



SPEAKING NOTES

of

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DROIT

to the

Standing Senate Committee on Legal and Constitutional Affairs

Regarding Bill C—78, *An Act to amend the Divorce Act, the Family Orders and Agreements
Enforcement Assistance Act and the Garnishment, Attachment and Pension Diversion Act and
to make consequential amendments to another Act*

Room W120, 1 Wellington St

Ottawa Ontario

June 6, 2019

- Good morning. Thank you for this opportunity to speak on Bill C-78 on behalf of the National Association of Women and the Law (NAWL). I am pleased to also speak today on behalf of our sister organization, Luke's Place Support and Resource Centre, with whom NAWL has worked in partnership on Bill C-78.
- NAWL is an incorporated not-for-profit feminist organization that promotes the equality rights of women in Canada through legal education, research, and law reform advocacy.
- Advocating for much needed changes to family laws, including the *Divorce Act* has been a focus of NAWL's work since the 1980's.
- NAWL and Luke's Place developed a joint Discussion Paper and Brief on C-78 reflecting an intersectional feminist analysis of the Bill, which was submitted to the Parliamentary Justice and Human Rights Committee, and has also been circulated to members of this Committee.
- Our joint Brief was endorsed by 31 organizations from; BC, Saskatchewan, Manitoba, Ontario, Quebec, and New Brunswick, and more than a dozen national feminist and equality seeking groups and is the fruit of consultations that NAWL convened with feminist academics, lawyers, service providers and advocates.
- I raise this now to emphasize that there is broad based support for many aspects of Bill C-78, and we urge this Committee, the House and the Minister of Justice to cooperate to ensure that this Bill is passed before the end of this Parliamentary session.
- We take this position as Bill C-78 introduces many important any long overdue amendments to the Divorce Act, including:
 - Placing the well-being and best interests of children at the centre of the Bill;

- Developing clear criteria for the best interests of the child test, which will assist unrepresented litigants, lawyers and the judiciary to understand what needs to be taken into account when determining arrangements for children;
 - The clear identification of family violence as an issue to be considered in divorce proceedings;
 - The inclusion of coercive control, psychological, financial and animal abuse in the description is extremely important;
 - Recognizing that family violence exists, whether or not the conduct constitutes a criminal offence is critical if women, who are the primary victims of abuse within the family, are to receive appropriate outcomes in divorce proceedings; and
 - Not introducing a presumption in favour of shared parenting. Because of the unique circumstances of every family, any such presumption would not be in the best interests of children.
- I want to emphasize that NAWL fully supports the **exclusion** from this Bill of any presumptions of shared parenting. Determining what is in the best interests of the child must be done on a case-by-case basis. I will recommend a few amendments to clarify this critical issue.
 - In the hopes that all parties involved can cooperate to make just a few key amendments to this Bill, NAWL and Luke's Place propose the following key and relatively simple amendments be made to Bill C-78, which reflect concerns raised in a range of briefs submitted on this Bill, and in the testimony of many witnesses that appeared before the House Committee, and of witnesses that appeared yesterday and this morning before this Committee, which are all focused on family violence issues in the context of divorce.

- Our first recommendation, which was also supported by witnesses yesterday is that section 16.6 entitled “**Maximum parenting time**’ be deleted from the Bill.
- This provision opens up the possibility that maximum time with both parents will be presumed to be in the best interests of the child, which as we know, is not always the case, especially in cases of family violence. This clause could seriously undermine the entire framing of this Bill around the best interests of the child as the primary and indeed only presumption that should be in operation in divorce proceedings.
- Our second recommendation is that s. 16(3)(c) also be removed from the Bill.
- In cases where there has been any family violence, it is totally unacceptable, and indeed in many case it may be dangerous, and even lethal to insist that a mother be willing ‘to support the development and maintenance of the child’s relationship with the [abusive] spouse’.
- Similarly, s. 16(j)(i) should be removed or revised as the critical issue to be determined here should not be the **willingness** of an abusive parent to care for a child. The focus should be on the impacts of family violence perpetrated by that parent on their capacity to parent (not their willingness to do so), in a manner that reflects the best interests of the child.
- Our last recommendation is that the Bill should explicitly reflect the reality that we were very pleased to hear the Minister acknowledge in his remarks yesterday, which is the gendered nature of family violence.

The evidence is clear and unequivocal, as with other forms of gender-based violence, most victims/survivors of violence within marriage and when it ends, are women, and men are overwhelmingly the perpetrators of this violence.

- Therefore, as reflected in Recommendation #3 contained in our joint Brief, we recommend that the gendered nature of family violence be included in the Bill by simply adding to the definition of family violence that: “***Family violence perpetrated against women, is a form of violence against women.***”

[family violence:

means any conduct, whether or not the conduct constitutes a criminal offence, by a family member towards another family member, that is violent or threatening or that constitutes a pattern of coercive and controlling behaviour or that causes that other family member to fear for their own safety or for that of another person — and in the case of a child, the direct or indirect exposure to such conduct — and includes any incident or pattern of;

...

Family violence perpetrated against women, is a form of violence against women.]

- We have also provided a definition of VAW that can be included, as well, which is found in Recommendation #2 of our joint Brief on C-78:

Violence against women:

- is a form of gender-based discrimination, a manifestation of historical and systemic inequality between men and women;
- includes any act, intention or threat of physical, sexual or psychological violence that results in the harm or suffering of women in all their diversity, including restrictions on their freedom, safety and full participation in society;
- is inflicted by intimate partners, caregivers, family members, guardians, strangers, co-workers, employers, healthcare and other service providers;
- occurs in the home, at work, online, in institutions and in our communities; and
- is experienced by women in multiple ways shaped by other forms of discrimination and disadvantage, which intersect

with race, Indigenous identity, ethnicity, religion, gender identity or gender expression, sexual orientation, citizenship immigration and refugee status, geographic location, social condition, age, and disability.

- Given the short timelines that remain to agree on any amendments, I can also propose a second globally agreed definition of violence against women that could be adopted at this point, and then reviewed later when the Divorce Act is next reviewed again.
- In conclusion, I reiterate that while concerns with these elements of C-78 remain, I am here today to urge you, in the strongest possible way, to pass the Bill.
- Bill C-78 offers the opportunity to modernize the *Divorce Act* so it better reflects the realities of families in Canada in 2019. In particular, it will be able to more appropriately and effectively respond to families where violence is a reality; making it possible for women, who are the primary victims of that violence, and their children to move on to lives free from violence or the threat of violence. The *Divorce Act*, as amended by Bill C-78, can protect the best interests of children, understand family violence, reduce child poverty and increase access to justice for families in Canada.
- I thank the Committee again for providing NAWL with the opportunity to appear on C-78.