironically, we started this work back in December, some of the things we wanted to do—online commissioning and that kind of thing—out of Bill 161, which we won't talk too much about.

We've done so many things. Just the online automated forms: We've added 400 more in the system, many of them family-law based. We've brought in an e-filing system so that you can actually file things online. I know that doesn't sound revolutionary in the way other departments sometimes—ServiceOntario is really good online. But our system was so paper-based, and the rules and procedures are built around it being on paper. So to move all of those parts with all of the justice sector at the same time was a phenomenal opportunity to literally bring the system forward decades and harness existing technology. I could talk for the whole hour about the number of things that we've done to try to make this more accessible. And it brings down costs.

I can tell you, we're doing hearings now—the Superior Court has done 50,000 online hearings since March. That's a lot. That's lot of people who didn't have to get in their cars and drive to a courthouse and go through a door and all of the things that go with that—and that's just the Superior Court.

So, yes, thanks for the question. We've invested a lot of money in the right places. We've transformed rules, procedures and technology to make it easier. This is the thing: It's not just about the lawyers and the judges; this is for the public. This is the public accessing its system, so with everything we do, we're focused on that piece.

The Chair (Mr. Roman Baber): We have two minutes remaining. MPP Gill.

Mr. Parm Gill: Thank you, Minister, for that answer.

I'm wondering if you can share with us what else you potentially have coming down the pipe in the foreseeable future that families and justice sector partners can look forward to in order to continue improving the family justice system. Are there any other organization efforts that your ministry will be undertaking that will benefit the family law system?

Hon. Doug Downey: Again, there are so many things. You name the area of law, and I'll tell the public how we're changing it, how we're making it more modern and more accessible.

We're bringing on partners. We found a way, during COVID-19, to keep the courts open, to make sure that people with urgent matters, especially custody issues and restraining orders—we found a way in the early days to keep the system functioning, and again, that was with our partners. We also, then, started building on that—platforms and opportunities, looking at not just what we do and why we do it. We started stripping away bureaucracy and red tape to allow people—starting with the urgent matters—to be able to have their cases dealt with.

I'm very proud of the fact that we did not close the courts during COVID-19 for those most important matters. It's something that people may assume would be the case—a lot of things got closed; the courts did not. We managed to work with our partners and find a way.

There was an opportunity in this moment to not just go back to the way things were, and I've been really clear with the public that we are not going back. This is transformational stuff. This Moving Ontario Family Law Forward Act is part of that. It's about transforming appeals. It's about transforming child support certified payment orders. This family law act fits perfectly in how we started, keeping things open, and then moving on through the system.

The Chair (Mr. Roman Baber): We'll now move on to six minutes of opposition questions. MPP Taylor.

Miss Monique Taylor: Good morning. I've been looking through the submissions that were sent to us, and I want to address the Ontario Association of Child Protection Lawyers and their submission. Have you read the submission, Minister?

Hon. Doug Downey: I have read part of their submission to the federal government, when they presented on the Divorce Act there.

Miss Monique Taylor: Their submission to us has great concerns of what the appeal process will do to child protection cases. We've seen many cases in the past, and I know many of us who have heard from their constituents when it comes to child protection—have felt strangled in the court process. Now, with the appeal process change, from my understanding from reading their submission, it's going to cause greater difficulty for families when it comes to child protection. They say that this is welcome news when it comes to the family law cases, but when it comes to child protection cases, they're extremely concerned about the rights of families, that their rights are at stake. What do you have to say to that?

Hon. Doug Downey: We consulted widely. The federal government consulted extremely widely—they did; they absolutely did. I can see you shaking your head, but I can tell you—look, I met with them. I have the letter from them. We consulted widely—not just with them, but across the system—and we talked directly with judicial officials who end up working in the system.

Quite frankly, what they're after is that they would rather not have family law judges make charter decisions. Let's get right to the nub of it: Their preference is that family law judges not be able to make decisions that are charter-based.

I can tell you that this government trusts our judges to make decisions. We trust their judgment in these issues. There are different models, and they're equipped to deal with child protection issues and proceedings. The Chief Justices support the model. The system supports the model, because, well, it works. To strip away the discretion of a judge to make a charter decision is fairly significant; it's a fairly significant request. It was considered. I met with them. I heard from them. We've continued dialogue with them, but this is the path that we chose.

Miss Monique Taylor: Respectfully, their submission directly says that they were not consulted on the proposed changes to the appeal routes set out in Bill 207. They've raised some serious issues here when it comes to access to justice for Indigenous families. There were cases within Motherisk that would have put the ability to not appeal directly involved if this legislation was already in place.

I've read all of the submissions. I understand that many people are in favour of this bill, but these particular lawyers have serious concerns. Will you address their concerns? You can say that it's about some just not wanting to change the process, but they have legitimate concerns here and they will be addressing us tomorrow. I hope that you'll be listening in to that address.

0930

Child protection involves state interference in charter rights. It says that they have grave concerns: "The interests at stake in the custody hearing are unquestionably of the highest order." Minister, I have debated through this, I have spent a lot of time on this bill, and then when I see this, particularly—it was something that we hadn't heard through your debates, through any of the portions of the debates.

What are your plans on moving forward? You say that you have spoken to them; they say that you haven't. What are you going to do to implement specific changes to ensure that child protection is addressed and that there are proper amendments made to address this within Bill 207?

Hon. Doug Downey: This bill is built around protecting families and making the system easier and faster—and cheaper, quite frankly.

One quote from the chair of the Federation of Ontario Law Associations' family law committee said, "FOLA welcomes changes designed to simplify and streamline the appeal routes for family law cases, as well as the continuous amendments to Ontario's statues, in order to make Ontario's justice system more accessible to Ontarians." What they're asking for—and my director of policy spoke with them as recently as last week, with family law. What they want is direct access without leave to the Court of Appeal. They would like to have the appeal routes changed so that they have direct access to the Court of Appeal. They represent the parents of the children who are taken away—so let's be clear who they represent. That's not necessarily in the child's best interest.

We're focused on the child's best interest in the appeal routes that we've designed. We've got the letter. I understand their position. But when I look at what is in the best interests of children, and what is in the best interest of families generally, the appeal routes serve that purpose.

The Chair (Mr. Roman Baber): We'll now move back to the government for six minutes of questioning. MPP Kusendova.

Ms. Natalia Kusendova: Good morning, Minister. Thank you so much for your presentation this morning to committee and for bringing this bill, Bill 207, forward. I was privileged to debate on this bill, and frankly, when I was preparing for the debate I actually learned a lot about our justice system. I am not a lawyer—I'm a regular Ontarian—so it was very informative to be preparing for debate. I realized how convoluted and how complex our justice system can be to access for Ontario families. We all speak English, but there are a lot of families, especially in my riding in Mississauga and the region of Peel, for whom English is not their first language, and so that's why it's so important to streamline access to justice and make it more efficient, easier and cheaper, as you've mentioned, for Ontario families to access justice.

When it comes to family law, emotions can be very heightened. This can be a very difficult time for parents, custodians and everyone involved. That's why it's so important that we make access to justice streamlined and easier so that parents can focus on what's the most important thing; namely, the care of their children.

Minister Downey, I know that you've consulted widely, together with parliamentary assistant Lindsey Park, with

different organizations across the justice sector. For example, the Ontario Association for Family Mediation came in support of this bill, and I was fortunate to speak on it at a lunch-and-learn and learn a little bit more about the process of family mediation.

Can you expand a little bit on how this bill came about, who you've consulted—tomorrow and today, we will be hearing from more stakeholders—and why the changes, with Bill 207?

Hon. Doug Downey: Thank you for the question—and especially when we talk about accessing the system in different languages. I know that you speak several languages, so that comes with some authority from you.

The bill came about—we do have a deadline, in terms of the federal Divorce Act, if we want to align with it. The federal Divorce Act was going to be enforced sometime this year, but with the pandemic, we saw that that deadline was pushed off, and so March 2021 next year is when it comes into effect. That really gave me a deadline on one part of this bill. I wanted no gaps. I heard from the practising bar across Ontario—without consulting, I heard from them that this was an important piece of the puzzle, and not just for them, but for the public to understand how the system works and whatnot.

It's ironic; you mentioned when you were getting ready for the speech, which was great, by the way—you talked about how complicated the system is, and that's the point. Even for somebody as educated as you, who's coming to this area for the first time, it's complicated. And so, anything we can do to simplify and to align with other jurisdictions and to take away the—sometimes it's not even a rule; it's what you don't know and the worry about what you don't know.

We partnered with others, whether it be CLEO—they create pathways for self-represented people. We've partnered with other organizations. We've looked at what pro bono law does. We've gone to and been endorsed by, as you mentioned, the Ontario Association for Family Mediation, county law associations like the Middlesex Law Association. We talked to the Ontario Bar Association. We talked to anybody we could talk to. Parliamentary assistant Lindsey Park travelled around the province. She went end to end and sat down with people who had a stake in the system and listened to what they had to say and tried to prioritize what was most important. The information came from all over the place—and really, it was time. This dovetailed nicely. We issued a consultation letter in January of this year on the Divorce Act, specifically, and received a ton of feedback on that as well. So that's where it has come from.

The Chair (Mr. Roman Baber): There's a minute and a half remaining.

Ms. Natalia Kusendova: Could you briefly comment about family unification courts? I know that under your leadership, Ontario has actually expanded these courts to approximately eight or nine new areas in Ontario, and I know that every chance you get, you advocate at the federal level to continue this expansion.

Hon. Doug Downey: Absolutely. I'm happy to talk about unified Family Court. There's lots of history that I've been watching since it started in the late 1970s. It's something that I do advocate for. I've talked to Minister Lametti federally several times. We need them to come to the table on helping us make it happen, so we'll continue to do that.

I'm conscious of the clock, so I don't want to go too deep in the weeds on it, but I can come back to the unified Family Court and how it works and why it's good for the public and why it's the right thing to do. It's a really important piece of the puzzle for us in having families simplify the system across Ontario. We're about halfway there, so far, across Ontario.

The Chair (Mr. Roman Baber): With 40 seconds remaining, I am prepared to turn it over to the official opposition.

Before that, I want to confirm that we do not have any independent members with us on Zoom. Is that correct? We do not. Okay.

Going back to the official opposition for six minutes of questions: MPP Morrison.

Ms. Suze Morrison: I want to thank the Attorney General for being here today.

I think, as we've said in debate, it's not our intention to oppose this bill. We recognize that a lot of the changes that are here are ones that the legal community has been asking for for some time, but we do want to really push you to make sure that—this is a bill that is a once-in-a-generation update, and we want to make sure that nothing is missed. I do think there are a number of areas where we can strengthen this bill, and we'll be pushing for some significant amendments in that way.

As we get to some of those amendments—I know that in conversations with folks, particularly in the ending-violence-against-women sector, there are some concerns about where the bill could be strengthened in terms of recognizing a gender-based lens throughout the bill, clarifying some definitions around violence against women, as well as identifying gaps where the best interests of the child may not actually be maximum contact with both parents in cases of violence.

I'm wondering if you can speak a little bit to any areas where you see the bill could be improved through this committee process, particularly with regard to violence against women and gender-based violence.

0940

Hon. Doug Downey: Thank you for the question. That's obviously a critically important area of the bill in terms of the definitions, in terms of some of the criteria to be looked at. And it's not exhaustive criteria; it just gives more guidance to the courts on where they should start and the kinds of things that they should consider. It doesn't tie the hands of the courts in terms of looking beyond that and other indicia. It's very important that we continue to encourage—and I say "encourage" because there are jurisdictional issues between me and telling judges what to do. We need to encourage ongoing education so that when we're choosing judges and then when they're working—that they do have an understanding and a lens.

We heard from some of the groups that you're probably getting some perspective from. We heard from Barbra

Schlifer and Luke's Place and a few others. They appeared at the federal committee.

Here's the thing: We had a choice to make. We could start to hold the pen and change the criteria and change the definitions and it would—perhaps by embedding different words or doing something in a different way, we would do what we think is an improvement. But at the end of the day, what we're trying to do is align with the federal act—because all those groups presented at the federal level. They consulted widely, and this is where they landed—on these pieces. So if we end up with two different systems because we have a different list of criteria than the federal Divorce Act, then although we've advanced the cause generally, we have hampered the system, because it's become more confusing again. Then it matters which list you go to from between the Ontario Court or the Superior Court, and the Superior Court family division. Which list do you work from? We need the consistency. That's what we've heard across the board. Some 95% or 98% of the people said, "Regardless, we need consistency."

Ms. Suze Morrison: Thank you so much, Minister. I just want to cut in there.

Some of the recommendations that we're hearing are quite specific and I don't think would be incongruous with the federal law. One example we've heard from Luke's Place is a request for domestic violence screenings. I don't think the addition of violence screenings makes our provincial legislation in conflict with our federal system. I don't think it creates two systems. I think it enhances it.

Would you and your government support an amendment to the legislation to make requirements for domestic violence screenings, as one example?

Hon. Doug Downey: I do want to get to that. Your opening comment was very kind in terms of once in a generation. It really is a once-in-a-generation chance. However, we're consistently making changes as we go through the process. But a number of things that I brought forward haven't been touched in 20 years, and so we have to be very careful with it. The way to be careful, in terms of adding more processes, adding different processes, is to consult with the profession and the ultimate users of the system. I know that Luke's Place has proposed a couple of things like that. This doesn't preclude maybe coming back to something if that's the way it works out. But we've got judicial independence, and that's a reality and it's good. It's there for a reason. Judicial independence is something that plays into that kind of conversation.

Ms. Suze Morrison: Minister, I have limited time, and I don't mean to cut you off, but my question was specifically about whether you and your government would support amendments around domestic violence screenings for staff in our system. I don't think that has anything to do with judicial independence.

Hon. Doug Downey: I think the way that the system works has to be done in concert with what judges are doing and what they need to be part of that conversation. I think we landed in the right spot. I think we've landed on a family law amendment that moves the interests forward—the interests of the children, the interests of the participants in the system. I think that we've landed in the right spot when we've gone out and talked to hundreds and—we've talked to four family law stakeholders every week, and we've been doing this since January. We've talked to a lot of people, and I understand one group has an idea, but I think we've landed where we need to be.

Ms. Suze Morrison: And so, to be clear—

The Chair (Mr. Roman Baber): I apologize, MPP Morrison. Unfortunately, your time has expired.

However, there is another round left subsequent to the government. Coming back to the government for six minutes: MPP Triantafilopoulos.

Ms. Effie J. Triantafilopoulos: I have a question for the Attorney General. I want to commend him very much for this once-in-a-generation legislation which I think will make significant progress for families and children in our community.

I have a specific question related directly to the fact that the family law responsibility is divided up between the federal government and the provincial government in Canada. This legislation is aligning with the new federal Divorce Act which is coming into force next year, on March 1, 2021. That's very important, that we align all of the legislation as it affects family law.

Do you think this legislation you've introduced does an effective job [*inaudible*] with federal law and ensuring consistency, and are there some additional areas for improvement to make it more cohesive and consistent going forward?

Hon. Doug Downey: Yes, absolutely. What I see happening is a total alignment with the Divorce Act. That's going to make it so much better for the people who are coming into the system for the first time. It's not just because you're in the system, but the information you get from the Family Law Information Centres or pro bono law or CLEO or any of the stakeholders or when you go to consult a lawyer, you're spending your money—the answer is going to be the same. It's going to be, "Here are the criteria that are being looked at, and it doesn't matter whether it's federal or provincial." So that kind of alignment makes it easier for us to help people. It makes it easier for us to educate people, give them resources and to engage with the system.

I'm actually really thrilled that we've, again, landed in a space where we're going to make the system easier for those people who are self-represented. Again, it's a sense of magnitude—but somewhere between 50% and 70% of people in the family law system are self-represented, so they're coming to the system with their own devices. The more we can align it, the better. There are opportunities, absolutely, to do more to make things easier, and that's—we get into the unified Family Court. What unified Family Court is—and I think you probably know this, Effie—is the provincial court judge being dual-patented as a Superior Court judge so that, regardless of what your issues are, you land in that Family Court. You don't have to figure out, "Am I turning left or turning right?" And that's something that we need to stay on.

Ms. Effie J. Triantafilopoulos: have another question for you, Attorney General. What I would like to ask you to focus on are other factors that might be present as

challenges to accessing justice for families, including some of the geographical challenges that we have with such a vast province in Ontario. How has this bill tried to address some of those kinds of challenges?

Hon. Doug Downey: Again, like we are here—you're in Mississauga, I happen to be in Barrie, the Chair is in Toronto—we're using technology to facilitate things. And so, as we're moving through the different areas of law, I want to see what we can do, if we use technology to harness that. Primarily, it's a relatively simple change, but allowing these certificates for support to be certified allows people to get what they need without having to go into a courthouse—and it doesn't matter if they're in Thunder Bay or they're in Ottawa or in Sarnia. It's saving them from having to navigate the courthouse and saving them from having to actually get in the car and go there. It's so much better when people can get what they need from the system without much red tape. And again, it leaves the parents time to be dealing with the kids and the family, which is really what they should be doing with their time, ideally, anyway. So that technology helps, definitely, with travel and accessing the system.

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Ms. Effie J. Triantafilopoulos: I have just one more question, specifically on the COVID-19 pandemic and how it forced the court system to actually change and innovate through technology. I know that since March, the Superior Court of Justice has had over 50,000 virtual hearings. That's kind of unheard of in the court system. So in your experience, how has the court operated in the area of family law during this time of COVID-19?

Hon. Doug Downey: Thanks for the question.

We started by making sure urgent matters were still getting heard. That didn't stop, because we know that those situations are the most vulnerable. The urgent stuff kept going. But we immediately spent $1.3 million—we armed the courts with laptops and VPNs and all the tools they needed. I have to say I'm very pleased that the justice partners that we worked with took to that fairly quickly. Some judges were already operating in an electronic way. Some were later to the party on it in terms of their experience. But they all tucked in and allowed us to do hearings, child protection hearings and all sorts of things—there was allowing lawyers to participate, to represent, and allowing the individuals to get the protections that they need. Technology made that happen, and it's the people who use the technology, who were willing to, who made it happen.

The Chair (Mr. Roman Baber): We'll now conclude with six minutes of questions by the opposition. I recognize MPP Singh.

Mr. Gurratan Singh: Good morning, Minister. We know that there's been substantial backlog in the family law system. I've heard from a lot of lawyers who are saying that they're getting dates months in the future given the situation of COVID-19. But this bill is before us right now, and it is before us within the context of COVID-19.

What efforts does this bill make to address this huge backlog, which is already impacting a system that was already backlogged? We have a backlog to a backlogged system. What efforts are being made to address this backlog?

Hon. Doug Downey: Thanks for the question.

I was concerned about the backlog before the pandemic, as you were. I think we all knew that it was there. Part of what creates a backlog is so many self-represented individuals walking into court—and the judges are in a position where the judges have to help the individual not override their own rights, to sort of help them along, but the judge still has to be neutral. It creates a very cumbersome and difficult position for the judges to be in, to try to be the arbiter and assist that individual. Anytime we can simplify things like in this bill—appeal routes are one thing, but the actual Divorce Act and aligning with that—if we can simplify things and put supports in place for them, then the judges aren't in that position as much.

The other piece that we're doing at the same time is the dispute resolution officers—we're expanding that program, getting two more locations outfitted for it so that we can make sure that people are potentially resolving matters before they even go to a judge. Sometimes that's all that people need—they need somebody to look at it with them and say, "This is never going to fly," and "This might. You guys should go down the hall and have a conversation," if it's possible. It's not possible in every situation. But to divert things out or to get them into mediation or to get them into some sort of alternative dispute resolution—I think that's the ticket in terms of unlocking.

On top of that, we're continuing to invest in the system. I'm making a real effort—every time there's a vacancy for a judge, I'm getting it filled as fast as I can. We're making sure that the resources are there.

Mr. Gurratan Singh: We know that there have been substantial cuts to legal aid and often these family law clients, people in the family law system, rely on these clinics for assistance.

How do you reconcile the cuts to legal aid, which are resulting in folks who are in marginalized positions having barriers towards access to justice and also to the steps that are being put forward to modernize family law?

I'll turn over the balance of my time, after this answer, to MPP Suze Morrison.

Hon. Doug Downey: In terms of legal aid, the clinics are still doing the work that they were doing, and again, technology is helping with that. But the clinics don't do family law per se; it's really the certificate lawyers who are doing the family law. So we've been working closely, many times a week, talking with legal aid to make sure that the resources are there for certificates for people when they need them. That is happening.

We're yearly increasing the threshold for income qualification, to make sure that we're keeping up with inflation and that trend.

So we're doing a number of things to make sure that the legal aid resources are there when they're needed, and we're keeping updated on the number of certificates that they're sending out. And clinics are going through—and not just clinics, but the legal aid system in general.

Legal Aid Ontario has endorsed this bill, has said that there are great things in it that they support, and so we'll continue to work with them, to make sure that people get the service that they need.

Ms. Suze Morrison: I want to ask you a quick question related to 2SLGBTQ families and how this bill will impact them.

As you know, I represent the Church-Wellesley Village here in downtown Toronto. I've heard from one of my constituents specifically with regard to issues related to parents being unable to change their name or their gender on a child's birth certificate, and that this creates problems, particularly when crossing borders—having to carry name-change forms and basically outing themselves as trans when crossing the border with their children, as one example.

Is there anything in this bill that rectifies that situation and allows a parent to change their name and gender on their child's birth certificate?

Hon. Doug Downey: That's really a question for Minister Thompson with the Ministry of Government and Consumer Services. Birth certificates, death certificates and coroner's certificates—actually, I don't know if that's the Solicitor General or Minister Thompson, but it's not something that falls within our space and it's not something that the federal government took up as a piece of the Divorce Act when they amended it. There's nothing specifically on that point that I'm aware of that was even suggested.

Ms. Suze Morrison: Okay. And then, more broadly, appreciating again, as you said, that this is a once-in-a-generation bill: The last time the Family Law Act was amended was before same-sex marriage was even legalized in Ontario. Is there anything in this bill that speaks directly to the unique experiences of 2SLGBTQ families?

Hon. Doug Downey: I'll simply put it this way: Everybody knows that we are where we are. There's nothing in there that specifically discriminates against any kind of union. When we talk about the child's best interest, that's what we're looking at. We want to get away from conflict, from the words "custody" and "access" and all that kind of stuff. All of those pieces work without the lens of the kinds of situations that you're talking about.

