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

Discussion Paper by

Luke's Place Support and Resource Centre, Durham Region, Ontario
and
National Association of Women and the Law/Association nationale Femmes et Droit*
(NAWL/ANFD)

October 2018

* Funding for the NAWL Project; "Rebuilding Feminist Law Reform Capacity: Substantive Equality in the Law Making Process" was generously provided by Status of Women Canada.

INTRODUCTION

Purpose of the discussion paper

This joint NAWL (National Association of Women and the Law) and Luke's Place paper is intended to form the basis for discussion and advocacy on *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* (hereinafter Bill C-78) by women's equality-seeking and violence against women organizations and advocates across the country.[†]

We hope this discussion paper will be a valuable feminist law reform resource that will be used by a range of organizations and individuals to prepare written and oral testimony on Bill C-78 for Parliamentary and/or Senate Committees and other advocacy, and that it will also be useful for decision-makers involved in the law making process.

There are many welcome additions and changes in Bill C-78. Luke's Place and NAWL support having children and their well-being remain at the centre of the *Divorce Act*. We commend the important objective of reducing conflict, but note that care must be taken to ensure that conflict and family violence are not conflated, as this can be very dangerous. The requirements that are appropriate to place on parents in nonviolent, albeit conflictual, situations should differ from those that need to be put in place when an abused woman is involved in a divorce proceeding. Therefore, the majority of our recommendations focus on proposing specific changes that are required to help ensure that Bill C-78 will truly protect women at the end of an abusive relationship, as well as their children.

SETTING THE CONTEXT

Why does the *Divorce Act* matter?

The *Divorce Act*, as its name indicates, applies only to married people who are seeking a divorce. This includes people of all genders, gender expressions and sexual orientations. As a result, people in a common-law relationship or who are married but not seeking a divorce, are not affected directly by this legislation.

[†]This discussion paper was prepared by Suki Beavers and Anastasia Berwald (NAWL) and Pamela Cross (Luke's Place). NAWL and Luke's Place gratefully acknowledge the many contributions that informed the development of this paper, including those made by the following organizations: Action Ontarienne contre la violence fait aux femmes; the Barbra Schlifer Commemorative Clinic, the BC Society of Transition Houses, the Canadian Council of Muslim Women, the Canadian Women's Foundation, the DisAbled Women's Network of Canada, Femmes Autochtones du Québec, Harmony House, Ontario Association of Interval Transition Houses, the Native Women's Association of Canada, Ottawa Coalition to End Violence Against Women, RISE Women's Legal Centre, the South Asian Legal Clinic, Vancouver Rape Relief and Women's Shelter, West Coast Leaf, LEAF: Women's Legal Education and Action Fund, Women's Shelters Canada. NAWL and Luke's Place also gratefully acknowledge contributions made by the following law firms and individuals: Athena Law, Equitas Law Group, Jenkins Marzban Logan LLP, Suleman Family Law, Professor Emerita Susan Boyd, Rachel Law, Hilary Linton, Professor Linda Neilson and Glenda Perry. Finally, special thanks to Lisa Cirillo, Lorena Fontaine, Martha Jackman, Anne Levesque, Cheryl Milne, and Zahra Taseer (NAWL), and Carol Barkwell (Luke's Place) for their contributions.

However, it is the only federal law dealing with family law and, as a result, is important for all of us, even if many of the women we support or represent do not rely on it directly. As a federal law, it sets a tone for the country and may have an impact on the development of provincial and territorial legislation.

An intersectional gender-based analysis

Prime Minister Justin Trudeau has identified himself as a feminist and has spoken frequently about his commitment to women's equality both domestically and internationally. This Federal Government is committed to using a gender-based analysis + (GBA+) to help "ensure that the development of policies, programs and legislation includes the consideration of differential impacts on diverse groups of women and men."[1]

NAWL and Luke's Place are working with an intersectional, feminist framework in responding to Bill C-78. Our comments are rooted in an intersectional women's equality analysis of the legislation and in the lived realities of women in Canada.

In doing so, we consider women as a heterogenous group, with varied lived-experiences and often multiple and intersecting axes of discrimination. We recognize the need to consider and take into account impacts on all groups of women for any legal analysis to be meaningful. In particular, we recognize from the onset the devastating effects settlers' colonialism has had on Indigenous women and communities. Any discussion of violence against women must consider these ongoing impacts, and the actions and absence of actions by governments and individuals that continue to perpetuate them.

We have used gender-specific language to refer to those who are harmed by violence within the family and those who cause that harm. We believe it is important to acknowledge that, in Canada, women, and transgender, queer and gender non-confirming people are overwhelmingly those who are subjected to abuse, and men are primarily those who engage in abusive behaviour. We also acknowledge the diversity of women and families in this country and the continued adverse impacts of homophobia, transphobia and heteronormative culture.

Disaggregated data will be used wherever it is available as it is critical that considerable attention be given to understanding the different impacts (good and bad) that the changes Bill C-78 introduces will have on diverse communities of women across Canada.

A brief history of *Divorce Act* law reform

The *Divorce Act*, in particular its provisions dealing with custody and access, have been of concern to feminists – frontline workers, advocates, lawyers and academics – for decades. Various attempts to revise the *Act*, many of them driven by so-called fathers' rights activists, have failed. Bill C-78 proposes the first comprehensive amendments to this legislation since the 1980s.

NAWL, working with frontline violence against women organizations, has played a significant role in past *Divorce Act* law reform efforts. (For a history of activism and advocacy in this area,

see http://nawl.ca/en/issues/entry/custody-and-access-la-garde-des-enfants-et-les-droits-de-visite).

Since at least 1997, when the *Child Support Guidelines* were introduced by the then federal Minister of Justice, "fathers' rights" organizations have advocated for a presumption of equal-parenting. Couched in unsupported, gender-neutral, best interests of the child claims in favour of equal parenting, these organizations are, in fact, interested in saving their members money on child support as well as maintaining their power and control over their former partner after separation. Indeed, when time is split equally between both parents, child support, which normally falls on the father's shoulders, is far less expensive for him.

For many years now, there has been a concerted and organized attempt by these organizations to paint a picture of hapless, loving fathers being discriminated against and victimized by vindictive women seeking to take all their money and deny them a relationship with their children. They claim the family law system in Canada is biased against men and in favour of women, going so far as to accuse women of lying about family violence to demonize fathers and "win" custody battles. They have engaged in vigorous lobbying at the provincial, territorial and federal levels to have family law set out a legal presumption in favour of shared parenting. Their activities have also included high-profile public relations stunts to gain attention for their point of view. In addition, judges' misunderstanding of family violence coupled with these aggressive and effective strategies has led to worrisome results and cases of judges over-sympathizing with abusive fathers.

Despite the lack of any kind of meaningful evidence – their strategy has been called a "personal troubles discourse" – they have gained considerable public and political sympathy, and a number of private member's bills in both the House of Commons and the Senate since 1997 have attempted to introduce the concept of shared parenting into the *Divorce Act.* There is every reason to believe they will once again be very vocal in their advocacy for this presumption.

In some measure due to ongoing advocacy by women's equality and violence against women organizations and individuals, these attempts have been unsuccessful. However, fathers' rights organizations have remained active on this issue, making submissions in December 2017 to the Senate Committee on Legal and Constitutional Affairs on Bill S-202, which proposed creating the equivalent of a presumption in favour of shared parenting.

Such a presumption would not be in the best interests of children. It is crucial to be prepared to respond to the fathers' rights advocates and make it clear that a GBA+ analysis is better suited to protect mothers and children.

