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

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February 6th, 2019 / 4:20 p.m.
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Minister of Justice and Attorney General of Canada, Lib.

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David Lametti

Madam Speaker, that is effectively what I am saying. I appreciate the hon. member's question, but there is a large degree of consensus in the House and across Canada.

The experts are weighing in and the voices are fairly unanimous, that this is an excellent piece of legislation. Lawrence Pinsky from the law firm of Taylor McCaffrey said, “Bill C-78 is clearly an advance in family law in Canada, and the government should be commended from bringing it forward. This should be a non-partisan issue.”

From West Coast LEAF, Elba Bendo stated:

West Coast LEAF welcomes the important amendments proposed by Bill C-78. We are very glad that the intended purpose of the legislation—to promote faster, better and more cost-effective solutions to family law disputes—recognizes the difficult reality that many people across this country are alone in navigating the legal system during what is often one of the most difficult times in their lives.

We need to move forward, because the bill has widespread support.

Links & Sharing
As spoken

Third Reading Divorce ActGovernment Orders

February 6th, 2019 / 5:30 p.m.
See context

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Arif Virani Parliamentary Secretary to the Minister of Justice and Attorney General of Canada and to the Minister of Democratic Institutions, Lib.

Mr. Speaker, I will be splitting my time with the member for Mount Royal.

I am very grateful for the opportunity to speak to Bill C-78. I will use most of my time to address the important amendments the Standing Committee on Justice and Human Rights have made to this important bill. I was proud to work with the committee to bring forward these changes, which reflect witness testimony and would significantly improve access to the Canadian family justice system.

Changes to federal family laws are long overdue. The changes we are bringing forward are substantial. They would better address the challenging issues that families may face, such as family violence and disputes over relocation. They would improve access to the Canadian family justice system. Bill C-78 already went a long way toward

achieving these goals and the work of the justice committee took the bill even further.

I am fortunate to represent a riding like Parkdale—High Park in this chamber, where the constituents are informed and engaged, and I am privileged to bring their concerns to this chamber every day. My constituents in Parkdale—High Park have spoken to me repeatedly about the importance of reconciling the need for a strong and fair justice system with their desire to be compassionate and understanding toward the plight of single parents and vulnerable children. This bill is precisely that middle ground.

I want to thank the many witnesses who submitted briefs or shared their thoughts on this bill in person. The committee listened closely to all the different points of view raised by members of the public and family justice system professionals in response to Bill C-78.

Committee members gathered important information from over 50 witnesses. The committee also received over 50 briefs representing a broad range of opinions and points of view. It reviewed the recommendations carefully, and many of them resulted in amendments to Bill C-78.

Relocation, particularly moving with a child after separation or divorce, is one of the most highly litigated areas of family law. There is next to no guidance on this issue in the current Divorce Act.

Bill C-78 would introduce a relocation framework to ensure that children come first and to encourage out-of-court dispute resolution. Some witnesses brought forward suggestions to improve access to justice in relocation, which is particularly relevant for northern remote communities and unrepresented litigants.

The Canadian Bar Association and the Family Law Association of Nunavut wisely recommended the use of a simplified form rather than court applications to facilitate access to justice and reduce the need to get the courts involved.

The committee addressed this concern and developed an innovative solution promoting conflict resolution and access to justice. Specifically, it passed an amendment to give non-relocating parents the option of indicating their opposition to a proposed relocation through a form set out in the regulations. This will save the responding parent time and money.

The committee also amended the bill to require that parties seeking to relocate use a form to provide notice. Requiring that notice be provided through a form will promote clarity by prompting parents to provide all necessary information in a consistent manner.

We anticipate that these measures will relieve the administrative burden on the non-relocating parent, while still helping to ensure that courts only hear cases in which there is a genuine disagreement between the parties.

I believe that all members of the House support efforts in the bill to improve protections for children and families who have experienced family violence. For the very first time in federal law, Bill C-78 includes a broad, evidence-based definition of family violence and guidance for courts making parenting orders in the context of family violence.

Bill C-78 also stipulates that courts will be required to take family violence into account when determining the shared parenting arrangement that will be in the best interest of the child.

Witnesses raised concerns that, when people fleeing violence want to relocate, it can be dangerous for them to inform the other parties of their intention to apply for an exemption concerning the notice requirements.

In response to this particular concern, Bill C-78 was amended to explicitly provide that parties may apply to a court to waive or change relocation notice requirements without notice to other parties. Courts could then decide whether or how other parties should receive notice, without risking the safety of family members. People who have experienced family violence and face ongoing risk must be able to relocate without compromising their safety. However, notice is a fundamental principle of the legal system, so courts will exercise this power only where necessary.

Now I want to turn to the important issue of poverty reduction. I said I would focus this speech on the work of the justice committee, but I must take a minute to raise another issue of importance to me and I believe to many Canadians. That is the feminization of poverty and how the bill would help address it.

Children and families going through a separation or divorce are more vulnerable to poverty, especially those living in single-parent families, which are often led by mothers.

Unfortunately, although parents are required to provide accurate and up-to-date information on their income when the child support amounts are established, many parents do not comply. In 96% of cases where child support payments are in arrears, women are the ones owed money.

Obtaining fair child support amounts is key to reducing the risk of child poverty. Children do better when a fair and accurate amount of support is set and paid for them promptly after separation or divorce.

Bill C-78 would provide for various measures to ensure that child support obligations are met, which would address the pressing need of eliminating poverty in families going through a separation or divorce. The bill would allow for information on a parent's income to be shared with the court and provincial services.

With respect to official languages, the family justice system must adapt to the changing needs of Canadian families. This includes the needs of Canadians living outside Quebec whose first language is French, as well as those living in Quebec who have English as their first official language.

Consequently, the committee adopted an important amendment. Bill C-78 will now explicitly recognize litigants' right to use the official language of their choice in divorce proceedings before the lower courts. The parties will be able to give evidence, make submissions and apply for an order in the language of their choice. They can also be heard by a judge who speaks their official language.

This important change in the family justice system will provide the parties with the same language guarantees currently provided by the criminal justice system. This will help English-language and French-language minority communities flourish in Canada. It is very important to point this out, in light of the current Ontario government's threats against its francophone community.

I would like to recognize the tireless efforts of my colleagues, specifically the member for Mount Royal and the member for Ottawa—Vanier, to ensure that this becomes a reality.

In conclusion, I would like to once again recognize the work of the entire Standing Committee on Justice and Human Rights, and of course the invaluable contributions of family law experts and stakeholders from across Canada. They have made an impressive bill even stronger and more responsive to the needs of all Canadian families.

The residents in my riding of Parkdale—High Park have said that one of the many ways to modernize the justice system in Canada is by addressing the shortfalls of our family justice system, and this bill is a comprehensive step toward realizing that important goal.

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Partially translated

Divorce Act Government Orders

January 30th, 2019 / 3:30 p.m.
See context

Minister of Justice and Attorney General of Canada, Lib.

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David Lametti

moved that the bill be read the third time and passed.

Mr. Speaker, it is with humility that I rise for the first time as the Minister of Justice and Attorney General of Canada.

I want to thank the right hon. Prime Minister for the trust he has placed in me. I also thank the people of LaSalle—Émard—Verdun for their continued support. I would also like to thank the Minister of Innovation, Science and Economic Development and the Minister of Foreign Affairs for their guidance. I also want to thank their teams.

I would also like to salute the work of my predecessor. It was a historic appointment, and it was matched by a historic quantity of substantive legislation. I want to thank her as we move forward.

I would also like to thank the chair and the members of the committee, as well as the witnesses who expressed their support and provided insights and recommendations on Bill C-78. I would also like to acknowledge the recent expression of support for Bill C-78 on the part of the federal-provincial-territorial ministers responsible for justice and public safety.

Finally, I could not go on without mentioning the constant support of my very able parliamentary secretary, the member for Parkdale—High Park.

The needs of families going through a separation or divorce have changed significantly over the past decades. Federal family laws are now outdated and do not meet their needs. That is why we are proud to present the first major changes to these laws in more than 20 years.

The bill will modernize federal family laws and improve the family justice system, in particular by encouraging the use of alternative dispute resolution methods, and ensuring that the best interests of the child are at the heart of any decisions affecting them.

The best interests of the child is a fundamental principle in family law that must be reinforced to ensure that the support and the protection of our children are always paramount. Bill C-78 entrenches in law the best interests of the child as the only consideration when making decisions about parenting arrangements.

Along these lines, the bill introduces a primary consideration, according to which a child's physical, emotional and psychological safety, security and well-being will be considered above all else. Courts will have to weigh each best interest criterion in light of this primary consideration.