The Chair (Mr. Roman Baber): The time for questioning has expired.

Attorney General, I want to thank you for your attendance this morning and excuse you with that.

Hon. Doug Downey: Thank you so much. Have a great day.

The Chair (Mr. Roman Baber): The committee will break for three minutes and resume at 10 a.m.

The committee recessed from 0958 to 1001.

NATIONAL SELF-REPRESENTED LITIGANTS PROJECT, UNIVERSITY OF WINDSOR

DR. JENNIFER KAGAN AND MR. PHILIP VIATER

MR. MICHAEL TWEYMAN

The Chair (Mr. Roman Baber): I call the Standing Committee on Justice Policy again to order to resume hearings on 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 will now proceed with our next set of submissions and first multi-witness panel. I'd like to welcome Julie Macfarlane, appearing on behalf of the National Self-Represented Litigants Project, University of Windsor. I'd like to welcome Jennifer Kagan, who I understand will be appearing together with Philip Viater; and a gentleman I believe to be a constituent, Michael Tweyman. Welcome, Mr. Tweyman.

Mr. Michael Tweyman: Thank you, MPP Baber.

The Chair (Mr. Roman Baber): Good morning, everyone. We will now proceed with each presenter making their initial submissions for seven minutes. That will be followed by panel questioning: two rounds of seven and a half minutes each by the two recognized parties and two rounds of four and a half minutes by the independents.

Can I just confirm that we didn't have any other MPPs join us in the interim during the break, and specifically, we do not have any independent MPPs? Okay, thank you.

Ms. Macfarlane, I invite you to commence your seven minutes of submissions.

Dr. Julie Macfarlane: Thank you very much for hearing me this morning, and good morning to everybody.

Let me, first of all, explain that the National Self-Represented Litigants Project creates resources for self-represented litigants. It conducts continuous research on the needs and demographics of what we call SRLs, and also tracks the emerging case law. It provides access to lawyers offering more affordable services, and advocates for respect and access to justice for the self-represented. That's just to give you a little background.

Bill 207 makes Ontario law consistent with the new federal Divorce Act in some important aspects. However, there is almost nothing in this bill that actually addresses the real problem of lack of access to justice for Ontarians—not just for the poor, not just for those without meritorious cases, but basically everyone between those who qualify for legal aid and those who can afford full legal representation.

I want to quote to the committee from a report from the Lord Chancellor in England and Wales in 2011 which is absolutely relevant here. It says this: "It is a reality that those who cannot afford legal services and those for whom the state will not provide legal aid comprise the larger part of the population ... for most members of the public who become involved in legal proceedings they will have to represent themselves. The thing that keeps that reality below the surface is simply the hope or belief on the part of most people that they will not have a" legal "dispute." This situation is exactly the same in other common-law jurisdictions, including Ontario and across Canada—more of which in a moment.

My first proposition to the committee this morning is that any credible justice system reforms must first, as a threshold issue, consider access to assistance and support for the enormous numbers of people who are coming to

Family Court now without a lawyer. The Family Courts are very complex to navigate without a lawyer. As one self-represented litigant told us, "The procedure as I read it sounded easy. I thought it was going to be easy, but it was anything but."

I would like the committee to understand, if you do not already know this, that more than 50% of family litigants now come to court without a lawyer. That figure is consistent across Canada—and across Ontario, of course—and it means that in most Family Courts in Canada, self-represented litigants now outnumber represented parties. This figure is even higher in urban centres. If you go to the Jarvis or Sheppard Family Courts in downtown Toronto, you will find that self-represented litigants are close to 80%. Let me just make sure that you heard that figure: It is 80%.

We're talking about a family justice bill that does some important things in terms of closing gaps in nomenclature, as the AG has just mentioned, around custody and access and new terminology, and around best interests of children. But we are doing nothing for the reality of what actually bringing a family case involves for litigants.

Why is this happening? The most important reason that people are self-representing is lack of funds. I did a study across Canada in 2013 that showed this very clearly, and there are the same results being reported in studies now being conducted in the United States, England and Wales, New Zealand, Australia and Northern Ireland; this is not just a Canadian or an Ontarian problem.

The gap between those funded by Legal Aid Ontario—which, I'm sure the committee knows, has a threshold now of $19,000 per annum—and those who can afford more than minimal legal assistance is now, as the Lord Chancellor's report put it, basically all of us. As this self-represented litigant said, it's "a Catch-22—you can't afford to hire a lawyer, but the courts don't want you to represent yourself—and you can't qualify for legal aid." Undoubtedly part of the reason for the increase in self-representation is downturns in legal aid. I'm going to address that in a moment, but it is not the whole answer.

It's important, I think, that you also know a couple of other things about this population. More than half, our research shows, of those without lawyers actually began with legal representation in Family Court, but they ran out of funds and then were forced to go it alone. We also know that the vast majority of this group—86%, in my study—continued to look for affordable legal assistance. These are not budding Perry Masons who think that they can do this better themselves. As one put it to us, "It's not that I think that I can do this better than a lawyer; I have no choice. I don't have $350 an hour to pay a lawyer."

One of the pieces of data I want to quickly put before you is this: Unsurprisingly, court outcomes in Family Court are significantly worse or less favourable for those without legal representation. From data from 2012 to 2016, we know that almost three quarters of self-represented litigants participating in hearings will lose. That number rises to 78% in motions court, which, as you probably know, is where most court business gets done. The result is a travesty of justice for many Ontarians who are not getting a fair chance, and I think we should be really concerned about this. It is resulting in a massive failing of faith in the justice system. People who have gone through the Family Courts alone do not believe they will get access to justice, and this is completely unchanged by whatever legal name you give to "custody" or "access" or even the definition of "the best interests of the child."

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My second proposition to you is that Ontarians need family justice reforms that will begin to change this picture. So what are these? I'm just going to highlight three for you. First of all, obviously, more money is needed for Legal Aid Ontario. But legal economist Gillian Hadfield of the University of the Toronto has shown the math doesn't work here, because at the current market rate of legal services, to provide everyone who has a legal problem and cannot afford a lawyer with legal counsel would make the legal aid budget higher than the combined budgets of health and education. In the US, Gillian calculates it would take a 40-fold increase in civil legal aid—

The Chair (Mr. Roman Baber): I apologize, Ms. Macfarlane. You're at the end of your time. If you would like to incorporate the other two submissions into your questions being asked, then you're welcome to do so.

We'll now proceed with Jennifer Kagan and Philip Viater.

Dr. Jennifer Kagan: Thank you for allowing us to be here this morning to speak to the committee. My name is Jennifer Kagan. I am first and foremost Keira's mom, and I am also a family physician.

This is my husband, Philip Viater, who was an amazing stepfather to my daughter, Keira. Philip is a practising family law lawyer with over a decade of experience in Ontario courts.

We are here because of the preventable tragedy that occurred in February 2020, when our beautiful four-year-old daughter, Keira, was found dead at the base of a cliff in Milton, Ontario, along with her biological father, in a murder-suicide. We are speaking here today because many red flags and warning signs were ignored by the Family Courts, and we do not want to see this happen to any other child or family. We want to see a judicial system that recognizes and understands all aspects of domestic violence and truly puts the needs of vulnerable children first and protects them from all forms of family-based violence.

Domestic violence does not refer exclusively to physical violence. It also includes psychological abuse, financial abuse and coercive control, which is defined as an ongoing pattern of domination using strategies that include irrational demands, surveillance, isolation and the realistic threat of punishment and negative consequences. The spectrum of tactics used includes threats, intimidation, emotional abuse, isolation and denial of harm. A common strategy used by perpetrators of violence is DARVO: They deflect, attack the victim for attempting to hold them accountable, and then they will lie and make false allegations against the victim, thus reversing the role of victim

and offender. Violence often continues post-separation as the child is used as a tool by the perpetrator to continue to exert power and control over the victim. The perpetrator is not motivated by the child's best interest but rather a desire to maintain power and control over the victim.

Domestic violence cases differ, from high-conflict cases in which there is no power imbalance between the parties and where both parties perpetuate the conflict. The Family Court system seems to look at all cases through a lens of conflict, which is inaccurate and harmful in cases of domestic violence, which are distinctly different. Domestic violence is more than an issue between two adults; it goes to the heart of the perpetrator's parenting and affects the child as well as the victim's parenting. Children cannot be safe if their primary parent is not safe. This is true not only for physical violence, but also for psychological abuse and coercive control, which have equally grave impacts on vulnerable children. With domestic violence, not only is there an increased risk of physical harm to the child, but also, an abusive parent is likely to use that child to further their abuse of the victim parent.

Significant emotional abuse may be an even more damaging form of maltreatment than physical abuse. This is likely to have serious long-term ramifications for the child, including increased risk of adverse health consequences later in life such as heart problems and obesity, and mental health issues such as addiction, depression and suicide. A child has a right to emotional stability and security, to a life free from trauma. It is too simplistic to suggest that children are exposed to domestic violence, including coercive control; they experience it.

There is also a risk for exposure to severe trauma, including losing both parents, homicide or homicide-suicide, and there is a risk of children being killed. Some 10% of domestic homicides are children—80% are women, 10% men, 10% children. Rates of deliberate killing of a child by a parent in the context of separation and divorce are increasing.

I am of the firm view that we need to put the physical and psychological safety of children first.

I will now turn it over to Philip Viater to address the merits of Bill 207 in this regard.

Mr. Philip Viater: Thank you. I'm going to be a little less formal than my wife. I'm a family law lawyer. I'm now in my 12th year of practice. I've reviewed this legislation, and I'm talking only about the domestic violence or family violence portion, the best-interests-of-the-child portion, not the other aspects such as FRO and moving and all that other stuff.

Here is the truth: They are great words, well-written on a piece of paper, that will have practically no, if any, impact on real-life decisions. I want to clarify. This will not do a single thing, in my view—or very little.

How many people here think that if they go to any judge in this province and say, "Hey, here is our new bill and, oh, here are all the factors you're going to consider"—do you think the judges are going to say they didn't consider it? Every skilled lawyer raises all of the issues that you put in the best interests of the child. Every single skilled lawyer talks about family violence. Every skilled lawyer talks about emotional harm to the child. The issue isn't that judges aren't considering it. You've now put it on a piece of paper. Great. The issue is that judges don't know what to do with that information. They have no mandatory training in family violence—none. If you want to be an arbitrator in this province, you've got to do a minimum of 21 hours of family violence, domestic violence training—judges, nothing. They're a family law lawyer—or any lawyer—who has been in practice for 10 years and applied and became a judge.

As a lawyer, we have no mandatory training in family violence. Most family lawyers I know don't know the first thing about family violence. They don't know the first thing about ages and stages of the development of a child. I have a 17-month-old at home. What's my schedule if I separate from my wife? I'll go to Judge One. Judge One will say, "I'll give you 50-50 with your 17-month-old." Judge Two will say, "I'm not going to discuss this until the child is six. What are you, nuts?"

But this is the problem. The bill misses the forest for the trees. It's well-written, it's well-meaning, but the implementation is lacking because judges don't have that mandatory education. They don't have that training. Until you get them that training, nothing will change.

Here's another interesting point. Do you know that I can go in front of a court and be in front of a judge who has had no experience, or very little experience, with family law? I go in front of judges who are personal injury lawyers, criminal lawyers, civil lawyers; they don't know the first thing about family law, and now they're deciding the fate of a young child. That's what happens in real life.

We treat criminals, or accused persons, better than our children. In an accused person's case, you go to criminal court, and you're getting a specialized criminal judge. If I go to Family Court, who knows what I'm going to get? Maybe I'll get a Family Court judge. Maybe I'll get a personal injury judge. Let me put it into perspective for you: That's like you asking your dentist to perform heart surgery. That's what is happening in real life.

Family violence isn't so easy. It's not what you see on TV. It's not "here is a picture of bruises and a black eye." Family violence today, in the year 2020, is way more nuanced and way more methodical. It is a series of little events that ordinarily take place, and judges don't know how to identify it. If you ask me during question-and-answer period, I'll give you examples that I bet you you'll never have even thought of. You'll say, "No way. I would have never thought of that." But I don't have enough time right now in the time that we are getting today.

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

We will now proceed with Michael Tweyman. You have seven minutes for your initial submission.

Mr. Michael Tweyman: Thank you to the committee, and to you, MPP Baber. I am a family law lawyer in Toronto who has been practising for about 14 years. I just want to address two pieces of the legislation.

I was going to address this one at the end, but given the previous comments, I think it's a good segue into it. There remains a gap in family law with respect to common-law spouses and protection for common-law spouses in a domestic violence situation. I really believe that all parties should be able to get behind a provision or a piece of legislation that provides more protection for common-law spouses in relationships of permanency with children, especially in the context of the COVID-19 pandemic. Right now—and some of the MPPs may not be aware of this—a married spouse can get exclusive possession of a home even if they don't own it. If someone is a victim of violence, the court can order that that one spouse has possession of the home and the violent spouse has to leave, no matter what the ownership is.

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The reason that a similar provision doesn't exist for common-law spouses is because common-law relationships were historically seen as less permanent, and therefore you don't want to kick someone out of their home in a semi-permanent relationship, where they own the house. But times have changed. It doesn't mean that the provisions have to be identical to the ones for spouses, but there should be some provision as part of this bill that provides protection to common-law spouses with children who are in violent situations. The options are to make it have a longer relationship—like, for example, you to have to have been in a two- or three-year relationship, you have to have a child and you have to have been living there a certain time. You can make the bar higher without not giving this protection at all to common-law spouses. Now that we have this opportunity with this bill, I encourage MPPs to really consider that. I really think it's something that all parties can get behind. It's not a Conservative or a Liberal or an NDP issue; it's recognizing the times we live in. That's my segue from the last issue.

My other point, which sounds somewhat trivial in respect to what we just heard, but which I think is still important in context of procedure, is about the appeal routes that are being proposed in this legislation. A number of months ago—maybe even over a year—I proposed changes regarding the appeal routes, because the Court of Appeal has routinely commented that there are confusing appeal routes for people, basically at the same level of court, coming to different cases. That spurred these changes, but the idea of these changes was to make the appeal routes consistent and understandable; unfortunately, these changes have done neither.

Just to give a brief background: With family law, you have the Divisional Court and the Court of Appeal as two possible appeal routes. The Divisional Court is comprised mostly of trial judges at the same level as Superior Court judges. Outside of Toronto, the Divisional Court only sits a couple of times a year, so it's not that easy to get a hearing at this court. On the other hand, you have the Court of Appeal, which sits all year, the whole time during the year, and has specialized appellate judges who understand errors that can be made by trial judges.

The other advantage of the Court of Appeal is that it's final. Other than a very rare case that gets appealed to the Supreme Court of Canada, for all intents and purposes the Court of Appeal is final, whereas the Divisional Court still provides the possibility of appeal to the Court of Appeal.

I read through some of these changes, and I think what's not really appreciated is that in one family law case, you can have the Family Law Act, the Children's Law Reform Act, the Divorce Act, equalization payments, support, custody—all of these issues in one case. So when you have a trial on all the issues and you want to know—especially as a self-represented litigant, referencing the earlier speaker—where to appeal, you shouldn't have to have a complex formula where you have to figure out, "Well, this matter goes to the Court of Appeal. This matter goes to the Divisional Court." In my submission, everything should just be to the Court of Appeal. The elegance of this is that with one change to one provision, you can make this whole thing "every court just goes to the Court of Appeal" and make this simpler for everyone. There is a provision in the Courts of Justice Act, section 21.9.1, which talks about deeming where the appeals go, without all of these extra provisions that the government has come up with—which are really confusing, even to a lawyer; I've read them a number of times and I'm still trying to piece together where the appeals go. Just make everything go to the Court of Appeal. That will give families finality. Kids in custody and access situations need finality.

If you go to the Divisional Court, there's still a possibility of going to the Court of Appeal. Why would we do that? Why would we not give the best judges, in the sense of appellate judges in Ontario, the ability to decide these cases? And nobody would have any doubt as to where they are going if they lose the trial—to the Court of Appeal, and not anywhere else.

Again, there's also a perception—and I'll let MPP Baber cut me off when my time is done—that the Superior Court judges who sit on the Divisional Court are colleagues with the judges who may have made the trial decisions. They're the same level of court. They may have run into each other. So there's also a perception to both lawyers, and I think potentially to litigants who understand this, that you're just getting an appeal heard by the same level of judge and not by someone who is really disconnected from that same level of judge, which is the Court of Appeal.

Finally, the Court of Appeal is excellent at scheduling matters. They are very efficient at getting matters heard, much more so than these Divisional Courts that sit outside of Toronto. They're very good about it, and it provides, in my opinion, a better mechanism of action to get appeals heard and to remove all of this confusion. The advantage is, this can be done with just one change to the Courts of Justice Act, and the entire problem would be solved. There's no need to go through four or five different pieces of legislation to make this happen.

The Chair (Mr. Roman Baber): With 35 seconds remaining, Counsel, I'll assume that this is the end of your submission.

I would like to welcome MPP Collard, who is joining us this morning. MPP Collard, where are you located?

Mme Lucille Collard: I'm here in my office in Ottawa–Vanier, in Vanier.

The Chair (Mr. Roman Baber): Thank you, and good morning.

We'll now proceed with questioning for our panellists, with two rounds of seven and a half minutes each for both the government and the official opposition and then two rounds of four and a half minutes for the independent member.

I invite the opposition to commence. MPP Morrison.

Ms. Suze Morrison: I want to thank all of the panellists. I have a ton of questions. I'm sorry if I don't get to all of you in the seven and a half minutes that I have.

I want to start with Philip. Thank you for your presentation. You said at the end of your presentation that you had specific examples that we would be stunned to hear. I'm wondering if you could take a minute to share one or two of those examples that you think would be in the best interest of the committee to hear.

Mr. Philip Viater: Absolutely.

"It's my grandmother's 90th birthday party. Can my daughter attend?" "Absolutely," says other parent, "As long as you do—" insert unreasonable demands that are unrelated here. "Absolutely. But you're going to have to deregister her from the school because I don't like the school you chose, and I want her for the next four weekends in a row, then you can go to the 90th birthday party."

Here are other examples: The child is sick in your care. You go to the other parent. The other parent says, "Oh, no, no, no, Mom just wants you to be sick. You're not really sick." The child's sense of security and stability is completely shattered because of little things.

One parent is upset at the other parent. What do they do? They go and give the child a haircut. You go to court and you say, "The other parent gave my child a haircut." The point wasn't the haircut; the point was the other parent was using the child to punish them because they were upset about something completely unrelated.

It's little quips. It's little things; it's not one thing. You have to look at it holistically. That's the problem. It's constant denigration. It's—

Dr. Jennifer Kagan: To find the court order—when there's a time to return the child, not returning the child, saying, "I'm not going to return them unless you acquiesce to these demands," which is terribly unsettling for a little child who thinks they are being returned to their mom and their stepdad at X hour. This is a child's world, right? Their world is a lot smaller than our world, so these issues are very significant to a child.

Mr. Philip Viater: And it's constantly misinterpreting court orders: "Oh, I thought Good Friday started on Thursday evening." Do you think this is a joke? This is actually what we experienced. We had a case with 53 court orders against somebody who has now ultimately killed our stepdaughter. The judges didn't know what to do with it. This is the problem. They heard it, they understood that the guy was bad news, but they had no training. They had no idea. "What am I supposed to do with this information?" That's the problem with this legislation. You're telling them what they already know; they know to use this. The problem is, without the training, they can't understand it. They don't understand that the haircut is a big deal. It's not a little deal, because you need to know the purpose of the haircut. You need to know the purpose—why you had to wait an extra 10 minutes in your car because you had to go to a trip and it was really important that the child be returned on time but conveniently is always late on the day of the trip, because it's the point to control you, to cause you to have stress, to say, "Oh, my God, am I going to miss my flight now?"

These are the little things that you say are not family violence; they are, and they're the worst kind, because the parents are in a constant state of stress, then the child is in a constant state of stress. The child has a plan, the child knows the plan, but the plan is constantly disrupted. There's no sense of security for the child. This is the very heart of coercive control. It's unreasonable behaviour. If you don't comply with their demands, you know what's going to happen—they're not going to agree to anything.

1030

But judges look at it in a vacuum. They look at one event. You can't look at it that way. And then what ends up happening is this: The judge says, "Oh, come on, you're nitpicking." Somebody who is engaging in coercive control is now no longer deemed to be engaging in coercive control, so they just repeat their behaviour, saying, "No, Judge X said that I'm fine, that you're nitpicking." All of a sudden, you have a fake circumstance that doesn't represent true reality for this child and for the family, and everyone suffers.

I hope those are some examples. I can keep going; trust me.

Ms. Suze Morrison: No, that's so helpful.

We've heard in some of the written submissions from some stakeholders that we're going to hear from later in the week similar recommendations around not only training for judges and folks in the system around family violence and intimate partner violence, but also for mandatory screening, which is not currently part of our system.

Do you have any comments that you would like to make on the recommendation around including mandatory screening for domestic violence and intimate partner violence?

Mr. Philip Viater: There absolutely should be screening. I think that once somebody identifies as being the victim of family violence, there should be screening.

I think there should be specialized judges who actually have had the proper training to deal with the situation. Right now, what's happening is, everyone is grouped together. The judges get 10 cases on their docket, 20 cases on their docket, and they hear the same thing. They don't know what to do with that information. They treat everyone the same. It's like going to a doctor's office, hearing everyone cough, and saying, "Okay, you all have a cold. Go home and take Tylenol." Judges don't know what to do with that information.

Quite frankly, litigants themselves claim that there's domestic violence and then you have the other side that

says, "No, no, no, they're lying," so you need a more comprehensive tool. In truth, judges get your file sometimes minutes, half an hour or an hour before the case starts. They briefly gloss over it. It's written by a lawyer. Maybe they retain some of the information. You need a way more involved process for people who identify as victims of family violence.

Ms. Suze Morrison: I want to pop over to Mr. Tweyman. I'm wondering if you have any comments that you can share with us on how access to legal aid funding potentially slows down the Family Court system, and if you'd see any benefit to restoring legal aid funding in terms of actually allowing the Family Court system to move ahead more quickly and efficiently.

The Chair (Mr. Roman Baber): Just a minute and 15 seconds.

