
**To the Standing Committee on Justice and Human Rights**

**Re: *Bill C-22: An Act to Amend the Divorce Act***

**Ontario Association of Interval and Transition Houses (OAITH)**

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## Introduction—who we are

The Ontario Association of Interval and Transition Houses (OAITH) is a 72-member province-wide association of emergency shelters for women and children escaping intimate violence. It is the largest association of its kind in Canada.

Since its inception 26 years ago, OAITH has known that the legislation, policy and practices within family law can create either protection for abused women and their children, or barriers to escape from violence. As a result, the Association has always taken a keen interest in legislation (the *Divorce Act* at the federal level and the *Children's Law Reform Act* at the Ontario provincial level), as well as family law services, such as legal aid and alternate dispute resolution.

Shelters have established specific programs within their services to respond to concerns regarding family law and to provide support to women grappling with the barriers presented by current family law practices. Shelters in Ontario also provide support to children exposed to violence and address the impacts of family law decision-making on children's lives.

OAITH has contributed to recent *Divorce Act* reform since the federal government created the Special Joint Committee on Child Custody and Access in 1998. We have also provided information directly to Ministers of Justice and participated in response to the public consultation *Putting Children First: Federal Provincial Territorial Consultation on Custody, Access and Child Support.*

OAITH has engaged in discussion and analysis of all proposals for *Divorce Act* reform with women across Ontario and has also conducted a number of regional meetings with women's shelters to specifically discuss and receive comment on *Bill C-22.* We believe we are well placed, therefore, to comment on this proposed legislation and we appreciate the opportunity to submit this contribution.

## Context of our response and recommendations

While all families where marriage ends will be affected by changes to the *Divorce Act*, we believe that it will be abused women and their children who will most keenly experience the impact of the amendments proposed in *Bill C-22*.

A minority of family law custody and access decision-making happens in court; the vast majority is negotiated between lawyers or parents themselves. Cases reaching court are those in which negotiation has not been possible, and where we are likely to find a high number of cases in which violence has been a precipitating factor in marriage breakdown.

While this may be a familiar scenario to those of us who work frontline with abused women and their children, disclosure of abuse and violence is often invisible in family court—deliberately screened out during the legal process or not considered relevant.[1] Fathers who expose their children to violence are granted unsupervised child access most of the time.[2] (This is in spite of an increasing trend in child welfare practice to equate child exposure to adult violence with direct child maltreatment. For example in Ontario, substantiated emotional harm reports to child protection, largely as a result of exposure to 'domestic violence,' rose by 870% between 1993 and 1998.[3])

In Ontario we have seen lethal aftermaths in some situations where violence against women was not sufficiently addressed as a priority consideration within the context of a custody and access dispute. In March of 2002, for example, Peter Currie stabbed his two-year-old daughter, Alexis, to death and threw her body in a roadside ditch on the first unsupervised child access visit with his two daughters. He had previously been convicted of assaulting his wife, who had fled their home, and he was angry about access arrangements made as a result of the family law process.

Separation or divorce does not necessarily end abusive behaviour by ex-partners and indeed, as in the case above, sometimes escalates it. Murders of ex-wives increased by 25% in Canada between 2000 and 2001[4]. The number one apparent motive for murder of women by intimate male partners is estrangement[5]. Many women experience increased violence immediately after separation and for many of these women, violence becomes more severe[6]; children are present during continuing violence by abusive fathers after women have separated[7].

In the context of intimate violence, family law decisions can literally influence the life and death of children and their mothers. It is within this context, therefore, that we believe the Standing Committee on Justice and Human Rights must give special consideration to ensuring that the *Divorce Act* recognizes the prevalence of violence against women in the family and its impact on children. The Committee must consider how it will protect women and children's rights to both safety and well-being during and after divorce.

Making consideration of abuse a priority will in no way harm or negatively affect the legal rights of parties undertaking divorce proceedings where no abuse exists. It may, however, ensure that where violence is used to control families both before and after separation, family law is consistent with the *Canadian Charter of Rights and Freedoms* in protecting the life, liberty and personal security of its victims as well as the equality rights of all women.