Proposed changes also recognize the importance of a child's voice in family justice proceedings. Bill C-78 puts forward concrete measures to promote the best interests of the child in situations in which children are most vulnerable. The bill introduces criteria to determine the best interests of the child, as well as important considerations and exceptions when there has been family violence.

With thanks to witnesses heard by the committee, the bill has been amended so that in some cases of family violence, applications to modify a parenting arrangement or to relocate can be made without notice to other parties, which will provide further protection to children and families fleeing these situations.

A number of witnesses addressed the issue of a presumption of equal shared parenting under the Divorce Act. While some witnesses were in favour of a presumption, most were strongly opposed to it. Creating such a presumption would have gone against our commitment to ensure that each child's best interests would always be put first. Given

that each child and each family's circumstances are unique, courts need flexibility to tailor parenting orders to the needs of each particular child.

We recognize, however, the important role that both parents can play in a child's life. Bill C-78 reflects social science evidence that it is generally important for children to have a relationship with both parents after divorce. Thus, the bill requires courts to apply the “maximum parenting time” principle that a child should have as much time with each parent as is consistent with the child's best interests.

Witnesses raised concerns that this principle may create a misunderstanding that equal time with each parent should be the starting point when establishing a parenting order. To address these concerns, the bill was amended to further clarify that this principle is always subject to the best interests of the child.

Another important aspect that has been the subject of considerable discussion over the past few years is recognition of linguistic rights in the Divorce Act.

After hearing from witnesses on the matter, including the Fédération des associations de juristes d’expression française de common law and the Canadian Bar Association, we amended the bill to allow parties to use either official language in any proceedings under the Divorce Act.

Parties will have exactly the same linguistic rights as those provided for under Part XVII of the Criminal Code in criminal matters. In other words, anyone can testify and submit evidence in the official language of their choice. Parties will also be able to be heard by a judge who speaks their language and can obtain any ruling or order in the official language of their choice.

This important change will improve access to the family justice system and help enhance the vitality of official language minority communities.

I want to thank my caucus colleagues for their important work on this matter, especially the hon. member for Mount Royal and the hon. member for Ottawa—Vanier.

Our government has been growing the middle class and helping those working hard to join it. Bill C-78 furthers this work by making important contributions to help address child poverty.

Family breakdown often places significant financial strain on families. For some families, divorce may lead to poverty. Lone-parent families, most often led by women, are at a particularly high risk of experiencing financial hardship. This bill will improve federal support enforcement tools, such as the release of income information, to ensure that fair and accurate support amounts can be calculated.

Bill C-78 sets out obligations for parents who divorce in order to protect the children, promote their best interests and foster the amicable settlement of family disputes.

Parents will now be required to exercise their decision-making responsibilities in a manner that is compatible with the interests of the child and will protect children from conflict. These obligations should already have been accepted by divorced parents. However, making this an explicit rule will remind parties of their obligations under the Divorce Act.

To foster Canadians' access to justice, the Department of Justice will prepare various documents to inform the public of the changes proposed by the bill and guide families through the divorce process.

This leads me to mention another important objective, that is, making the family justice system more accessible and efficient.

In closing, Bill C-78 shows our commitment to enhancing the family justice system. This bill seeks to protect families, especially the children, from the adverse effects that can be caused by a divorce by focusing on dispute resolution and the interests of the child.

Once again, I would like to thank all those who contributed to the committee process.

I encourage my colleagues on all sides of the House to join me in supporting this very progressive bill.

Links & Sharing
Partially translated

Divorce Act Government Orders

January 30th, 2019 / 3:50 p.m.
See context

Conservative

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Michael Cooper Conservative St. Albert—Edmonton, AB

Mr. Speaker, I am pleased to rise to speak at third reading stage of Bill C-78, an act to amend the Divorce Act. As a member of the justice committee, I had the benefit of studying the bill in some detail at committee, where we heard from a wide range of stakeholders involved in family law. While there are some aspects of the bill that could be improved upon, and I will address those specific issues in short order, I believe that many aspects of the bill would provide greater clarity and certainty in the law. This, after all, is the first major update of the Divorce Act since it was passed in 1985, and in that regard, it is a timely update indeed.

Before getting into some of the areas where I think the bill falls short, let me start with some of the positives. One positive aspect of the bill is that it contains important measures to better ensure that children are not impacted by conflict and to encourage parties, where appropriate, to resolve their disputes outside the court process. It is important to note the words “where appropriate”. That language is in the legislation, because we know that in not all circumstances is it appropriate to resolve family disputes through negotiation or collaborative law, particularly where there is a history of family violence. However, we know that where it is appropriate, it is more often than not the best possible outcome. Because the court process is adversarial in nature, it increases conflict and it can prolong disputes, and that heightened conflict, of course, can have a profoundly negative impact on children.

We also know that the court process is often inefficient, and it is, indeed, costly. That raises issues of access to justice. More and more Canadians who are resorting to the family court system are self-represented litigants, because they cannot afford legal representation. Often these self-represented litigants do not know their rights. They do not have a good understanding of the law. That creates a number of issues, including from the standpoint of backlogs and delays in the family courts, but more broadly speaking, within our entire justice system. To the degree that we can encourage parties to settle, to go through mediation or negotiation or collaborative law, that is positive, and the bill contains measures in that direction.

A second area where the bill would provide better certainty in the law is through the codification of a wide body of case law that recognizes

that in determining custody or access orders, the sole determination should be based on what is in the best interests of the child. The bill sets forth a number of factors a judge would consider in fashioning an order and determining, based on the individual circumstances of the case, what, in fact, was in the best interests of the child. That is entirely appropriate and is consistent with what the family law bar has been asking for. It is consistent with the special joint committee report the House and the Senate undertook in 1998 with respect to custody and child support.

One area that I have some issues with is with respect to relocation, about which I posed a question earlier to the minister. Relocation, for obvious reasons, is one of the most difficult areas of family law when one parent seeks to relocate with that child to another location. Based upon the evidence before the committee from the family law bar, that has not been necessarily made easier by the Supreme Court in the Gordon v. Goertz decision of 1996, which provides a highly discretionary test, based upon the best interests of the child. This has let to uncertainty and, frankly, has increased litigation around relocation matters.

The bill seeks to provide certainty by establishing a three-way split with respect to which parent bears the burden of establishing that the relocation is in the best interests of a child. In that regard, the bill provides that when a child has substantially equal time with both parents, then the burden falls on the party seeking to relocate. On the other end of the spectrum, where a child is with the relocating parent the vast majority of time, the burden would fall to the other parent. Then, finally, where there are cases in between those two spectrums, neither parent would bear the burden.

This approach is consistent with the legislation that was passed in the province of Nova Scotia in 2013. There was some evidence before the committee that it was working relatively well, that judges were not having a difficult time sorting out which person or group would fall into the three categories.

However, that being said, while it is laudable that the government is seeking to provide some clarity in the face of Gordon v. Goertz and some greater certainty, I have some concern that this may create some new uncertainty. In that regard, it was raised before committee, I believe by Professor Bala, a well-respected expert in family law, that by using the term “a substantially equal time“ that it might imply or might not imply shared custody with the requisite 40% threshold.

Needless to say, it is new language. It has not been tested. It will be litigated,. Therefore, that is something to monitor.

Second, I have some concern about the appropriateness of a three-way split. Again, there was some evidence before the committee, and it is a view that I share, that from the standpoint of fairness and the standpoint of achieving what this legislation seeks to achieve, which is to do what is in the best interests of the child, that as a general rule, the burden should fall on the parent seeking to relocate to establish that it is in the best interests of the child, save for those circumstances where the child does spend the vast majority of his or her time with the relocating parent.

Having regard for the fact that unless the child is an infant, relocation does have, in the normal course, a significant impact on the everyday life of that child with respect to having to go to a new school, make new friends and adjust to a community, not to mention the impact it can have on the relationship with the other parent, who might have access or custody arrangements. It can often be a major disruption. From that standpoint, it would seem more appropriate that, as a general rule, the burden fall on the relocating party.

Then there are some technical issues with the notice requirements. I alluded to one of the concerns I had when I posed a question of the minister. One of the concerns with respect to notice is that the legislation would provide that a parent need only send a letter or some relatively informal notice to the non-relocating party.

At committee, Lawrence Pinsky, who is the past chair of the family law section of the Canadian Bar Association, among others, raised questions about the appropriateness of that form of notice. It seemed to Mr. Pinsky, and it seems to me, that it could unintentionally create situations where one parent would say that he or she had sent notice and the other parent would say that he or she did not receive notice. In the meantime, the parent who claimed the notice had been sent notice may have relocated with that child. What does one do in those circumstances?

