



March 23, 2026

Via email: JUST@parl.gc.ca

James Maloney, P.C., M.P.
Chair, Standing Committee on Justice and Human Rights
284 Wellington Street
Ottawa, ON K1A 0H8

Dear Mr. Maloney:

Re: Bill C-223 — *Keeping Children Safe Act*

We write on behalf of the Canadian Bar Association's Family Law and Child and Youth Law Sections (CBA Sections) regarding the proposed amendments to the *Divorce Act* in Bill C-223, the *Keeping Children Safe Act*. The CBA Sections support Bill C-223's objectives of strengthening systemic responses to family violence, enhancing the safety of children, prioritizing children's best interests, including their meaningful participation in matters relating to separation and divorce. We also note that several proposed reforms unduly constrain judicial discretion to evaluate the particular circumstances of each family. Below, we provide practice-informed recommendations to ensure legal and practical considerations are reflected and legislative objectives are met.¹

The CBA is a national association of over 40,000 members, including lawyers, notaries, academics and law students across Canada, with a mandate to seek improvements in the law and the administration of justice. The Family Law Section promotes the fair, effective and efficient resolution of family law matters, responding to developments in law, policy and research affecting families in Canada. The Child and Youth Law Section focuses on issues related to children's rights and best interests, addressing developments in law, policy and legal research affecting children and youth in Canada.

The CBA Section's recommendations address the following aspects of Bill C-223:

- Children's Rights
- Duties of Legal Advisors
- Dispute Resolution
- Best Interests of the Child (BIOC) Factors
- Parental Alienation
- Parenting Time
- Parenting Orders
- Evidence from the Child
- Relocation

¹ The 2021 amendments to the *Divorce Act* reaffirmed the best interests of the child as the paramount consideration in post-separation parenting disputes. Family violence was expressly integrated into the analysis, including coercive and controlling conduct, emotional, psychological, and financial abuse.

Children’s Rights (Preamble)

Under the United Nations Convention on the Rights of the Child (UNCRC), children have broad participatory rights, such as the right to be heard in proceedings affecting them, that are inextricably linked to their best interests.² The CBA Sections welcome the reference to the UNCRC in the Preamble to the Bill, which signals an intention to ground the legislation in internationally recognized children’s rights principles. However, the citation to the relevant articles is inaccurate. The sixth paragraph of the Preamble should read:

...and the Convention on the Rights of the Child, specifically Articles **3 and 12**, which **prioritize** the best interests of the child **and affirm** that a child who is capable of forming their own views has the right to express their views freely in all matters that affect them and to have those views given due weight in accordance with their age and maturity.

Duties of Legal Advisors (Subsections 7.7(2.1)-7.7(2.2))

The CBA Sections believe that the proposed new duty for family lawyers at subsection 7.7(2.1), to screen for family violence and power imbalances is reasonable in principle but difficult to implement without mandatory training. Several jurisdictions do not require training and imposing a legal obligation without supporting education risks inconsistent and ineffective screening.³ Any new duty must be paired with accessible, standardized training for lawyers across Canada.

Proposed subsection 7.7(2.2), requiring family lawyers to develop and implement safety plans, raises significant concerns. First, the term “safety plan” is not defined in the amendment. Second, this work falls outside the professional role of family lawyers, who lack the specialized training and resources to implement effective safety planning and may put lawyers in conflict with the Model Code of Professional Conduct.⁴ Lawyers have a legal and professional duty to their client to act on their client’s instructions, and ethically, they cannot impose legal services on a client, as the current wording of this subsection appears to do. The amendment is also silent on the responsibility for the associated costs, and fails to account for children’s needs, including their relationships with extended caregivers, schools, and community supports. While community-based services for women and children at risk of family violence exist across Canada, the availability and quality vary by region. Any requirement for safety planning would therefore necessitate dedicated federal funding to ensure equitable access nationwide. Absent such supports, imposing this duty risks creating unrealistic expectations of protection and may place both clients and lawyers in difficult and unsafe positions.