We support *Divorce Act* reform and believe it has been long overdue. In addition, some of the proposed amendments in *Bill C-22* represent a positive start toward ensuring that family law addresses abusive behaviour and its impact on children. There are also sections of the proposed legislation, however, that need improvement if they are to be effective in the intended purpose of progressively reforming divorce law. This brief focusses on those sections of the *Bill* that are particularly important for abused women and children exposed to violence.

## Section 16: Parenting Orders

Changes to Section 16 of the *Divorce Act,* as proposed, represent both progress and potential harm for abused women and their children.

***Steps Forward in Section 16:***

Progressive proposed changes include:

- The removal of a stand-alone clause (Section 16 (10)) directing the court to give effect to the principle of "maximum contact" and to take into consideration the willingness of the custodial parent to facilitate contact. This clause has caused serious difficulty for abused women attempting to protect their children from exposure to violence.

  In a recent study, the Muriel MacQueen Fergusson Centre for Family Violence Research in New Brunswick noted that in 40% to 60% of family law cases, there has been domestic violence, the vast majority against women, but that women are pressured not to raise it during custody and access disputes—that in fact disclosure is screened out at every step of the legal process.[8] We believe the "maximum contact" principle, coupled with lack of knowledge about the impact of violence against women, has been largely responsible for this screening.

- The replacement of the current Section 16 (8) regarding consideration only of the best interests of the child "as determined by reference to the condition, means, needs and other circumstances of the child" with a separate Section 16.2 expanding factors relevant to determining the best interests of the child. This is a progressive step that will help guide

courts and family law professionals in the complex task of family law judgements.

- Removal of the stand-alone clause regarding prohibition on consideration of "past conduct". Without consideration of acts of violence against women and their impact on children, this clause is a barrier to raising issues of violence and abuse, particularly in cases where courts are uninformed about the impact of continuing abuse and control by ex-partners after separation. In these cases, there is still a pervasive and dangerous myth that separation will end abusive tactics and control, and that past incidents of violence are therefore irrelevant to consideration of custody and access issues.

***Steps back in Section 16:***

While the changes above are steps forward, the most dramatic proposed changes to Section 16 as a whole will create increased difficulties for women and children attempting to escape violence. Our primary concern comes from the proposal to abandon the concepts and terminology of "custody" and "access" and to replace them with new legal concepts of "parenting responsibilities", "parenting time" and parental "decision-making responsibilities".

Abusive fathers and husbands use every means to maintain control, including manipulation and abuse of legal systems. For the women we work with, their ex-partner's abuse of family law to further harass and control them is a common experience. Changes to the terminology—intended to promote sharing of responsibilities between mothers and fathers—will instead have a detrimental effect on mothers attempting to escape violence and to protect their children from abuse. Some of the problems we foresee include:

- The terms are vague and vaguely defined, where they are defined at all. It is unclear from the language of the *Bill* where a child will reside or whether s(he) will have a stable and safe home base. Entirely new concepts in law, such as "parenting time" provide fertile ground for increased litigation.

- While the proposed changes to terminology have been made to counter the so-called "win-lose" context of family law disputes and to decrease the adversarial nature of many family law disputes, comparable changes made in other jurisdictions similar to Canada have not had this outcome. Changes in England, Australia and the United States have demonstrated that attempts to use family law to change parenting practices do not work. In Australia, for example, researchers note that after similar reforms were made, "there is no evidence to suggest that shared caregiving has become lived reality for the children of separated parents…Most respondents agreed that mothers continue to do the bulk of the caregiving work after separation and that many fathers still 'do not consistently make themselves available to the children'."[9] Research shows that rather than reduce conflict and acrimony, changes to promote shared responsibility for children after divorce have instead led to skyrocketing rates of litigation and disputes.