Mr. Michael Tweyman: Legal aid funding is part of a solution. I think this was also mentioned by the other speaker—that it's not the entire solution. In my view, what is needed is reform in how legal aid gives out certificates. The way that we could help solve this problem is by having staggered eligibility criteria for people of different incomes who receive fewer hours.

Right now, there is just one line of eligibility. If you're over it, you don't get it, and if you're under it, you do get it. It also creates problems because you sometimes get a legal-aid-funded litigant against someone who is paying for a lawyer, and the legal-aid-funded litigant thinks that they can just use the system as much as they want because they're on legal aid. So it actually causes problems.

I think a better solution is to have a staggered system, even up to someone making $70,000 or $75,000—because even two, three, four, five hours of a lawyer's time can really result in multiple gains across. They might be able to draft a brief in a couple of hours that helps a judge get to the root of the problem. They might be able to organize financial disclosure. I don't think it's a fix-all solution.

But what I'd like to see is better criteria for the people who need it the most, and also a growing scale, because let's be realistic: Someone who is earning $60,000 or $70,000 a year and supporting a family can't afford a lawyer full-time for a long, drawn-out case. I think if the government cuts in one place, in terms of making sure that meritorious cases receive legal aid, they can add to giving some hours to people even at higher income brackets.

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

We'll now go back to the government for seven and a half minutes of questions. MPP Tangri.

Mrs. Nina Tangri: I really want to thank all of the presenters for coming out here today.

My question is for Ms. Macfarlane. Throughout the pandemic, I've been reminding my constituents who have talked to me about their child custody and access issues that this justice system has never closed. While the use of video hearings after hundreds of Zoom lines were proposed by the Ministry of the Attorney General may not have been ideal for every self-represented litigant, the move to virtual or video hearings has allowed the system to keep moving and address urgent child custody and access matters.

Luckily, I understand from the Attorney General that as of September 14, 308 courtrooms reopened in 68 of 74 base courthouses in Ontario, and the Zoom lines are still in place. However, I'm hearing anecdotally that some of the courts may be reluctant to continue using video hearings for even parts of a family matter. That seems like a move backward to me.

Can you please share your thoughts on being able to use video hearings for even parts of a family matter, which would save people time and money associated with travelling to court?

Dr. Julie Macfarlane: I would first say that although we have seen a great deal of impressive problem-solving on the part of the courts in the last six months, it is not the case that people with issues and disputes around children and access and custody have been able to get to the court. This is getting slightly reduced now, but every courthouse has had a threshold of urgency, which we know that self-represented litigants have a great deal of difficulty in meeting. We have actually been providing coaching and assistance to self-represented litigants on how to try to make temporary agreements, interim agreements.

That brings me to what the essential point is here: We have to deal, with or without a pandemic, with the reality that we are facing. As one of the other speakers mentioned, having words on a page does not provide people with real justice. If people don't have assistance to bring their cases forward, they are not going to be successful. We know that; the data is very clear.

I am somewhat astonished that a government would spend so much time looking at nomenclature and technicalities when in fact most people coming into the Family Courts with disputes, with issues—which increasingly, as you have said, will now be heard virtually—are still doing so without assistance. We know that they need assistance, and we know that they want assistance. The assistance that self-represented litigants are asking for is primarily procedural, because the courts are, as you know, extremely complex. That includes, in answer to your question, assistance with how to present at a virtual hearing, because that's not straightforward either; that is complex. Certainly, for people who are not accustomed to presenting in this fashion, as a lawyer on the other side might be, it's a very intimidating procedure. We're in the process of developing some coaching and some manuals for self-represented litigants to use virtual hearings effectively—but it's the same problem. The problem is lack of assistance.

I just want to put on the table why we have that problem. We have that problem because there is a legal services monopoly that is controlled by the law societies provincially across Canada. What we need is to see opening up of assistance by more affordable professionals, who don't always have to be lawyers. As I have sometimes said, the dirty little secret here of all this research data is that the assistance that self-represented litigants are primarily asking for is procedural and, secondarily,

emotional and psychological, because, as I'm sure you realize, going to court for any matter is extremely emotionally and psychologically draining for people. That kind of assistance doesn't require a licensed lawyer. This is legal information, but many community justice workers who are currently helping family litigants who don't have lawyers are constrained by concerns that they will be subject to prosecution—yes, prosecution—by the law society. We have a system that is making it difficult to get any assistance to people, and if the Law Society of Ontario cannot act, and it has failed to for a long time, I think that government should be prepared to amend the legal profession act to allow for a new class of legal assistance—paralegals, family assistance providers, whatever you want to call them—who will enable self-represented litigants in Family Court to have some assistance.

I'm not going to sit here and say it wouldn't be better for everybody to have a lawyer and for that lawyer to be the person presenting at the virtual hearing and not the individual themselves, but we have to deal with the reality here, and the reality here is that 80% of people are doing this alone. They are not only doing it alone, but they are barred from having paralegals or other people help them in relation to their family matter. That has got to change, and the government needs to be prepared to amend the legal profession act to allow for that.

1040

We also—and this goes back to the point that was being made earlier about the need for more settlement and less conflict. Obviously, in the pandemic, we have been encouraging self-represented litigants, who cannot otherwise access the court because of the restrictions around urgency that have existed and in some cases still exist, to settle their cases. There is some hope in the bill for an expansion of the role of the dispute resolution officers, which I would certainly support. The problem is—again, we know this; we have research data that shows us this—self-represented litigants don't know how to settle. They don't take up the option of mediation, they don't take up the option of negotiation because they're worried they're going to be taken advantage of by a lawyer on the other side. They simply don't know how to behave and how to be effective in mediation.

Something else I think the government needs to consider here to make this a real family justice bill is a provincial system of conflict coaching—this doesn't have to be by lawyers—that works with self-represented family litigants and prepares them to make the very best out of those opportunities for settlement. They want to settle, but they don't know how to settle.

We can also, I believe, revisit the idea that family mediation—and this was also mentioned by Philip—could be looked at as a mandatory step. There should be screening. We have very effective and very sophisticated screening tools now that have been developed in the last decade around family violence, and I absolutely second Philip's point that not only judges but lawyers need training in recognizing family violence. That is a huge issue. But if we were to make a step towards getting people prepared to negotiate and giving them real support to do so, we would see a huge difference.

The Chair (Mr. Roman Baber): Ten seconds.

Mr. Julie Macfarlane: We've had studies since the 1990s showing that mediation-connected programs report an average of 40% to 60% rates of resolution outside court. We need to act on that data.

The Chair (Mr. Roman Baber): We will now proceed with four and a half minutes for the independent member. Madame Collard.

M^me^ Lucille Collard: Thank you for your presentations. I apologize for not being able to reach you earlier. This is a riding week and there was stuff that I couldn't move. Believe me, it was not because I was sleeping in this morning. I am very interested in the matter.

I've caught, I think, the majority of what you've said, and the sense of your comments are of great interest to me. I have a great interest in mediation, first of all because I am a trained mediator, even though I haven't practised a lot during my career. You talked about the importance of having judges trained to recognize family violence—and I totally acknowledge that—and the importance that mediation can take.

I'd like to hear from whoever wants to speak on it about the importance of also having mediators who are trained to recognize family violence. As Philip explained, those signs are not easily recognizable if you don't have proper training and insight on what can actually constitute family violence—not being necessarily physical abuse with marks or that type of thing.

Dr. Julie Macfarlane: Certainly, I think that that's an extremely important part of mediator training. I've been studying mediation for 30 years now, and one of the things we've seen is a growing skepticism amongst some litigants, especially self-represented litigants, that they are really going to have their matter understood in anything other than a legal dimension by the mediator. It's so important that we recognize that what we're really doing with family justice is, we're looking at what conflicts are going on; we're not just looking at what the definition of "custody" or "access" or "the best interests of the child" is. I think it's extremely important that mediators should have that kind of training.

I also want to reiterate that I think we underestimate significantly how hard it is for family litigants to sit down and negotiate with one another. It's always been done in the past via lawyers. They haven't always been so great at it either, but at least they had some kind of professional confidence. The number of self-represented litigants who are turning down opportunities to mediate where I believe they could be supported and encouraged to use them, is, I think, one of the travesties of what's happening in the family justice system.

We could be doing so much better, but we have to provide people with proper supports. We have to realize they have to see their experience understood by a mediator, and the absolute threshold of that is understanding family violence.

M^me^ Lucille Collard: Jennifer and Philip, did you want to weigh in on the importance of mediation but also having

them trained appropriately? Could they really make a difference in the system?

Mr. Philip Viater: So the first question is, should mediators have training? The answer is yes.

Should mediation be mandatory? Not in cases of family violence. There are some cases of family violence where it can be beneficial, because there obviously are degrees of family violence, but at the same time a lot of the time or oftentimes perpetrators of family violence really don't come to the mediation process in good faith. They come there to cause more trauma. They come there to make unreasonable demands and it's not a fruitful process. But that's also why the mediator should have family violence training: so that the mediator can recognize at an early stage if someone is not there in good faith.

At the same time, don't compel victims of family violence to confront their accuser in a setting that they do not feel safe in. There are no police there. There is no security there. They are in a private room. A lot of times, their voices are completely obliterated. Maybe they'll have a lawyer, and that's fine—but you have self-represented people. A lot of victims of family violence are the house parent. They didn't work, and they can't afford a lawyer.

So as long as it's not mandatory—but to the extent that it is appropriate, it should definitely be encouraged in most cases. They should have that training, in my view.

M^me^ Lucille Collard: Is there any time left, Mr. Chair?

The Chair (Mr. Roman Baber): We're just about at the end of your time. However, you will have another round before the termination of this panel.

We now move back to the opposition for seven and a half minutes. MPP Taylor.

Miss Monique Taylor: Thank you to everyone who has come forward with presentations today. There are so many aspects of this bill that need improvement, and each one of you have specifically touched on those aspects.

One of our presenters that's going to be joining us tomorrow is the Ontario Association of Child Protection Lawyers. Mr. Tweyman, you mentioned quite a bit about the appeal process. Their submission talks about the injustice that these changes will cause directly to child protection cases. Have you come across any of those aspects while you have been looking at this bill?

Mr. Michael Tweyman: Yes. The child protection appeals process right now makes no sense. If you start in the Ontario Court of Justice, which you would in Toronto and Brampton—and I don't know their submissions, by the way, so I don't know if what I'm saying is going to be on par with them or not.

If you start in Toronto or Brampton, you have potentially two appeal routes from the original order, and we're talking about cases where sometimes there is what used to be called crown wardship orders, where a child's basic permanence in future is being decided. Again, back to my earlier point: Why not just make this go right to the Court of Appeal? Let the highest court in the province decide the matter, once and for all. It can be done in an efficient way. The Court of Appeal expedites family law appeals that have urgency and they are very capable of doing that. Why would you subject a child to potentially 12 to 18 months of appeal routes, especially when there might not be a case? On the other hand, why subject a parent to 12 to 18 months of appeal routes, when they might be right, when maybe the child should have been returned to them and now we only find that out at the Court of Appeal? It is rare for a parent to win an appeal and to have a child returned up, but it's possible.

If you want to note this down, MPP Taylor and anybody else, the solution for this problem lies in just changing 21.9.1 of the Courts of Justice Act. All you have to do is change the words "of the Family Court" to the "Divisional Court," you'll have to replace "Divisional Court" with "Court of Appeal," and the entire problem has just been solved. That one provision means that all Family Court matters—unified Family Court—would go to the Court of Appeal. Candidly, I'm a supporter of the government, but I don't understand why they chose this multipronged, multi-statute, confusing method to deal with this, when it could just be dealt with like that.

1050

Miss Monique Taylor: The national self-representation—please go ahead; I see you have lots to say.

Dr. Julie Macfarlane: I think the other thing that this committee really needs to understand is that parents often are facing children's aid societies without representation. This is extremely common. It is especially common amongst Indigenous families. What the children's aid society has done, systemically—and we have data on this, going back many years—is, they have used something called the summary judgment procedure to strike out those self-represented litigants. A summary judgment, as the lawyers here will know, is something that you bring forward at an early stage to try to say that the other side shouldn't have any kind of a full trial or a full hearing or any arguments.

We have data showing that when those motions are brought against self-represented people, 96% of the time they're successful—and that includes a lot of families who would like to go to a hearing to make their case to children's aid. I think that is an absolute travesty, that families who are facing such a critical decision about the future of their family and may already have had children removed—as I say, we see this problem especially affecting Indigenous families, whose children are removed at a far higher rate, still. They should have representation. To imagine that the children's aid society, as a government agency, can simply knock them out 96% of the time is absolutely outrageous.

The Chair (Mr. Roman Baber): Two minutes, 45 seconds.

Miss Monique Taylor: Yes, we know that many families have been outgunned by children's aid societies for decades, forever, as long as this system has held up. That 50% to 80% of people have no access to justice is a major problem. We've asked this government to reverse

their decisions on legal aid and the cuts that they've already put forward and to ensure that there are more mediation services and that they have to be stronger than—I completely understand that we should not be forcing families into mediation when there is abuse, but there are many situations that could use more support for families to ensure that they have the ability to do so. This bill has a lot of nice, warm words about changing the best interests of the child and ensuring that that's there, but I'm not sure that the access to justice truly provides that opportunity to families.

Michael Tweyman, please go ahead.

Mr. Michael Tweyman: I'm just going to make two quick comments to some of your points.

First of all, it was the federal government that enacted these changes. What I, for one, would hate to see is everything being held up for the sake of more improvements. I think Philip and Jennifer's proposals and thoughts are extremely important and need to be dealt with almost on their own. But I would hate to see this ongoing appeal problem and the synchronization of the provincial legislation with the federal legislation held up because of that. I think it's fair to say, from a lawyer's point of view, and probably from the government's point of view as well, that this legislation to change the CLRA was not meant to be a fix-all. It was meant to simply provide something synchronized to the federal changes. Because the federal government is going ahead with that, there's not much choice the provincial government has in that regard.

The second point I'd like—

Miss Monique Taylor: I know, but I'm almost going to run out of time, and I absolutely—

Mr. Michael Tweyman: Sorry.

Miss Monique Taylor: Access to justice is very important for families. I can understand that we need to make life easier for lawyers, but we also need to make life easier for families, because that's truly what the law is supposed to do—protect families and ensure that families have the ability to be seen in a court of law and have the representation that is properly, and should be, afforded to them. I respect what you have to say. I have no problems with this bill, except the lack of access to justice for families who are the most vulnerable, typically, in our communities and truly need to have those changes reflected within this bill.

The Chair (Mr. Roman Baber): We'll now go back to the government for seven and a half minutes. Mr. Bouma.

Mr. Will Bouma: Mr. Chair, through you, I was wondering if I could just spend my time with Jennifer and Philip. I wanted to start by saying my heartfelt condolences to you both on your loss. I so appreciate your courage in coming before us today to talk about these things that are still very, very raw for you both.

I wanted to focus a little bit more on—it was brought out earlier and it made me kind of curious—the federal component of this. If you were able to see it, we had the Attorney General on starting at 9 o'clock. He said that most of this, and it's been mentioned already, is just related to the actions of the federal government, to simplify some of these things, and we're responding to that. Rather than go our own way, to try to keep things as simple as possible, we've tried to mirror the provincial legislation in the same direction.

Did you have the opportunity to bring some of your suggestions forward to the federal government at all when they were doing consultations on this? That would be my first question.

Mr. Philip Viater: No, we were not provided with that opportunity, although we have reached out through various ways to try to get our views across. But we have not been heard as of today's date.

Mr. Will Bouma: Following up on that, I think, if I understand it correctly, the federal legislation comes into full force in March 2021. I assume—and you can correct me if I'm wrong—that there's probably no avenue, then, for you to make any changes to the federal legislation at this point?

Mr. Philip Viater: No, I don't believe there is. But at the same time, Mr. Tweyman hit the nail on the head in certain respects. You could deal with our criticism separately, because the whole heart of our criticism is training for judges, and to the extent that judges say, "We're independent. Don't tell us what to do," then it's going to be up to the government to—instead of coming up with abstract concepts such as "coercive control" and "best interests of the child," which mean something different to you than it does to me than it does to Mr. Baber than it does to Ms. Collard, you need to be more specific in your legislation. What is age and the stage of development? What is family violence? How much of a factor should that take into account? Can you have shared parenting with somebody who's abusive? I say no. Some judges may disagree with me. I say that they're wrong, and then other judges will agree with me.

It may be too late to change the amendments to the Divorce Act; that's possible. But it doesn't mean that we're out to lunch. It doesn't mean that we still can't get what we want to ensure that the intention of the legislation is complied with, which is, let's recognize family violence. How do we do that? We've got to go to the people who are actually interpreting what family violence is. We've got to get to the judges.

Mr. Will Bouma: Following up on that, then—and you did the segue for me. I appreciate that. For the judicial training piece, because I'm no lawyer—is that a federal responsibility or is that a provincial responsibility or is that done in the court system? Is it by provincial legislation that judges are trained or is that provincial overreach? I was just wondering if you could speak to that further, because obviously you've done your research on that.

Mr. Philip Viater: I can, and the answer is going to depend on who you ask. Based on all of our letters and who we've spoken to, everyone passes the buck. When you talk to one person, they say, "No, they're responsible." When you talk to the next person, they say, "No, they're responsible." When you talk to these people, they say, "The judges themselves are responsible."

The government, whether it's provincial or federal, can pass legislation to mandate mandatory training for judges. If anyone disagrees, it's very simple: You say, "Okay, then we're not going to give you the autonomy. We're going to put right in the legislation how you're going to behave. A child is age 17 months? This is going to be the schedule unless somebody can show otherwise. There is family violence? You're not ordering shared parenting unless whatever."

1100

Right now, it's too open-ended. If everyone is passing the buck and they refuse to get their own training—which they do, because the judicial council told us flat out that they have no mandatory training and it's up to the judges to determine what training they want to get themselves, and oh, by the way, family violence is only offered once every three years for maybe, I don't know, a six-minute period of time for training—

Dr. Jennifer Kagan: If that.

Mr. Philip Viater: If that.

Dr. Jennifer Kagan: —via the federal National Judicial Institute and the CJC. So there's no mandatory training federally on issues of domestic violence, nor provincially, per our understanding, per our communication with those bodies.

Mr. Will Bouma: How much time, Mr. Chair?

The Chair (Mr. Roman Baber): About a minute and 40 seconds.

Mr. Will Bouma: Very good.

So in your conversations—and it appears that it's a judicial council—is there any self-regulation that judges do, and do you have buy-in from them on this sort of training so that they have the proper tools in their tool boxes in order to deal with these sorts of situations? I was just curious if you had any comment on that.

Mr. Philip Viater: Right now, judges are self-regulated, and as we said, the judicial council has taken the position in writing to us that judges decide what training they want. So if I'm going to be in front of a personal injury law judge who clearly has no experience in family law whatsoever, I'm out of luck. Perhaps more importantly, the child is out of luck. That child's future is going to be decided by somebody who literally has no knowledge of child development or family violence other than what they know on TV.

To compare that and contrast that with some criminal matters, I know that there has been lots of discussion and they wanted to pass bills on judges getting training on sexual assaults. This is the same thing, except now they're dealing with a child, and that child's future is dependent on this judge's decision. That's why I circle back to, accused persons are treated better than children in our province.

Mr. Will Bouma: I really appreciate that. Thank you. That gives me a lot of clarity on that.

I'm a licensed optometrist. We have the College of Optometrists in the province of Ontario. If you're not happy with my service, you can file a complaint with them. But it appears to me that we have no system to ensure professional knowledge in a certain type of case file with our judicial system whatsoever, and I do find that very, very troubling. I don't know if this piece of legislation—I think I would agree with Mr. Tweyman on that one, that we could deal with this as a separate issue.

I really appreciate you coming forward. Again, my heartfelt condolences to you both on your loss. Thank you very much for appearing before committee today.

The Chair (Mr. Roman Baber): I appreciate that Mr. Tweyman and Ms. Macfarlane had sought an opportunity to add to the submissions, and perhaps they might do so as I invite Madame Collard for four and a half minutes of follow-up.

M^me^ Lucille Collard: I would like to give more time to Julie Macfarlane, because I think that there is a lot to be said about the importance of training judges. In the Ontario Court of Justice, we do have a family law division, so how is it that these judges who are supposed to sit in that division don't have proper training, and how else could we assist the system?

We talked about mediation and alternative dispute resolution and more support that's not necessarily legal to accompany the couples through this really hard process. Frankly, I think that couples who have these kind of issues want to go to court as a last resort. I would just like to give you the time that I've got to express yourself more on that.

Dr. Julie Macfarlane: Thank you very much indeed. I really appreciate it.

First of all, I want to go back to what was just being discussed about judicial training. Jennifer and Philip are completely correct, of course, that judges decide what training they want.

I hope that what the committee is starting to see is that there is a structural problem here, which is the same whether you look at it through the lens of family violence or whether you look at it through the lens of self-represented litigants, and that structural problem is that the legal profession and the judiciary are entirely self-regulating. That might have been a good model a hundred years ago or even 50 years ago, but with the current sophistication of the litigants who are coming forward, the needs they have and their desires to see real justice, we cannot allow the legal profession and the judiciary to decide what they need to know in terms of training.

I have many, many very respected judicial colleagues. I trained with the National Judicial Institute for 20 years. I've also worked with the Canadian Judicial Council, which is where you would make a complaint about a judge if you had one. I'm sorry to say that despite the best efforts of some very good people, neither of those organizations are providing adequate guidance in terms of the training that is needed, which I believe should be mandatory and the public should be able to ask for to be mandatory.

I think judicial service is a public service, and they should serve the public's needs. That includes training on family violence. That includes training to work with self-represented litigants, because believe me, it's not easy. At the National Self-Represented Litigants Project, we have been spending hundreds of hours putting out important

information to assist judges in working with self-represented litigants, but this needs to be undertaken not just by a little not-for-profit like us that is surviving on a shoestring at the moment; it needs to be undertaken by government.

This comes back to my other point about regulation of the legal profession. We also hear constantly from self-represented litigants that their complaints against both judges and lawyers where they feel they have been badly treated—and I can tell you, having read many, many of these complaints, that a lot of them are well-founded, and I hope you'll take me seriously on that. They don't get anywhere with their complaints to the law society. They don't get anywhere with their complaints to the Canadian Judicial Council. In fact, it's so bad that I now routinely advise people not to bother, because it's such a traumatic experience for them to set out their whole experience, much as Jennifer and Philip have, and then just to be told, "No, that's not important to us."