In such a circumstance, it may be that the other parent might not be able to have access and custody for which he or she is entitled pursuant to an order. Is the other parent in contempt of that order? That seems to be an aspect of the bill that needs to be re-evaluated, with a

very minor amendment when it goes to the Senate, since we were not able to address it at committee.

Then there is the issue of the 30-day response period; 60 days to provide notice of a relocation and 30 days to provide a response. Thirty days is problematic for individuals who may be in remote and northern communities and might not have easy access to a lawyer. It could be problematic for persons who may be disadvantaged or unfamiliar with the court process, maybe who have never retained a lawyer before, or who might perhaps be unable to afford retaining a lawyer and then find themselves in a position where an application to respond has to be prepared. There might be some significant barriers for many groups of Canadians. That is a concern.

Then there is the whole issue of rushing into court. Effectively, the only recourse for parents who are not relocating and who receive that notice is to file an application in court objecting to the relocation. That is inconsistent with one of the key objectives of the bill, which is to encourage parties, where possible, to settle disputes out of court. In most circumstances, someone who is relocating likely will have thought about that relocation long before he or she provides 60 days' notice. By contrast, the party who is not relocating, more often than not, may only learn of it upon receiving notice, in which that parent has 30 days to respond.

That is problematic inasmuch as it might take one some time to absorb what that relocation means, how it impacts custody or access arrangements and prohibits the ability of the parties to negotiate and approach the relocation in a collaborative way and avoid litigation on that issue. It is why I brought forward an amendment, consistent with evidence from a number of witnesses, to increase the time from a 90-day period to provide notice and a 60-day period to respond, Again, it is a relatively minor amendment that hopefully can be considered in the Senate since it was not adopted when it was studied at the justice committee. It is one that could have a profound impact on many families.

I was disappointed that the bill did not recognize the fact that in most circumstances, it is desirable to maintain a shared parenting relationship. That it is not to say that it is appropriate in all cases. We know, particularly in situations where there is family violence, that it is not. However, it does not make sense to remove a perfectly fit parent from having as much access and time to spend with his or her child, and yet

we know that does happen every day. The government's response, I suspect, will be that shared parenting is not consistent with this legislation and it rejects the notion of shared parenting because the legislation is focused exclusively on the best interests of the child.

I agree wholeheartedly that any issue relating to custody or access should be based exclusively on what is in the best interests of the child. However, the fact is that in many circumstances, what is in the best interests of the child is to maintain that shared parenting relationship. We know that from common sense life experience and a wide body of social science evidence to back that up. That is why, when the Senate studied custody and access in 1998, it recommended the incorporation of factors that a court should consider with respect to the best interests of a child, which the government incorporated in the bill. One of the factors was the benefit to a child of a shared parenting relationship.

With that, on the whole, the bill gets a lot of things right. There is a fair bit of consensus among the family law bar and other actors involved in family law, divorce, separation, etc., but there are areas where there is room for improvement. I hope there will be some further consideration on how to improve the bill when it goes to the Senate.

Links & Sharing
As spoken

Divorce Act Government Orders

January 30th, 2019 / 4:20 p.m.
See context

NDP

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Brigitte Sansoucy NDP Saint-Hyacinthe—Bagot, QC

Mr. Speaker, as my party's critic for families, children and social development, I am delighted to rise in the House once again to speak to Bill C-78.

I will get straight to the point. Bill C-78 is clearly a step forward, considering that the 40-year-old Divorce Act is no longer a useful tool for

helping families navigate the problems they encounter during a divorce.

Let me illustrate that with a quote from Senator Landon Pearson. She was appointed to the Senate in 1994 and retired in 2005. I think this quote shows that we have long known the Divorce Act needs updating. Senator Pearson served as vice-chair of the Standing Committee on Human Rights.

This is what she said way back in the early 2000s:

> *When their parents separate, children's lives are changed forever. The responsibility of parents and family members as well as the professionals who engage with them, is to make that change as smooth as possible. Children have the right to be looked after, and to be protected from violence and undue emotional stress. They also have the right to maintain relationships that are important to them and to have their own voices heard. Only when these and all the other rights that are guaranteed to them by the United Nations Convention on the Rights of the Child are respected, will children be able to accept and adjust well to the new circumstances in which they find themselves.*

That is why my NDP colleagues and I will support this bill. However, I want my esteemed colleagues to realize that, although this bill is a step forward, we cannot stop here. I believe this bill can and should be improved.

I think we can all agree that the objectives set out in the text—namely, promoting the best interests of the child, taking family violence into account in making parenting arrangements, fighting child poverty and making Canada's family justice system more accessible—are all steps

in the right direction. However, the major flaw with this bill is that it too often lacks the teeth to support its intentions.

Many of the witnesses who appeared before the Standing Committee on Justice and Human Rights as part of its work on Bill C-78 came to the same conclusion. I would like to thank them once again. What I took away from those meetings is that families, associations, justice professionals and academics are all waiting for a comprehensive reform of the Divorce Act.

I want to emphasize how important it is that we not let the opportunity we have today pass us by, since we will likely not reform the Divorce Act again for another few decades. Let us not make changes just for the sake of making changes; we must listen to the recommendations made by witnesses in committee and in the many briefs that have been sent to us. We do not want to realize a few months down the road that the act does not resolve certain problems and only addresses them superficially.

We need to make sure we do things right. I do not want us to end up dealing with problems that we were warned about and that we could have resolved today. I am thinking in particular about situations of family violence and about how the child's views always need to be taken into account in divorce proceedings.

I would therefore like to talk about three issues: fully protecting the best interests of the child, of all children, managing situations of family violence, and combatting poverty.

First, when it comes to promoting the best interests of the child, we must not end up in a situation where the child's interests are determined a priori by the parents or the judge.

That is why it would make sense to include a provision in the bill to give the child the right to be represented by a third party. Countless studies show that questioning a child through such a process is very beneficial. Professionals note that when a person is there to communicate to the parents the concerns and interests of their child, the divorce is settled almost immediately.

Although the bill states in clause 16(3) the need to consider “the child’s views and preferences, by giving due weight to the child’s age and maturity”, it seems that representation for the child would guar-

antee that the best interest of the child is central to concerns in all circumstances.

Moreover, we should give considerable attention to training on how to duly take into account the point of view of the child in matters before family court. I think that our approach has to be based on the International Convention on the Rights of the Child and best practices being used in Canada and abroad. In fact, to go even further, the Convention on the Rights of the Child should be included in the section on the best interest of the child.

Unfortunately, the departmental officials told the committee that we did not need to explicitly incorporate the Convention on the Rights of the Child because it is a given that Canadian courts are required to comply with the convention. However, several witnesses testified that explicitly including it, not only in the preamble but also in the body of the act, would enable both us and the courts to take into account all the underlying principles of this convention. Sadly, this view did not find favour.

I also want to point out how important it is that children be offered services and resources that give them psychological support.

Lastly, it is equally vital that the best interests of children, all children, be taken into consideration. This means that indigenous children's right to their own culture, religion and language must be recognized in paragraph (f) of subclause 16(3) on the best interests of the child.

The testimony of UNICEF Canada representatives was extremely pertinent and supported this point of view. It is obvious to them that the International Convention on the Rights of the Child supports the principle of considering the culture of indigenous children. Here again, as I just said, we can look to article 30 of the International Convention on the Rights of the Child, which recognizes the rights of an indigenous child to enjoy his or her own culture, to profess and practise his or her own religion or to use his or her own language in community with the other members of his or her group.

I would like to read a quote from the evidence we heard at committee in support of the representation of the child. I will quote Dr. Valerie Irvine, a professor at the University of Victoria, who talked about her studies on the impact of divorce on families. She said:

Canadian families require more integrated services, such as data analytics, the elevation of the role of a child's direct health professional team, and legal representation for the child.

It is clear that, to have these professional services, we must support the provinces, which are responsible for enforcing this law. We know that compared to health services, social services are often overlooked in the provinces.

Barbara Landau told our committee the following:

It isn't lawyers that I say shouldn't interview children; it's judges. I think bringing a kid to the courtroom and having a judge take a few minutes in chambers with the child is a pretty frightening experience.

I think that mental health professionals are the best ones to be trained to work with children. Interviewing a child as part of the process is really helpful. Almost every case settles almost immediately once there is somebody to reflect the child's concerns and interests to the parents.