- The changes in terminology and concepts of "parenting" within the *Bill* will provide new weapons and greater scope for violent fathers to harass, intimidate and control ex-wives through endless legal wrangling designed to 'wear down' and financially bankrupt their former partners. In the Australian example, researchers reviewing the legislation after it had been in place for three years found that applications alleging breaches of parenting orders increased by 250% between 1995/96 and 1999/2000. A review of breaches from the year 1998/99 found that almost all applications were brought by 'non-custodial' parents, mostly fathers, and that the majority of cases were found to be without merit.[10]

- The abuse of family law process by abusive men to intimidate and impoverish ex-wives will have a disproportionate negative impact on poor women, especially women from racially and ethnically diverse communities and women with disabilities who have less than half of the income of other women[11].

- Confusion regarding the concepts and parameters of "parenting time" and "parental responsibility" in the *Bill* will result in further difficulty in determining appropriate child support. Women, who are already economically disadvantaged when divorce occurs, will face even further erosion of financial support for their children. Women who experience additional economic disadvantage—Aboriginal women, women of colour, immigrant women and women with disabilities—can expect greater negative impact on themselves and their children. The high percentage of (largely) fathers who resist or refuse payment of appropriate support for their children after separation and divorce is very likely to increase.

- The most serious impacts of similar changes in the other jurisdictions have been borne by women and children leaving abusive situations. Researchers in Australia found that after three years, women and children fleeing abusive husbands and fathers suffered the most severe impacts of changes to the law. These included increased exposure to violence as a result of parental responsibility clauses interpreted by abusers—and apparently by many courts—as a virtual "right" to shared parenting, particularly during the period immediately after separation when interim orders are written—and when women and children are most at risk.[12] We are very troubled by the potential for harm in Canada if comparable changes are made. This kind of outcome, regardless of any intent to avoid presumptions, could lead to *de facto* "shared parenting" as a starting point in courts. Such an outcome would further jeopardize the safety and well-being of abused women and in turn, their children.

- We are concerned about the wording of Section 16 (8) regarding "exclusive" decision-making with regard to day-to-day decisions during allocated "parenting time". Research has shown that even where there is an order for joint custody in Canada, children are likely to live solely with their mother in a large majority of cases[13] and that after separation or divorce, a large percentage of fathers (40%) never visit their children or visit them irregularly[14]. If the trend to increased orders for joint custody or "parenting time" continues, coupled with exclusive decision-making power "whether or not the child is physically with that spouse or other person during all of that period", we predict serious difficulty for women and children whose ex-partner is abusive and insists on a *legal* "right" to control decision-making even if the child(ren) are usually in the care of their mother or he neglects to exercise access.

- The numerous types of parenting responsibilities outlined without any link to the primary caregiving of the child in the legislation is troubling. The *Divorce Act* must include clear direction ensuring that the primary caregiver of the child(ren) also has primary decision-making responsibility.

- Increased litigation will result in increased costs to the system as a whole. These precious and currently inadequate resources are already stretched thin. Any added pressure will create additional barriers to women escaping abusers including diminishing resources for access to courts and legal aid. Any erosion of financial supports will have a greater negative impact on Aboriginal women, women of colour, immigrant women and women with disabilities. Their already unequal access to justice will be further diminished by and escalating cost or rate of litigation within family law.

- We are concerned that the change from the terminology of "custody" and "access" no longer coincides with terminology used in the *Hague Convention*. Although Section 22.1

(1) of *Bill C-22* proposes that the court *may* designate one of the parents as having "rights custody or rights of access" for the purposes of the Convention, this is not a mandatory requirement for the court. Section 22.1 (2) states that if the court is silent on the issue, both parents who have "parenting time" will be considered to have custody—*de facto* that both parents have "joint custody". There are two problems that we see arising from this section:

- That the determination of any "parenting time" as analogous to "joint custody" will become a *de facto* concept of shared parenting in family law as courts interpret the concepts of "parental responsibility" and "parenting time" along with clauses under the *Hague Convention.*
- That Section 22.1 may facilitate international abductions by abusive ex-husbands and fathers who, regardless of how little contact or "parenting time" they may have, can claim to have "custody" of the child. While this may affect any abused woman whose partner uses threats of abduction, it will be particularly serious for immigrant women. Immigrant women in Canada are disadvantaged both with regard to income, and with regard access to legal processes. If courts have discretion regarding determining rights of custody and access for the purpose of the *Hague Convention*, the children of immigrant women, in particular, may be at risk of abduction if women do not specifically *request* that the court designate those rights in an order.