Unintended negative consequences

Even well-intentioned and carefully thought out public policy can lead to unintended negative consequences for women. Mandatory charging in cases of domestic violence, intended to respond to the fact that domestic violence was not being taken seriously by police forces,

provides one obvious example of this. While the policy to require charging had some initial benefit, in the long run it has proven detrimental to many women, especially those marginalized because of race, Indigeneity, class, disability, mental health and/or substance use.

As we consider our intersectional feminist response to Bill C-78, we need to reflect on possible unintended negative consequences of each provision – even those that appear to offer significant improvement – of the Bill. We recognize that the Bill introduces improvements to the current version and is well intended. However, we consider it our role, as active members of civil society and within the independent feminist movement to remain critical when necessary to continue the work towards all women's substantive equality.

THE REALITIES OF WOMEN'S ONGOING INEQUALITY

Women in Canada have not yet achieved equality. This is apparent in the family, where, predominantly, women continue to be the primary caregivers to children and to carry a larger role in terms of household management and chores as well as care of family elders. In addition, time spent on unpaid family labour affects the time spent at work, which contributes to the persistent gender pay gap in Canada. In turn, the gender pay gap makes such unpaid labour even more onerous and exacerbates women's difficulties when problematic intimate relationships end.

Indigenous Women

At the outset, we want to recall the international and domestic obligations of the federal government in relation to the rights of all Indigenous peoples in Canada, and to Indigenous women specifically. The Government of Canada has committed to reconciliation with Indigenous peoples. Reconciliation is only possible through the renewal of the relationship between Indigenous peoples and Canada, on a nation-to-nation basis. This undoubtedly includes the consultation of Indigenous peoples, including Indigenous women, during the law-making process, whenever new laws may affect them. To date, there is no evidence that the Department of Justice has engaged in meaningful consultation with Indigenous women's groups on the potential impacts of C-78 on Indigenous women, their children, families and communities. We urge the federal government to do so prior to the finalization and enactment of C-78, in order to ensure the cultural heritage, safety, security, autonomy and rights of Indigenous women and their children are respected, protected and fulfilled, and not further endangered or violated by any impacts (direct or indirect) of any of the provisions of C-78.

Marriage as defined by the *Divorce Act* is a colonial and patriarchal institution. Such institutions have long contributed to the oppression of Indigenous women in Canada. Indeed, these women face a specific set of deeply rooted inequalities. Though they are more likely to become mothers than are non-Indigenous women,[2] they are also vastly more likely to see their children removed from their care and placed in the care of the state. Indeed, in 2011, in Canada, approximately half of the children under 14 in foster care were Indigenous children, though they represented roughly only 7% of the total population of children under 14.[3] In 2005, this was almost three times as many children as were ever in residential schools.[4] The removal of children from Indigenous families is the result of anti-Indigenous racism,[5] underfunding of welfare services on

reserves, and lack of reparation for the harms caused by residential schools, and other settler colonialism violence.[6]

As the Canadian Human Rights Tribunal found in 2016, the high rate of intervention by child protection services on reserve is in part due to poverty, poor housing and substance abuse; all issues for which the State bears considerable responsibility.[7] Indigenous populations have a great need for social services, yet these services are vastly underfunded.[8] In addition, off-reserve Indigenous women are at higher risk of becoming homeless,[9] while on reserve ownership of matrimonial property remains uncertain.[10] The calls for action by the Truth and Reconciliation Commission address this situation and we thus note that these should be integrated into any meaningful law reform.[11]

Lastly, "the profiles of Aboriginal families differ dramatically from the profile of non-Aboriginal families"[12] and "less than one-half of Aboriginal children in foster care live with at least one adult with an Aboriginal identity."[13]

Though Indigenous mothers are less likely to be married,[14] relationship breakdown always exacerbates risks for women. The ways in which family matters are dealt with when the *Divorce Act* applies to Indigenous spouses may help set the bar and influence the protection of Indigenous mothers and children.

<u>Women as primary caregivers and unpaid labourers</u>

In 2010, women spent an average of 50.1 hours per week on child care, more than double the average time (24.4 hours) spent by men.[15] However, the level of involvement of men with their children has seen a steady increase over the last 30 years. Despite this increase, women continue to spend more time than men providing help and care to children: 2.6 hours and 1.9 hours per day on average respectively.

Along with unpaid childcare labour, women spent an average of 3.6 hours per day doing unpaid household work in 2015. This gap was smallest in British Columbia, where women did 36% more unpaid work than men, and highest on the Prairies, at 52%.[16]

In 2015 only 39% of the total number of hours of housework done by parents could be attributed to men. For the same year, 33% of men performed household responsibilities such as cleaning, laundry and other indoor household work. Despite a slight decrease, women remained responsible for close to three-quarters (72%) of all the hours spent on laundry and cleaning in 2015.[17]

Family caregivers were more likely to be women: 30% of women reported that they provided care to a relative or friend with a chronic health problem in 2012, in comparison with 26% of men.[18]

Women tended to spend more time caring for seniors inside the household than men. Forty-nine percent (49%) of women providing some care to a senior spent more than 10 hours per week on this activity compared with 25% of men.[19]

Women in the workforce and parental leave

Based on the Labour Force Survey (LFS), 82% of women - six million - in the core working ages of 25 to 54 years participated in the labour market in 2015, in both full-time and part-time positions.

Women generally perform fewer paid hours than men, as they tend to spend more time on housework and child care.[20] However, the difference between the work hours of men and women has gotten smaller over the last 40 years, mostly as a result of declines in men's work hours.

According to Statistics Canada's 2013 findings, 30.8% of recent fathers claimed or intended to take parental leave, an increase from 25.4% in 2012.[21]

In 2015, fathers were the stay-at-home parent in 1 of 10 families with at least one parent remaining at home with children.[22]

Access to affordable child care also affects women in the workforce. Currently, there are only enough regulated child care spaces for about 20% of children under five years of age. Spaces for infants and toddlers, children with disabilities, Indigenous, and rural children are even tougher to find.[23] Because women provide most of the labour in caring for children, this affects them the most: "When child care is unavailable or unaffordable, women are the ones that scale down or withdraw from their professional commitments to care for children. Almost a third of women in part-time jobs cited caring for children as the reason they were in part-time work."[24]

On average, women across Canada face a 32% gender pay gap. Women with disabilities face a 56% gender pay gap, immigrant women face a 55% gender pay gap; Indigenous women face a 45% gender pay gap, and racialized women face a 40% gender pay gap.[25] Divorce exacerbates these inequalities. Time spent on household labour, caregiving for children and other family members and lack of affordable child-care contribute to this gap in Canada. In addition, pay equity has yet to be achieved, adding to the disparity.[26]

These realities need to be a central consideration in any family law reform. To fail to do so will exacerbate women's subordination in the family as well as society and make women more vulnerable to coercive control, violence and abuse.