In the divorce process, each parent is represented by lawyers, and although both parents are concerned about the child's well-being, the child's best interests can unwittingly get lost in the process. If a professional who can speak on behalf of the child and is not intimidated by the judicial process is present for every step of that process, we could truly say that the child is our primary concern.

Second, I want to talk about three considerations regarding family violence. First, it is a great idea to include a definition of family violence

in the bill. The definition is purposely broad in order to take into account the complexity and the variety of types of family violence. Nevertheless, many organizations have drawn our attention to the importance of explicitly recognizing in the definition that family violence is a type of violence against women, and rightly so.

The goal is not to minimize cases of violence against men but to recognize the fact that, in the vast majority of cases, family violence is gendered in nature, because it is most often men who commit violence against women. The statistics are clear in that regard.

Next, we need to set out in the bill that alternate dispute resolution mechanisms should not often be used in situations of family violence. Many organizations and academics are concerned that resolving divorce proceedings outside the court system will merely give the violent parent more ways of controlling his victims.

As a result, it is essential that the bill include provisions regarding training for justice professionals on how to recognize, understand and deal with situations of family violence.

I want to take a moment to again pay tribute to two community organizations in my riding that do amazing work day after day for children whose parents are getting divorced and for all women experiencing domestic violence. The expertise of these organizations has been extremely useful for helping me fully understand and document my committee work on this issue.

First, I want to thank Le Petit Pont, an organization that works to create and maintain parent-child bonds in a neutral, harmonious, family-friendly setting during situations of separation and conflict. The child's best interests and safety, both physical and mental, are the top priority for this organization, which operates in both Saint-Hyacinthe and Longueuil.

Second, I want to express my gratitude to La Clé sur la porte. In its 37 years of operation, it has taken in over 4,000 women from all over Quebec. This organization provides shelter for women fleeing domestic violence and their children in Saint-Hyacinthe and also offers support programs in Acton Vale and Belœil. La Clé sur la porte is fully focused on keeping women and children safe.

Every day, these two organizations see the toll that domestic violence takes on women and the indirect repercussions it has on their chil-

dren, whose welfare is closely tied to that of their parents, as we know. These organizations can attest to the importance of the three amendments I just talked about.

Finally, there is nothing in this bill, nor in the comments made by the Minister of Justice, to convince me that Bill C-78 will do anything to reduce poverty in any meaningful way. The provisions to facilitate the settlement of support orders are good, but what happens when the parent who is supposed to pay cannot afford it?

In addition, access to justice is limited for the most economically vulnerable families. Divorce proceedings are expensive; lawyers are expensive; notaries are expensive; and incomes shrink when couples separate. The use of alternative dispute resolution mechanisms, as required under this bill, is very likely to be effective when it comes to resolving conflicts, but at the same time, this could create new inequities in terms of access to justice, because those mechanisms will also be expensive. It is therefore crucial that the bill provide funding to support those most vulnerable in our society and guarantee true equality in terms of access to justice. Funding definitely needs to be set aside for transfer to the provinces to bring in these teams of professionals.

Several witnesses told us this. One witness in particular told us that she had the financial means to hire experts, use psychological support services for her children, and access resources for her defence. However, in light of her experience, she found it important to come testify to say that it was clear to her that not all families have access to the same resources and that the children of these less fortunate families had to face this situation alone. We must therefore set aside funding for these social services. As we know, access to legal aid is diminishing. We must ensure that all Canadians have the same access to justice.

If the Liberals truly want to the reduce child poverty, then Bill C-78 is not the answer. The Minister of Justice told us earlier that this bill will not help with that. He then once again pointed to the Canada child benefit, like many of his Liberal colleagues. We know that this benefit cannot solve everything. I will therefore accept the minister's invitation to offer my colleagues some potential solutions to truly end child poverty.

We need to come up with a real national strategy to end child poverty. It is not enough to set targets. We need to provide the means to achieve them, which the current strategy does not do. Then we must build affordable housing for families, seniors and those who need it now. Too many Canadians spend more than 30% of their income on housing. In some regions, that is the case for 50% of the population. In addition, we need a universal pharmacare plan and a universal day care system. We must also establish a $15-an-hour minimum wage. Those are real social policies that will actually reduce child poverty. I hope we will not see half measures and that the government will consider the recommendations made by witnesses and the opposition.

We must consider all the recommendations. I was very impressed that the witnesses who appeared before our committee were so well prepared. We proposed amendments that, unfortunately, were rejected. I hope that the work in this place will let us go further. Ultimately, we all want the best for our families and, above all, for our children.

Links & Sharing
Translated

Divorce Act Government Orders

January 30th, 2019 / 4:50 p.m.
See context

Green

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Elizabeth May Green Saanich—Gulf Islands, BC

Mr. Speaker, as I rise for my first full speech in our new chamber, I want to begin by acknowledging that we are on the traditional territory of the Algonquin people, expressing our gratitude for their patience and hospitality. *Meegwetch*.

There could not be a topic that is more fraught emotionally than child custody disputes in marital breakdowns, and it certainly is not new. As I pondered, having been in the deep weeds of this bill through clause by clause with my many amendments, to step back at report stage and really think about our topic, it struck me how very long humanity has struggled with the difficulties.

As my hon. colleague from St. Albert mentioned earlier, judges have a hard time with these decisions, and it put me in mind of the first book of Kings and the wisdom of Solomon. The quite well known story was 2,500 years ago, of two women coming to King Solomon with the claim that a baby was theirs. It was a child custody dispute 2,500 years ago. In trying to discern who was the real mother—we all know the story—King Solomon said to bring him a sword. He would cut the child in half and he would give half to each one of these women. Of course, the real mother said not to, but to give the child to the other woman. Of course, that is when King Solomon said now he knew who the real mother was, and that was that.

Our courts still struggle, and when they get it wrong, sometimes children die. It is still the case in this day and age, and perhaps increasingly so, as violence against an intimate partner sometimes turns into revenge against that intimate partner.

I wanted to start with these two cases because I raised them when this bill came forward for first reading, and I raised them to our then minister of justice to ask if this bill would help in these cases. I now believe that it would or, more accurately, it might. The two cases I want to raise are the cases of two women from Vancouver Island where I live, both of whom lost their children because a judge would not listen to them in a dispute over custody.

One is a case that has been raised in this House many times. In 2015, Alison Azer's children were taken on a vacation, over her objections. Her former spouse was a very well respected doctor, even in the kind of echelons where he was at least an acquaintance of our former prime minister. He was respected in the community, and the court took his word that, in taking Alison's children on holiday, he would bring them back. Alison Azer begged the judge not to give the passports of her children to her former spouse, who was originally from Iraq. She was terrified the children might be kept there, and that is in fact what happened. The children, Canadian citizens, still live overseas. Sharvahn, Rojevahn, Dersim and Meitan have now been so culturally and egregiously alienated from their own mother that, when she finally got a chance to see them, they were not willing to run to her arms. It is one of those things that just breaks one's heart. The judge did not listen to Alison.

The next case is worse, if there is anything worse. In January 2018, more than a thousand people crammed into Christ Church Cathedral in

Victoria for the funeral of Chloe and Aubrey Berry, who were murdered by their father on Christmas. I was one of those mourners. I have never been through anything as difficult. The clergy struggled to find meaning, to give people hope, because those little angels were adored by their classmates and their family—of course they were; they were beautiful little girls—and murdered by their father. Their mother also sought to convince a judge that there should not be unsupervised visits for her children with their father. Tragically, the judge did not see that there was existing evidence of threat or harm that was sufficient to deny the father an unsupervised visit.

That mother's name is Sarah Cotton. When I talked to Sarah afterwards at the reception with the mourners, she was startling in her clarity. She was articulate and asked me to help work to make sure that what happened to her would not happen to other mothers. She said that the family court system had to change, that judges had to be prepared to listen and that they should not be so concerned with the access rights of a father that they should ignore the cries of a mother that there was a reason to be concerned.

The rest of what I am going to say about Bill C-78 is dedicated to Alison and Sarah, extraordinary mothers who have lost their children because they could not convince a judge to listen to them about the threat of allowing those children to go with their fathers, either overseas or for a Christmas visit that ended in the children's murder.

Where I find hope in the bill is in the recognition of family violence and the way in which the definition section of the bill would allow for a lot of consideration by a judge of a definition that falls short of "They have already been hurt. He has made specific threats".

I should step back and say that in some contexts it is not a mother and a father. It could be a mother who is a threat. We are also dealing with situations that are not cisgendered individuals in all cases who are always in heterosexual relationships. We recognize that gender violence and gender inequity transcends hetero norms.