Dispute Resolution (Subsection 7.7(2))

The CBA Sections recommend reconsideration of the proposal that legal advisors not be required to inform clients about, or encourage, out-of-court family dispute resolution processes in cases involving family violence. While we understand the intent behind adding “risk of family violence” to s 7.7(2)(a) to ensure that survivors are not directed into unsafe dispute-resolution processes, the *Divorce Act* already allows exclusion where family violence or risk is present. The existing provision at s 7.7(2)(a)

² United Nations Convention on the Rights of the Child (20 November 1989), [online](#). See also: CBA Submission, Bill C-78 — *Divorce Act* amendments (November 2018) at p 2, [online](#) [CBA Bill C-78].

³ Screening refers to the use of structured questions by professionals to assess whether a person has experienced or is experiencing family violence. See Pamela Cross et al, Department of Justice Canada, *What You Don’t Know Can Hurt You: The Importance of Family Violence Screening Tools for Family Law Practitioners* (2018), [online](#); Department of Justice Canada, *HELP Toolkit: Identifying and Responding to Family Violence for Family Law Legal Advisors* (2022) at 49, [online](#).

⁴ Federation of Law Societies of Canada, *Model Code of Professional Conduct* (2024), [online](#).

already permits dispute resolution to be excluded where family violence makes it unsuitable. The proposed language suggests that family dispute resolution is inappropriate *in every case* where any evidence of risk exists.

This categorical restriction risks unintended and counterproductive effects. In some circumstances, carefully screened, trauma-informed dispute resolution can allow survivors to address concerns with trained professionals while avoiding harms associated with litigation. This restriction may also discourage disclosure of family violence during screening, as parties may fear that any history of violence, regardless of context, severity or remoteness, will automatically exclude them from mediation.

Best Interests of the Child (BIOC) Factors (Subsections 16(3)-16(5.1))

The CBA Sections have long advocated for the BIOC as the governing legal principle for post-separation parenting determinations.⁵ The primacy of children’s interests over parental rights has been entrenched in Canadian family law for decades and is reflected in appellate jurisprudence, provincial and territorial legislative frameworks, and the 2021 *Divorce Act* amendments. At the same time, we acknowledge that the application of the BIOC has, in some cases, prioritized preserving parental relationships despite concerns regarding family violence, or the expressed views and experiences of children. Most importantly, the BIOC test requires an individual assessment in every case, where children’s views are meaningfully considered and family violence concerns fully evaluated.

The CBA Sections oppose the proposed repeal of s. 16(3)(c), which should remain one of several factors considered in determining the BIOC. Instead, we recommend retaining the provision and incorporating the following qualifying language:

(c) each spouse’s **ability and** willingness to support the development and maintenance of the child’s relationship with the other spouse, **taking into consideration the child’s views and any evidence of family violence.**

The CBA Sections support the proposed change to s. 16(3)(j)(i) which removes the word “willingness” from the clause. Similarly, the Sections support the proposed amendment to s 16(4)(g), which ensures that courts consider less restrictive parenting only if there is clear evidence of accountability and behavioural change in parents who have engaged in family violence.⁶

The CBA Sections have concerns with repealing the existing s 16(5), which addresses the relevance of past conduct in the determination of BIOC. We recommend retaining the original provision and adding “**taking into consideration any evidence of family violence**”.

⁵ See CBA Submissions: “Bill C-422 – In the Interest of the Child” (2010), [online](#); “In the Interests of Children Response to Bill C-560” (2014), [online](#); “Bill S-202 – Shared Parenting Act” (2017), [online](#); CBA Bill C-78, *supra* note 2; Canadian Coalition for the Rights of Children, *Alternative Report to the UN Committee on the Rights of the Child* (2020), [online](#).