THE REALITY OF FAMILY VIOLENCE IN CANADA

In 2016, Canada's Chief Public Officer of Health, Dr. Gregory Taylor, declared family violence to be a serious national public health issue. He also noted that the majority of victims of violence within the family are women. In addition, the perpetrators are more likely to be men.[27]

Victimization of women by their partners varies in many ways: women are more likely to face family violence that is categorized as more severe;[28] women with an activity limitation are almost twice as likely to be victims of family violence;[29] and women who identify as lesbian or bisexual are three times more likely to report spousal violence.[30]

Indigenous women are more likely to be victims of family violence[31] and are more likely to report injury as a result (6 in 10 aboriginal women report injury vs 4 in 10 non-Indigenous women).[32] This is consistent with research indicating that Indigenous women are victims of more "severe" types of family violence.[33]

Spousal violence remains underreported and under prosecuted, making it hard for women to be adequately protected from dangerous partners. In 2009, "less than one-third (30%) of female victims of spousal violence stated that the incident came to the attention of police.[34] Women "who sustained physical injury, who feared for their lives and who suffered the greatest number of spousal violence incidents" were the likeliest to report spousal violence to the police."[35] Of these women, "about one in seven female victims of spousal violence obtained a restraining order."[36] About a third of these women report that such orders were breached.[37]

The seriousness of family violence is further illustrated by occupancy rates at women's shelters. Indeed, most women seeking shelter are fleeing abuse (71-78%).[38] Women also seek shelter to protect children from abuse.[39] In April 2014, there were 12,058 shelters beds in Canada. A snapshot of April 16 2016, indicated that 70% of beds in women's shelters were occupied. Admissions in Territories and Western provinces tended to be higher. On the same date, more than half the women turned away from shelters (56%) were turned away because the shelter was at capacity.[40] The National Shelter Survey found that on an average night in 2014, 90% of beds in emergency shelters were being used.[41]

Family law reform must reflect the gendered reality as well as the overall prevalence of violence within Canadian families. If it fails to do so, women and their children will continue to be exposed to ongoing abuse and violence, including lethal violence, when they leave abusive relationships.

<u>Marriage and Divorce Statistics</u>

According to Statistics Canada, in 2011, 46.4% of the population aged 15 and over was legally married, while 53.6% was unmarried (that is, never married, divorced or separated, or widowed.)[42]

According to the 2011 General Social Survey on Families, approximately five million Canadians had separated or divorced within the preceding 20 years. About half (49%) of these Canadians ended a common-law relationship, 44% a legal marriage and 7% both a common-law union and a legal marriage[43].

In 2011, about one in five people in their late 50s were divorced or separated (21.6% of women and 18.9% of men), the highest among all age groups.

Data from the 2011 Household Survey shows 11% of Canadian women lived with a common-law partner, up from 3.8 per cent in 1981. The survey was done among 14 million Canadian women aged 15 and older.

Same-Sex Relationships

Same-sex couples accounted for 0.9% of all couples in 2016. The number of same-sex married couples grew 60.7% between 2006 and 2016—the first full 10-year period in which same-sex marriage was legal across the country.[44] In 2016, roughly 33% of same sex-partners were married (24,370 couples out of 72,880 couples).‡

THE REALITY OF WOMEN'S LIVES POST-SEPARATION

It is well established that women's standard of living falls considerably post-separation. Women who have been the primary caregiver during the relationship often cannot find full-time employment or cannot secure appropriate child care to enable them to return to the paid workforce. Child and spousal support seldom, if ever, allow women with children to maintain their pre-separation standard of living. Affordable housing is in short supply and usually only available to the worst off after a lengthy waiting period.

Women with children who flee abusive relationships face additional challenges. While the abuse almost always continues past separation, women are often not believed or are given the message that they should stop their complaining and move on with their lives. They are also criticized for legitimately not getting along with their abusive partners on matters concerning the children.

It is difficult for women to obtain protection/restraining orders despite the clear evidence that women are at greatest risk of being killed at and just after the point of separation.[45]

Many fathers draw the children into their abuse, using them to spy on their mother, telling them lies about her and encouraging them to be disrespectful or even abusive to her.

Abusive men also make untrue allegations that their former partners are alienating the children from them and, when they do so, they are believed more often than mothers who make the same claim about their former partners. Once a father makes a claim of parental alienation, the mother's allegations of abuse against her drop out of sight because they are often disbelieved and ignored by judges.

Frontline services report that legal bullying post-separation is common and can exhaust a woman emotionally and financially as well as intimidate her into conceding on important legal issues or even to returning to the abuser.[46]

‡ To our knowledge, no data has yet been released on divorce rates of same-sex couples.

Some men continue their financial abuse post-separation by refusing to provide interim, informal support for the children or to assist with family expenses.

Post-separation abuse often enters the woman's workplace, making it difficult for her to maintain employment and a measure of financial independence.

High shelter occupancy rates as well as lack of affordable housing are serious issues for women leaving abusive relationships. Some have no other choice but to return to the abusive partner. Abusive fathers may even be granted custody by judges who blame mothers for the inability to find safe, affordable housing which forces them to seek refuge in shelters. On the flip side, judges erroneously minimize abuse when women continue to live with their partners to avoid homelessness or shelters.

Relationship breakdown and divorce are particularly dangerous times for women leaving abusive partners. Stalking and harassment are frequently observed in custody conflicts.[47] Six in ten spousal homicides against women had a history of family violence.[48] Separation increases the risk of lethality: "women are six times more likely to be killed by an ex-spouse than a current legally married spouse."[49] Moreover, the months immediately following separation are the most dangerous: "approximately 50% of women killed by intimate partners were murdered in the first two months after separation and 87% were killed within the year."[50]

In 2011, there were 59 female victims of spousal homicides in Canada, in comparison to 7 male victims. From 2002 to 2009, 12% of domestic violence cases resulting in homicide had child victims.

It is important to understand that this increased risk of lethality at the time of separation puts women in the difficult position of risking their lives by leaving their partner.[51] It is crucial that divorce procedures in no way increase this risk.

Despite the stark reality of family violence in Canada, courts and other actors in the family legal system still struggle with understanding its dynamics. There remains a tendency to focus on incidents rather than patterns, to minimize the impacts of the abuse and to consider mothers' acts of resistance or self-defence as family violence. Myths and stereotypes continue to motivate legal decisions and endanger mothers. The *Act* should prevent and correct these errors as much as possible.

In 2014, lone-parent families accounted for 20% of families with children aged less than 16 and lone mothers accounted for 81% of lone-parent families.[52] In addition, in 2007, the Native Women's Association of Canada found that "27 percent of Aboriginal families are headed by single mothers, and 40 percent of Aboriginal mothers earn less than $12,000.00 a year."[53]

In 2011, seven in ten separated or divorced parents indicated that the child lived primarily with their mother. Another 15% indicated that the child mainly lived with the father, while 9% reported equal living time between the two parents' homes.[54]

In 1994-95, 79.3% of the time mothers were being granted custody through court orders.[55§]

In 2011, 21% of separated or divorced parents who currently had children 18 years of younger were paying some form of financial support for their children, while 26% were receiving child support.[56]

WHAT BILL C-78 PROPOSES

Bill C-78 proposes a number of positive changes to the *Divorce Act* as well as some that are of concern. Many of the new provisions are inspired by provisions from the most recent reform of the British Columbia *Family Law Act*[57] and the Alberta *Family Law Act*.[58]

Below, we set out what we have identified as the most significant proposed changes in general themes, with a brief assessment from our perspective of the pros/cons of each, as well as some changes the legislation does not include that we think are important.

Note: We have paraphrased the language of the Bill in this discussion paper, so reading the section below in conjunction with the Bill itself is recommended (http://www.parl.ca/DocumentViewer/en/42-1/bill/C-78/first-reading).
For specific language and proposed amendments, see the joint Luke's Place and NAWL Brief on Bill C-78.

1. Family violence

Concerns about family violence, and the ways Bill C-78 may be improved to reduce risks and mitigate impacts of past family violence, frame much of our discussion. Certain aspects of the Bill are very positive in this regard, while others are concerning as they place women at greater risk of experiencing continued family violence.

Bill C-78 sets out both a definition of family violence and factors the court must consider as part of the best interests of the child test.