We are troubled that changes to family law designed to enforce so-called 'parental responsibility' may, in fact, do more harm than good.

## Section 16.2 Best Interests of the Child

The introduction of a guide to the 'best interests of the child' within the *Divorce Act* is a significant improvement on the current legislation. In addition, there are a number of specific positive inclusions within the list of factors to be considered, as compared to the current definition of 'best interests' within the *Act*. Once again, however, there are also areas where improvement is warranted. It is in consideration of the 'best interest' factors of proposed Section 16.2 that context is most critical, and where it is necessary that courts and family law professionals thoroughly understand the material reality of families—in particular the reality of violence against women and children. Several key 'best interest' factors are either critically important to support, or require further improvement.

### *History of care of the child*

This factor is paramount to advancing the 'best interests of the child' and we fully support its inclusion. The primary caregiving of the child before separation must be upheld after divorce and goes to the factor of maintaining stability and consideration of the child's physical, emotional and psychological needs as outlined in proposed Section 16.2(2)(a) of the *Bill*.

### *Maintaining meaningful relationship with both spouses*

We do not support the inclusion of this factor in the list. Although it is an improvement over a stand-alone clause requiring "maximum contact" as it appears within a list of many factors, we believe that in practice it will merely replace the current clause and continue to create barriers to women and children attempting to escape violence. We fully support involvement of both parents in children's lives where there is no issue of parental abuse or intimate violence. Indeed, given the high percentage of fathers who do not exercise visitation rights in Canada, we know that where there is no abuse, women are frustrated by situations where 'the other spouse' refuses to remain involved. As there are already remedies available for violation of court orders with regard to exercise of 'contact' these

remedies can and should be used to ensure that orders are followed. A clause requiring "willingness" therefore is not necessary and we suggest that it be removed as a factor to be considered.

***Consideration of 'family violence'***

We are very gratified to see consideration of violence on the list because we know that knowledgeable consideration of woman abuse can help free abused women, and children exposed to it, from abuse and control. Given that women continue to be, according the 2001 census[15], the primary caregivers of children in Canada and further, that the well-being of children is closely linked to the well-being of their primary caregiver, it is critical that decisions regarding child custody and access take into consideration the high levels of violence against women in the family and its impact on both children and their mothers. Furthermore, it is critical that the *Divorce Act* ensure that women's rights to safety and personal security after divorce are protected, as required under the *Canadian Charter of Rights and Freedoms*, and that women are not prevented from exercising those rights in order to satisfy claims to so-called "fathers rights" by abusive men. Consideration of 'family violence' within the *Bill*, therefore, is a positive start.

Unfortunately, as the wording of the proposed *Bill* presently stands, this well-intentioned attempt to consider the impact of 'family violence' on children will fail without further improvement.

In particular, the definition of 'family violence' in Section 16.2 (3) must be amended. As it is proposed, we are concerned that the definition is limited to "*physical* harm" either to the child or someone else in the family. While there is also consideration included of causing a family member to "reasonably fear for his or her safety", that safety still implies "physical" safety. Unless family court professionals receive extensive training on violence against women, indicators of *lethal* violence could be dismissed within this parameter: e.g. Threats of suicide, obsessive focus on the estranged partner, breaches of court orders, damaging property, abuse of animals, etc. Moreover, psychological and verbal abuse can have serious emotional impact on both abused mothers and children exposed to it. It is not only endangerment of physical safety that has a negative impact on children's well-being, and the well-being of mothers as their primary caregivers. If children and their mothers are to be protected, the *Divorce Act* must include all tactics of abuse used to control women and children.

We are also disturbed that the Department of Justice has chosen to gender-neutralized and make violence generic the definition of 'family violence'. The Department is aware that violence in the family is not gender neutral or 'equal', nor is it generic. Federal government statistics show that women are significantly more likely to be the targets of serious violence in spousal relationships[16], before and after separation, and that it is male relatives, primarily fathers, who are most likely to be accused of criminal child abuse.[17] It is not helpful to families to reinforce within family law, where the dismissal of violence against women (and mothers) can have drastic and even lethal outcomes, the misguided notion that 'family violence' is gender-neutral.