I think that what the committee really has to recognize is that giving that power to the judiciary to decide what they will and won't be trained on, giving the power to the legal profession—and this is, I think, the ultimate irony—to decide who can provide legal services other than themselves, to which their answer is always "no one," is a huge problem that creates a lack of public faith, a disbelief that the institutions of justice are really there to serve people and to listen to people.

The Chair (Mr. Roman Baber): With 20 seconds remaining, Madame Collard, would you like to conclude?

M^me^ Lucille Collard: Yes. I just want to thank you again. Thank you for your advocacy. It's so important. You provided really helpful information today. Thank you to all the presenters.

The Chair (Mr. Roman Baber): I want to thank the panel for their interesting submissions and excuse them from this morning's hearing.

MR. SHELDON TENENBAUM

ONTARIO ASSOCIATION OF CHILDREN'S AID SOCIETIES

DURHAM COMMUNITY LEGAL CLINIC

The Chair (Mr. Roman Baber): We're now joined by our second multi-presenter panel and our third testimony of the day on Bill 207. I'd like to welcome Sheldon Tenenbaum, Wendy Miller of the Ontario Association of Children's Aid Societies, and Omar Ha-Redeye and Anna Toth of the Durham Community Legal Clinic, who always provide helpful testimony at this committee. I invite the presenters to make their initial seven minutes of submissions, followed by questions from both parties and the independent member.

Sheldon Tenenbaum, may I please invite you to begin your submissions by saying your name for the record?

Mr. Sheldon Tenenbaum: Sheldon Tenenbaum.

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

Mr. Sheldon Tenenbaum: I don't have any prepared submissions or any particular agenda. I'm a lawyer at a small law firm that primarily does family law. I've been doing this for 30 years in Markham. My practice, frankly, struggles financially, but I don't refuse or turn away low-income or legal aid clients, provided they are otherwise reasonable.

I love my work, meeting potential clients and listening to their experiences with the justice system and life in general. My passion for the practice and my line of credit have carried me through my 30 years. I often say that as my line of credit grows, my passion shrinks, but it is certainly something that I enjoy, in many areas; for instance, per diem duty counsel for Legal Aid Ontario in the Family Courts in the Toronto region, and also in the criminal courts in the Toronto region. I teach with Chris Bentley at the law practice program. I often attend and give seminars. I'm certainly a member of many associations, but I don't speak for any of them. My opinions aren't even my own; my wife speaks for me.

I do appreciate the opportunity to be heard by the committee, and I'd like to think that it's well-intentioned.

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I went on the Internet and I've seen the changes that are proposed. I thought they were not enough; let's put it that way. Less paperwork for mediators and so on are good changes, but I think that in the current situation we're in in Ontario, there's much better opportunity to make justice more accessible. Family law is a major area—for nine out of 10 people who come in my door, it's a family law problem.

There are huge accessibility issues with clients of many types that I think can be solved or helped in a lot of ways, particularly if we can legislate Internet trials. I'm one of the few lawyers in Ontario now that has done one, and there are huge efficiencies. A judge in Sudbury could hear a Toronto case from their office—huge efficiencies for the taxpayer, for the litigants and for the lawyers.

Really, what I'd like to do is just make myself available, if there are any questions that the panel has. I'm sure they've listened to some excellent presentations, many from members that I'm familiar with—the Family Lawyers Association etc., etc.

That's it.

The Chair (Mr. Roman Baber): Thank you very much. I'd like to invite Wendy Miller of the Ontario Association of Children's Aid Societies for seven minutes of submissions. Please begin by stating your name for the record.

Ms. Wendy Miller: Thanks very much. I'm Wendy Miller from the Ontario Association of Children's Aid Societies. I'm here speaking on behalf of Ontario's 50 children's aid societies and Indigenous child well-being societies. My comments are going to focus on schedule 2, with respect to the Courts of Justice Act. We have not brought comments regarding the bulk of the bill—simply this one section, schedule 2, in particular, regarding matters that would be under the CYFSA, the Child, Youth and Family Services Act, that being child protection matters.

The position of children's aid societies is twofold on this section: that all appeals of final family law orders should be directed directly to the Ontario Court of Appeal, rather than, in the proposed bill as drafted, amending appeal routes to the Superior Court of Justice or the Divisional Court with a requirement to seek leave to the Ontario Court of Appeal.

The second point I'd like to speak about is that as important as other forms of family law are, child protection matters are particularly and uniquely urgent, involving the essential rights of children and parents. The rights contained in the United Nations Convention on the Rights of the Child, as well as the imperatives of the CYFSA—and that would be including to promote the best interests, protection and well-being of children—we believe can best be fulfilled through one route of appeal to the Ontario Court of Appeal.

I'll just speak briefly to the reasons for this position. With respect to permanency for children and youth, we believe that one route that would streamline appeals directly to the Ontario Court of Appeal would reduce significantly the delays that are experienced across the province. The various and inconsistent jurisdictions across Ontario mean that if you're in Toronto or some other better-resourced section of the province, you are likely to have case management assistance and you are likely to have assistance that would allow you to move through the appeals processes reasonably well, whereas if you're living in the north or other parts of the province, between unified courts and the other types of court systems, there are greater delays. The more delays there are, the more harmful that is on the permanency and the well-being of children and youth.

Children need timely resolution of protection matters, and so do parents. With more appeal routes, decisions regarding permanency can last up to years, and the more delays there are, the longer that process can take. In particular, the United Nations Convention on the Rights of the Child recognizes that delays in decision-making can adversely impact children as they evolve.

The second argument, or set of arguments, relates to the streamlining: One route of appeal will increase fairness and consistency across the province. I heard a tiny bit here this morning, but also reading the debates in the Legislature around inconsistency and fairness—and I believe that this bill is aiming in that direction. But we are here to say that, as proposed, we believe the delays will continue and we believe that the unnecessary confusion and multi-layered appeal routes will not have the desired streamlining effect. There are inconsistencies, with some regions of the province experiencing much greater delays and different levels of support, like case management or assistance, and the Ontario Court of Appeal, as I understand, has a tremendous process for case management.

Streamlining will enhance access to justice, particularly for self-represented litigants; the previous speaker was speaking about this. It's common. In fact, in child protection matters, self-represented litigants are common. We need an appeal route that is accessible, fair and can be resolved at the earliest opportunity. Thank you very much.

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

We'll now proceed with the Durham Community Legal Clinic. Omar and Anna, please begin your seven minutes of submissions by stating your names for the record.

Ms. Anna Toth: Thank you. My name is Anna Toth. I'm a volunteer with Durham Community Legal Clinic, and I practise as a junior associate at Carpenter Family Law, in family and child protection law. Today I will be speaking about the need for an overall shift in family dispute resolution, because the framework, as it exists today, does not work.

Regardless of party circumstances, the process to separate and seek corollary relief through the courts is too complex, too expensive and too conflict-oriented. From a lawyer's perspective, it is disheartening to tell a client who is already suffering from heartbreak and uncertainty of separation that I don't know when the process is going to be over and I don't know how much it will cost. There are too many factors. Particularly if the other side is highly adversarial, it is possible to stretch a case on for three years, 10 years or more. The COVID-19 pandemic has only increased this uncertainty. This is enough to overwhelm adults, but imagine for a moment witnessing and experiencing this from the perspective of a child. Imagine being eight years old and learning that everything you do or say, including what you write in private emails and text messages, can be screenshot and sent to lawyers, psychologists, social workers and judges to be analyzed and picked apart. Imagine not knowing when the scrutiny and surveillance will end.

The shape and structure of family law should be designed with the best interests of the child at heart. I would argue that Bill 207 reflects this priority. For example, sections 33.1(1) and 33.1(2) of the Children's Law Reform Act establish an obligation to protect children from conflict, and where possible, resolve issues through mediation and negotiation. The importance of these sections cannot be underestimated. If enacted, I as a lawyer can point out those sections to my clients and say, "This is what we're striving for." I can refer other lawyers who are trying to make things more adversarial, and remind them of our obligation to our clients to encourage collaboration and efficiency.

Although further statutory and regulatory changes are needed to ensure proper implementation, this is a good start. ADR methods are cheaper, faster and less invasive. They're also more flexible, so they can be customized to fit the needs of the parties involved. To an extent, there is room for emotion, compromise, creativity and empathy—all the things that are needed during a separation. The process is also cheaper, so I think there might be a possibility that more people will be able to afford legal representation if one mediation, two mediations will solve the problem, instead of years of litigation. Having a lawyer there will address the commonly referenced disadvantage of ADR, which is that existing power dynamics can go unchecked. If both sides have a lawyer, we can address that. Thank you.

Omar?

Mr. Omar Ha-Redeye: Omar Ha-Redeye.

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The Chair (Mr. Roman Baber): Thank you. You have three and half minutes remaining.

Mr. Omar Ha-Redeye: New lawyers like Anna enter the field of family law knowing it is often the most important legal issue that many Ontarians will face. They are quickly confronted with the reality that family law disputes are far too complicated, far too acrimonious and far too procedural to be resolved effectively and efficiently. They also learn that far too many lawyers define their professional interests as separate from that of the justice system, and simply define the best interests of the child as the best interests of the client.

At the risk of sounding like a lawyer who cried wolf, I return to this committee once again to describe an access-to-justice crisis. However, the crisis in family law is worse than in any other part of the justice system. As the executive director of the Durham Community Legal Clinic, I can share that we receive hundreds of phone calls a year from our residents, who are desperately seeking family law assistance. Unfortunately, we do not provide family law legal advice, yet we could not ignore these pleas entirely without at least attempting to point these people in the right directions. Consequently, we are developing a family law triage program through our access-to-justice hub.

Bill 207 makes some very important changes to the Family Law Act and the Children's Law Reform Act. These changes, in conjunction with a commitment by this government to foster support and fund community-based, social, psychological and financial services relevant to family law, will invariably improve our justice system. They promote greater use of alternative dispute resolution outside of court, even before family law proceedings arrive at their doorstep of justice. These changes also introduce necessary definitions of family law violence, to properly recognize that power imbalances and coercive control can come in many different forms. Our justice system and society at large have a very strong, public interest in preventing this behaviour and ensuring that bad conduct is not inadvertently rewarded in the litigation process.

Bill 207 is not simply an attempt to mirror the federal amendments to the Divorce Act which come into effect next year. The constitutional responsibility for the operation of the courts is with the province. It is therefore the province's responsibility to make the necessary changes to the operation of our family law system, to make it more effective, efficient and accountable.

The Durham Community Legal Clinic supports the amendments found in Bill 207 and encourages the members of the committee to provide their support for these changes as well. It is very rare for me to arrive at this committee and provide my unqualified support to any bill, and so the fact that I am taking this position here will please, I hope, the members of the committee, but also perhaps surprise the Chair and the PA, who I see are in attendance in person in the Amethyst Room.

I'll leave the remainder of the time for questions. Thank you.

The Chair (Mr. Roman Baber): Thank you, sir. We'll now go back to the government for seven and a half minutes of questions. MPP Tangri.

Mrs. Nina Tangri: I want to thank all of the presenters for coming and joining us today to give us your views.

My first question is to Ms. Miller. I do want to thank the Ontario Association of Children's Aid Societies for the great and very difficult work that you have to do. I've spent quite a bit of time with our Peel Children's Aid Society, asking for their input on a variety of issues.

As you know, our government is proposing changes to Ontario's family laws so that they can become a little bit more consistent with recent revisions to the federal Divorce Act, such as changing terminology like "custody" to "decision-making responsibility," and "access" to "parenting time" or "contact," to decrease conflict in family law matters. I understand that when the Attorney General consulted with the Ontario justice sector partners on this—I think it was around January 7, 2020—the number-one piece of feedback that he received across the board was to make our provincial laws, and specifically the terminology, consistent with the federal law.

Ms. Miller, can you give us a bit of explanation why consistency in the law is so important for the courts, for the lawyers and for the litigants themselves, to streamline things?

Ms. Wendy Miller: I will do my level best, MPP Tangri. I'm not a lawyer myself. I was guided by senior counsel from our sector, including those from Peel CAS. In fact, in preparing my remarks this morning—as I said earlier, the focus of our submissions, really, is on the appeal side. I have no doubt that making those terminology and other elements consistent with federal law would be supportive of streamlining and promoting access to justice. That's my personal opinion.

What I would like to point out, however, is, you mentioned the consultations, and I read about these in the Hansard debates. As far as I know, Ontario's children's aid societies were not among those consulted with respect to these changes, and, in particular, with respect to the drafting of Bill 207. I do know that our comments with respect to the appeals routes are consistent with those of the Office of the Children's Lawyer, as well, I believe, as those of the family law association. So in terms of having an opportunity to speak to the things that you are raising right now, unfortunately I don't have that background, and as far as I know, our sector was not part of those consultations.

Mrs. Nina Tangri: Just to go back a little bit—specifically, when the Attorney General said that at the outset of the pandemic the justice system has moved decades in only a matter of months. Our government's track record of significantly investing in the justice system to modernize it and not automate it has benefited families, children and the justice sector partners in every corner of this province.

The expansion of the e-filing for more than 400 types of civil and family court documents, as well as procuring a cloud-based document-sharing or storage platform, which is called CaseLines—they're the two things I can think of off the bat that benefit family law.

Can you please describe how our government has made it easier, faster and more affordable to resolve their family legal matters on the ground, including child protection proceedings? For example, in your view, what other modernization efforts should the Ministry of the Attorney General and the courts undertake to invest to benefit the family law system and child protection proceedings?

Ms. Wendy Miller: I would be happy to consult my colleagues on those questions. They sound like very important questions. I do not have an answer for you.

The only thing I can say, in terms of the last point of your question, with respect to innovations or additions that could be made—I do know that there was some discussion this morning around family law, with the FLICs, with the family law information centres or duty counsel, those kinds of supports that are not readily available currently, particularly with respect to supporting self-represented litigants. That's probably the best I can answer right now.

Those sound like very important questions, and I would be happy to provide follow-up comments if such a thing were available.

Mrs. Nina Tangri: How much time do I have, Chair?

The Chair (Mr. Roman Baber): About three minutes.

Mrs. Nina Tangri: I'm just going to pass it on to Mr. Tenenbaum. Just based on some of the comments that you have made, I wanted to ask if you have participated in the federal Divorce Act consultations. Were you asked to participate in that, or did you present to them before their changes?

Mr. Sheldon Tenenbaum: No, I didn't.

Mrs. Nina Tangri: I'm just going to pass on to the Durham legal clinic, to ask you the same question. Did you participate in that consultation?

Mr. Omar Ha-Redeye: What I can say is that I am in constant communication with many political representatives at all levels of government, including the PA to the AG, well before this particular initiative has been under way. My comments and positions as it relates to family law are very much built on Julie Macfarlane's work. We have 40 pages of written submissions for Bill 207 that are here for the committee members, and many, many other submissions that I have made that were in fact used at the federal level.

The Chair (Mr. Roman Baber): With two minutes remaining, I invite MPP Park.

Ms. Lindsey Park: I'll speak further with the Durham Community Legal Clinic. First of all, I want to thank you. For those on this call who don't know, I am the MPP for Durham, so it's always a pleasure to have representatives from our backyard showing up and participating in the democratic process here at committee.

I just wanted to get some further perspective from you, either Anna or Omar, on why, in your experience, consistency in areas like family law, where there is both federal legislation and provincial legislation—why it's important from a practical perspective that there is consistency in the language used between those acts and some of the tests that judges are considering, that sort of thing.

Ms. Anna Toth: Everyone I've met—and I'm a new call—is just overwhelmed. When they come to a family lawyer, this is probably one of the worst periods of their life. It makes it very hard to learn things like the law, and lawyers are there, throwing out, "Look at this section. This is the case precedent." It's a new language and it's a new world for them, so as much as possible, if we can make things consistent between the federal and provincial legislation so they're not learning two times the vocabulary they need to move around in that world—we tell our clients, "When we're in front of a judge, you have to make sure that you're calm, even if you're angry and you're heartbroken." There are so many moving parts. Learning two laws when maybe one would do is of great help to our clients, if possible.

1130

Ms. Lindsey Park: Chair, do I have a bit more time?

The Chair (Mr. Roman Baber): Unfortunately, no.

We'll now move back to the opposition for seven and a half minutes of questions. MPP Taylor.

Miss Monique Taylor: Thank you to all of our presenters who have joined us today and taken the time to come and talk about Bill 207.

I'm going to direct my first questions to Wendy. It's always nice to see you, Wendy. Thank you for your participation in this. I have to say, I was discouraged to hear that you were not consulted on this legislation, particularly on the appeal process, which affects your families directly.

We have a submission from the Ontario Association of Child Protection Lawyers. They have great concerns about the changes to the appeal process and how that will affect our most vulnerable families when it comes to child protection cases.

Would you like to highlight again some of the issues that you see when it comes to the appeal process and access to justice for families?

Ms. Wendy Miller: As I understand it, the complex number of levels of appeals routes that exist across the province make it so that it's inconsistent. If you live in the north, it's different than if you live in Toronto. How quickly you can get to the Court of Appeal as a final place for a decision really depends on where you live, so there's a bit of a postal code lottery there. Ultimately, why it matters is that the permanency and the well-being of children are delayed, and the longer it's delayed, the more harmful it is on children, full stop.

Miss Monique Taylor: Do you think the changes that the government is bringing forward will help families be able to navigate the system better?

Ms. Wendy Miller: Well, like I said earlier, I'm not a lawyer, so I am learning from my colleagues that, as proposed, Bill 207 looks like it's trying to address this streamlining question, but it does it in a way that my colleagues feel is not going to achieve its intended goals.

So rather than supporting different ways to get to these other layers of appeal, they're saying to just go straight to the Ontario Court of Appeal, to make it consistent for all, regardless of what jurisdiction you live in.

I'm hearing stories of families where kids—I heard one this morning. I think the matter began in 2015, and then it was 2019 before all appeals had been exhausted. That was in large part because this family lived in a jurisdiction where they had to go to Divisional Court, then they had to seek leave to go to the Ontario Court of Appeal. Had those layers been removed, that time to permanency for that young person might have been cut in half.

Miss Monique Taylor: Access to justice is definitely something that has been highlighted as we have continued to debate this bill and as we have heard from folks who have come to do deputations in front of us today.

I'll go to the Durham legal clinic. How are you feeling about this bill when it comes to true access to justice for the constituents you serve, who are typically, I'm sure, some of the most vulnerable in our community? Do you think this bill does anything to help these people when it comes to access to justice, particularly with the cuts to legal aid?

Mr. Omar Ha-Redeye: The comments related to cuts to legal aid are significant. That is going to be a challenge going forward. However, the problem with family law—this was alluded to on some of the previous panels—is not going to be fixed by money alone. The system itself is broken. The system itself is ineffectual. The system itself is conflict-oriented and adverse-relationship-oriented, and is therefore in its inherent nature not in the best interests of the child.

What the changes here—not only Bill C-78, but also Bill 207 here provincially—have done is to introduce formally in legislation an explicit reference to out-of-court dispute resolution. Ideally, that dispute resolution would happen before low-income or even middle-class individuals even go to court. That would be the ideal solution. What that would do is to then take off the pressure from the courts and allow them to actually properly focus on those cases that do have coercive control, domestic violence or, perhaps, even complex issues of law.

Family law is not an issue that should be solved within our court system, generally, and that should be the starting point. That's what the statute allows. As we allude to in our 40-page submissions, there is quite a bit more that needs to be done, but this is the framework and the starting point which we expect and we hope that this government will build upon even further.

The Chair (Mr. Roman Baber): Two and a half minutes remaining.

Miss Monique Taylor: As I'm sure you're aware, 50% to 80% of people who access our Family Courts do so without representation because of the lack of access to justice.

Do you think that this bill—yes, it will streamline some of the things, and yes, it will make wording easier for lawyers within the court system. But is there true access to justice built into this bill that will make a difference in our legal system?

Mr. Omar Ha-Redeye: If "access to justice" is defined as simply having the ability to go to a family law trial, then no; in fact, nobody in all of Canada will have that. We have a backlog of cases which the Supreme Court of Canada has indicated, in cases like Jordan and Cody, need to be addressed from a constitutional perspective in criminal law first and foremost. Family law is not resolved in Ontario or anywhere in Canada through family law trials.

We agree: The level of self-represented rates—we actually go on Julie Macfarlane's work in our written submissions—is of concern. The major reason for those rates, though, is that those individuals are unaware and are not informed that the proper way to resolve their family law disputes is outside of court, because most family law disputes are actually not about the law at all. They're about financial issues; they're about social issues; they're about psychological issues; they're about mental health issues. Those are issues which lawyers and, quite frankly, the courts are very ill-equipped to deal with. There is consensus about that quite broadly, not only in the family law bar, but more importantly, within the court system and the bench as well.

I'm happy, perhaps in a subsequent question, to actually provide a defence to the judiciary, because I know some of the previous comments also made some critiques about them.

Miss Monique Taylor: One of the things that we have heard about this morning is the lack of training for judges when it comes to domestic violence and abuse. Is that something that you could see yourself supporting?

Mr. Omar Ha-Redeye: We would support—

The Chair (Mr. Roman Baber): In 10 seconds.

Mr. Omar Ha-Redeye: Sorry. I believe the Chair spoke.

Miss Monique Taylor: He said, "10 seconds."

The Chair (Mr. Roman Baber): If you could kindly conclude quickly, please.

Miss Monique Taylor: Just yes or no.

Mr. Omar Ha-Redeye: I think that they do receive that training, and that's what I will say in the 10 seconds.

The Chair (Mr. Roman Baber): We'll now move on to the independent member, Madame Collard, with four and a half minutes.

M^me^ Lucille Collard: Thank you to each of you who came forward this morning to share your views and your expertise in that area.

We've heard that the appeal route is convoluted, that it involves more delays, and this is a very negative impact on families who seek justice. With the court process being something that's very costly, with the long delays and the conflict-oriented process that of course create a great deal of stress on spouses and also on children, do you believe that we need better support in terms of alternative dispute resolution, and more specifically, having mediators who have training to recognize signs of family violence, and also other professionals who can assist with all the other social aspects that Omar mentioned?

Omar?

1140

Mr. Omar Ha-Redeye: I'm happy to speak to that further.