Section 1(7) defines family violence broadly to mean any conduct, whether or not it constitutes a criminal offence, that is violent or threatening, that constitutes a pattern of coercive and controlling behaviour or that causes fear. More specifically, family violence is defined as physical abuse, including forced confinement; sexual abuse; threats to kill or cause bodily harm; harassment, including stalking; failure to provide necessaries of life; psychological abuse; financial abuse; threats to kill or harm an animal or damage property, and, killing or harming an animal or damaging property.

§ Statistics Canada stopped collecting data on divorce and custody after 1995. In addition, the information we were capable of gathering for this paper is based on their analyses of census data, which is done based on their needs and interests. In other words, while there may be more detailed information on marriage and separations in the raw census data, it has not been currently analyzed.

The use of reasonable force to protect oneself or another person is excluded from the definition of family violence.

Comments:
Positive: This is an extensive and inclusive definition. It is especially good to see the language of coercive and controlling behaviour as well as of fear. Inclusion of threats or actual harm to animals is very positive, as is the explicit inclusion of financial abuse.

Positive and negative: Given the current reality of family violence in Canada, protecting women and their children from family violence should be the key focus of all family laws, including Bill C-78. To achieve this, laws must be interpreted and applied using an intersectional gender analysis. To clarify this, we recommend the addition of both a preamble, as well as additions to the definitions included in the Bill, so that Bill C-78 explicitly acknowledges that i) as with all forms of gender-based violence, in the context of family violence, women are overwhelmingly the victims/survivors of violence perpetrated by a spouse, and men are overwhelmingly their abusers, ii) that women experience family violence as a form of violence against women, and iii) that women have diverse lived experiences of family violence. These additions would provide important clarification that Bill C-78 is intended to protect a parent and/or children from past, ongoing or future family violence, as well as mitigate the impacts of family violence (regardless of the form, frequency or how long ago the family violence took place), and that this approach is consistent with and in the best interests of the child.

While it is positive to see an exception for the use of reasonable force to protect oneself or another person, this could backfire on women who use force to keep themselves or their children safe. What will a family court judge consider to be "reasonable" force? Will this clause be interpreted narrowly as self-defence in the criminal law understanding of that phrase or will it be interpreted more broadly? How will abusive men be able to manipulate this clause to cover their own use of violence?

Section 16(3)(c) states that each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse should be considered in determining the child best interests.

Comments:
Negative: This section continues to reinforce the "friendly parent" rule and is problematic in cases of family violence. On its surface, the friendly parent rule seeks to encourage parents to get along, for the sake of their children and to prevent one parent from interfering with the child's relationship with the other parent. In practice however, this provision makes any parent who appears to not be fully collaborating, or refusing to be "friendly," look like a bad parent who cares more about their spousal conflict that their child's well-being. A mother in an abusive relationship will in most cases have legitimate reasons to oppose, or at least not support, the child's relationship with the abusive parent, especially if she fears he may be violent towards them. The inclusion of this factor may prevent crucial protection of children and mothers. The other factors in the section adequately ensure that the child will continue to have a relationship

with both spouses when it is in their best interests. In other words, this factor is unnecessary and dangerous. If it is to be retained, there needs to be an exception for such cases in which it is not in the child's best interests to maintain a relationship with an abusive spouse.

In addition, claims of parental alienation by an abusive parent are a real problem. Due in part to a lack of true understanding of family violence by judges, abusive fathers successfully claim parental alienation and in some cases are granted custody. In the most worrisome cases, this happens despite children's testimony that they would prefer to remain with their mother.[59] This section seems very well suited for parental alienation claims by abusive fathers.

Section 16(3)(i) further includes the ability and willingness of each person to communicate and cooperate on matters affecting the child.

Comments:
Negative: This factor also reinforces the "friendly parent" rule. Women leaving abusive relationships are often legitimately neither able nor willing to communicate with their former partner. It can place them at risk of both emotional/psychological, physical and even lethal harm. In some cases, communication may violate a criminal court no-contact order. Again, there is no real need for this section to protect the child's best interests, and it is dangerous. Though the next section creates an exception to this provision in cases of family violence where cooperation is not appropriate, removing it would be ideal. Alternatively, an explicit reference to family violence as an exception would make this provision less cause for concern.

Section 16(3)(j) requires the court to consider any family violence and its impact on, among other things:

> **(i)** the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child
> **(ii)** the appropriateness of requiring persons to cooperate on issues affecting the child.

Comments:
Positive: Placing an assessment of family violence directly in the test, unlike in some provincial family law legislation, is a positive move.

It is also positive that the consideration of family violence must include whether or not it is appropriate for people to cooperate on issues affecting the child.

Negative: The court should not be concerned with whether the person who engaged in the family violence is willing to care for the child. Most abusers will say they are willing; this does not mean parenting time/decision-making responsibility is appropriate or safe for the children or for the mother. The focus should be on the impacts of family violence on the mother and the child's well-being, as well as on the abusive spouse's ability to parent.

Section 16(4) sets out the factors related to family violence that the court is to consider as part of the best interests of the child test. These factors include:

(a) The nature, seriousness and frequency of the family violence and when it occurred
(b) Whether there is a pattern of coercive and controlling behaviour
(c) Whether the violence is directed toward a child or whether the child is directly or indirectly exposed to it
(d) The harm or risk of harm to the child
(e) Any compromise to the safety of the child or other family member
(f) Whether the violence causes the child or other family member to fear for their own safety or that of another person
(g) Any steps taken by the person engaging in the family violence to prevent future family violence and to improve their ability to care for the child
(h) Any other relevant factor.

Comments:
Positive: It is positive to have a list of factors for the court to consider when assessing family violence for the purpose of determining the best interest of the child. Including both direct and indirect exposure to the family violence rather than just direct involvement is important.

Negative: Clause (g) is problematic. The legislation should require objective evidence of changed behaviour and not simply evidence from the abuser that he has taken "steps" to prevent future violence and to improve his parenting ability. In many communities, especially smaller ones, men hold positions of power and influence. They may use this position to bolster evidence of steps taken to prevent family violence. On the other hand, if the mother is marginalized, be it due to her gender, race, disability or the family violence itself, she may not be in a position to find support in her community to refute these claims. The clause should be rewritten to require evidence that steps have rendered the abusive spouse capable of caring for the child.

This section would be a great place to include a reference to the gendered nature of family violence, to encourage judges to take its dynamics into account.

The *Act* should also prevent judges from interpreting exposure to family violence too narrowly. Indeed, research indicates that even when a child is aware of the abuse, without necessarily being present, their well-being can be seriously affected by the fact of their mother's abuse. That being said, mothers should not be blamed for their children's exposure to family violence. The focus should be on protecting mothers from violent situations, rather than removing children from their mothers entirely, as removal tends be more detrimental on children's well-being.

Section 16(5) states that past conduct shall not be taken into account in determining the best interests of the child, unless the past conduct is relevant.

Comments:
Negative: This may create an obstacle to introducing family violence, especially its pattern, into evidence. The section would be stronger if it was positively worded and clearly stated that family violence is always relevant past conduct.