On the positive side, we are pleased that the proposed legislation excludes acts of self-protection or protection of another person from the definition of 'family violence'. We are also pleased that under Section 16.2(4), the proposed legislation specifically states that 'family violence' will be established on a "balance of probabilities", as is appropriate within civil law.

***Cultural, linguistic, religious/ spiritual and heritage considerations***

This factor within the 'best interests' list is another that demands consideration of context and complexity and a thorough knowledge of the impacts of culture, language, religion and heritage on the family. Currently, systemic racism and discrimination, intensified by the poverty that results from and compounds it, prevents many Aboriginal women, women of colour and immigrant women

from accessing equal justice within Canada, including in family law. In addition, the prejudices and biases within Canadian culture as a whole are also imbedded in institutions such as family courts.

It is significant and positive that the proposed *Bill* includes considerations of culture, language and heritage, and that it specifically considers Aboriginal heritage in decision-making about custody and access issues. It is essential that family courts understand different child rearing practices, as well as the importance to a child's well-being of maintaining identity, history, language and sense of community. The consideration of culture and heritage, while offering a positive step forward, however, does not include the critical considerations of race or ethnic origin. This is a serious omission that must be corrected before the legislation is presented for final reading.

It is also important for courts to acknowledge and guard against incidences where abusive men have used (and won) the argument in family court that cultural practices support their ongoing control over the family[18]. This circumstance requires understanding of the balance between respect for cultural practices and the equality and security interests of women and children. Legislators must be cautious about including consideration of "culture" without clarifying that such considerations must be consistent with the *Canadian Charter of Rights and Freedoms*.

While the specific mention of Aboriginal heritage within this section is essential, we believe it deserves to have a separate and distinct clause to further highlight the importance of the court taking into account the history of Canadian colonization of Aboriginal peoples. Colonization of Aboriginal peoples in Canada, including separation of children from their communities and residential school abuses, continues to have unique impact on First Nations' communities, and to have particular impacts on Aboriginal women and children. The *Divorce Act* should recognize with a stand-alone clause the impact of this oppression on families.

***Plans proposed for the child's care and upbringing***

As stated previously, the primary caregiving of the child(ren) prior to separation should be a priority in determining the care of the child(ren) post-separation. We are troubled that equal consideration may be afforded to what are essentially promises for the future, as outlined in this section. "Proposed plans" speak only to the future and cannot be assessed with regard to reality. It would be misguided to base custody and access decision-making on the *promise* of parenting. Divorce law decision-making should be cognizant of the reality of Canadian family life and not fall victim to wishful thinking. Abused women and children are used to hearing promises for change and a brighter future. Because abusers are adept manipulators and con artists, promises often seem heartfelt and sincere. They are rarely so.

The consideration of "proposed plans" for care encourages the increasing introduction of "parenting plans" into family law processes. Not only are these plans untested when they are considered, but they are another area in which we expect to see increasing litigation, particularly from abusive fathers, with regard to their detailed implementation and perceived 'violations' of the parenting plan as originally proposed. We believe there is no need for this contentious and potentially disruptive clause and suggest it be deleted from the *Bill*.

## Our Recommendations for Improvement of *Bill C-22*

**Recommendation 1: Parenting Orders**
That the terms "custody" and "access" be maintained in the *Divorce Act*, and subsections 16(1) to 16(7) in the current *Divorce Act* remain unchanged. Subsections (16(8), (9) and (10) of the current Act should be repealed, since the list of criteria to be considered under the proposed new section defining the 'best interests of the child' (16.2) would address issues that they provide for.
If the Standing Committee supports the amendment to abandon the terms "custody" and "access", and replace it with the concept of parental responsibility, changes will be required to clarify, define and link responsibilities to ensure that the new terms and concepts cannot be used to reinforce or continue control of families by abusive ex-spouses. These changes include:

**Recommendation 2: Parenting Orders**

a. That the responsibilities of primary caregiving and decision-making be linked in the legislation to prevent abusive fathers from maintaining rigid decision-making control while abdicating any actual caregiving responsibilities;
b. That the *Act* provide better guidance as to where a child will actually reside;
c. That the *Act* identify how "supervised parenting" (currently "supervised access") is to be ordered and exercised;
d. That specific provisions be added to ensure that 'shared' decision-making and responsibility does not jeopardize an abused woman or children's well-being or safety interests;
e. That provisions be made to better protect children from international kidnappings, including making it mandatory that under the proposed Section 22.1 of *Bill C-22*, the court designate a parent—that parent being the primary caregiver—within the *Divorce Act* with the rights of "custody" for the purpose of the *Hague Convention*.

**Recommendation 3: Best Interests of the Child**

a. That the *Bill* be amended to place *priority* on consideration of both the history of primary caregiving of the child and the consideration of the safety and security rights of both the child and the child's primary caregiver within the factors in Section 16.2. For the safety, well-being and stability of children, we believe that consideration of the child's needs and well-being along with the child's stability, as determined by the history of caregiving, as well as consideration of abuse should be paramount and overriding considerations in decisions about both 'parenting' and 'contact', however, they are framed in the future law.
b. That the definition of 'family violence' in this section be amended to include particular reference to wife assault, and to further expand the definition to include sexual and psychological abuse such that it forms of pattern of coercive control.
c. That the section further be amended to include a presumption against awarding custody in cases where 'family violence' has been identified. Such a provision has a precedent in the *Guardianship Act 1968* of New Zealand[19]. (Please see endnote for online access site.)
d. That the section be amended to add a list of risk factors to guide the court with regard to determining the safety and well-being of children in situations where intimate violence and abuse are present. The *Guardianship Act 1968* if New Zealand contains such as list as a precedent for this amendment[20]. (Please see endnote for online access.)
e. That the section be amended to add race and ethnic origin in the list of factors.
f. That consideration of Aboriginal heritage should be moved to its own stand-alone clause.
g. That a clause be added to clarify that considerations of culture, race, ethnic origin, language, religion and Aboriginal heritage are to assessed within a context of equality rights outlined by the *Canadian Charter of Rights and Freedoms.* Courts must be cognizant of both the context of specific communities and the equality and safety rights of women and children.

h. That the considerations of parenting plans for the future be deleted from the list.
**i.** That consideration of the "willingness" of spouses to support the development and maintenance of the child's relationship with the other spouse be deleted; or that such a clause provide for a specific stated exception in the case of 'family violence'.

**Overall Recommendation—Context Needed in the *Divorce Act*:**

**Recommendation 4: Preamble**
We recommend that *Bill C-22* be amended to add a preamble to the *Divorce Act* that guides the court with regard to women's role as the primary caregivers of children in Canada, and in particular the ongoing disadvantage of women—both before and after separation and divorce—with regard to both caregiving of children, as well as material economic and social conditions. Such a preamble should specifically acknowledge the impact of violence against women in the family and its impact on children as a mechanism and a manifestation of the ongoing inequality of women. In addition, the preamble should further clearly recognize the additional historical and ongoing disadvantage among women with regard to race, class, culture, language, disability and sexual orientation. It should guide the family courts with regard to ensuring that decisions made under the *Divorce Act* are consistent with the *Canadian Charter of Rights and Freedoms* and Canada's many commitments internationally to the elimination of discrimination against women and the elimination of violence against women. Moreover, we recommend that the Standing Committee on Justice and Human Rights ensure that a gender-based analysis is undertaken on this legislation before final reading.

**Recommendations Regarding Implementation of Family Law 'Services"**

Legislation does not exist in a vacuum. As legislation is introduced, then interpreted and argued, inappropriate levels of service and support within family law institutions can intensify the impact of court decisions. It is therefore vital that the Standing Committee on Justice and Human Rights speak not only to the proposed legislated amendments of *Bill C-22*, but to the potential implications for resources and services they create. We believe that, based on the experiences of other jurisdictions, litigation will increase as new concepts and considerations in law are introduced. The family law system must be able to respond in egalitarian and comprehensive ways. In particular, we foresee a critical need for additional legal aid support, screening of and expedited process for cases in which 'family violence' or violence against women and children is identified, as well as limitations on mediation and other forms of alternate dispute mechanisms that jeopardize women's safety, security and access to justice rights.