However, let me just continue with the traditional way in which we talk about family violence, which is that it is generally the case in inter-spousal violence that it tends to be a father making threats and a mother who is in the weaker situation, either economically or in terms of the power imbalance, as has been referred to by other members.

In this definition of family violence, and this is what makes it helpful, there is not an exclusive list. It uses examples but it is not a closed list. It defines family violence as:

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

Then we have a non-exclusive list of (a) to (i). I found it impressive, really, in terms of recognizing psychological abuse and also recognizing the real warning signs, such as under subsection (h), “threats to kill or harm an animal”, a threat against a family pet. If a judge hears that now, the judge can say that it falls within this definition of family violence and we ought to take action to protect these children. We need to think of all these elements.

It is not going to be perfect because judges will continue to make mistakes, but I hope that the recognition in this first reform in more than 20 years of our family law will direct the minds of judges to these various elements of family violence and the psychological stress. I certainly used to practice a little bit of family law. I found it very difficult because it is so emotional. However, we certainly know that there were some times that because it became so confrontational, there would be false charges against one partner or the other in an effort to gain custody. The larger risk comes when one does not listen to the parent who is really concerned that the child might be at risk if parenting time, as we now describe it, is allocated to a parent who may be capable of kidnapping their own children, alienating one parent and doing huge psychological damage to the children, or in the worst case, as I have mentioned, capable of murder.

That, I think, is an improvement: the injection of a more sophisticated understanding of family violence. The context of it and definition of it is certainly an improvement. Of course, this law is primarily child-centred legislation. It is much closer to what we have had in British Columbia for some years, which is, under British Columbia's Family Law Act, a focus on the best interests of the child.

Therefore, it is interesting that the two cases I have raised took place in B.C., even though they had this kind of framework of focusing on the best interests of the children. It suggests that the changes are going to be cultural and need training. I hope this legislation is going to protect children. Its goal is certainly to always have paramount the best interests of the child, and it is for that reason that I support the legislation.

It does have some other substantial improvements that are more about logistics. One of them I just referenced, all too briefly. When we used language about custody and access we created, perhaps inadvertently, more of a contested, gladiatorial struggle to win custody, to be acknowledged as, essentially, the better parent. In an emotional context, marriage breakdowns are certainly about the most emotional time in a person's life. The children were often treated as the spoils of war, and the word “custody” tended to fuel that. At least that is what the drafters of this legislation must have considered in changing the language.

A lot of family law experts who testified at the committee said they hoped this would take away some of that notion of winners and losers, of “winning” custody, because we now talk about parenting time. Parenting time is described in ways that suggest that it is shared parenting time and requires responsible behaviour during that parenting time. This is progress. I think it will help take out some of the conflict. I certainly hope so. As I said earlier, at least it might.

Another big improvement in the legislation, and long overdue, is that it allows a judge to access income information about one or the other parent from other government sources. We certainly know that it has delayed these cases. It has cost the court time. It has stressed out already stressed-out parents, particularly where one spouse has more income than the other, which is often the case. Where they are resistant to disclose voluntarily, now the judge has an access to get other information from other government sources. This will help for sure, and it is a win-win-win in a couple of different directions.

It has already been discussed at some length the improvements around a legislated test for the question of one parent moving to another location with a child and how that affects the other parent and access to parenting time. The rules here will, by being legislated, create a lot more certainty than in the past, where we were essentially dealing with the 1996 Supreme Court case of Gordon v. Goertz. This effort to legislate the test for mobility is clearly progress.

It is also worth reinforcing that in cases where family violence is not at play, the opportunity to go to mediation is certainly an improvement. Anything that takes the adversarial nature of family breakdown, turns down that temperature and makes it all about what is in the best interests of the child is good.

I was trained as a lawyer. I have mentioned that before. There is no doubt it is an adversarial thing. We are taught to go into courtrooms and win. That is not helpful. If in a family breakdown situation we can avoid lawyers and avoid courts and work through mediation everyone will be better off, except the lawyers, and that is okay. I so hope that the kind of co-operative law we have seen developing across Canada, the access to mediation, which is stressed in this bill, will help families get through this crisis period in their lives with their relationships intact. It certainly is the most helpful thing for the children.

I brought forward a number of amendments. My amendments were not accepted. I wanted to see an amendment that dealt with the issue of maximum access. There was a Liberal amendment that was quite similar. I hope we will see that playing out in a way that addresses some of the concerns raised by legal experts. I also put forward amendments to have more of a focus on the question of the judge turning his or her mind to the specific issues when a child is indigenous.

We have seen far too many indigenous children in this country taken from their families, historically and currently, and we need to pay attention to that and wherever possible ensure that children are in their communities, are in their culture, have access to their languages and have access to other relatives. The indigenous nature of child custody is referenced in the bill, but not as completely as it would have been had my amendments been accepted.

As I have said, though, the bill is a substantial reform of family law in Canada. It is long overdue. I so hope it works. I hope it works to avoid, ever again, the tragedies I have mentioned already. There could be

nothing worse for any parents than to lose their children. Losing them in divorce is tough. Losing them forever is unbearable.

I hope and pray the legislation will be followed up with additional funding and more training, perhaps mandatory training for judges to think through these cases, to read and think about Aubrey and to read and think about Chloe, and about Alison's children, so that when dealing with a case in front of them they think about what the worst thing is that could happen if they get it wrong. That is ultimately the burden judges carry. I would not want to be the judges who said that they did not worry about the Azer children going overseas or the Berry girls going to their father at Christmas.

All of us need to make the best interests of the child the guiding light of all family law. Indeed, I could not agree more with my hon. colleague from Saint-Hyacinthe—Bagot. It would have been better had this legislation included an acknowledgement of our obligations under the United Nations Convention on the Rights of the Child. However, there is much more that can still be done. We have worked for years in this country, particularly retired Senator Landon Pearson, who led the charge to have a child advocate at the federal level to look at the broad range of issues as they affect our children.

With that, I thank the House for the opportunity to speak to Bill C-78. I look forward to voting for it at report stage and third reading, and seeing it go to the Senate, which potentially may go back to some of the amendments that failed in the House.

Links & Sharing
As spoken

Divorce Act Government Orders

January 30th, 2019 / 5:15 p.m.
See context

Conservative

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Luc Berthold Conservative Mégantic—L'Érable, QC

Mr. Speaker, I am pleased to rise today for the first time in this new House of Commons. I must admit that it is much bigger. There is a lot

of space. It will likely encourage us to give impassioned speeches. All sorts of nice surprises await us over the next 10 years.

I would first like to acknowledge the excellent work that was done by the members of the Standing Committee on Justice and Human Rights. I would particularly like to thank our justice critic, the member for St. Albert—Edmonton, for his work on this file and for the much-needed assistance he provided to each of our colleagues in understanding the issues related to Bill C-78. I thank him for his valuable advice.

For those watching at home, we are talking about 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.

I will get into the nitty gritty of the bill a little later on, but I would like to take a moment to share something relevant to this topic. I am very fortunate to have never had personal experience with the Divorce Act. I am so blessed to have had such an extraordinary woman by my side for more than 27 years. We have been through good and not-so-good times. There have been many ups along with the downs.

Caro and I have three children, who have always been our pride and joy. Like most parents, we have tried to make every decision in the best interests of our children. There have been hits and misses, but no one can say that we have not tried to always act in the best interests of our children. The longevity of our relationship can be attributed to communication, dialogue and co-operation. Like many of my colleagues, I plan to keep investing in our family in the years to come.

I understand that, unfortunately, no two relationships are the same and that stories do not always have a happy ending. Children are often at the centre of these stories that end badly. Some divorces can be very difficult. There are fights over the children, domestic violence and children who become fought-after pawns because of the law. Parents fight for custody of their children. Any couple who turns to the courts must embark on this long and difficult process.

Throughout this process, people experience strong emotions. Some are hurt, others are angry. There are all kinds of factors that make it difficult for them to go through this legal process. There is also the whole financial aspect. In the past few years, when the time came to discuss custody and determine who was the better parent, the courts used a win-lose approach. One parent would get custody of the children and

the other had to settle for weekends. It was time to overhaul this legislation.

The bill does a number of things. First, it replaces the terminology pertaining to custody and access with terms that reflect the parental role to try to minimize these wars where there is a winner and a loser. The bill establishes a list of criteria concerning the interests of the child. It will create obligations for the parties and legal counsel to encourage the use of family dispute settlement mechanisms. I know that we already have such a process in Quebec, but incorporating it into law will make it official. It is absolutely essential. It is often hard enough to make a marriage work. There is no need to make divorce even more difficult.