In addition, misunderstandings and common misconceptions about the dynamics of family violence lead to dangerous decisions. The *Act* would do a much better job of protecting mothers and children if it explicitly mentioned that courts should not presume:

1. that because the relationship has ended, or divorce proceedings have begun, that the family violence has ended.
2. that the absence of disclosure of family violence prior to separation, including reports to the police or child welfare authorities, means the family violence did not happen, or that the claims are exaggerated.
3. that the absence or recanting of criminal charges, or the absence of intervention of child welfare authorities means that the family violence did not happen, or that the claims are exaggerated.
4. that if claims of family violence are made late in the proceedings or were not made in prior proceedings, they are false or exaggerated.
5. that inconsistencies between evidence of family violence in the divorce proceedings and other proceedings, including criminal proceedings, mean the family violence did not happen, that the claims are exaggerated, or that the spouse making the claims is unreliable or dishonest.
6. that if a spouse continued to reside or maintain a financial, sexual, business relationship or a relationship for immigration purposes, with a spouse, or has in the past left and returned to a spouse, that family violence did not happen, or that the claims are exaggerated.
7. that leaving a violent household to reside in a shelter or other temporary housing is contrary to the best interests of the child.
8. that fleeing a jurisdiction with the children, with or without a court order, in an effort to escape family violence, is contrary to the best interests of the child.
9. that the absence of observable physical injuries or the absence of external expressions of fear means the abuse did not happen.

2. <u>Best interests of the child/maximum parenting time</u>

Presently, the *Divorce Act* states that the court is to consider only the best interests of the child, but does not provide factors for the court to take into account when determining the child's best interests.

Bill C-78 provides a list of factors to be taken into account when determining the best interests of the child, some of which were addressed in the previous section.

Comments:
<u>Positive:</u> In general, it is very positive to see that the best interests of the child remains the only test to be used in determining arrangements for children post-separation. It is especially good to see that the government has retained a focus on the best interests of the child and resisted pressure from fathers' rights organizations for the introduction of a presumption in favour of

shared parenting. Such a presumption would be a poor reflection of reality, create an unnecessary onus for parents seeking to reverse it and is especially worrisome in family violence cases. It is in the best interests of the child that arrangements be ordered on a case by case basis, to ensure their safety as well as continuity of care as it existed during the marriage.

The addition of a list of factors is also positive, inasmuch as the factors can provide guidance and support to courts.

Negative: As mentioned in the previous section, some of the factors seem to vacate the reality that the children being dealt with exist within the matrix of a complex relationship. In family violence cases, this must be recognized. Some of the factors, in particular the "friendly parent" requirements, seem to create a fiction wherein, once divorce proceedings begin, an abusive relationship, can somehow immediately become a cordial, healthy one, in which both parents can coparent without conflict, abuse, risk, or violence. However, we know that this not true in family violence cases. Indeed, separation tends to exacerbate violence and abuse, making cooperation with an abuser even more onerous. The full dynamics of the abusive relationship need to be understood by all actors and especially the deciders in such cases. When there is ongoing contact by former spouses, because there are children involved, the power and control exerted by one spouse during the marriage is not going to end simply because the marriage is legally ending.

Section 16(2): The court is to give primary consideration to the child's physical, emotional and psychological safety, security and well-being.

Comments:
Positive: This provision makes it clear that child safety and well-being are of paramount importance.

Negative: It would be made stronger if it included in the case of Indigenous children the importance of preserving their cultural identity and connection to community and the rights of Indigenous peoples to raise their children in accordance with their cultures, heritages, and traditions. Research also demonstrates that children's well-being is improved when their mothers are safe from abuse. Therefore, the best interests of the child test should acknowledge that protecting the non-abusive spouse's "physical, emotional and psychological safety, security and well-being" is also relevant to the child's best interests.

Section 16(3): Below are additional factors to be considered the in the best interests of the child test about which we have some concerns.

Section 16(3)(b) lists the nature and strength of the child's relationship with each spouse, as well as other family members such as siblings and grandparents.

Comments:

Positive: This section allows for other positive figures in the child's life to be considered and may benefit the child inasmuch as it allows these people to remain in the child's life.

Negative: The wording, particularly "nature and strength" may reflect situations in which an abusive father uses his control to strengthen the relationship with his own family, while cutting ties with the mother's. We believe the word 'quality' would better reflect the types of relationships worth preserving for the child's best interests.

Section 16.2(1): requires to the court is to give effect to the principle that a child shall have as much time with each spouse as is consistent with the best interests of the child.

In addition, as mentioned, the third factor in the best interests of the child test stipulates that the court is to consider each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse.

Comments:
Negative: Both of these clauses continue to entrench the notion from the current *Divorce Act* that it is generally in children's best interests to spend maximum time with both parents. This is obviously not the case in family violence situations, and is at odds with the stated goals of Bill C-78 with respect to the best interests of the child. While Section 16.2(1) requires that maximum contact is to be consistent with the best interest of the child, this is not strong enough language, especially because of Section 16(3)(c), which makes supporting the development and maintenance of the child's relationship with the other spouse a mandatory consideration in the best interest of the child test. While not called a presumption, given current societal and judicial attitudes about the family, there is every reason to be concerned that courts will focus on the maximum contact without truly considering the best interests of the child.

Maximum contact requirements are also especially onerous for rural women attempting to leave abusive relationships. Doing so can require moving to another community, which could give the impression that she is refusing to cooperate and follow the maximum contact principle. This may force women to continue to live in close proximity to their abusive ex-spouse, putting them at great risk, especially in the months following the separation.

Both these sections should be removed entirely. This would be consistent with the Bill's goal of protecting children's best interests. The British-Columbia *Family Law Act* provides that no parenting arrangement is presumed to be in the child's best interest and that there is to be no assumption that maximum time with each parent is ideal. A provision to the same effect in the federal Bill would make the best interests of the child test more effective and credible.

3. Language of custody and access

Bill C-78 proposes to eliminate the language of custody and access, replacing it with new terms: parenting time, parenting orders, decision-making responsibility and contact orders.

Section 7 defines *decision making responsibility* in broad terms, as the responsibility to make significant decisions regarding health, education, culture and extra-curricular activities. *Parenting time* refers to the time allocated as such by the court, in a parenting order.

Section 16.1: Parenting orders will provide for the exercise of parenting time and/or decision-making responsibility. These orders will allocate parenting time and decision-making responsibility. They can include requirements that parenting time and/or exchanges of children be supervised as well as requirements for how communication between a child and whichever parent the child is not with at the time will happen. Through a parenting order, parents can be directed to attend a family dispute resolution process. Relocation can be authorized or prohibited.

Comments:
Positive intentions: Eliminating the terms custody and access is meant to reduce conflict by getting rid of the idea of one person winning and the other losing. The goal is to avoid children being caught in the middle of their parents' conflict. In addition, there is a feeling within the profession that the use of the expression "custody" is not appropriate when referring to the care of children and some lawyers have already stopped using these terms outside litigation.

Negative: Though the intention of reducing conflict to shield children is a commendable one, there is currently no evidence that similar changes of language that have been made in other jurisdictions (domestically and internationally) have actually resulted in the reduction of conflict that was hoped for. In addition, losing the clear and habitual terms of custody and access will have serious negative consequences in cases involving family violence. Tensions and conflictual situations that arise during relationship breakdown differ qualitatively from family violence. In family violence cases, abusive spouses attempt to make use of any means available, in this specific case the custody battle/arrangement, to sustain/maintain coercive domination and control. Absence of clear identification of ultimate authority inflames and strengthens efforts from the abusive spouse to maintain/gain coercive control in family violence cases. Any weakening of clarity around a mother's parenting authority will be used by perpetrators in family violence cases to coerce, intimidate and control.