Without question, as I mentioned, family law disputes are primarily not about the law at all, so if the focus and the steps going forward are on out-of-court dispute resolution, which I very much hope they will be, that may require further steps, for example, by the law society. Julie Macfarlane spoke about the new family law licence that's currently under way and under development by the law society; those paralegals, for example, will come from social work backgrounds or mental health backgrounds and have skill sets that, quite frankly, lawyers, including family lawyers, just do not have.

Independent of our written submissions, we actually provide a schematic of what our family law triage program looks like, and it does rely very heavily on non-lawyers who are providing social services. So yes, there is a need for adequate funding and adequate support by this government for those social services, and without question, we would want to have mediators and arbitrators who have very extensive backgrounds in family law violence as it is defined in the statute.

I think that's what really is the amazing part about Bill 207, as well as the federal legislation: It is introducing the definition into the statute itself, whereas previously we only had this in the common law. When we have self-represented individuals going to court, they cannot be easily expected to go and identify what those expansive definitions of family law violence are in the common law. Having it in the statute allows them to understand that family law violence is actually more than just violence; it's coercive control. It is about power imbalances.

Here's the most important part: Having that definition in the statute itself and tying it into the best interests of the child empowers and enables the judiciary to actually provide negative consequences to individuals who are engaging in that type of conduct. And so there is an opportunity here for the court system to actually have a meaningful effect when it comes to family law violence issues—if, of course, the family law rules are perhaps modified and the judiciary, in their independence, actually take up that challenge to address this very pervasive and troubling problem.

M^me^ Lucille Collard: Anna, did you want to weigh in on this and add your views?

Ms. Anna Toth: I agree with everything that Omar said.

I know that among my friends who have graduated in similar times, there is that goal to become accredited as a mediator and to get involved and give back as that third neutral party. I think as that becomes popular among lawyers—to be providing that service to people instead of advocating for one side and maybe contributing to conflict—those are resources that self-represented litigants could then make use of.

M^me^ Lucille Collard: Do I have a little bit more time, Mr. Chair?

The Chair (Mr. Roman Baber): Twenty seconds, Madame Collard.

M^me^ Lucille Collard: Okay. Maybe next round we'll be able to elaborate a little bit more on that.

Going back to people being accredited as mediators—I am one. I don't think I'm qualified to detect family violence signs if I was to conduct a mediation.

Do you believe in training for mediators?

Ms. Anna Toth: Yes, I agree—

The Chair (Mr. Roman Baber): I apologize and thank you.

We're now back to the government for seven and a half minutes. MPP Kusendova.

Ms. Natalia Kusendova: Good morning, everyone. Thank you so much for all of your submissions this morning. I've been listening intently.

The area of family mediation is something that has been brought up over and over. When I was preparing to debate this particular piece of legislation, I was involved in a lunch-and-learn with the Ontario Association for Family Mediation, and they actually had a demonstration of what a mediation would look like between the two parties, whether it's a wife and a husband or whether it is a different family. They did a little presentation about what that would look like, and my reaction was that it's a much gentler approach. It's a less acrimonious approach than going into court. It reminded me of my own family situation; my parents are divorced. I don't remember which route of mediation they chose, but I remember how much it impacted me, as a child, back then.

Back to Omar and Anna: Can you touch a little bit more on the topic of family mediation and why it is so important to encourage that, especially given the fact that so many people in the judicial system today choose to be self-represented? You talked about the backlog in the courts and you talked about the fact that family law matters should be taken out of the courts—and use alternative approaches.

Mr. Omar Ha-Redeye: I would like to start out by saying that people don't choose to be self-represented, and that again is borne out by Julie Macfarlane's work. They often retain a lawyer because they think that's what they have to do, and then their financial resources are completely exhausted. They spend all their money on a lawyer. That means that's money and resources that could have been spent on the child, if there's a child involved, but can no longer be spent on a child. And that's for both parents. You're actually losing that money and assets that both family members would have had to support that child.

What's more important, perhaps, is to describe what actually happens in the family law litigation process. Even though we exist in a no-fault jurisdiction—that's important, and it's been that way since the 1970s—it's not uncommon for family law litigants to make very volatile accusations about the other party, especially as it relates to infidelity and things like that, which have very little if no bearing at all on the actual legal merits of the case. And they wouldn't know any better because they don't have legal representation. Because of this process being

adversely oriented in that manner, they are now stuck with a lifetime—or at least the child's lifetime—of an adverse relationship where you say really, really horrible things that don't help you at all in law, and that person is never going to forget that and they just do the same thing in return.

Again, there is consensus on this: The family law court system—and the family law bar will say this—is not the ideal place for resolving these disputes. The family law judges will say the same thing; they're just not able to appear before the committee, given their role. So it is important, as members of the bar, for us to convey the message to the committee, but also to society at large, that we need to emphasize and make out-of-court dispute resolution—especially, as I said before, even before family law conflict begins in the court—the primary basis for dispute resolution in Ontario. I think Bill 207, as I've mentioned, is the first step in that direction.

Ms. Natalia Kusendova: Thank you for recognizing that.

I want to shift gears and talk a little bit about the dispute resolution officer program. As you know, with this bill, our Attorney General has introduced two more locations, those being Kitchener and Welland.

Can you talk a little bit about your experience working with the dispute resolution officer program, and would this program be beneficial to expand even further to other cities?

Mr. Omar Ha-Redeye: I would say yes, but I haven't done much DRO work in the past year or two. I'm going to pass it on to Anna.

Ms. Anna Toth: I received mentorship from lawyer Geoff Carpenter. He is registered to help with the dispute resolution office, and he has a very positive outlook on what it's been able to do. It fits the needs of certain parties and can help them reach solutions a little faster.

Ms. Natalia Kusendova: I would now like to ask Wendy some questions. I've been working closely with Peel Children's Aid Society, with Juliet, so thank you for doing incredible work for our children and our families, in the region of Peel but also throughout Ontario.

My question is about Family Court unification. Under the leadership of Attorney General Doug Downey, we have actually expanded access to Family Court unification to eight more locations across Ontario. In your experience working with families, has access to the system been beneficial, and can you say a little bit more about that?

Ms. Wendy Miller: I apologize; I am not a lawyer and I'm not a practising person within an agency. I work for the provincial association. So I have no knowledge of how that has gone. I would be happy, in some opportunity, as with previous comments with MPP Tangri, to provide further comments to that, in some other forum. I simply don't know how it's gone. Possibly my colleagues at the Durham legal clinic might have some knowledge of that, but unfortunately I do not.

Ms. Natalia Kusendova: Maybe I will ask the same question to Mr. Tenenbaum—if you could comment on the Family Court unification system and if it's beneficial to expand it to even more locations across Ontario.

1150

The Chair (Mr. Roman Baber): A minute remaining.

Mr. Sheldon Tenenbaum: Family lawyers have been calling for Family Court unification for the last 25 years and nothing's happened, so it's nice to see at least this government taking steps to do so. I'm a Toronto guy in Markham, but in Toronto they need to do it as well. There shouldn't have to be one court if you're renting and one court if you own a home. It's not efficient.

The Chair (Mr. Roman Baber): Thirty seconds remaining, Ms. Kusendova.

Ms. Natalia Kusendova: Well, with that, I just would like to thank you all for your presentations today. In our experience, we have learned that family law is something very complex and convoluted, so anything that we can do to make it easier, more efficient and more affordable for families to access is what our government is all about, and that's what Bill 207 is about. Thank you so much for your time this morning.

The Chair (Mr. Roman Baber): We'll now go back to the opposition for seven and a half minutes. MPP Singh.

Mr. Gurratan Singh: I'm going to start with Omar. My question to you is going to be twofold. One is, how do you think the government's previous cuts to legal aid have now impacted access to justice with respect to family law?

Mr. Omar Ha-Redeye: I think the easy answer to that, of course, is going to be that any cuts are going to reduce service. But as we've heard consistently from multiple presenters today alone, the solution to family law is not going to be through legal aid. Legal aid itself says that it is not going to be the solution to family law. In fact, the majority of the self-represented litigants that we find before the courts would never have been eligible for legal aid certificates to begin with.

It's nice to receive additional funds to do good work, but what many of us in the legal profession have been calling for is systemic changes, procedural changes and true access to justice, which is only going to happen outside of the court setting, allowing, as I mentioned, courts to properly focus on the complex issues and the domestic violence cases that properly belong before them.

Mr. Gurratan Singh: You've described what is true access to justice. What could government do, in your opinion, to provide and implement true access to justice with respect to family law?

Mr. Omar Ha-Redeye: We detailed some of that in our submissions, but I think what needs to happen is some of what we've heard, which is unified Family Court, more DROs, a stronger emphasis within the courts to push these matters outside of the court system to begin with.

There are elements of funding, and I think there is a need for this government to prioritize the social aspects of family law and to build some infrastructure and resources around that as well. An example that we'll use is, at the Durham Community Legal Clinic, we are not funded by Legal Aid Ontario to provide family law advice. That being said, given the enormous crisis that we are facing in

Durham region, we've had to step up and create collaborative partnerships. At this point, those relationships have extended to places like Barrie and Ottawa. We have dozens of lawyers and mediators—Luke's Place and the Schlifer clinic for the domestic violence piece—to work collaboratively, all with our existing funding. So we found ways to do it from our existing funding, even though we're not funded specifically to do that.

The innovation, the ideas and the solutions are very much there. Part of the reason why we're here and why we have open lines of communication to this government is to let them know that we can do more and we can solve this access-to-justice problem. It's about not just spending more money; it's about spending it smartly and in the right ways, and that may not be through legal aid certificates in the court system, which is a very, very ineffective way.

In fact—going back to the unrepresented litigants—many of those unrepresented litigants started out with a family law certificate, started out with an adversarial relationship with their ex-spouse, and now have to fend for themselves for the next 10 years or 15 years of a protracted dispute with a parent that they had a separation with when the child was two years old. That isn't going to be the solution. The solutions are going to be collaborative. They're going to be social work-oriented. They're going to require, quite frankly, as you've indicated, some support financially from the government in other aspects of our system that are supportive of the justice system.

Mr. Gurratan Singh: What would those other aspects be? You're alluding towards the systemic or social areas. What have you outlined as areas to invest in?

Mr. Omar Ha-Redeye: Anna wants to jump in there, so I'll pass it on to her.

Ms. Anna Toth: This is linking back to the domestic violence conversation that we were having before. I wonder if there was an office—not the police—where people could report. A lot of people are reluctant to charge their spouse with violence, especially if it isn't physical. But if there was an office they could call and say, "There's no risk anything will happen, but we can develop a record for you and create evidence when things happen," be it financial, emotional, psychological. I think that would be a service that people in abusive relationships could benefit from—sorry, that was my point.

Mr. Gurratan Singh: I'm going to switch my questions over to Wendy right now. Wendy, I know you're not a lawyer and you're someone who can't comment on that area in that respect, but what have your experiences been with respect to the systemic issues that can be addressed through funding from the government to help create more access to justice, or—instead of using the term "access to justice"—to create more equity with respect to people interacting with the family law system?

Ms. Wendy Miller: Thanks for the question.

I would like to piggyback on what Omar and Anna have spoken of. Not only do the resources need to be upfront in terms of any involvement with disputes; they actually have to be way upstream in terms of social determinants of child protection, which are not unlike the social determinants of health.

We know that we are undergoing a child welfare redesign process right now. Our sector is in its current phase of transformation. This government has acknowledged the need and has been quite supportive of the idea of upfront services, early interventions and preventive kinds of services. We know that children's aid societies are kind of like the emergency room of social services. When all our other systems and supports have failed, that's when child protection has traditionally been invoked and been involved. It doesn't need to be that way going forward. We have a lot to offer at the front end of prevention as well.

So I would say resources at any given point in a community that has few resources, where a children's aid society may be the one place that families are able to avail themselves of support—that's probably not a great system. Mental health supports for children and for parents, domestic violence services, addictions and mental health together—services are not available everywhere in the province, and those are the high drivers of child protection needs. I would say they're probably related directly to the need for supports through family law circumstances as well.

Mr. Gurratan Singh: So it's fair to say that the government's cuts to mental health or a lack of funding to our schools and oversized classrooms—all these determinants would negatively impact people's ability to access justice in Ontario. Wendy, would you agree with that comment?

Ms. Wendy Miller: I would agree with it. I also think there's lots of literature that speaks to this; that's not just my opinion. I think there's lots that has been researched and written on how those types of services—in their absence or in their presence—impact people's access to everything that relates to a good quality of life.

Mr. Gurratan Singh: It's fair to say that these issues are being exacerbated by COVID-19 right now and that by not funding these specific areas, the people who fall through the gaps of CERB or who are unable to access small business funding—all these determinants are going to result in a further lack of access to justice for anyone who interacts in any areas of the justice system. Is that fair to say?

Ms. Wendy Miller: I think there's a general trajectory there that you're painting that I would probably agree with, yes.

The Chair (Mr. Roman Baber): We'll now move, to conclude, with four and a half minutes by the independents. Madame Collard.

M^me^ Lucille Collard: While I think we can all agree that Bill 207 is moving in the right direction in improving family law justice, I'd like to hear from you about the missed opportunities. These public hearings are very important for our democratic process and to review what the bill is changing. Next week, we'll have a clause-by-clause review that will presumably provide some opportunity to improve and address some of the issues that are not addressed. So, what is your view? I can start with Mr. Tenenbaum, and maybe he can let me know what those changes are that would improve Bill 207 to address the

problems in our society that we see today. Mr. Tenenbaum?

Mr. Sheldon Tenenbaum: Well, I think that these changes will happen, hopefully, because of government and not in spite of government. There are incredible efficiencies that can be had here. Again, there's always a shortage of judges. The fact that a judge could now go on Zoom, just like we are today, and hear a matter in another jurisdiction is wonderful. I always have to turn away clients from Hamilton or from Penetanguishene with legal aid certificates. I can't take those. Legal aid doesn't pay me to fly out there. If I can have the hearings on Zoom, I can take clients like that.

I'm not here asking for the government to spend money. However, I think it was Mr. Singh who was asking, should we be spending more money on legal aid? I am a supporter of legal aid. Legal aid allows small-time lawyers—I was once young—to start a practice with some financial viability. Every shingle that gets thrown out, we lose more access to justice. It's another place that a person can go.

The other thing legal aid does is—if you walk into 311 Jarvis or 47 Sheppard in Toronto, you can see a FLIC lawyer, a free lawyer, with no appointment needed, no obligation. You can go see them and get some summary advice, maybe a referral for a certificate—whatever is done that can help you. This is a great service for Ontarians. Legal aid is a top-heavy organization, and I don't want to the government to spend more money, but I do agree with what your colleague did say: They should be supported.

I could go on and on. Yes, these changes that our government is making are helpful. Getting rid of the words "custody" and "access"—sure. As Shakespeare said, a rose by any other name would smell as sweet. These are minor improvements.

I think the major improvements are as a result of what has happened with COVID-19 and the fact that now we can do trials remotely and be much more efficient. Having to bill a client for a whole day while I'm waiting for my trial or a motion or a hearing to start—and yes, I also agree with what my colleague Mr. Ha-Redeye, Omar, was saying: The courts are not the most efficient system, and the government, if they want to spend money, should also consider ADR, which is a game-changer. They are supporting ADR now, but more so—so not just mediation, but actually rent your own judge. Instead of going through the court process, I can go hire a judge. The legislation allows it already. If the government can help a little bit, parties with less means can do it.

But I think Ontarians should be proud. I think that despite all the problems we hear about with access to justice, you can phone my phone number and many of my colleagues, hundreds of other family lawyers—none of them are making a lot of money running through 47 Sheppard. You can phone these lawyers and get free advice on the phone and get some referrals and help.

It is an adversarial system. The lawyers didn't make it adversarial; the people did. For instance, I turn away legal aid clients not because legal aid isn't paying me enough, but because these parties will fight to the last dollar of legal aid. They have no skin in the game. They just want to fight and fight and fight, and I can't change that; unfortunately, no legislation can.

But for the most part, the system works, and I think there are incredible efficiencies—again, having judges be able to conduct trials remotely, having lawyers being able to take clients that otherwise they couldn't take and supporting young lawyers, particularly the younger ones who are struggling to open practices in family law.

I hope that helps.

The Chair (Mr. Roman Baber): This concludes the time we have available for this panel. I'd like to thank all the presenters for their appearances this morning and excuse them from the committee at this time.

The committee will recess until 1 p.m.

The committee recessed from 1204 to 1301.

The Chair (Mr. Roman Baber): The Standing Committee on Justice Policy is going to resume its afternoon hearing on 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.

I just want to confirm that no MPPs have joined this afternoon who were not recognized in the morning. Okay. In the room physically, I have MPP Lindsey Park and myself.

ONTARIO BAR ASSOCIATION

LUKE'S PLACE SUPPORT AND RESOURCE CENTRE FOR WOMEN AND CHILDREN

FEDERATION OF ONTARIO LAW ASSOCIATIONS

The Chair (Mr. Roman Baber): I'd now like to invite the 1 o'clock panel, starting with the Ontario Bar Association's Frances Wood, Pamela Cross of Luke's Place Support and Resource Centre for Women and Children, and Sam Misheal of the Federation of Ontario Law Associations. Welcome to you all. I invite each of you to make seven minutes' worth of initial submissions, followed by questions by both official parties and the independent member.

Frances Wood, if I may please invite you to commence your seven minutes by stating your name for the record.

Ms. Frances Wood: My name is Frances Wood. Good afternoon, Mr. Chair and members of the committee. I'm the chair of the Ontario Bar Association's family law section. The OBA is the largest voluntary legal association in Ontario, with over 16,000 members. Our members practise on the front lines of the justice system, providing services to people and businesses in virtually every area of law and in every part of the province. Each year, through the work of our 40 practice sections, the OBA provides dozens of submissions to legislators and other key decision-makers for the profession and for the public interest. We deliver over 325 professional development programs to an audience of over 12,000 lawyers, judges, students and professors.

We appreciate the opportunity, Mr. Chair, to appear today at the standing committee to speak to the Attorney General's family justice bill, Bill 207, and to respond to questions that committee members may have.

The OBA has been a strong advocate for changes that streamline and remove barriers to the family law system, to increase the public's access to the help that they need from lawyers.

We've made a written submission to the committee with respect to schedule 1 of Bill 207, and I'd like to speak to that now.

First of all, with respect to the Children's Law Reform Act: Schedule 1 of the bill proposes changes to the CLRA to align this provincial legislation with recent changes to the federal Divorce Act, which are now scheduled to come into force in March 2021. The OBA commends the Attorney General for seeking to offer clarity and equal application of laws to married and unmarried spouses by responding to our call for consistency between provincial and federal laws with this bill. The federal changes were strongly supported by organizations representing members of the legal profession, including the Canadian Bar Association, which is our national organization. Significant submissions and debate went into the federal bill at both the House of Commons and the Senate. The standing committees heard from numerous witnesses and considered many briefs submitted by a variety of organizations and individuals.

The OBA's position is that the Divorce Act changes represent a fair balance of the numerous and sometimes competing interests advanced by the various stakeholders. The changes will help to modernize the Divorce Act by providing further clarity around promoting the best interests of the child, updating parenting terminology, better addressing family violence and encouraging the use of family dispute resolution processes where appropriate.

The OBA continues to advocate for the incorporation of these federal changes into Ontario legislation, notably the Children's Law Reform Act. There are two primary reasons for this. The first is our general support for the federal amendments, and our strongly held view that inconsistencies between the federal and provincial law on these issues are not in the best interests of families in Ontario.

There are many benefits of having consistent provincial and federal legislation, including ensuring that the same laws apply to the children of married spouses, which is generally guided by federal law, and the children of non-married spouses, which is generally guided by provincial law, and in addition creating clarity for the public, the legal profession and third parties who are involved in and affected by family law. Bill 207, if passed, would largely align the provincial and federal legislation, and the OBA strongly supports this alignment.

There are two issues that I'd like to raise with the committee today. These are in our written submission, but I just wanted to speak to them briefly. The first is with respect to the definition of "child" in proposed subsection 18(3) of the Children's Law Reform Act. In that definition, "child' is limited to a minor. The Divorce Act, by contrast, and the provincial Family Law Act have expanded definitions. They have slightly different terminology, but in essence, both include a child who is either at or over the age of majority but is unable, by reason of illness, disability or otherwise, to withdraw from the charge of his or her parents.

We have already spoken to the importance of having consistency between the federal and the provincial legislation. In fact, not so long ago, there was a charter challenge with respect to the definition in the Family Law Act, which previously did not contain the broader definition for the purposes of child support, and it was as a result of that charter challenge that the Family Law Act was amended. The proposed limited definition in this bill would cause a similar distinction, an unequal treatment between married and unmarried spouses, where there is a child with a disability who is either at or over the age of majority. Unmarried spouses would have to turn to a completely different legal regime under the Substitute Decisions Act of 1992.

The second issue that I'd like to raise is with respect to subsection 28(3) of schedule 1. This section proposes to replace language referencing an application for custody in the Family Law Act with an application for a parenting order respecting decision-making responsibility. That particular section refers to the court's ability to stand over a decision with respect to child support until—it used to say—a custody order has been made. By limiting it to only decision-making, there is a risk that a court could not stand over a support decision, even if parenting time is outstanding. But the issue there is that section 9 of the child support guidelines calls for different child support regimes depending on the amount of parenting time. So for that reason, it's critical that the Bill 207 amendment permits the court to direct that a support application stand over until parenting time has been determined—and not only decision-making. It's our suggestion that it would be sufficient simply to amend that provision to say, "an application for a parenting order," and leave it at that.

I think I'm coming quite near to the end of my time, so on behalf of the OBA, we, again, appreciate the opportunity to speak to these issues at the standing committee. We look forward to answering any questions that the committee members may have.

The Chair (Mr. Roman Baber): Thank you so much, Ms. Wood.

I'd like to invite Pamela Cross from Luke's Place.

Ms. Pamela Cross: Good afternoon. Thank you very much for this opportunity to discuss Bill 207 with all of you. I do so on behalf of Luke's Place Support and Resource Centre in Durham region, where I am the legal director. We're named after Luke Schillings, a three-and-a-half-year-old boy who was murdered by his father on his first unsupervised access visit after his mother had sought, but was unsuccessful in attaining, an order for supervised access. We deliver direct, Family Court support services to women in Durham region who are leaving abusive relationships. We also work at the provincial and national

levels doing research, training and law reform advocacy on the issue of violence against women and the law. Naturally, family laws at both the federal and provincial levels have a huge impact on the women we serve, as well as on their children, so we have been involved in advocacy in this area for many years.