It is not always necessary to involve the courts. It is not always necessary to pay exorbitant lawyers' fees and spend weeks, months or years arguing in court. There are other ways. That is what this bill will help with. It will also introduce measures to assist the courts in addressing family violence. I will come back to that. It will establish a framework for the relocation of a child and simplify certain processes, including those related to family support obligations.

Those are the key principles. Based on what has been presented, this bill should help attain certain fundamental objectives.

The first is to promote the best interests of the child, by emphasizing the importance of ensuring that the child's best interests are always the primary consideration in family law when parental decisions are being made.

The second objective is to address family violence by requiring the courts to take into account parental violence, its seriousness, its impact on the child, and future parenting arrangements.

The third objective is to reduce child poverty by offering more tools for calculating child support and for enforcing support orders.

Finally, the bill should make Canada's family justice system more accessible and efficient by simplifying the various definitions and processes, giving provincial child support recalculation services more flexibility, alleviating the courts' workloads by allowing provincial administrative child support services to carry out some tasks for which the courts are currently responsible, and requiring legal profes-

sionals to encourage their clients to use means other than the courts to resolve disputes.

As I mentioned, all of these measures seek to put the best interests of the child first. In the case of separation or divorce, children are always the victims of their parents' relationship. As we all know, children do not get to choose what family they are born into. Some are lucky, while others are less so. Unfortunately, in an emotional situation like a separation, life can easily become increasingly difficult for children. We all know of children whose parents went through difficult divorces and who had a lot of problems after that, who took years to recover from the experience and who will always carry the emotional scars of that difficult period.

Thirty years on, it makes perfect sense to me that the courts should put the child's best interests first in all their decisions. What makes no sense is why it took so many years to make these changes. Neither the Divorce Act nor any of the other acts I mentioned earlier have been changed to any significant extent in over 30 years, even though the reality of Canadian families has changed a lot in the past 30-plus years. Divorce is more common now than it was when the act initially came into force in 1968.

I would like to share some statistics. According to the 2016 census, five million Canadians separated or divorced between 1991 and 2011. Of those, 38% had a child together at the time of their divorce. I will point out that the act we are discussing today relates only to divorce. It does not deal with common-law partners, only legally married parents. The 2016 census showed that over two million children were living in separated or divorced families. Over a million children of separated families were living in single-parent families, and another million were living in step families.

I want to point out that a separation creates single-parent families. The statistics show that single-parent families, and in particular ones in which a woman is the custodial parent, are more likely to be poor than two-parent families. This is a fact. It is understandable, then, in these cases, that the parent would not have a lot of money to spend on legal fees to assert her rights, for example. We cannot lose sight of this reality in our jobs as legislators.

As I mentioned earlier, one of the reasons we support this bill is that it puts the best interest of the child first. Promoting the best interest of

the child, helping to address family violence, fighting child poverty and making Canada's family justice system more accessible and effective are all features that we as parliamentarians must stand up for.

Of course, I hope those folks over there do not expect us to agree with everything in Bill C-78. There are certain items that need a closer look. I know my colleagues on the Standing Committee on Justice and Human Rights had recommended some amendments to the bill, but they were rejected. There was one that really stood out for me. I would have liked Bill C-78 to provide for the possibility of shared parenting in the consideration of determining factors in the best interest of the child.

This is not always true, but I do know some people who were better at getting a divorce than they were at being married. They exist. This change would make such situations legal, when people can reach an understanding. Shared parenting would give them more flexibility. It can work, although I realize it does not work in every situation. This would have given judges the authority to consider that as a determining factor.

I would be remiss if I did not mention one important amendment to the bill made by the Standing Committee on Justice and Human Rights. On December 5, the committee unanimously adopted an amendment to include the right to testify, plead, make observations and receive a judgment in the official language of one's choice. I believe this is very important to all Canadians.

Links & Sharing
Translated

JusticeGovernment Orders

October 4th, 2018 / 10:20 a.m.
See context

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Arif Virani Parliamentary Secretary to the Minister of Justice and Attorney General of Canada, Lib.

Mr. Speaker, I will be splitting my time with the member for St. John's East.

I am pleased to rise today as the Parliamentary Secretary to the Minister of Justice to speak to an important aspect of Bill C-78, which is poverty reduction.

Over two million Canadian children live in separated or divorced families. Of these, lone-parent families are the most financially vulnerable of all family types and are more likely to depend upon social assistance.

There are couple of other important statistics.

Right now, there is well over $1 billion in support payment arrears in this country. In the vast majority of such cases, 96% of all such cases, the arrears relate to money owed by men to women.

The data on the economic challenges of single parenthood are quite stark. In 2016, the median net worth of Canadian couples with children under 18 was over $300,000, while the median net worth of single-parent families was less than one-sixth of that, $57,200.

Separation and divorce can cause a financial crisis for some families. The benefits of sharing family expenses often disappear as a second home must be established. Some parents need to significantly change their work hours to accommodate their changed parenting schedule, which can affect their income and their employment opportunities. This is what I hear when I speak to families in my riding of Parkdale—High Park. I hear far too often from single mothers who are struggling to access spousal and child support after a marital breakdown. Bill C-78 will directly benefit these residents of my community and the residents of so many other communities in a similar situation right across Canada. It will help lift those individuals, whether they are mothers or children, out of poverty. It will mean less time fighting out support payments in court, which is costly and time consuming, and creates a court backlog. It will mean more tools to allow single parents to identify and locate the assets of their former spouses, and more tools to enforce the actual payment of spousal and child support to single parents and their children.

Allow me to explain. I want to first turn to the payment of child support reducing the risk of poverty.

The sooner a fair and accurate amount of child support is established after parents separate and payments are made, the better the outcomes are for the child in question. The payment of child support is a

key factor in reducing the risk of child poverty, especially for low-income, single-parent families.

Parents have a legal obligation to support their children financially after separation or divorce. Children have a legal right to that support. Federal, provincial and territorial child support laws require parents to disclose specific income information, including income tax returns, and set out penalties and consequences if a parent fails to disclose this information. This includes imputing income, which means that the parent's income is assumed to be a certain amount for child support purposes, and the child support order is based on that income.

Most parents dutifully meet their legal obligations. However, some parents do not provide complete and accurate income information, despite the possible penalties and consequences. This is a significant issue that has serious consequences for children and families going through the family justice system, as well as for the system as a whole.

Family law practitioners and judges often say that income disclosure issues are one of the most contentious areas of family law. Failure to comply with disclosure obligations can put significant pressure on the family justice system. It may also discourage parents from reaching agreements through family dispute resolution processes, such as mediation. If income cannot be properly determined at the outset, it may also prevent families from benefiting from other family justice services such as administrative child support calculation or recalculation services.

I want to turn now to the costs associated with the non-disclosure of income.

The financial and emotional costs to parents seeking income disclosure are significant. They are legally entitled to financial information from the other parent. However, when financial disclosure is not made, they must ask a court to order that the information be provided. This creates significant costs for families and can lead to overburdening of the family justice system, including the courts. The other parent may still not disclose his or her income information, even after the court has ordered it. In these situations, the court may then impute the income of the other parent.

Although imputing income may work adequately in some situations, it is very difficult for the court to determine a fair amount of support

that reflects a parent's true ability to pay in the absence of complete and up-to-date income information. Imputing income may result in child support amounts that are too high, which, in many situations, will not be paid or result in support payments that are too low and thereby prevent children from benefiting from the support of both parents.

Consistent with our government's commitment to poverty reduction and to meeting the needs of low- and middle-income families, Bill C-78 would bring much needed changes to middle-class Canadians. It would limit the negative consequences of income-related disputes for the family justice system and parents. Bill C-78 also proposes much needed changes to help reduce child poverty.

I will turn to one aspect of the law that would be amended here, the Family Orders and Agreements Enforcement Assistance Act. Amendments to this act would ensure that a separating or divorcing parent's failure to meet their income disclosure obligations would not prevent the establishment of a fair and accurate amount of support. We would amend this particular law to allow the federal government to release an individual's income information, including information from tax returns, to a court for the purpose of establishing, varying, or enforcing a support provision.

The income information to be released would be listed in the regulations, and important safeguards would be included in the act. An application for information under this legislation would not be permitted if the court were of the view that a release of information would jeopardize the safety and security of any person. Where information is released to a court, it must be sealed and kept in a place to which the public has no access.