Conflating family violence and conflict is dangerous. The *Act* should reflect the differences between conflict surrounding non-violent relationship breakdown, which the language and custody and access *may* exacerbate, and family violence, which requires clear authority and little room for abuse. Reducing conflict in non-violent situations is a good objective, but it should not be the focus of family violence cases. It is safer for children and their mothers to have a clear, unambiguous allocation of custody, and clarity about who has the authority to make specific decisions about what is in the best interests of a child.

Losing the familiar terms of custody and access will, at least in the short term, lead to some uncertainty and confusion in the interpretation of the new language. There is no evidence that other jurisdictions that have replaced custody and access language with other terms have seen a reduction in the level of disputes over where children should live and who should have

authority over them. There is also a risk that mother's may face complications or obstacles at the international level, notably regarding Canada's obligations under the *Hague Convention*. In at least one case, a British Columbian mother seeking to apply for a passport for her children has faced barriers due to the lack of clear authority over such matters. In any case, there is no way of being certain the change in terminology will not create undue and onerous consequences.

It would be preferable to maintain the habitual terms of custody and access. We would also recommend clarifying the proposed definition of custody/decision-making responsibility, by listing in more detail the decisions the parent with custody has the authority to make. The broadness of the proposed definition leaves too much opportunity for abusive fathers to undermine mothers by claiming decision fall outside their authority. The British Columbia *Family Law Act* currently contains an extensive detailed list.[60]

Section 16.2(3) states that during their parenting time, that parent has the exclusive authority to make day to day decisions affecting the child.

Comments:
Neutral/negative: In families where there is no history of family violence and where both parents are able to place the interests of their children ahead of their desire to coerce and control the other, this clause does not raise concerns.

However, in the context of family violence, an abuser may well use this clause to justify making decisions that are clearly not in the best interests of the child or just because he knows they are not decisions the mother would support, as a tactic in his ongoing abuse and intimidation of his ex/spouse.

It is also challenging in many cases to separate "day-to-day decisions affecting a child" from some "decision-making responsibilities." If a parent has the child six days a week and signs the child up for swimming lessons, is that day to day care or a significant extra-curricular activity? This can work for parents who are cooperative, but does little to resolve disputes for parents who are not. Moreover, this provision invites a controlling parent to insist on having input into relatively minor decisions. It also creates the opportunity for him to ignore activities that are important to the child that fall during his time, claiming that not sending the child to swimming lessons for instance, is a day-to-day decision.

The language should be changed to make clear that any day to day decision making cannot conflict with the decisions made by a parent with custody, or decision-making authority and that day to day decisions must be made in the best interests of the child. The term "exclusive" should also be removed to make it clear that decisions of the parent with decision making authority supersede all day to day decisions at all times, if there is any conflict. As mentioned, we recommend adding a clear list of decisions that the parent with custody/decision making responsibility retains the right to make.

Section 16.5: Contact orders will set out the time that a person other than the spouses (eg a grandparent) can spend with a child. Any such person must have leave of the court to make an application. In making a contact order, the court must consider all relevant factors including whether contact could happen otherwise, such as during parenting time of one of the spouses.

Comments:
Positive: This provides statutory authority for people other than parents to apply for an order giving them contact with a child, which could be positive where family members, in particular grandparents, have played an important and positive role with their grandchildren. This could be beneficial for Indigenous or newcomers families in which relatives and grandparents are often positive figures. However, this potential positive impact must be weighed against the possibility that some immigrant women may be in Canada without extended family.

Negative: Abusive men may turn to their parents to seek a contact order as a means of gaining time with their children that they may have been denied in a parenting order. Additionally, paternal grandparents may seek a contact order in situations where their relationship with their grandchildren's mother is toxic and use such contact time to undermine the children's relationship with their mother.

Contact orders should be made only if they are in the best interests of the child, but there is no reference to these criteria in the provision. It would be made stronger with an explicit reference to the best interests of the child as the only relevant factor and an explicit requirement to apply the best interests of the child test when determining contact orders.

As mentioned, this provision can have an increased adverse impact on immigrant women, who are often in Canada without the extended family members that their abuser has, leaving the mother alone against the father and his family members with contact orders.

4. Relocation

Bill C-78 sets out detailed provisions for the relocation of children, beginning at **section 16.9**.

Comments:
Positive: There is value in having a statute-based approach to relocation to bring consistency across jurisdictions.

Negative: All provisions dealing with relocation need to provide a clear exception for cases of family violence.

Women who need to flee for reasons of safety or to reconnect with family for support should not have to notify the other parent or apply to the court before moving with the children **(Section 16.9(2))**, nor should they have to provide their new address to the other parent (**Section 16.9(2)(b))**.

While **subsection 16.9(3**) allows these requirements to be waived or modified where there is a risk of family violence, there should be an absolute exemption in cases of family violence to both the notice period and providing the new address. It should also be made clear that application for the waiver can be made without notifying anyone else.

Section 16.5(8): permits orders providing that a child shall not be removed from a specified geographic area without the written consent of any specified person or without a court order authorizing the removal.

This section is problematic, as it could be used by an abuser against the mother to prevent her from fleeing to a safe place.

Section 16.92(1) sets out factors the court is to consider, in addition to those set out in section 16(3), when deciding whether or not the relocation of a child is in the child's best interests. Those factors include:

- **(a)** Reasons for the relocation
- **(b)** Impact on the child
- **(c)** Amount of time spent with the child by each person with parenting time or a pending application for a parenting order and the level of involvement in the child's life of each of those persons
- **(d)** Whether the person intending to relocate has complied with the notice requirements and other legislation
- **(e)** The existence of an order specifying the geographic area in which the child is to live
- **(f)** The reasonableness of the proposal of the person intending to move to vary the exercise of parenting time, decision-making responsibility or contact, taking into account, among other things, the proposed new location and travel expenses
- **(g)** Whether each person with parenting time or decision-making responsibility or a pending application for a parenting order has complied with their obligations under family law legislation, an order, arbitral award or agreement and the likelihood of future compliance.

Comments:
Positive: These are useful factors for a court to consider when making a decision about the relocation of children.

Negative: While family violence should be read in as part of the best interests of the child test, there is no reason to think it will be, so it should be set out as an explicit factor in this list. Ensuing that a mother is safe from an abusive ex-partner is generally going to be in the child's best interests as well. Therefore the court should also be required to consider if the relocation would serve to protect the mother, which would weigh in favour of relocation.

The section should also explicitly mention that if the party opposing the relocation is doing so to maintain coercive control over the party requesting the relocation, the opposition should be dismissed.

Section 16.92(2) provides that the court must not take into account whether the party seeking to relocate would do so if the child's relocation is not granted.

Comments:
Positive: This section is a positive inclusion which will help women who find themselves in a "double-bind" situation. Indeed, if the mother claims she will not move without her children, courts may believe the relocation is not important and therefore deny the request. If however, the mother claims she will move without her children, this is seen as a failure in motherhood on her part and custody may be awarded to the father.

Section 16.93(1) states that if the parties to the proceeding substantially comply with an order, arbitral award or agreement that provides that a child of the marriage spend substantially equal time in the care of each party, the party wishing to relocate with the child has the burden of proving that the move would be in the best interests of the child.

Section 16.93(2) states that if the parties to the proceeding substantially comply with an order, arbitral award or agreement that provides that a child of the marriage spends the vast majority of their time in the care of the party who intends to relocate the child, the party opposing the relocation has the burden of proving that the relocation would not be in the best interests of the child.

Comments:
Positive: In theory, the burden of proof provisions appear reasonable.