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Our brief, which we have submitted to the committee for your consideration, despite the speed with which this bill is moving ahead, has already been endorsed by 30 organizations across the province, including three at the national level. Both the brief and my remarks this afternoon are focused on the proposed changes to the Children's Law Reform Act.

We congratulate the Attorney General for the many positive changes introduced in the bill. We are particularly pleased that the bill proposes an extensive and inclusive definition of family violence, which will now appear directly in the best interests of the child test. It's especially good to see that the definition uses the language of "coercive and controlling behaviour" and includes a wide array of behaviours that are considered to be family violence. We also note the importance of the bill identifying that conduct need not constitute a criminal offence for it to be considered in a family law proceeding.

Despite these positive steps, we believe the bill could go further to address the needs of women and children leaving abusive relationships. Violence within families is an endemic and pervasive social problem. Any changes to family laws must make this reality a high priority.

Here are just a few stats: A woman is killed approximately every six days by her partner or former partner. Of the family violence which is reported, women are the victims in seven out of 10 cases. About one in four women is subjected to intimate partner violence in her lifetime, and those rates remain pretty constant over time. Children are profoundly affected by living in a home where their mother is being abused. In extreme cases, as we heard from Jennifer Kagan this morning, the child is killed. In many other cases, they witness their mother being killed. Financially, the aftermath of intimate partner violence in Canada is high. In 2009, it cost approximately $7.4 billion.

Our brief makes a total of 23 recommendations, but I'm going to focus on just three. Please turn to our brief if you would like to see suggested wording to support each of those 23 recommendations.

First, maximum contact: In both subsections (3)(c) and (6) of section 24, the best interests of the child test, the bill proposes language that is very similar to what used to be called the friendly parent rule or maximum contact principle. Both provisions require the court to give weight to the concept that children should spend as much time with each parent as possible. This places a woman fleeing an abusive relationship in a no-win situation. Does she indicate to the court that because of safety concerns she does not support the father spending extensive time with the children, thus potentially disadvantaging herself in the court proceeding? Or does she tell the court that she's comfortable with the kids spending significant time with their dad, thus potentially risking both their and her safety and well-being?

These references are unnecessary and should be removed. If the best interests test is properly applied, parenting decisions will be made appropriately. In most cases, this will mean kids spend lots of time with both parents. But in some cases, especially those where there has been coercive, controlling abuse, it won't be in the best interests of the children to spend a lot of time with the abuser. Including two references to maximum contact within the best interests test only serves as encouragement to abusive men to seek more time with their children than is appropriate.

Second, the present language with respect to decision-making creates an opportunity for an abusive partner to manipulate the intention of the legislation in order to intimidate and control the child's other parent. We recommend that the legislation be explicit that day-to-day decision-making cannot conflict with decisions made by the parent who has primary decision-making responsibility. Section 28(6) should be amended to explicitly state that the non-primary decision-maker may—not has the authority to, but may—subject to compliance with best interests, make day-to-day decisions affecting the child and that such decisions shall not conflict with decisions made by the primary decision-making parent.

Third, we strongly recommend that Bill 207 include a duty for all legal advisers to screen for family violence at the beginning of every family law case. Not all women disclose the abuse to which they have been subjected; without a universal screening process, the lawyer may not be aware of important abuse issues. When the lawyer is not aware of these issues, they may not take the proper steps to assist their client to access appropriate services, safety issues may go unaddressed and, more generally, the lawyer's advice may not speak to what the client most needs in terms of legal process and outcomes.

It was challenging to pull these three recommendations from all of those in our brief, because we feel passionately that all of them are important. I will just say that Luke's Place strongly supports the comments made this morning by Jennifer and Phil that education and training for all those involved in the Family Court system is critical. I'm happy to answer questions about any of the recommendations I've talked about now or that are in our brief as time permits.

Let me conclude by saying that we support Bill 207 but strongly encourage the committee to consider our proposed amendments. Implementing these recommendations will strengthen what is already a good bill, leading to safer outcomes for women and children fleeing abuse. Thank you.

The Chair (Mr. Roman Baber): Thank you very much. We'll now begin with seven and a half minutes of questions by the official opposition—

Ms. Lindsey Park: I think we may have one more witness.

The Chair (Mr. Roman Baber): Sorry; we have one more witness, Sam Misheal—of course, the Federation of Ontario Law Associations. I apologize, Mr. Misheal.

Mr. Sam Misheal: Good afternoon, Chair, Vice-Chair and members of the Standing Committee on Justice Policy. Thank you for providing the Federation of Ontario Law Associations—or we're known as FOLA; that's the most commonly known name for us—with the opportunity to present to you today. My name is Sam Misheal. I am the family law committee chair for FOLA and also a sole family law practitioner in Oakville, Ontario.

Just by way of background: FOLA's membership is composed of presidents of the 46 law associations in Ontario, and in addition there's the Toronto Lawyers Association. Certainly, we're represented in every judicial district in Ontario. These local law associations collectively represent nearly 12,000 lawyers who are in private practice in firms across Ontario, and these lawyers are also the front line of our justice system.

Many of our members practise in family law and child protection law in various capacities, whether through traditional retainers or limited-scope retainers, duty counsel, [*inaudible*], flat rates for a day of court, certificates—

Failure of sound system.

Mr. Sam Misheal: They also practice—

Failure of sound system.

Mr. Sam Misheal: It's saying my connection is unstable—and volunteer dispute resolution officers, as well as out-of-court dispute resolution processes such as mediators, arbitrators and through collective practice.

As you know, much work has gone into the drafting of this legislation, and we thank the minister, his staff and his parliamentary assistant, Ms. Lindsey Park, for their extensive consultation in advance of their amendments to the Family Law Act, the Children's Law Reform Act and the Courts of Justice Act in creating the Moving Ontario Family Law Forward Act. Our members welcomed the proposed amendments, and also the many opportunities that we were provided for input. We offered our input and feel that our concerns have been by and large addressed in the proposed legislation. We agree with the government that the proposed Moving Ontario Family Law Forward Act helps in providing continued efforts in making access to justice more accessible to Ontarians; for example, by simplifying the appeal process; addressing the archaic language concerns in the Children's Law Reform Act; and assisting families with child support issues.

I'd like to highlight a few examples of where this legislation would, if passed, help.

The amendments to the Children's Law Reform Act and other provincial statutes: In making an order for custody or access, the court would make such an order under either the Divorce Act for married parents or through the Children's Law Reform Act for parents who are not married or who are not pursuing a divorce. With the proposal in Bill 207, it provides a reduction of inconsistencies between the federal and the provincial legislation by adopting the same terminology, such as "parenting order," "parental decision-making," "parenting times" and "contact orders," rather than the old, archaic terms of "custody" and "access."

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The new terminology will certainly reflect the culture change that has been witnessed in the past couple decades, and it's a welcome step away from the adversarial approach towards a child-centred approach. It is FOLA's view that the previous terminology was seen by parents as a mechanism that promotes them to view custody and access as an Olympics, in order to see who would be the winner and finish first on the podium. With the proposed changes and the intent behind the proposed changes, it is our view that it reduces the conflict between the parents, given that it is a child-centred approach.

Furthermore, the expansion on "best interests": There is no doubt that the best interests of the child are being advanced to ensure justice for children of separated parents, as well as taking into consideration that such is paramount and provides for a meaningful parental relationship and the ability to be loved by both of their parents, absent ongoing parental conflict and family violence. As well, stability and their daily routine are protected.

Additionally, the proposed amendments are of great significance—that caters to the children's essential needs, helping them grow, develop and achieve their capabilities to the maximum extent possible. Again, FOLA's view is that the best interests of the children, as proposed, provide the court with primary consideration and factors to be taken into account that address the above.

Alternative dispute resolution: Again, this was a welcome step, taking into consideration the proposed language, that is, "to the extent that it is appropriate to do so, the parties to a proceeding shall try to resolve...." That was FOLA's concern when we made the submissions. That was heard and certainly was taken into consideration. "To the extent that it is appropriate to do so" certainly addresses some of the case scenarios where there is some power imbalance or domestic violence, and with the proposed language, that could be eliminated.

To close, if Bill 207 is passed, the Moving Ontario Family Law Forward Act should go a long way to reducing stress, strain and burden for Ontarians by providing more clarity for families involved in family law matters.

I'd be pleased to answer any questions you may have.

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

We will now proceed with seven and a half minutes by the official opposition. I recognize MPP Morrison.

Ms. Suze Morrison: I'd like to begin by directing my questions at Pamela Cross. Thank you so much for being here today.

Can you elaborate and provide some examples of stories or situations that you've encountered that would better depict some of the issues at a more personal level—you were speaking particularly to maximum contact—and then how we can strengthen this bill to better protect women experiencing violence, particularly intimate partner violence?

Ms. Pamela Cross: Thank you for that question.

Maximum contact is a "principle" that has hung around in family law in Canada for a long time, in both the

Divorce Act and most provincial legislation. Over time, what it has been understood to mean is that the parent who appears friendlier in the proceedings is more likely to do well in terms of obtaining a significant role in the child's life. That's great for people who have separated, where there isn't a power imbalance, where both parents are focused on what's best for the children. Certainly, there's no doubt that kids do better in those situations, when both parents play a significant role in raising them—not unlike that expression, "It takes a village to raise a child."

But where there's a history of abuse, especially coercive, controlling abuse—and here I just refer back to Jennifer Kagan's really powerful remarks this morning about what coercive control is. I won't repeat everything she said this morning. Especially where there has been coercive, controlling abuse, that kind of maximum contact is not what's best for the child. It puts the child in a situation where they can become a tool of the abusive former partner. It puts the non-abusive partner in a situation where they remain under the control of the abuser, whose actions are not necessarily—in fact, I would argue are almost never—motivated by a genuine concern for what's best for the child, but rather about his need for ongoing control over the former partner.

We see these women at Luke's Place—I used to see them when I had a private practice—who would say, "I just don't think the kids should spend a whole lot of time with their father. I'm happy for them to have some time, but here are my concerns. In the past, he's used the children to spy on me." Certainly, nowadays, especially with the kind of technological tools that are available, children are often placed in the middle by the abuser, where, unwittingly, they're spying on their mother through devices, technology that has been brought into the home with the children.

When women leave an abusive relationship, they need to be able to leave; they need to not continue to be under the control of their former partner. But where there is, in effect, a presumption that it's always better for kids to spend a lot of time with both parents, that's really difficult. There is no place for presumptions of any kind in family law. We have the best interests test. We say in the law that all decisions about parenting arrangements are to be made dependent entirely on what's best for the children, and yet in this legislation, we have two clauses that say "what's best for the children, but we're also letting you know the kids should spend as much time as possible with both parents." It's inconsistent, it's unnecessary, and it places children and women at risk of ongoing harm.

Ms. Suze Morrison: I know you have another recommendation around training for legal professionals in terms of providing abuse and violence screening. Can you elaborate a little bit more on that recommendation for the committee?

Ms. Pamela Cross: Luke's Place did extensive research two years ago for the federal Department of Justice, looking at whether or not family law practitioners should have access to a standardized screening tool and whether indeed that screening should be "universal," which is, I think, a polite word for mandatory. Our research, which looked at tools from around the world, found unequivocally that when a good tool is used—there are some good ones out there—by lawyers who have been educated in domestic violence and in how to use the tool, the lawyers were getting a more accurate reading early on in the case about whether domestic violence is a factor for this particular case.

A lot of mediators use really great tools to screen. Many mediation associations require that that screening be done. There is no such obligation on lawyers. That is, first of all, inconsistent and, secondly, it does a big disservice to survivors of family violence, many of whom, I think everyone on the committee can appreciate, may be reluctant to spill the beans about this secret the first time they meet with their lawyer, who is a stranger to them. So a screening tool helps us get past that and get to a place where the lawyer has the information they need to provide the best possible representation to that client.

Ms. Suze Morrison: We also heard from another stakeholder this morning around—they also proposed the idea around domestic violence training for judges. Do you see that as something that would be helpful in looking at this legislation, as well?

Ms. Pamela Cross: Absolutely, but not just judges. Everyone needs it. Law students should have to take some kind of course on violence within the family. Lawyers should have access to more opportunities for professional development in this area. Anyone who comes into a Family Court case to do an assessment—everybody needs to have more education and training on family violence.

1330

Ms. Suze Morrison: Chair, how much time do I have left?

The Chair (Mr. Roman Baber): Just about 50 seconds.

Ms. Suze Morrison: Okay.

In the last 30 seconds or less, is there anything else that you'd like to add to your presentation?

Ms. Pamela Cross: I'd just like to stress that decision-making is also critical here. I've worked with clients where the abusive former partner has intentionally used that day-to-day decision-making responsibility to run directly counter to the longer-term plans of the parent, the mother, who has primary decision-making responsibility. So I think this is a critical spot for the committee to address as well.

The Chair (Mr. Roman Baber): Back to the government for seven and a half minutes: MPP Gill.

Mr. Parm Gill: I appreciate this opportunity, and I also want to take this opportunity to thank our presenters for appearing before the committee to discuss this important piece of legislation.

My question is for the Federation of Ontario Law Associations, to Sam Misheal. Attorney General Downey has said that since the outset of the pandemic, Ontario's justice system has moved decades in only a matter of months, and our government's track record of significantly investing in the justice system to modernize it, not automate it, has

benefited families, children and justice sector partners in every corner of this province. The expansion of e-filing for more than 400 different types of civil and family court documents, as well as procuring a cloud-based document-sharing storage platform called CaseLines are the two things that I can think of off the top of my head that benefit family law.

Can you please describe how our government has made it easier, faster and more affordable to resolve family legal matters on the ground?

Mr. Sam Misheal: Thank you for your question.

I could give you many instances, but particularly—for example, I'm on the panel of the Office of the Children's Lawyer. From my perspective, it allows for the opportunity to advocate on children's behalf without any delay. I'll give you a perfect example. Last week, I had to appear before—with COVID-19, court adjournments happen to be—this is the court where we're moving the matter forward, and I happened to have two particular cases on the same day, half an hour apart. One was in Welland, Ontario, and the other one was in Milton, Ontario. By allowing us to move forward, similar to what you just described, it allowed me the opportunity to be in two places almost instantly, at the same time, without having to travel or without advising the court that, "I'm sorry, I cannot attend because I have another matter in a different jurisdiction." That's one instance.

Another instance: For example, I act as duty counsel sometimes in the criminal court, sometimes in Family Court. It allows less fortunate individuals, where they don't have vehicles and they use public transportation, to now have the ability to attend via Zoom rather than travel, incurring expenses and having to travel for a number of hours. Now they can attend almost instantly.

Other measures—allowing them to e-file. That's another example where before, they either had to, again, travel to the courthouse or had to take public transportation, incurring expenses to file the material. Now they can do it online, as well.

These are some of the examples that come to mind right now.

Mr. Parm Gill: Thank you for sharing your experience. I'm sure that's just one example of many, many others around the province.

Something that I hear from my constituents in Milton—as you mentioned, you had an incident or experience with the Milton courthouse—throughout the pandemic, who have talked to me about whether it's their child custody and access issues, is that the justice system has never closed. Ontario's justice system is here and available, of course, to serve families and children during some of their most difficult times.

While use of video hearings—hundreds of Zoom lines were procured by the Ministry of the Attorney General—may not be ideal for every circumstance, which is understandable, the move to virtual or video hearings has allowed the system to keep moving and addressing urgent child custody access, restraining order matters etc.

Luckily, I understand from the Attorney General that as of September 14, 308 courtrooms reopened in 68 of the 74 base courthouses in Ontario, and the Zoom lines are still in place. However, I'm hearing anecdotally that some from the courts may be reluctant to continue using video hearings for even parts of the family matter. That seems like a move backward to me.

Can you please share your thoughts on being able to use the video hearings for even parts of the family matter, which would save people time and money associated with going to court?

Mr. Sam Misheal: Punctuality—that's one example that comes to mind. It seems to be the flow of court attendances, with times for matters being called—the timelines are strictly adhered to. For example, if your matter is to start at 11 o'clock, 11 o'clock is the start time. Scaling it back—if it's up to me, and speaking to my colleagues—and I welcome my colleagues to also add additional comments—it's a personal preference. Some counsel like to attend; there is that personal touch. They want to attend, speak to other counsel, canvass resolution discussions outside of the courtroom, where the current online segment sometimes doesn't allow you to do so. That's the one example that comes to mind that I feel where some individuals, some counsel or even parties say, "Let's scale it back. Let's attend in person rather than via the Zoom" or other means.

Mr. Parm Gill: Obviously, I think we can all agree, in a perfect world, personal touch is important—and I am one of those people. But especially in circumstances where either it's not feasible or, as you had mentioned earlier, in terms of schedule issues and other items—I think having that flexibility does go a long, long way.

How much time do I have, Chair?

The Chair (Mr. Roman Baber): You have about 20 seconds.

Mr. Parm Gill: Okay. Then I'll take a pass.

Thank you very much, once again, to all of the witnesses for taking the time.

The Chair (Mr. Roman Baber): We'll now move on to the independent member for four and a half minutes.

M^me^ Lucille Collard: Mr. Misheal, I've listened to your views, and obviously you're very supportive of the bill. I also think that the bill is certainly moving in the right direction. There's great stuff in there that's going to improve family law matters and the way we deal with them. But the committee has an opportunity to review this bill with the help of your testimonies today and then with a review of it clause-by-clause.

I'd just like to hear from you, if we're to take the opportunity to see how we can improve the bill, what would there be, in your view—that we could actually make it go further, to further protect women and children that family law matters affect most?

Mr. Sam Misheal: Quite frankly, I think Ms. Cross has brought up a very good, important factor: domestic violence. And my colleague Ms. Wood, as well—the definition of a child. In my respectful opinion, the definition has to align with the federal legislation. In order to prevent, for example—I'll stick with the definition of a child—it allows for consistencies. This way, children of

married couples are not treated differently than children of unmarried couples. That's where a reworded improvement can definitely help Ontarians and help everybody to be treated equally.

Domestic violence—there is no doubt in anyone's mind that it's a problem that we see on a daily basis, on a minute-by-minute basis, as a matter of fact, and I think we need to educate our stakeholders, professionals. I can't really speak on behalf of the judges because I don't know what courses they take or they don't take. In any event, domestic violence education is a great component to learn in order to have a better understanding of what we could assist with, how we can allow people to have more access to justice, and to have a better understanding of their needs.

1340

M^me^ Lucille Collard: Ms. Wood, can I hear you on the same question? We've got a great opportunity here to recognize the improvements that are needed. We do have this bill that is going to change a few pieces of legislation. How can we make improvements to make sure that we are addressing the most pressing issues?

Ms. Frances Wood: Thank you very much, Ms. Collard, for your question.

In addition to the things that I had raised earlier during my initial remarks, maybe I can come back to a few other things that we haven't discussed much so far. One of them is the expansion of the dispute resolution officer program. I know there were some questions about that this morning; I had listened in a little bit. That's a program whereby some cases are referred initially to senior members of the family law bar before they are referred to a judge. I sit as a dispute resolution officer, and we are able to significantly assist parties in either settling their matter or, if they can't settle their matter, then we can get the files very well organized so that when they do get before a judge, they can make the most of their time there and make the judicial system much more efficient.

I was really happy to see in this legislation that that program is now being expanded across the province to a few more jurisdictions. In our submission, if that could expand even further across the province, that would be a great way of streamlining a lot of cases for Ontarians and improving their ability to access the family law justice system.

The other thing—

The Chair (Mr. Roman Baber): I apologize. Your time is up. Hopefully, you'll be able to integrate the continuation of your answer into the next presenter.

If I may please bring it back to the opposition for seven and a half minutes—MPP Taylor.

Miss Monique Taylor: Good afternoon, everybody. Thank you so much for your presentations and for bringing your perspective to this bill.

I do want to try to turn you back—I know you, Ms. Wood, were particularly focusing on schedule 1, but schedule 2 has great changes to the appeal process. I've read a submission from the Ontario Association of Child Protection Lawyers that they have concerns about the direction of this bill and what that will mean for access to justice for many families who find themselves in the appeal process. Do you have any comments on that, and particularly on this bill and the changes?

Ms. Frances Wood: Thank you very much, Miss Taylor, for your question.

I have also read that submission—and I know there were some submissions this morning and will be again tomorrow. The primary concern, from the OBA's perspective, is making sure that clients of all of our members have access to a fair and intelligible appeal route. I was really happy to see that some steps are being taken in the right direction. With this bill, there is some simplification of the processes.

What I would really love to invite the province to do is to continue its commitment to rolling out the unified Family Courts. I believe that some of you will have heard a little bit about that this morning. In many jurisdictions across this province, we have unified Family Courts where the Superior Court and the former Ontario Court of Justice are merged into one. There are specialized judges who sit in those courts.

Part of the issue with the appeal routes has been specific legislation about appeal routes from those courts. As those UFCs are rolled out across the province, a lot of the appeal route issues, including many that are raised by the child protection bar but that are also of great importance to family law lawyers in general, will be minimized because we won't have the Ontario Court of Justice distinction. The more commitment that we can get from this provincial government to continue to roll that out—there have been numerous new jurisdictions announced in the last few years, and the more of that that we can push for in our submission—that would be a great way of further simplifying the appeal processes.

Miss Monique Taylor: Mr. Misheal, do you have any comments on the changes to the appeals and what that means to child protection?

Mr. Sam Misheal: Unfortunately, I did not read the submissions.

Miss Monique Taylor: The changes to the appeal process—this particular presenter felt that it left child protection behind and that in different jurisdictions, particularly, Indigenous families would be left out of the process and not be able to have adequate access to the appeal process if these changes were to continue for them.

Mr. Sam Misheal: Sorry.

Miss Monique Taylor: That's okay. I'm just wondering how your organization, your association, felt about the changes to the appeal process. Do they feel equitable to you?

Mr. Sam Misheal: Well, certainly any changes are welcome changes.

I'll just echo Ms. Wood's comments: Sometimes the reality is that any change is not necessarily the perfect change; it allows us the opportunity to look at better changes for the future, to see what works and what doesn't work.

I did not read the reports, so I don't feel comfortable commenting on that per se. But overall, the appeals

process—it's a welcome step. Could it lead to something more? Definitely. Should we leave the door open for something more? Definitely.