The release of this income information would help ensure that child support amounts reflect the parent's true capacity to pay. It would also reduce legal costs associated with ensuring income disclosure for a parent, as well as the associated use of court resources. Child support orders would be made more quickly, more accurately, with less conflict and less expense, helping the very women I mentioned at the outset, the 96% of recipients of spousal and child support in Canada who are women.

The legislative amendments we are proposing will also allow the disclosure of income information to child support recalculation services.

Recent information on a parent's income is needed so that those provincial and territorial recalculation services, which provide an administrative service, can do their job. They are an important tool in ensuring access to justice for parents who pay or receive child support. These services help update child support amounts through a process that is fast, more effective, low cost and non adversarial.

These recalculation services recalculate the amounts indicated in child support orders and agreements based on a parent's current income. However, they cannot proceed with the recalculation on income allocated or when no income information has been provided. In such cases, parents have to go through the courts to amend the child support amount.

These amendments to the act will reduce costs, not only for parents but also for the justice system, by allowing administrative services to recalculate to obtain the income information they need. Agreements with the provinces and territories on the disclosure of information will be updated in order to guarantee the protection of income information disclosed to the services responsible for doing the recalculation.

Bill C-78 also proposes amendments to the garnishment provisions. This act provides for the payment of salaries and pension benefits payable to current and former federal employees to another person to help satisfy family support. Amendments to the legislation would help reduce child poverty by making the process more efficient so that families receive the support they are entitled to in a timely manner. For example, the amendments would prioritize garnishment for family support debts over all other debts, other than debts to the Crown, which allow for earlier garnishment where possible.

In conclusion, separation and divorce can be difficult emotionally and financially for families and children. That most Canadians dutifully meet their obligations when it comes to both the establishment and payment of child support is a testament to our society's values. However, when parties cannot agree on what their obligations should be, our family justice system should be there to help resolve those issues. Federal enforcement legislation is there to help when parties do not meet their support obligations. That is exactly what Bill C-78 would do. I am proud to support it, and I urge all members of the House to do the same.

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Partially translated

JusticeGovernment Orders

October 4th, 2018 / 10:30 a.m.
See context

Parliamentary Secretary to the Minister of Justice and Attorney General of Canada, Lib.

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Arif Virani

Mr. Speaker, the member for Dufferin—Caledon raises a very important point. What we are doing with Bill C-78 is providing more tools in the toolbox to allow better access to and disclosure of financial information. Clearly, there are and will remain instances in which people seek to evade such disclosure, which could happen in many different cases.

However, with this legislation we are responding to the concerns we have heard from Canadians from coast to coast to coast that they need better tools and better information sharing between different components of government and departments to access that information. Then it is for the courts through the provisions already provided for in the law to ensure enforceability of that, including imputing income where necessary for those who still withhold information.

Links & Sharing
As spoken

JusticeGovernment Orders

October 4th, 2018 / 10:35 a.m.
See context

Parliamentary Secretary to the Minister of Justice and Attorney General of Canada, Lib.

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Arif Virani

Mr. Speaker, family law is obviously a matter of dual jurisdiction. This issue of family law is a matter of shared jurisdiction between the

provinces and the federal government. Issues of divorce and marriage are a matter of federal jurisdiction. The issue of separations that do not include divorce, for example, are a matter of provincial jurisdiction.

We have worked diligently on this bill with our FPT colleagues and collaboratively at various ministerial meetings with the provinces and territories. A component of the enforceability will continue to reside with the courts, as administered in the provinces and territories, consistent with the jurisdictional division of powers under our constitutional provisions. It will be a collaborative effort.

However, what is important to emphasize with regard to Bill C-78 is that we are giving more tools and strengthening the enforcement that is available to the very provincial actors that my friend has mentioned, to the courts that are on the front lines of the important work being done on the family law front and, importantly, not necessarily forcing people to get involved in the courts at the first instance, thereby reducing the costs, the court backlog and the necessity of seeking enforcement. We are creating more tools outside of the court structure that people can access to pursue their rights under this regime.

Links & Sharing
As spoken

JusticeGovernment Orders

October 4th, 2018 / 10:35 a.m.
See context

Liberal

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Nick Whalen Liberal St. John's East, NL

Mr. Speaker, it is a pleasure to rise today to speak to Bill C-78 and the significant contribution it would make to improve the accessibility and efficiency of the family justice system.

As mentioned, federal family laws have not been updated substantially in over 20 years and changes are long overdue. Access to justice is a priority for our government and access to family justice is a key component of achieving that. Costs, delays, and complex procedures can

make it difficult for Canadians to have access to justice. Along with the expansion of the unified family courts and sustained funding for family justice services, Bill C-78 is part of our government's commitment to improving access to justice for families going through separation and divorce. Under the pen of retired Supreme Court Justice Cromwell, the action committee on access to justice in civil and family matters stated that early management of legal issues and encouraging informal dispute resolution were key to improving access to justice.

Bill C-78 recognizes the need to improve access to justice and offers guidance, information and tools to help families going through separation and divorce, including people who represent themselves, as well as lawyers and courts involved in family law issues.

Bill C-78 encourages the use of family dispute resolution processes. These are defined as out-of-court processes used by parties to help them resolve their family law disputes. Negotiation, mediation and collaborative law are examples of such processes. These are often less expensive and faster than litigation and allow parents to actively participate in creating arrangements that are in the child's best interests.

Part of the role lawyers play is to ensure that parents who have family law issues have the relevant information on family dispute resolution. Bill C-78 would create a duty for lawyers to tell parents about family justice services that could help them resolve their disputes, and to encourage them to try family dispute resolution where appropriate.

In addition, if the case is before the court, the bill gives judges the option to refer parents to family dispute resolution where available. Bill C-78 also introduces duties for parents involved in a family law matter to try to resolve their issues through a family dispute resolution process where appropriate.

That said, family dispute resolution processes may not be appropriate in all circumstances, including where there is family violence. For this reason, Bill C-78 only encourages the use of these procedures where appropriate. Courts and lawyers must evaluate each of these situations on a case-by-case basis and take into account families' circumstances, including whether there is family violence, before encouraging the use of family dispute resolution. In addition, other service providers, such as certified mediators, play a critical role in screening for family violence and power imbalances in order to promote a fair and equitable process.

There are numerous ways that Bill C-78 would facilitate the resolution of family disputes and help parents reach out of court agreements focused on the best interests of their children. For example, it proposes changes to custody and access language, the definitions in the old version of the act, to use terminology that is more neutral and child focused and reflects the actual tasks of parenting, such as parenting time and other terms used in the act. It also includes a non-exhaustive list of criteria to help determine what is in the child's best interest, as well as criteria to assist parents dealing with relocation issues. This additional information will help parents make informed and child-focused decisions and better understand what the outcome might be if they were to go to court. This in turn is intended to help reduce litigation.

Our government is bringing forward some innovative thinking to help improve the family justice system. There are issues currently determined by courts that are administrative in nature and that could be handled outside of the court. Bill C-78 will expand the range of matters that child support services may address and will allow them to perform tasks currently that were in the sole purview of the court itself.

Many provinces and territories have child support services that recalculate support orders, for instance. Bill C-78 proposes several measures to make these services more efficient. This includes the recalculation of interim child support amounts in Divorce Act orders. In addition, the bill would allow child support services to recalculate child support amounts at the request of a parent, for example, if there were a job loss. Currently, the Divorce Act requires that recalculation be done only at fixed or regular dates.

The bill also includes a new approach allowing for the calculation of initial child support amounts by provincial or territorial child support services, where possible. This will allow administrative services, as opposed to courts, to calculate, based on relevant income information, child support amounts based on child support guidelines.

These proposed additions and improvements to the Divorce Act would make it easier, less costly and less adversarial to determine or recalculate child support amounts.

Changing Divorce Act orders when parties live in different jurisdictions can also be costly and cumbersome for families. Bill C-78 pro-

poses to improve the process to change a support order for parties living in different provinces or territories.

Currently, two courts are involved, a court in the applicant's province that makes a provisional order and a court in the respondent's jurisdiction that confirms the order. The new process would involve only one court and would eliminate the need for the current first stage hearing, thereby saving time and money. Because this new system mirrors that in most provinces and territories, it would also ensure consistency whether interjurisdictional proceedings are conducted under the provincial legislation or under the Divorce Act.

The bill also includes provisions to improve processes in international child support cases. These changes are an essential step for Canada to become party to the 2007 Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, which was signed in May 2017.

The 2007 convention is an international agreement that provides a low-cost and efficient legal framework for cross-border establishment, modification, recognition and enforcement of family support obligations. It will be of particular interest to Canadian families and children, as it provides a means for a parent to obtain child support from a former spouse living in a different country.