Negative: However, it is currently not the trend in Canada for one parent to receive the "vast majority" of parenting time. Mothers, who will be doing most of the childcare duties despite shared parenting orders, will be put in a position where they need to prove that relocation is in the best interests of the child which will likely be difficult to do. This is especially problematic in family violence cases where women need to be able to flee quickly for their safety and that of the child. Upon separation, some women finally freeing themselves from coercive control need to return to their communities for support (financial and other). These provisions create a barrier to this positive move.

In addition, the expressions "substantially comply" as well as "vast majority" are unclear and highly problematic. They will likely cause confusion, which may lead to additional litigation, both of which are dangerous and undesirable for abused, poor, or women who are otherwise disadvantaged in the legal system.

Lastly, it should be noted that changing the burdens for specific percentages of time would be problematic and should be avoided. Such percentage tend to increase and exacerbate litigation.

5. Family dispute resolution processes

Section 7.3 requires that parties try to resolve matters through a family dispute resolution process, when appropriate.

Section 7.7(2) creates a duty for legal advisors to encourage their client to attempt to resolve matters through a family dispute resolution process, "unless the circumstances of the case are of such a nature that it would clearly not be appropriate to do so."

Comments:
Negative and positive: Dispute resolution processes can have many benefits. They may indeed be less adversarial and more empowering to some women than family court litigation. However, it would be wrong to assume they are best suited to all cases. They may be dangerous to women in abusive relationship who will find themselves forced to cooperate with an abusive spouse and pressured to agree to dangerous resolutions. Certain women, including Indigenous women, immigrant and refugee women, women with disabilities, women in LGBTQ+ relationships, and women living in isolated or rural communities where there are access to justice issues and a lack of resources, may be less able to resist pressure to mediate and may be disadvantaged by that process.

In any case, the system should ensure that women are free and capable of making a meaningful choice between available processes. The language of 7.3 should be softened and not require parties to use alternative dispute resolution processes. The language should also acknowledge specific risks that exist in cases of family violence. Legal advisors should have the duty to provide women with all the relevant information on the various processes to allow them to make a free and educated decision, free from any pressure.

The risks of family dispute resolution processes in family violence cases, should be taken into account when a legal advisor is advising a client. To ensure this, legal advisors should have an ongoing duty to screen for coercive control, fear and power imbalances.[**]

6. Education

Bill C-78 makes no mention of either education or accountability for lawyers and judges as well as others involved in the family court system, including mediators. Both of these are critical. Without mandatory education on family violence, provided by community-based as well as legal experts, and on evidence- and research-based principles of child development, that is supported by strong accountability measures, changes to the law will not result in changes to outcomes in family court.

Provisions should be added to the Bill specifying requirements for training on family violence and family violence screening, as well as the use of recognized screening tools. Here again, there is a need for the federal government to work with provincial and territorial governments as

[**] In British Columbia, the ADR requirement has proven problematic, especially in case of power imbalances and family violence. Women and abused women without representation do not know how to object to ADR, and it is unclear whether the screening is effective.

well as law societies to ensure all actors in the family law system are adequately trained and regulated.

There must also be a commitment from the federal government to work with provincial and territorial governments as well as law societies to ensure that all actors in the family law system are adequately educated on family violence.

7. Funding

The Bill does not address the gendered inequities that result from the lack of proper resourcing for legal aid programs and services in the provinces and territories, nor the high number of un-represented litigants in family law cases. The Bill should provide requirements for legal aid funding in family law cases. The Bill should allow for a regulatory scheme to be set out, under which federal transfer to the provinces would necessarily be attributed to legal funding in the family law system.

---

[1] www.swc-cfc.gc.ca
[2] Samantha Bokma, "Early Learning and Childcare-Factsheet", Native Women's Association of Canada, online: <www.nwac.ca>.
[3] Annie Turner "Living arrangements of Aboriginal children aged 14 and under", Insights On Canadian Society, (April 2016) Ottawa: Statistics Canada, no 75-006-X. Most live in western provinces, Three-quarters (76%) of Aboriginal foster children lived in the four Western provinces, compared with 62% of Aboriginal children who were not in foster care. In Manitoba and Saskatchewan, 85% or more of foster children were Aboriginal children.
[4] *Caring Society of Canada v Attorney General of Canada (Minister of Indian Affairs and Northern Development)* 2016 CHRT 2 at 53.
[5] Dr Shelly Johson (Mukwa Musayett) "Failing to protect and provide in the *"best place on earth":* Can Indigenous children in Canada be safe if their mothers aren't" (2012) 8 Native Social Work Journal 13. *Caring Society of Canada v Attorney General of Canada (Minister of Indian Affairs and Northern Development)* 2016 CHRT 2 at 53.
[6] *Caring Society of Canada v Attorney General of Canada (Minister of Indian Affairs and Northern Development)* 2016 CHRT 2 at 80.
[7] *Caring Society of Canada v Attorney General of Canada (Minister of Indian Affairs and Northern Development)* 2016 CHRT 2 at 39.
[8] *Caring Society of Canada v Attorney General of Canada (Minister of Indian Affairs and Northern Development)* 2016 CHRT 2 at 54.
[9] Katharine Curry, "Housing – Fact Sheet", Native's Women Association of Canada, online: <www.nwac.ca>.
[10] Native's Women Association of Canada, "Legal Issues/Indian Act/Matrimonial Property", online <www.nwac.ca>.
[11] Calls to Action 1-5, 27-28, 50, 57
[12] *Caring Society of Canada v Attorney General of Canada (Minister of Indian Affairs and Northern Development)* 2016 CHRT 2.
[13] Annie Turner "Living arrangements of Aboriginal children aged 14 and under", Insights On Canadian Society, (April 2016) Ottawa: Statistics Canada, no 75-006-X.
[14] Maire Sinha, "Measuring violence against women: Statistical trends" (2013) Juristat, Ottawa: Statistics Canada, no 85-002-X.
[15] Anne Milan, Leslie-Anne Keown & Covadonga Robles Urquijo, "Families, living arrangements and unpaid work", Women in Canada: A gender-based statistical report, (2011) Ottawa: Statistics Canada, no 89-503-X.