Miss Monique Taylor: We've definitely heard from presenters who feel that this bill doesn't go far enough, and we know that, particularly, access to justice isn't being addressed within this bill. Many folks are still going to be left outgunned. I know the move to virtual is happening, but that could also leave many of our most vulnerable folks without access to virtual—northern Ontario doesn't have access to broadband, so there are several issues regarding that.

Ms. Cross, I just wanted to reaffirm once again how important we think it is for mediation, and how important we think it is for further education within all of our legal system, whether it be lawyers, whether it be our justices, knowing that many families need to have that screening to ensure that the child safety truly is in the best effort and the best focus of the children. It's great to put nice words into legislation, but if we don't have the social policies in the background to ensure that they can happen, then this bill and the wording could be for naught.

Chair, how much longer do I have?

The Chair (Mr. Roman Baber): Just under two minutes.

Miss Monique Taylor: Okay.

Does my colleague Suze Morrison have any further questions?

Ms. Suze Morrison: Not off the top of my head, no. Sorry.

Miss Monique Taylor: Okay, then I'm happy to pass some of my time over, if you have any final comments or thoughts on how we can push a little bit harder. It may not happen in this bill, but what would you like to see in changes? I'll open that up to any one of you.

Ms. Pamela Cross: Certainly, I appreciate the support for the issues that we've raised here today.

If I could make a general comment about court process: We see many, many women who are unrepresented. Some 60% to 70% of the women we work with do not have a lawyer, so steps to simplify court process—not simply the appeals stage of things, but the whole court process. Further expansion of the unified Family Courts, as Ms. Wood has said, is certainly part of that, but there are a lot of rules, boy. Even for lawyers, there are a lot of rules, so somebody who doesn't have a lawyer, who is dealing with legal bullying on the part of their former partner who is engaged in a campaign of terror and intimidation—we need a court process that's accessible for that person. We need adequate government support for Legal Aid Ontario, so that those parties—especially the most vulnerable, because of family violence—are represented by a lawyer through the process. We need a system that is responsive to the most vulnerable people who access it.

This bill starts us moving in that direction, but there's more to come, not just in legislation but in regulations, in programming. I'd like to see more spending on programs like the Family Court Support Worker Program, which allows any survivor of family violence to have a companion to walk through the court process with her who is skilled in the area of family violence.

1350

The Chair (Mr. Roman Baber): We'll turn it back to the government for seven and a half minutes. Mr. Bouma.

Mr. Will Bouma: Thank you, Mr. Chair. Through you, I want to start with Pamela Cross from Luke's Place.

I was very, very moved by the testimony from Jennifer and Philip, and I could tell that resonated very deeply with you also, with the work that you do every day.

I want to start by asking you if Luke's Place or you yourself had the opportunity to provide any input to the federal government as they worked through the divorce legislation federally.

Ms. Pamela Cross: Indeed, we did. Luke's Place worked very closely with the National Association of Women and the Law. We led a national coalition of women's organizations. We held consultations across the country and submitted a brief to the federal government in which we raised similar issues to those we're raising here. That brief was endorsed by more than 40 organizations across the country. We appeared at the committee stage, both in the House of Commons and with the Senate.

Of course, that bill moved through under a lot of pressure because of the impending federal election, but we certainly left that process feeling quite encouraged, in particular by comments made by senators who said they wanted to see the bill move ahead, so they weren't going to assist on amendments. They very much wanted to see the federal government, post-passage of the bill, post-election, move ahead on issues, including the issue of education for judges.

So we come back full circle to things you heard this morning—education, education, education. I think these pieces of legislation, Bill C-78 and Bill 207, are really, really good legislation. I don't say that lightly. I'm a good critic. I think there's a lot of good stuff in these bills. If the people who apply and interpret the bills are not properly educated about violence within the family, about the gendered reality of that violence; if they don't understand that women die one a week or more than one a week, that children like Keira Kagan die when Family Courts do not make appropriate orders for parenting after separation, then those pieces of paper on which the bills are written are meaningless.

Mr. Will Bouma: It's really good to hear that you could be so instrumental in drafting this legislation. I trust that the federal legislation—which we're trying to mirror somewhat, or coordinate with well—also brings forward some of those concerns.

We heard this morning that the buck seems to get passed with who is responsible for the judicial educational piece. I was wondering if I could ask your opinion on which way you think that would be best implemented, from your experience. Is that a federal thing, is that a provincial thing or is that something that the judges should take care of internally?

Ms. Pamela Cross: It's both federal and provincial, because there are federally appointed justices and there are

provincially appointed justices, so jurisdictionally the responsibility rests at both levels. Should judges be involved? Absolutely. But should they be in charge? Should they be the only ones determining what happens in terms of education? Probably not. There are people who are experts on family violence, on violence against women, on the impact on children. Those are people who should be closely involved.

There have been good programs in the past. The National Judicial Institute had a fantastic program several years ago that I had the pleasure of being involved with, in which judges and others—including people like me, but also law professors, crown attorneys and so on—developed a program for both Family Court and criminal court justices, to enable them to better manage a trial or a case that involved family violence. It is a great program. It's still lurking around somewhere; it's not being used very often right now.

We don't have to start from scratch, but it certainly involves everybody—and I don't put judges in this situation alone. Whether it's judges or police officers or lawyers, they're not the only ones who should decide what they need to know, because sometimes we think we already know what we need to know because we don't know what we don't know. That's where organizations like Luke's Place and many others across the country could play a really helpful role.

Mr. Will Bouma: I will conclude that part by just saying that I believe the parliamentary assistant and the Attorney General are both listening very closely to your testimony, and I really appreciate that.

Getting back to consistency between—in the time remaining, if I could turn to Frances Wood. I was wondering if you could discuss a little bit more at length how important it is that the provincial legislation works really well with the federal legislation.

Ms. Frances Wood: The biggest distinction right now is that the Divorce Act amendments—which, as I mentioned, were developed after significant consultation—only apply to couples who have been legally married. Any parents of children or any couples who are either living in a common-law relationship or are the parents of a child but were never married to one another don't have access to that legislation; they have access to provincial legislation. So, as you can imagine, to the extent that the federal legislation, the Divorce Act and the provincial legislation differ, now you have different treatment for the children of married couples vis-à-vis children of unmarried couples.

First of all, that can create significant discrimination for those children. It can also create, as you can imagine, tremendous complication for teachers, doctors, the school boards and other people who are involved with these children. If some people come to them with a parenting order and other people come to them with a custody order, it creates a significant amount of confusion. It also creates confusion for the citizens of the province when they're not sure why their order differs from somebody else's order and they don't understand which piece of legislation applies to them. Having consistency for all people in the province is of utmost importance. That's why we have been pushing.

The federal legislation was originally scheduled to come into force in July, and because of COVID-19 was put off to March 2021, but that was in large part in respect of the fact that many provinces, because of the pandemic, had not had an opportunity to introduce provincial legislation which would mirror the federal legislation. The federal government recognized how important that was, and that was part of their rationale for moving that legislation off for several months—to allow all provinces across this country to really sit down and consider this issue, so that we don't have these inconsistencies for the people of our province.

The Chair (Mr. Roman Baber): We'll conclude with four and a half minutes for the independent member, Madame Collard.

M^me^ Lucille Collard: Ms. Cross, I wanted to discuss a little bit further with you. Like you, I do welcome the fact that we would have a definition of family violence in the legislation, which will be very helpful to any intervener to understand what it could look like. You also gave some statistics that are reflecting the real and urgent problem of women, Indigenous women and children being affected negatively by all these conflicts. You also referred to a screening process being an important part of the process, to be able to recognize where there is family violence.

The act also encourages the use of mediation, and I think that alternative dispute resolution is a really great idea, given the fact that the court process is intimidating, it's costly and it takes time. The overall thing, especially in a difficult situation, just makes everything worse.

The question I had is about the importance of having mediators or alternative dispute resolution experts or interveners have proper training in order to be able to really identify signs of family violence. I think we need to acknowledge the fact that men—if we accept the fact that it's mostly the case—are quite able to dissimulate the fact of their abuse. They can go under the radar. Would you think it would be very important to make sure that mediators or interveners at the early stage—or even avoiding the court process—would benefit from some training on these specific issues?

1400

Ms. Pamela Cross: Training is critical for everybody who is involved with Family Court, because domestic violence cases, family violence cases, make up somewhere around a third of the cases that find their way into Family Court. People who can get along with one another post-separation aren't appearing at the doors of our family courthouses. They're working things out either privately or with lawyers through collaborative law and sometimes through mediation.

We don't take a position against mediation. What we're concerned about is that this legislation, as was the case with the changes to the Divorce Act, favours ADR over litigation. We think that women and men should have full autonomy to choose the court process that is best suited to

their own situation. Often, in cases of abuse, the victim will feel uncomfortable going into mediation because it's a closer kind of contact with the abuser.

I had a client a number of years ago who came to me after a mediation process. She had left an abusive relationship. Her then lawyer had encouraged her into mediation. What the mediator didn't know was that while she had been with her partner, one of the things he had done was to burn her with cigarettes. During the mediation sessions, while they were sitting in the room with the mediator, whenever things got a bit sticky, her former partner would pull out a pack of cigarettes and tap them on the table. This intimidated her to the point that she simply agreed with anything he was saying then. That was invisible to the mediator. How would the mediator know what that meant?

Mediation has come a long way since those days. There's a very good screening process that most mediators use. There are things like shuttle mediation that can keep the two people in different rooms. The point is that nobody, particularly vulnerable people, should feel pressured into using one process over another. Litigation has its downsides too. There's no doubt about that. What we would like to see is legislation that says legal advisers are required to provide all clients with information about all possible processes and then support the client in whatever choice they make.

M^me^ Lucille Collard: They're very helpful comments. I do appreciate the distinction and the emphasis on using the tool that actually works best for you.

Would you agree, then, as well, that if for some reason a spouse decided to decline a mediation process because they don't think it's to their advantage, the judge shouldn't take that as a negative factor in determining the interests of the child?

Ms. Pamela Cross: There can be no negative inference drawn if one party chooses not to use mediation.

The Chair (Mr. Roman Baber): That concludes the time we have available for this panel. I thank them for their submissions and wish them a good day.

ONTARIO ASSOCIATION FOR FAMILY MEDIATION

MR. SCOTT GRAHAM

The Chair (Mr. Roman Baber): I'd like to welcome the last panel of the day. We have the Ontario Association for Family Mediation—Mary-Anne Popescu—and Scott Graham. I invite you to commence your seven minutes' worth of submissions, followed by questions by both parties and the independent member.

Mary-Anne, please begin by stating your name for the record.

Ms. Mary-Anne Popescu: I'm Mary-Anne Popescu. I'm the executive director of the Ontario Association for Family Mediation. Mr. Chair and members of the committee, on behalf of the Ontario Association for Family Mediation, I would like to thank you for the invitation to appear before the committee today. I am here to offer our support of the amendments proposed to the Family Law Act, the Children's Law Reform Act and other Ontario statues to align them with the federal government's recent amendments to the Divorce Act.

Since being established in 1982, the Ontario Association for Family Mediation has played an important leadership role, representing the interests of families and supporting over 800 family mediators in Ontario.

The OAFM has taken a key role to support family mediators and the community during COVID-19. We quickly implemented and specialized our training program to allow members to adapt and serve, ensuring that mediation services continued to be available online to meet the needs of the community during this unprecedented time.

We'd like to compliment the provincial government in proposing 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. Today, I would like to focus on six key areas of OAFM support.

Number one: Subsections 18(5) and 18(6) of the Children's Law Reform Act outline changes to the terminology; for example, "custody," "access" and "parenting order". We support the update to parenting terminology and believe that changing "custody" to "decision-making" is more representative of the responsibilities that the proposed term refers to. As mediators, we have seen time and again how divisive words like "custody" and "access" can become and how parents become very positional and easily slip into an all-or-nothing mindset regarding who has control over their children. The hope is that these changes will help shift the discussion to what's most important—from raising children, to a loving, caring, coordinated co-parenting structure, while reducing acrimony. Families can easily understand this term, and family mediators have actually been using this term for many years.

Number two: Providing a more comprehensive list of factors for the courts to consider when determining the best interests of the child—for example, stage of development; nature of relationship with parents, siblings, grandmothers and grandfathers; history of care—is a positive step in the right direction to support Ontario's children. Being specific is key, especially when professionals considering the best needs of children are not all child welfare specialists.

Number three: Clarity regarding what constitutes violence—for example, definitions or numbers of instances—and the introduction of measures to assist courts in addressing family violence are much-needed and appreciated amendments. Being transparent about this difficult topic reduces stigma, encourages empathetic conversation and can aid in assessing what a family needs to ensure their safety.

Number four: Sections 39.1 to 39.3—requirements for notice respecting changes in residence and relocations—are helpful. We hope that these changes will help reduce the conflict that often results when unexpected changes to

the children's residences and parenting schedules are proposed without notice. Lack of notice causes disruption to children and to the non-moving parent. Providing a statutory framework for when a person with decision-making authority relocates with or without a child—for example, requiring 60 days' notice to the other parent—are considerations for the court to consider in determining when relocation is in the best interests of the child. This gives much-needed guidance to families grappling with mobility issues.

Number five: requiring leave to the Court of Appeal in order to appeal certain final orders. Regarding appeals, we understand that the proposed amendments make it easier for families to determine where to appeal cases in the Family Court branch of the Superior Court of Justice, give them the same number of appeals as of right without prior permission of the court among the three courts, and would provide for direct appeal to the Ontario Court of Appeal for custody cases that raise interjurisdictional issues. We are appreciative of and support the simplification of the family law appeal routes for Ontario families.

Number six: promotion of ADR processes. This is probably my favourite one. The OAFM applauds and wholeheartedly supports the addition of directives throughout Bill 207 which clearly state that lawyers and other legal advisers have a duty to encourage litigants to try to resolve their family law matters through mediation or other ADR processes, and that the parties themselves also have a duty to try to resolve family law matters through mediation or other ADR processes. For example, in sections 33.1, 33.2 and 47.2, the establishment of obligations for lawyers and parties to encourage the use of family dispute resolution processes, such as the very affordable and accessible model of family mediation, and duties of courts to examine the existence of other proceedings make sense if we are to support access to justice. Family mediation recognizes the ongoing relationship between parents. The key difference here is that parents are no longer in a romantic relationship but the children remain in the family; for their relationships to thrive, parents need assistance in transitioning to a co-parenting model.

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Families who choose mediation reported greater satisfaction, and agreements reached are more durable, with less need for contact with the court system. OAFM supports mediation as the primary dispute resolution process. The research is very clear that family mediation is an effective solution for families experiencing conflict. It is affordable, it is timely and it preserves relationships where possible, which is critical particularly for couples who must continue to co-parent for many years.

It is our experience that mediation is effective in the majority of family law matters and is an essential way to put families first.

We applaud this government's initiative in making these important changes to the legislation and offer our full support for these amendments. We thank you for consulting with us on this important issue.

Again, on behalf of OAFM, thank you for the opportunity to appear before the committee today.

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

I'd like to welcome Scott Graham for his seven minutes' worth of submissions.

Mr. Scott Graham: Hello. I submitted a letter that I want to rely on, because I want to keep it very simple, to what I was trying to get across.

Going in line with the lady who just spoke—I believe in some of those same ideas. The only thing that I'm asking for is a statutory exemption in family law—sorry, a presumption—that would allow for equal access from the beginning, before the matter starts. To explain what I mean by that—it's that both parents, right from the get-go, right from the beginning, have equal access, have 50-50 access, then it proceeds through the case conferences, the motions and so forth to get to the best-interests analysis, to determine what is suitable for the child. Not every situation is ideal, and in some situations a 60-40 schedule would work better for the family, or maybe a 70-30 schedule would work better. But what I'm proposing is a presumption that allows for 50-50 equal access right from the beginning. It reduces stress. It reduces conflict.

From my own experience, motion courts are completely flooded with motions over ridiculous things such as whether or not parents agree on hockey or agree on this or that. I think that's taking away judges' ability to focus on more important issues—because it's the same court. When you go to Family Court, the same judge has to deal with CAS matters, and they also have to deal with family law matters. They could be giving that attention toward CAS matters where the state has more concerns over the well-being of a child.

What I'm suggesting is that if we have a statutory framework in place that simply, right from the get-go, equalizes the access and makes it 50-50—it doesn't matter if you're a mother or a father or two male parents or whatever; the access is completely equal. Thereby, doing that, parents don't have to build a case. They don't have to go to an ex parte motion. They don't have to build a case saying all these nasty things about the other party to try to get more access through the emergency motion process.

To further explain: I also think that would reduce situations where we have abductions. We have mothers or fathers who are concerned that the separation is going to happen, and they don't know what's going to happen with their access to their kids. It puts them in a frantic state. They panic. They do things that they wouldn't normally do, and it can hold up into a whole number of legal issues. Especially if one parent is more legally inclined than the other parent, they might take advantage of that. They might bring an ex parte motion and build their affidavit in such a way, and the judge, without hearing the other person, would have to automatically grant that ex parte order.

What I'm suggesting is that if we have a presumption that there is 50-50 access, provided that there aren't any situations of child neglect or harm or CAS involvement—but the courts can rely upon it. This idea that I'm

mentioning has already been brought to a federal committee before. They were looking at the same idea.

I think this is where family law is going anyway, because if you have equal access and parents don't need to be building a case against each other, it serves the child. It's more about what's in the best interests of the child: "Let's focus on the child. What are their needs?" At least starting at the 50-50 level, starting at an equal standpoint, if one parent decides they want to vary the access a little bit—they want, let's say, one day a week extra because of hockey or something—they can ask for that through the steps. They can go to a case conference, go to a settlement conference and then do the motion. It's a more relaxed approach.

Separations can go really bad, especially when there are kids involved. It takes one party to just come out of nowhere with a motion and they can take all the access, leaving the other party completely in the dark, and it would take months before they can see a case conference judge and they can make their motion to try to get some access back.

Actually, the principle is already there. The maximum contact principle is in the legislation. We already have it in place. What I'm suggesting is that we just bring it forward and it starts from the beginning that both parents—provided there are no safety issues for the child—that there is 50-50 access right from the beginning. Having that idea in place will prevent a lot of stress and a lot of problems that usually arise, which cause a lot of financial burden on both parties.

How much time do I have left?

The Chair (Mr. Roman Baber): About a minute and a half.

Mr. Scott Graham: A minute and a half? Sorry—yes, I believe that covers it. Thank you.

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

We're going to commence with seven and a half minutes by the government. I recognize MPP Kusendova.

Ms. Natalia Kusendova: Good afternoon, everyone. I'd like to thank you both for your presentations today.

Mary-Anne, it's great to see you again. Thank you for doing the incredible work you are doing. I referred many times to the lunch-and-learn that you've organized for the MPPs to learn more about mediation and what mediators can offer in terms of families and allowing them greater access to justice, so it's great to actually see you present directly to the committee.

You spoke today about more inclusive language and less abrasive language that would elicit less of an emotional response from parents. You also spoke about the simplification of the appeal process and encouraging dispute resolution outside of the courtroom. This is something that we've been hearing over and over from stakeholders.

One interesting thing that you noted is that mediation, for a lot of families—not all—can actually increase satisfaction. Can you speak a little bit more to that?

Ms. Mary-Anne Popescu: It's really nice to see you again too, Natalia.

The idea of having some control—if I came into your office and said you need to go somewhere or you need to fill out this form right now, as opposed to if I came in and said, "MPP Lucille Collard and you have to work something out together. Can you go into a breakout room and discuss it?" Right away, you tend to get a visceral response of how you'd feel better.

Our clients are just like us, with pains and worries and love and lost love and relationships lost and gained. When you give people a wee bit of control over the outcome, and when you make it possible for them, by either modifying the process in mediation—if there's domestic violence present—or by using a classic model, where you really do help two people come into a room and you help them hear each other, the idea is that you are solving the problem together as a new little unit that needs to go forward. That increases the chance that—just think about it: If I imposed something on you, you may be less likely, if you thought it went against you, than if you had agreed with your partner, "This is how we're going to try. This is what we're going to do for the next six months," or a year, or while the children are in preschool etc. The durability and the likelihood of you following what you agreed to is much higher; just psychologically, that's so.

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Mediators are not doing magic tricks. We're just helping people maintain their control and their sense of empowerment in a process that has left them really drawn. Nobody expects to go through a separation. You get married, and it's a beautiful, lovely day; you never expect to be in a mediation room. That's not the path that you were looking for, so there's grief and loss here. If we can take people out of the court setting and put them into a setting where they have some control over an uncontrollable situation, outcomes are much improved.

Ms. Natalia Kusendova: You did speak to that coparenting relationship that needs to continue and how important it is to salvage that relationship between the two partners. At the same time, what we're trying to do with this particular bill is to make it easier for families to access justice across the broad spectrum, to allow parents to actually focus on what's most important, which is the parenting of their children.

Can you talk a little bit more about how other aspects of this bill will allow parents to spend the time where it is needed; namely, on their children?

Ms. Mary-Anne Popescu: It looks like the simplicity that you've woven in here—you're trying to come in line with Bill C-78, so that those changes—I think they're taking effect on March 31, 2021. You're really harmonizing things for people, so there's an ability for people to understand the law as it applies to them in family law from the federal level and the provincial level. If you just take away the discrepancies, that helps with simplicity.

My position—obviously, as the executive director of OAFM—is going to be that family mediation is an excellent choice and often the best choice for families. But I will also suggest that there are families who do need the assistance of a decision-maker in the legal system, so the

simpler a path that they have to follow, like, for example, the appeal route—I'm approaching this from a social work background, not from a legal background, and even reading about this, I'm thinking, "Okay, it's simplified." That's all that I'm taking from it—that this is a simplified process, that there's a path that's a bit clearer.

Anything that provides clarity in a time when an emotionally distressed person with a fight, flight, freeze or fawn response—if it's too complicated, how are you going to make sure that they get to those services they need? So I think the clarity here, also interwoven with the fact that there are off-ramps, that you can take an off-ramp and your lawyer can explain to you, "Hey, for this issue, I wonder if a parenting plan mediator would help you this regard"—I think that emphasis throughout the bill is going to support families too.

Ms. Natalia Kusendova: Do you have any other suggestions for modernization efforts that the Ministry of the Attorney General could undertake to invest in to benefit the family law system in Ontario?

