



Canadian Women's Foundation

BRIEF - 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

Drawn from a discussion paper prepared by Luke's Place Support and Resource Centre, and National Association of Women and the Law/Association nationale Femmes et Droit (NAWL/ANFD)

Concerns about family violence, and the ways Bill C-78 may be improved to reduce risks and mitigate impacts of past family violence are central to the concerns of Canadian Women's Foundation.

Aspects of the Bill are very positive in this regard, while others are concerning as they seem to place women at greater risk of experiencing continued family violence through the divorce process.

Keeping women and their children safe

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.

This means that 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. Women experience family violence as a form of violence against women, and women have diverse lived experiences of family violence.

This analysis throughout the bill would provide that Bill C-78 protects a parent and /or children from past, ongoing or future family violence, as well as mitigates the impacts of family violence (regardless of the form, frequency or how long ago the family violence took place). We believe that this approach is consistent with and in the best interests of the child.

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.

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. These considerations should also impact decisions on visitation.

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:

- that because the relationship has ended, or divorce proceedings have begun, that the family violence has ended.

- 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.
- 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.
- that if claims of family violence are made late in the proceedings or were not made in prior proceedings, they are false or exaggerated.
- 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.
- 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.
- that leaving a violent household to reside in a shelter or other temporary housing is contrary to the best interests of the child.
- 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.
- that the absence of observable physical injuries or the absence of external expressions of fear means the abuse did not happen.

Legal Education and Information

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. There is a need for the federal government to work with provincial and territorial governments as well as law societies to ensure all stakeholders in the family law system are adequately trained and monitored.