[16] Robson Fletcher, "Women spend 50% more time doing unpaid work than men: Statistics Canada" CBC News (1 June 2017) online: <www.cbc.ca>.
[17] Patricia Houle, Martin Turcotte & Michael Wendt, "Changes in parents' participation in domestic tasks and care for children from 1986 to 2015." Spotlight on Canadians: Results from the General Social Survey (2017) Ottawa: Statistics Canada no 89-652-X.
[18] Maire Sinha, "Portrait of Caregivers, 2012." Spotlight on Canadians: Results from the General Social Survey (2013) Ottawa: Statistics Canada, no 89-652-X.
[19] Anne Milan, Leslie-Anne Keown & Covadonga Robles Urquijo, "Families, living arrangements and unpaid work", Women in Canada: A gender-based statistical report, (2011) Ottawa: Statistics Canada, no 89-503-X.
[20] Suzanne M Bianchi, "Maternal employment and time with children: Dramatic change or surprising continuity?" (2002) 37:4 Demography 401, Anne Milan, Leslie-Anne Keown & Covadonga Robles Urquijo, "Families, living arrangements and unpaid work", Women in Canada: A gender-based statistical report, (2011) Ottawa: Statistics Canada, no 89-503-X.
[21] Donna S Lero, "Current Stats on Paternity Leave and Fathers' Use of Parental Leave and Income Support in Canada and Québec" (2015) University of Guelph, Centre for Families, Work & Well-Being, online: < https://www.worklifecanada.ca/cms/resources/files/731/CURRENT_STATS_ON_PATERNITY_LEAVE_AND_FATHERS.pdf>.
[22] S Uppal, "Employment patterns of families with children" Insights on Canadian Society, (June 2015) Statistics Canada no 75-006-X.
[23] Canadian Labour Congress "Quality, Affordable Childcare", (2015) online: <http://canadianlabour.ca/issues-research/quality-affordable-child-care>.
[24] National Association of Women and the Law, "Why Child Care is Important for Women", online <http://nawl.ca/en/issues/entry/child-care-les-services-de-garde> (Accessed on June 28 2018).
[25] Canadian Labour Congress, http://www.donewaiting.ca/wage_discrimination (Accessed on 15 June 2018).
[26] Canadian Labour Congress, http://www.donewaiting.ca/wage_discrimination (Accessed on 15 June 2018).
[27] Martha Burczycka & Shana Conroy "Family violence in Canada: A statistical profile, 2016" (2018) Juristat, Ottawa: Statistics Canada, no 85-002-X. In 2011 Manitoba and Saskatchewam reported highest cases of intimate partner violence: Maire Sinha, "Measuring violence against women: Statistical trends" (2013) Juristat, Ottawa: Statistics Canada, no 85-002-X.
[28] Ontario, Ministry of Status of Women, "Statistics: Domestic Violence", online: <http://www.women.gov.on.ca/owd/english/ending-violence/domestic_violence.shtml> (Accessed June 28 2018).
[29] Maire Sinha, "Measuring violence against women: Statistical trends" (2013) Juristat, Ottawa: Statistics Canada, no 85-002-X. It should be noted that men with disabilities also are also twice more likely than their counterpart to experience spousal abuse: Adam Cotter, "Violent victimization of women with disabilities, 2014" (2018) Juristat Ottawa: Statistics Canada, no 85-002-X.
[30] Maire Sinha, "Measuring violence against women: Statistical trends" (2013) Juristat, Ottawa: Statistics Canada, no 85-002-X, Ontario, Ministry of Status of Women, "Statistics: Domestic Violence", online: <http://www.women.gov.on.ca/owd/english/ending-violence/domestic_violence.shtml> (Accessed June 28 2018).
[31] Jillian Boyce, "Victimization of Aboriginal People in Canada 2014" (2016) Juristat, Ottawa: Statistics Canada, no 85-002-X, Ontario, Ministry of Status of Women, "Statistics: Domestic Violence", online: <http://www.women.gov.on.ca/owd/english/ending-violence/domestic_violence.shtml> (Accessed June 28 2018).
[32] Maire Sinha, "Measuring violence against women: Statistical trends" Juristat (2013) Ottawa: Statistics Canada, no 85-002-X.
[33] Jillian Boyce, "Victimization of Aboriginal People in Canada 2014" (2016) Juristat, Ottawa: Statistics Canada, no 85-002-X.

[34] Maire Sinha, “Measuring violence against women: Statistical trends” Juristat (2013) Ottawa: Statistics Canada, no 85-002-X.
[35]Maire Sinha, “Measuring violence against women: Statistical trends” Juristat (2013) Ottawa: Statistics Canada, no 85-002-X.
[36] Maire Sinha, “Measuring violence against women: Statistical trends” Juristat (2013) Ottawa: Statistics Canada, no 85-002-X.
[37] Ontario, Ministry of Status of Women, “Statistics: Domestic Violence”, online: <http://www.women.gov.on.ca/owd/english/ending-violence/domestic_violence.shtml> (Accessed June 28 2018).
[38] Sinha, “Measuring violence against women: Statistical trends” Juristat (2013) Ottawa: Statistics Canada, no 85-002-X, Sara Beattie and Hope Hutchins, “Shelters for abused women in Canada, 2014”, (2015) Juristat, Ottawa: Statistics Canada, no 85-002-X, Ontario, Ministry of Status of Women, “Statistics: Domestic Violence”, online: <http://www.women.gov.on.ca/owd/english/ending-violence/domestic_violence.shtml> (Accessed June 28 2018).
[39] Sara Beattie and Hope Hutchins, “Shelters for abused women in Canada, 2014”, (2015) Juristat, Ottawa: Statistics Canada, no 85-002-X.
[40] Sara Beattie and Hope Hutchins, “Shelters for abused women in Canada, 2014”, (2015) Juristat, Ottawa: Statistics Canada, no 85-002-X.
[41] Employment and Social Development Canada, “The National Shelter Survey 2005-2014 - Emergency Shelter Use in Canada” (2017).
[42] Anne Milan, “Marital Status: Overview” (2013) Report on the Demographic Situation in Canada, Ottawa: Statistic Canada, no 91-209-X.
[43] “Lone Parent Families” (2015) Minister of Innovation, Science and Economic Development, Ottawa: Statistics Canada, no 75-006-X.
[44] “Same-sex couples in Canada in 2016” (2017) Census in Brief, Statistics Canada, online: < https://www12.statcan.gc.ca/census-recensement/2016/as-sa/98-200-x/2016007/98-200-x2016007-eng.cfm>
[45]http://www.mcscs.jus.gov.on.ca/english/DeathInvestigations/office_coroner/PublicationsandReports/DVDR/2013-14Report/DVDRC_201314.html).
[46] Pamela Cross, “When Shared Parenting and the Safety of Women and Children Collide” (2016) Ontario: Luke’s Place, <online>.
[47] Martha Burczycka & Shana Conroy “Family violence in Canada: A statistical profile, 2016” Juristat (2018) Ottawa: Statistics Canada, no 85-002-X
[48] Maire Sinha, “Measuring violence against women: Statistical trends” Juristat (2013) Ottawa: Statistics Canada, no 85-002-X.
[49] Ontario, Ministry of Status of Women, “Statistics: Domestic Violence”, online: <http://www.women.gov.on.ca/owd/english/ending-violence/domestic_violence.shtml> (Accessed June 28 2018).
[50] Dr Shelly Johson (Mukwa Musayett) “Failing to protect and provide in the *“best place on earth”:* Can Indigenous children in Canada be safe if their mothers aren’t” (2012) 8 Native Social Work Journal 13.
[51] Dr Shelly Johson (Mukwa Musayett) “Failing to protect and provide in the *“best place on earth”:* Can Indigenous children in Canada be safe if their mothers aren’t” (2012) 8 Native Social Work Journal 13.
[52] “Lone Parent Families” (2015) Minister of Innovation, Science and Economic Development, Ottawa: Statistics Canada, no 75-006-X.
[53] Native Women's Association of Canada, “Strategies to address child welfare: An issue Paper” (2007).
[54] Maire Sinha, “Parenting and child support after separation or divorce” (2013) Spotlight on Canadians: Results from the General Social Survey, Ottawa: Statistics Canada, no 89-652-X.
[55] “Selected Statistics on Canadian Families and Family Law: Second Edition” Department of Justice, online: <http://www.justice.gc.ca/eng/rp-pr/fl-lf/famil/stat2000/p4.html> (Accessed June 28 2018).
[56] Maire Sinha, “Parenting and child support after separation or divorce” (2013) Spotlight on Canadians: Results from the General Social Survey, Ottawa: Statistics Canada, no 89-652-X.
[57] *Family Law Act*, SBC 2011, c 25
[58] *Family Law Act*, SA 2003, c F-4.5

[59] Linda C Neilson, (2018) “Parental Alienation Empirical Analysis: Child Best Interests or Parental Rights?” (2018) Fredericton: Muriel McQueen Fergusson Centre for Family Violence Research and Vancouver: The FREDA Centre for Research on Violence Against Women and Children.

60 [60] *Family Law Act*, SBC 2011, c 25, s 41