**Recommendation 5: Family law services**
a. That the federal government ensures that legal aid is available to all provinces and territories to a level that will guarantee support for applicants within the family law system. Such aid must be accompanied by conditions that will provide for a national standard of legal aid support sufficient to cover all matters within family law, to ensure French language services, translation and cultural interpretation, and full supports for parties with literacy and disability issues. Legal aid must be supported as a *right*, not a service. Finally, the federal government must ensure that no preconditions—such as participation in mediation or parent education—are required for access to legal aid support.
b. That screening be provided within family courts to identify abused women and children exposed to violence, and that additional supports be provided within family court to abused women seeking divorce and child custody. As noted before, the contrary is now the norm, with violence against women being systematically screened out of family law files. If the court is to consider 'family violence' as outlined in Section 16.2, then current practice must be reversed with a proactive effort, supported with resources, to identify violence.

c. That the current promotion of mediation and alternate dispute mechanisms be clearly offered as a voluntary service only. In addition, any such service must identify and screen out any and all cases where 'family violence' or violence against women is present. Furthermore, mediation must never be used as a form of "counselling" (or so-called 'therapeutic mediation') for parties to a separation or divorce.
d. That the government resists promoting information sessions on divorce as "parent education" within the context of family law disputes, that sessions be clearly voluntary for all parties and that they be clearly stated as inappropriate in situations where abuse has occurred. Furthermore, any information sessions or promotion of so-called "parent education" prior to divorce must explicitly support the decision of abused women to leave their abusive partner and to seek protection from the court for their children.

**Recommendations for Training and Education**

If amendments to the *Divorce Act* are to achieve their intended reforms, all personnel, from parties to the divorce to family law judges, must be educated not only in the legislation changes, but in the underlying considerations and concerns arising within the legislation. In particular, education will be required to understand the material conditions of women and children's lives in Canada, the complexities of violence against women and its impact on children, the need to make decisions consistent with women and children's equality rights under the *Charter* and the delicate balance of factors that affect women from diverse communities and experiences in Canada.

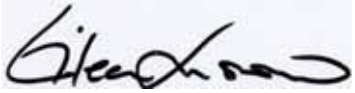
**Recommendation 6: Education and Training**

a. That all family court personnel—judges, lawyers, assessors and psychologists, court administration personnel, legal aid workers—take *mandatory* training that includes: comprehensive curriculum on violence against women and its impact on children; the economic and social reality of women in the family; differential impacts of racism, poverty, heterosexism, ableism and all forms of discrimination on the ability of women and children to thrive and achieve equality both before and after divorce; and the impact of family law and its implementation on these conditions.
b. That abused women be provided with independent support workers to provide information and guidance through the family law process, to ensure that both they and their children have additional information and advocacy with regard to the violence and its implications for family law decisions, in particular with regard to child custody and access, however termed.

**Conclusion**

For abused women, divorce is an act of courage and child protection. Rather than resisting the breakdown of the 'family' in situations where violence and control are occurring, we are hopeful that the Government of Canada will ensure that through the *Divorce Act* and its implementation process, women in abusive situations will be further encouraged and supported by the law to escape safely. We believe the recommendations we have made to enhance and improve *Bill C-22* and its introduction will go a long way to creating that support. We look forward to an opportunity to speak directly with Committee members in the future to discuss these proposals.