Another way in which Bill C-78 would increase access to justice and improve the efficiency of the family justice system is by amending the Family Orders and Agreements Enforcement Assistance Act. This act is used to help parents enforce support. The bill proposes to amend it to permit, in certain limited circumstances, the release of income information when parents do not provide it.

Accurate income information is key to determining fair child support amounts. This change would help to accurately determine child support amounts and enforce support orders, as well as to reduce time spent in court to obtain this information. Proceedings to obtain this information currently take up a lot of court time and resources and this can be expensive for people who are trying to obtain support and is not a good use of family resources.

When this information is given to a court, it would be sealed and kept in a location to which the public has no access, and the court could make any order necessary to protect the confidentiality of the information.

While the bill encourages resolution of matters outside of the court system, there are some matters that require formal court resolution.

Budget 2018 announced funding to expand unified family courts, fulfilling one of the Minister of Justice's mandate letter commitments to Canadians. The family court in my riding of St. John's East has benefited from this.

Unified family courts provide one-stop shopping for the family justice system by combining jurisdiction over all family law matters into one court. They also provide access to a range of family justice services, such as family law information centres and mediation services to help families through a range of family law issues, including separation and divorce and other services.

Funding is essential for the delivery of family justice services which fall within provincial and territorial jurisdiction. In budget 2017 our government committed $16 million per year for family justice services on an ongoing basis. This funding will increase Canadians' access to family justice by supporting provincial and territorial programs and services, such as mediation, parent information, education and support enforcement.

We have to work together to improve the accessibility and the efficiency of the Canadian family justice system. Bill C-78, along with the expansion of unified family courts and sustained funding for family justice services, will help support Canadian families going through separation and divorce and the over two million Canadian children who live in separated or divorced families. This is a great step forward and I trust that the changes we have proposed will bring positive changes to the family justice system.

In closing, I encourage all members of the House to support this legislation, as I do, so we can see it move to committee where it can be studied further.

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As spoken

Justice Government Orders

October 4th, 2018 / 10:50 a.m.
See context

Conservative

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Michael Cooper Conservative St. Albert—Edmonton, AB

Mr. Speaker, I am pleased to rise to speak to Bill C-78, the government's family law bill.

As other hon. members have alluded to in this debate, issues relating to family law, by and large, fall within the parameters of provincial jurisdiction. However, section 91, class 26 of the Constitution Act provides that it is within the jurisdiction of Parliament to make laws with respect to marriage and divorce.

In order to discuss Bill C-78 and what it seeks to do in terms of updating family law and divorce legislation in this country, it would be helpful at the outset to provide some context to how divorce law in this country has evolved. Indeed, the Divorce Act is a relatively new piece of legislation. It was passed in 1968, only 50 years ago.

Prior to the passage of the Divorce Act in 1968, this country had a patchwork of laws with respect to divorce. In some provinces, there were no divorce laws. As a result, it was necessary for couples to seek a private act of this Parliament in order to obtain a divorce. In other provinces, divorce was possible if it could be established that there had been some wrongdoing in the relationship.

Fast forward to 1968 when Parliament did pass legislation to provide uniform laws with respect to divorce. The Divorce Act of 1968 remained in place until it was updated in 1985, which is when Parliament made some very significant reforms to divorce and family law. Among the changes made in the 1985 Divorce Act was to provide a single ground upon which divorce could be obtained, namely, when there was a breakdown in the relationship. A breakdown in the relationship could be established based upon a number of different criteria, including one year of separation of the couple, or if it were established that there was adultery in the relationship or physical or mental abuse.

Since Parliament took steps in 1985 to update divorce law in Canada, over the last 30-plus years there has been very little change that has been made to update family law in this country. I have to say, I was born in 1984, one year before the Divorce Act was updated, so 1985 was a long, long time ago. Canadian society has evolved considerably in these last 33 or 34 years, including the structure of families and, unfortunately, the increased prevalence of divorces and marital break-

down. It is about time that Parliament moved forward to consider a comprehensive update to the Divorce Act.

In terms of the substance of this bill, let me say that we are open to looking at it carefully. On the surface, it would seem that this bill contains a number of positive measures. Among the key substantive aspects of this bill is the updating of terminology, encouraging families to settle disputes outside of the court, improving child support enforcement, and preserving the well-being of impacted children. All of these measures, on the surface, appear to be a step in the right direction.

In terms of the road to reform, it has been, as I mentioned, a long time coming. We saw a very thorough review undertaken by Justice Cromwell, back in 2013. One of the key recommendations from the Cromwell committee was the need to update terminology. Right now, under the Divorce Act, the terminology is quite adversarial, and that is not helpful as families deal with what is often the most difficult and challenging time couples can face when they are in a situation of marital breakdown.

Among the changes Bill C-78 would make would be to change the language to make it less adversarial, in accordance with the recommendations of the Cromwell committee. In what ways would the bill make the language in the Divorce Act less adversarial? For example, it would replace the term “custody” with the term “contact” and the term “access” with the term “parenting”.

Another aspect of the bill is that it would encourage parties to try to settle disputes through mediation or alternative dispute resolution. Far too much money is spent in our courts, and to the degree that families can settle their marital matters outside of court, outside of what is, by definition, an adversarial system, is a step in the right direction. Of course, as I alluded to, it would codify what is at this time a wide body of case law and have regard for the best interests of the child.

I spoke to an acquaintance of mine, who is a judge, and he told me that upon being appointed, one of the challenges was to get up to speed on different aspects of the law that he had never practised. For example, he had never practised criminal law before, so he certainly had to spend a lot of time getting up to speed. He said that aside from the academic side and getting up to speed on different aspects of the law, what he found to be the most difficult was trying to settle dis-

putes when children were involved in terms of making orders respecting parenting, for example, because so often, he is making a decision that is going to profoundly affect the parents, the family and the child. I tell that anecdote to underline the gravity, the importance and the impact these changes would have.

As I say, we will study the bill at committee. I look forward to hearing from a wide array of witnesses and to exploring possible amendments.

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Justice Government Orders

October 4th, 2018 / 11:05 a.m.
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Conservative

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Michael Cooper Conservative St. Albert—Edmonton, AB

Mr. Speaker, I certainly agree with the comments of my colleague from North Okanagan—Shuswap. I certainly agree with him on the importance of the matter he has raised. However, seeing that my time is nearly expiring, on a slightly more partisan note, I want to say this. It is a bit ironic that paramount in Bill C-78 are the best interests of the child, among other things, and rightfully so. What a contrast to Bill C-75, which is currently before the justice committee, which would water down sentences for a whole host of serious offences that directly impact children, including kidnapping a minor and forced marriage under the age of 16, and I could go on. The government is downgrading those offences that directly impact children from serious indictable offences to hybrid offences that could be punishable with a mere fine. Therefore, while it is encouraging that we are focused on the best interests of the child in this bill, I only wish the government would have the best interests of the child in all bills, including Bill C-75.

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As spoken

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October 4th, 2018 / 11:05 a.m.
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Parliamentary Secretary to the Minister of Justice and Attorney General of Canada, Lib.

Arif Virani

Mr. Speaker, I appreciate the member's comments, both in his speech and in his most recent responses to the question. However, what I would say is that we see strong statements in Bill C-78 with respect to defining family violence for the first time in a much more expansive way. It would give judges tools to use in interpreting family violence. I find a strong thematic consistency in Bill C-75, which he just mentioned, with respect to intimate partner violence. I would also say that, thematically, what both bills are trying to do is reduce reliance upon lawyers like me, and many in this House, who are involved in part of the overly litigious nature of the family law system. By encouraging people and giving them the tools to remove themselves from the court system, we would be reducing some of the backlog that characterizes that system, which is a goal that I think the member opposite and those on this side of the House share. I would put to him that those two are in fact compatible goals and that the legislation is moving in the same direction.

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JusticeGovernment Orders

October 4th, 2018 / 11:15 a.m.
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Conservative

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Michael Cooper Conservative St. Albert—Edmonton, AB

Mr. Speaker, speaking to Bill C-78, one of the criticisms that has been raised is that the bill would not provide for a rebuttable presumption for equal shared parenting. It is true that shared parenting is not always in the best interest of the child in every situation. However, I think most hon. members would agree that to the degree that it is possible for both parents to be involved in the raising of the child, in

many circumstances, in the normal course of things, it would be in the best interest of the child, hence the basis for a rebuttable presumption for equal shared parenting.

That is one of the many issues that we will look at carefully when we study the bill in committee.

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