Ms. Mary-Anne Popescu: Probably the best thing I can tell you is that the court-connected, court-funded, Attorney General-funded mediation services, both on-site and off-site, are probably the best-kept secret. These are excellent resources for the community that are not—we're not asking for funding; they're there. I think a public advertising campaign to talk about family mediation is something that I'd really like to see. I'd like to see more emphasis on promoting the use of family mediation, of existing services, because we know that in certain jurisdictions there's less uptake.

Educating all of the players involved in the courtroom and the courthouse—if we all know what's happening and we all know what's going on, it becomes less of a scary option. That's why at the MPP day, we did a role play. I mediated for you to say, "This is what it's like. It's not a magic trick. It's a real process that can really help you learn and understand from each other." And if we can promote this existing, paid-for service, I think we can go a long way.

Ms. Natalia Kusendova: Yes, I think that piece on raising public awareness that this service exists is huge. Your association is doing great work on that.

I just wanted to thank Kathy, your president, who's with us today, and also for providing the supportive quote as we were putting this bill forward.

I don't think I have any more time, so with that, I'd like to thank you.

The Chair (Mr. Roman Baber): I'd like to welcome Kathy Dunne, the president of the Ontario Association for Family Mediation, who has joined us and is also open for questions.

We'll now proceed with seven and a half minutes by the opposition. I recognize MPP Taylor.

Miss Monique Taylor: Good afternoon. It's nice to have you present today, because I'm a big fan of mediation.

Having been the child critic for nine years now, I've met with your organization several times to talk about the need for more mediation. I was not under the understanding that it was fully funded. Can you expand on that? I thought there was a problem with having access to family mediation and that not enough families were accessing it. I didn't realize it was an education piece. But you're telling me it's fully funded and that there are no issues with that?

Ms. Mary-Anne Popescu: There's a court-connected family mediation program in Ontario. Kathy may want to speak more to that. I was focusing on the positives, what you could do. I realize we have limited time.

I have a laundry list of wishes that includes the promotion of family mediation in the private sector. When I interviewed Attorney General Doug Downey the other day for the MPP lunch-and-learn, we talked about promotion and we talked about promotion of this existing system. We asked him about, would you want to partner with private organizations that are also doing mediation? He was open to hearing more about that.

So, yes, you're absolutely correct; there is underfunding in the child protection mediation model. Even though there is funding there too, the funding often runs out. We need more funding there, and in the elder mediation model too. Multi-party, intergenerational family mediation is not funded yet by the government, and that's also on my wish list. So if you're asking for an expanded wish list, I will give that you. There's definitely work to do.

Miss Monique Taylor: Thanks for that clarification, Mary-Anne. As soon as I saw the changes coming for that bill, where my mind went to instantly is that we need to be pushing for better mediation, and there it was inside of the bill, so I'm really pleased to see that. But I know the challenges that are faced within your sector and with people not having access to justice; Some 50% to 80% of people who go into family law go self-represented because they don't have the money, or they go in and they get so far and they run out of money so they end up on their own anyway. If we can push more of those families into the mediation service—I think that's exactly where we need to be. So I'm really glad you gave us that clarification.

And, yes, I would like to know your wish list. I think the most important thing when we come to a committee and we hear from people like you is—how can we go a little further? We've heard from many organizations about this bill, and they say it's good and it's the right step, but most of them also say that it could have gone a little further, that we could have pushed a little harder, that we could have ensured that there was true access to justice for families. So, Mary-Anne or Kathy, I'd love to hear more about your wish list and how we can ensure that families have true access to justice underneath this bill.

Ms. Mary-Anne Popescu: If I had known my wish list was going to be, "Dear Santa, we would like the following things"—OAFM has outlined a number of things, and I'm just trying to think about what priorities to put them in.

This bill is a small step. To be very clear, when we saw Bill C-78 and we saw this, we did a lot of work with our members on these amendments and what they meant. The words, the language that we use as family mediators is

already here. We've probably been using this language for two decades in terms of just letting people see who they were—like talking about decision-making instead of custody and making things simple and bringing things back to relationships.

I think that it likely goes back, for me right now, to promotion. We're a very big tiny organization, and we're really trying to get the attention of seniors' affairs—to think about intergenerational family mediation.

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If I had a wish list right now, it would be for increased funding in the child protection mediation sector. They run out of funds each year—they always run out of funds—and child protection mediation stops, and then has to restart. Imagine getting in a car and you're off to Thunder Bay, and you can't get there; you have to stop along the way and wait four months to get gas and then start your journey again. In order for traction to develop—and I give huge kudos to the child protection mediation field, because they do keep it going; I don't know how they do. They're in desperate need of funds to be more stable across the board—and then elder mediation.

I think that if you saw the MPP lunch-and-learn and you saw the mediation process, it's restoring community health. So what we're looking for is a stronger community and the—what I was speaking to Minister Downey about is that there's a trickle-on effect here. If you help people, if you promote family mediation to the public and you have good funding in all three areas, that would be key. You would have communities that were stronger, families that were stronger, kids who were not—a lot of what we do as a family mediator is parent coaching: "Here is something you could try. Have you thought of this?" It's not a counselling system, but it's definitely a supportive environment, where we are helping parents see the forest, see the trees in the forest, and trying to help them focus on their children when their hearts are broken. We can make a change in children's lives by having mediation roll off your tongue—just be like, "This is it. It's coming. This is how we help you be a stronger family"—and then we have a stronger community.

So I would say at the top of my wish list is definitely advertising of all three areas, and funding to increase in either end, cradle to grave. We need to take care of our seniors, too.

Miss Monique Taylor: Thank you for that. I so appreciate it.

I'm just looking for my little note here because I wanted to make sure that you know that all of your written submissions can be in by—I think it's Friday. Friday is the deadline for written submissions. So please send your wish list. It's really important that we hear them. It's really important that this is a fulsome perspective, that we're pushing forward, that we're doing the best that we can. This is like a generational—this act hasn't been opened in so many years. We need to take advantage of this opportunity while it's open and get those real access-to-justice pieces in there, including that ask for funding.

Thanks so much for being with us today. I really appreciate it.

The Chair (Mr. Roman Baber): We'll now move on to the independent member for four and a half minutes. Madame Collard.

M^me^ Lucille Collard: Thank you to both presenters, Mary-Anne and Scott Graham, for your insightful comments.

Mary-Anne, I was at the lunch-and-learn last week. I wasn't able to participate in the full thing, but I felt like I had a little bit of knowledge because I'm a trained mediator, actually, and I have been—that was about 15 years ago, at least. I remember that when I did that training, as a lawyer, I was expecting and certainly hoping that mediation would be the rule of thumb for family matters. We all know that going to court is probably, in most cases, not the best solution. It's costly. It takes time. It's controversial. It's difficult, and separation is already difficult as it is. So I thought mediation or alternative dispute resolution certainly is a good way to alleviate some of that.

But at the same time, we see that the act encourages mediation, and I see your passion about it, except there are instances where it may not be—and you've recognized that yourself—the best solution, like a family violence situation, where one of the spouses could be tricked into getting into mediation and where mediators may not be able to recognize the hidden signs of abuse by a spouse.

I'd like to know, on one part, if you have some views to share on how, in the context of mediation, we can ensure that legislation provides some protective measures against risky mediation for conflicts where it might be hard to detect family violence.

Ms. Mary-Anne Popescu: The piece to stress is that family mediators undertake 21 hours of domestic violence screening training as part of their requirements on a list of things and an ongoing five-hour requirement per year in screening. Family mediators are trained and receive ongoing training, and I can tell you that it is one of the things that most family mediators are very, very concerned about and actively discuss. We have a monthly Mediation Matters, which is sort of an active support group for mediators, and we talk about family violence and screening and the appropriate ways to screen. There are probably 10 screening tools and three or four methods of screening that mediators regularly undertake.

I'm lost for words in terms of what legislation could protect families other than the fact that this bill has access to or emphasis on mediation, which means that these clients are going to a process that—it's in our standards of practice to screen. It is highly important and deeply stressed by OAFM to screen. We've done a lot around online, so then the virtual world—Kathy and I are teaching a course on online dispute resolution with a big emphasis on how to screen when you're in a room, in a little box with someone. Who is home with them? Who is listening? What's going on?

We talk about "adapt and serve" as the online situation. But I would also say "adapt and serve" has always been and will continue to be something that—if there's family violence that is present, mediators have an ability to

modify and have process design that the courts may not be able to accomplish as well as a family mediation office in some instances.

I'm not here saying that family mediation is appropriate in all cases whatsoever, but I am saying that process design—for example, I had a highly coercively controlled client who had extreme difficulty. We met; we had a successful mediation because we met at my private office on separate days, separate times. They didn't even ever meet in the same room. I had different offices in the building that I took them to. This was a very safely designed process that resulted in an outcome that brought the level of conflict down so that they were able to communicate about their child and have a relationship that was less acrimonious than it was prior to.

I would say that the encouragement in this bill of the use of alternative dispute resolution is a thought of prevention for family violence, especially at the time of separation. We know that this is the highest risk for a person, when they're going through the physical act of separation. So we're keenly aware.

Does that answer your question?

The Chair (Mr. Roman Baber): I see that Ms. Dunne may wish to jump in and she might get that chance.

We're going to go back to the government for seven and a half minutes. MPP Park.

Ms. Lindsey Park: Kathy, it looked like you were about to jump in and expand on that, so I'll just give you a moment to share some of your thoughts.

Ms. Kathy Dunne: Thank you so much. It has been shown that the uncertainty during a separation can cause the volatility. The faster that parents can get some agreements in place and have that security of knowing what's going to happen going forward, it allows some of that volatility to come under control. When people are feeling stressed and insecure about their futures, that's when emotions are highest and people are most at risk. So it's the speed at which resolutions can come about that helps to alleviate some of the uncertainty and opportunities for volatility and conflict.

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Ms. Lindsey Park: I'd like to come back to some of the training you already do of mediators around screening for violence, but before we do that, I wanted to see if either of you had a perspective on the dispute resolution officer program that's in some court locations in the province. The goal, really, is to narrow the issues in the case when they're involved. Obviously, that's the job of mediators—to also help narrow issues. So I was curious if you had experience of cases coming to you after going to a dispute resolution officer, or before, and how you see that role as important or not.

Ms. Kathy Dunne: I've had some experience working in the Family Law Information Centres in Peterborough, Lindsay and Cobourg. They're small centres, so we don't have a dispute resolution officer in those centres. But I have had heard from others who work in the larger courts where they've already got that service in place. It has been very successful, because it's acting as a type of a triage. Certainly, in court locations that are very busy, it has been very, very helpful. That would be my limited experience in it, so I really couldn't comment further.

Ms. Lindsey Park: Mary-Anne, unless you have anything else to add on that topic, you're welcome to—

Ms. Mary-Anne Popescu: That's okay. I have never been in a family mediation setting in court. I've always been a private mediator. So Kathy was the right one to answer that question.

I would say that if you're getting the similarity between narrowing the issues from a DRO and narrowing the issues from a family mediator, you could have similar outcomes. You could have some similar experiences. I think that with the mediator role, if I could imagine what the DRO looks like, the relationship is key in determining the outcomes. I'm talking about the relationship between the mediator and the clients. The rapport-building to identify violence, to identify needs, to identify paths to move forward is something that is distinct to mediation, I believe.

Ms. Lindsey Park: I wondered if you could expand further—it has been a theme that has come up throughout the day, and perhaps not something that you do directly through legislation: the training of different people involved in the court system around domestic violence and violence of all kinds, and learning how to watch for signs that that's taking place, also known as screening. I thought it was helpful that you were able to share some of the training you already do, at least for mediators who are members of your association. Are you able to share a bit more detail with us? I think that would be helpful for the committee.

Ms. Mary-Anne Popescu: About the domestic violence training?

Ms. Lindsey Park: Exactly.

Ms. Mary-Anne Popescu: I can't stress enough how important it is to OAFM that we screen, and screen continuously throughout mediation. We're not looking at a tool and ticking boxes—some of us may use a tool as one part of the screening.

I can tell you, from soup to nuts in a mediation, you'll have contact with people over the life of the case. You'll have first contact on the telephone—one person will call you. You're screening. You're looking for the reasonable explanation for unreasonable behaviour here, if you see that, and so you're screening from first point of contact. Most mediators do an intake form that includes some questions about past situations that are pretty pointed questions: "Is there a history of abuse? Is there a history of verbal abuse? Physical abuse? Alcohol? Guns? Violence?" Then you move into the actual mediation, where each person will have a one-on-one session, so we'll talk to each other.

I can tell you that rapport-building is the most important piece for you to tell me something. You've already pulled your pants down and showed me your financial statement, and you've said your husband cheated on you. So why are you going to tell me, "He actually also threatens me," or "He sexually assaults me"? Are you going to feel like telling me that if I'm not taking the time to develop a rapport with you? So rapport-building is a key part of mediation, of domestic violence screening training.

When we talk about relationship-building, like when we come into this little world, it's reaching a hand out to shake their hand and saying, "I would love to offer you a cup of coffee," and trying to build that rapport in the relationship, even in this setting that we're in now. In person, the same principles apply.

I think that the ongoing nature of the screening is also something very key for you to know. Before each mediation session commences again, we're screening again. We're taking clients into our offices separately and asking, "Has anything new happened? Has anything happened between now and when I spoke to you?"

I'll never forget the woman who was raped in between sessions by a man she had met on a dating app—a very tragic situation where the police did not get involved, or refused to get involved—and this changed the entire dynamic of the mediation. This was a very, I would say, easy situation where it was a very amicable couple. They had tried to have children for years; they couldn't. If I hadn't done that screening then, and if we don't train people to keep going, to keep on looking for those clues and the importance of not ticking this box, there's no—"has screening occurred?" is probably one of the questions I despise. "Is it occurring?" is the correct question, because our lives change. You know tomorrow your life could change, or this afternoon, or yesterday something happened. So we're not in a box in terms of the training that we do. We're talking about this ongoing piece.

Kathy, I don't know if you have anything to add—

The Chair (Mr. Roman Baber): I'm terribly sorry to interrupt you.

Ms. Mary-Anne Popescu: That's okay.

The Chair (Mr. Roman Baber): Perhaps you could integrate that into the next set of questions.

Going back to the opposition for seven and a half minutes: MPP Singh.

Mr. Gurratan Singh: Just to expand on some of what's been said and a bit of your feedback on some other thoughts—we've been talking a lot about some systemic inequities and systemic barriers that folks often face. I understand that your work is in the context of mediation, but could you provide your own thoughts and your own reflections on what some of those barriers are and how they can be addressed? I'll start with Mary.

Ms. Mary-Anne Popescu: Cultural sensitivity is part of our ongoing training, too. These are part of the requirements. As a mediator, we do a lot of training on bias; we do a lot of training around unconscious bias, on culture, on understanding culture. I think the best thing that I can share with you that I have learned is that you need to know what it says on your plate. We're all seeing each other. We're taking cues. We're seeing what we look like, how we present. Our backgrounds are not virtual. We're getting information. We're taking that in. And so I think the most important thing for me to do as a mediator—and what I encourage our mediators to do is to check their own biases, their own unconscious ways of judging someone, and to get educated—to not make it their responsibility to understand their culture—and to take some time to talk about it.

I have a client right now who has just immigrated to Canada from another country, and I asked them, "What is it like for you? What's happening in your community? What are some of the ripple effects of this separation in your community? How is it affecting your children, your community, your relationships, your friendships?" One partner said, "I'm so glad you asked those questions. You gave me time to say what I was feeling and thinking." It's not that I was being nosy. I just wanted to understand so that—are there other bits that are key to how I can best support the family in mediation?

It is really knowing what it says on your plate. Know what you may have unconscious bias about. Educate yourself on as many cultures as you'll come in contact with, and make it your own responsibility to understand other people's cultures. Don't rely on them wholly to educate you on their culture. Know who you're with. Be interested. Show up for everyone who comes in your door.

Mr. Gurratan Singh: Kathy, to you—if you could just provide your thoughts on, more systemically, what are some barriers that folks are facing with respect to access to mediation, and towards justice as well.

Ms. Kathy Dunne: I think that one of the barriers would be a lack of knowledge that the service is available, that you can access ministry-funded services, either through the courts or outside of the courts through the off-site family mediation services.

And just a correction about the Ministry of the Attorney General-funded services: They're not fully funded. They are sliding scale. While the ministry provides funding, the clients are still required to pay for the services. I think that's a good decision because giving someone something for free doesn't allow them to appreciate it as much as when they have to pay for it. Even those who are only paying $5 an hour to access mediation services are still appreciating it more because they are having to pay what they can afford, even if it as low as $5 an hour.

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Mr. Gurratan Singh: There have been a degree of cuts that have been experienced in different legal services over the past few years. How has mediation been impacted by those, if at all?

Ms. Kathy Dunne: For the mediation services themselves, the funding has not been cut. What we do find, though—even though people are mediating, mediators will always strongly suggest to clients that they have a legal consult. Particularly once a mediated agreement is complete, you don't sign those agreements with your clients—there is always a suggestion that they take those to a lawyer so a lawyer can sign off on it and let them know, "What you've agreed to is not out in left field. This is a fine agreement that you've come to." Those services seem to be what's missing. The missing piece, really, is the access for mediation clients to have that legal consult on their mediated agreements.

Mr. Gurratan Singh: In your own experiences as a mediator, have you noticed a further decrease in access to lawyers by clients since the mandate of this current government?

Ms. Kathy Dunne: I haven't noticed a decrease myself. It's been similar for as long as I've been mediating, so I haven't noticed that there is a decrease. It's just something that's needed because a lot of the clients that we see, particularly through the court-connected services—and I'm not speaking now about private, independent mediators such as Mary-Anne, but the government-funded mediation services. A lot of those clients are marginalized and there is a lack of funding available for them to get legal services.

Mr. Gurratan Singh: What are your thoughts and is there any discussion in mediation around social determinants of access to justice? Is this a conversation that is done in mediation—in understanding the societal impacts and how it impacts people's ability to access justice and access fair mediation?

Ms. Kathy Dunne: I'll let Mary-Anne answer that one. Mary-Anne?

Ms. Mary-Anne Popescu: Absolutely. I think it's a conversation that we're having; we still have to keep talking. There is the court-connected mediation, and there are private mediators.

I was working on the LIZ project with Chris Bentley and Barbara Landau years back. We did a test on what people think of when they think of family conflict. We called 411 and a number of other places. Everyone said, "Call a lawyer." The systemic piece on that is the cost factor. There is a barrier to cost and to the cost of a mediator as well.

I'm trying to answer your question succinctly, but it is difficult because we haven't got there yet. We've consulted with an Indigenous scholar who is trying to help us have our website have more accessibility in terms of being approachable, showing up and showing the front face of family mediation to be accessible.

We're talking a lot about one of my passions, gender equality and sexual equality. I'm an ally and I volunteer for Toronto Pflag. I just recently changed my email signature, but we haven't done anything on the website yet.

We have a long way to go. I think you could nicely intertwine access to fair justice and equality of mediation services through advertising to different groups in different ways so they could pull some more people who may be marginalized by the current system—to get them connected to services that could help them and their family. I think—

The Chair (Mr. Roman Baber): Thank you very much. I apologize. We're a little over time.

If we can kindly conclude with MPP Collard for four and a half minutes.

M^me^ Lucille Collard: I wanted to ask about the position of Mr. Graham. Scott Graham spoke and explained the reason why he believes that there should be a presumption that child custody or access to a child should be 50-50. Is that something you practise in mediation? What's your view on that? I'd like to hear that.

Mr. Scott Graham: I haven't practised mediation. Mediation is also great, in my opinion, but in some situations you can't have mediation. Some parties don't want to sit in the same room as the other person. That creates some anxiety. They're very angry. To get people to settle down to do a mediation meeting can be hard sometimes.

I'm basically stating that the mediation should be there—I agree with all that—but additionally, we should have right from the beginning a statutory framework that says both parents get 50-50 access, and then we start from that point. If they go to mediation and they say, "Okay, we want to change this, because I feel like I need Mondays or I need Thursdays," then they can work that out in mediation. It doesn't stop the mediation process at all. It doesn't affect the best-interests analysis if they want to go to a conference and then go to a trial. It doesn't interfere with that whatsoever. All it does is, it creates level ground right from the beginning. That avoids nasty disputes where people write all kinds of stuff in affidavits that might not be true, where they have to put down the other party. It avoids ex parte motions. It avoids the courts having to waste time.

Basically, my solution is to eliminate wasting time in court with all these numerous motions about access and this and that and custody. And we're already seeing that—in this new legislation, we're moving away; the words that we're using, like "parenting time," are better words to be using.

What I'm saying is that we should push that a little bit further and it should be in the legislation, so that we have this very clear-cut, so kids have consistency, so they know—"My parents are getting separated. This is stressful enough, but I won't have to worry. I will see my dad or I will see my mom for 50% of the time." We're letting them know that that safety, that security is still there. Their access with their parents is not going to be disrupted. We're not creating weekend parents. We're not allowing parents to engage in custody battles and access battles in court. We're saying, "Both of you have equal access. You can sort it out in court. Go through the motions. Go through your case conference. Go to mediation. Do whatever." But the child has to know from the beginning, when parents separate, whatever the situation is, that there's that foundation and they have something to fall back on.

M^me^ Lucille Collard: Mary-Anne, is that the premise that you work from when you have an initial meeting with a couple that's separating, when you're looking at the child's interests? Or does it enter the equation at all at any point?

Ms. Mary-Anne Popescu: No, I would have to say it's not the premise. The idea is the best interests of the child, and a creative solution that works for the family is something mediators are looking for. There could be split shifts or overnight shifts; the family comes to you and provides the information that they have, and you help them have a conversation about what they need.

The Chair (Mr. Roman Baber): There are 40 seconds remaining.

M^me^ Lucille Collard: I have no more questions, so I will just thank the three of you for sharing your views. It was very instructive. I look forward to some positive

moves in the mediation world, because I'll be supportive of that for sure.

The Chair (Mr. Roman Baber): I'd like to thank the panel's presenters. Thank you for your valuable testimony. And with that, I'll wish you a good day.

Members, we have reached the end of the panels available for today. We have one more panel remaining tomorrow at 9 a.m., so the committee will sit for an hour tomorrow. As a reminder, we will be sitting on Monday for clause-by-clause.

Is there any further business before I recess the committee? Seeing no further business, we are recessed until 9 a.m. tomorrow.

The committee adjourned at 1459.

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