Respectfully submitted:



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## Endnotes

[1] *Spousal Abuse, Children and the Legal System*. Linda C. Neilson. Muriel McQueen Fergusson Centre for Family Violence Research. University of New Brunswick. March 2001. http://www.unbf.ca/arts/CFVR/spousal_abuse.pdf
[2] Ibid
[3] *Changing Face of Child Welfare Investigations in Ontario: Ontario Incidence Studies of Report3ed Child Abuse and Neglect (OIS 1993/1998).* Nico Trocmé, Barbara Fallon, Bruce MacLaurin, Barbara Copp. Centre of Excellence for Child Welfare. Page 10. 2002
[4] *Homicides*. *The Daily*, Wednesday, September 25, 2002. Statistics Canada.
[5] *Woman Killing: Intimate Femicide in Ontario 1991-1994 Volume II*, Maria Crawford, Rosemary Gartner, Myrna Dawson. Page 27. March 1997.
[6] *Spousal Violence After Marital Separation*. Juristat Canadian Centre for Justice Statistics. Number 85-002-XIE Vol. 21. No. 7.
[7] Ibid.
[8] *Spousal Abuse, Children and the Legal System*. Linda C. Neilson. Muriel McQueen Fergusson Centre for Family Violence Research. University of New Brunswick. March 2001. Page 8. The researchers wrote: "…information about abuse and irresponsible parenting is excluded or omitted at each stage in the legal process: during lawyer-client interviews, during legal interpretations of those interviews, during preparation of court documents, during negotiations between lawyers, and during the presentation of evidence to judges. Thus, by the time cases reach judges, for decision or confirmation of 'consent' orders, much of the evidence of abuse and irresponsible parenting has been screened from the legal process."
[9] *The Family Law Act: The First Three Years*. Executive Summary. Helen Rhoades, Reg Graycar, Margaret Harrison. University of Sydney and Family Court of Australia. Sydney, Australia. 2000 www.familycourt.gov.au/papers/html1/fla1summary.html
[10] Ibid. The researchers note: "Our research suggest that the reforms have created greater scope for an abusive non-resident parent to harass or interfere in the life of the child's primary caregiver by challenging her decisions and choices. As one counsellor noted, the concept of ongoing parental responsibility has become 'a new tool of control' for abusive non-resident parents. This also means constant disputes and 'an endless cycle of court orders'."
[11] *Women in Canada 2000: A Gender-Based Statistical Report*. Statistics Canada. September 2000. Pages 203, 205, 230, 232, 258, 259.
[12]*The Family Law Act: The First Three Years*. Executive Summary. Helen Rhoades, Reg Graycar, Margaret Harrison. University of Sydney and Family Court of Australia. Sydney, Australia. 2000 Page 74.
[13] *Custody, Access and Child Support: Findings from the National Longitudinal Study of Children and Youth.* Nicole Marcil-Gratton and Céline Le Bourdais. Université de Montréal, Institut national de la recherche scientifique. 1998. Page vi.
[14] Ibid. Page. 22. Researchers noted that only 30% of fathers visited their children every week.
[15] *2001 Census: Analysis Series*. The changing profile of Canada's labour force. Statistics Canada. February 11, 2003. Page 37.
[16] *Family Violence in Canada: A Statistical Profile 2003.* Centre for Justice Statistics. Pages 4-11. At http://www.statcan.ca/english/freepub/85-224-XIE/free.htm (See also *Husband Abuse: An Overview of Research and Perspective.* Family Violence Prevention Unit, Health Canada. 1999. At http://www.hc-sc.gc.ca/hppb/familyviolence/pdfs/husbandenglish.pdf )
[17] Ibid. Page 34.
[18] *Child Custody and Access: The Experiences of Abused Immigrant and Refugee Women*. Beryl Tsang. Education Wife Assault. Toronto. 2001
[19] *The Guardianship Act 1968* Section 16B (4 a and b) Allegations of violence made in custody or access proceedings states that: "Where, in any proceedings to which this section applies, the Court is satisfied that a party to the proceedings (in this section referred to as the violent party) has used violence against the child or a children of the family or against the other party to the proceedings, the Court shall not a) Make any order giving the violent party custody of the child to whom the proceedings relate; or b) Make any order allowing the violent party access (other than supervised access) to that child; unless the court is satisfied that the child will be safe while the violent party has custody of or, as the case may be, access to the child." Access online at: http://www.legislation.govt.nz/browse_vw.asp?content-set=pal_statutes
[20] Ibid.