⁶ L Bancroft & JG Silverman, *The batterer as parent: Assessing the impact of domestic violence on family dynamics*, Sage Series on Violence Against Women (Thousand Oaks, Cal: Sage Publications, 2002); P Jaffe, K Scott, L Heslop & S Hooda, *Sober second thoughts about the benefits and limitations of reunification therapy*, Family Violence & Family Law Brief, No 27 (London, ON: Centre for Research and Education on Violence Against Women and Children, Western University, 2023), at 11 [Jaffe].

While the CBA Sections generally support the amendments to s 16(5) regarding “Myths and Stereotypes” in relation to family violence,⁷ we recommend the following refinements to ensure the provision operates as intended:

- **Amend paragraph (c):** Given the different burdens of proof in criminal and family law proceedings and the well-recognized difficulty of proving domestic violence,⁸ we recommend the following additions: “no criminal charges were laid in respect of family violence, or allegations **in a criminal matter in respect of family violence** were withdrawn **or dismissed**, there was no intervention on the part of a child welfare agency or, in the case of a trial for an offence involving family violence, a finding of not guilty is entered;”
- **Clarify paragraph (e):** The current wording may be problematic given different evidentiary rules regarding prior inconsistent statements and credibility determinations. It should be qualified to state that “minor or immaterial inconsistencies whether in statements or other evidence, should not be used to minimize or undermine allegations of family violence.”
- **Add to the end of paragraph (f):** “...or has permitted them to have parenting time with the children”.

The CBA Sections are concerned that the proposed subsection 16(5.1) fails to adequately address situations in which a parent must urgently leave the province because of family violence, particularly where requiring prior judicial approval could endanger the victims’ safety.⁹ The Supreme Court of Canada has affirmed that family violence must remain a key consideration of any relocation analysis. We therefore recommend the following clarification:

(5.1) A decision by a **non-perpetrator** spouse to leave a household in which family violence occurs to reside in a shelter or other temporary housing **or to leave the province with any or all children of the marriage, with or without giving notice**, is not, in and of itself, contrary to the best interests of the child.

Parental Alienation (Subsections 16(3.1)-16(3.2))

The CBA Sections support the Bill’s objective of enhancing child safety and curbing the misuse of allegations of parental alienation;¹⁰ however, we recommend further study or revised drafting of ss. 16(3.1) and (3.2) to avoid unintended legal consequences and practical implementation challenges.

Allegations of parental alienation are common in contested family law matters and may divert attention from risks of harm to the child, particularly in cases involving family violence. These allegations also risk silencing children or diminishing the weight given to their views and experiences,

⁷ While there is no universal definition of “myths and stereotypes”, the BC Court of Appeal in *KMN v SZM*, 2024 BCCA 70 at para 110 [KMN] endorsed the definition advanced by Jennifer Koshan, “Challenging Myths and Stereotypes in Domestic Violence Cases” (2023) 35:1 *Can J Fam L* 33 at 38–39: “...assumptions or expectations that are false or faulty and are linked to disadvantaging beliefs, attitudes and narratives”.

⁸ *Barendregt v Grebliunas*, 2022 SCC 22 at para 144 [Barendregt]; *KMN supra* note 7 at para 110, citing Jennifer Koshan, “Challenging Myths and Stereotypes in Domestic Violence Cases” (2023) 35:1 *Can J Fam L* 33 at 38–39; D Sowter, “The Fabrication Myth: Intimate Partner Violence and Lawyers’ Advocacy in Family Law” (forthcoming 2026) *TMU L Rev*.

⁹ Human Rights Council, *Report of the Special Rapporteur on violence against women and girls, its causes and consequences*, UN Doc A/HRC/53/36 (2023), at paras 36-37, 74(k) [Special Rapporteur].

¹⁰ P Jaffe, (2021) “*The Misuse of Alienation in Domestic Violence Cases in Family Court: Helping Court-Related Professionals to Sort Through Conflicting Allegations*” Centre for Research and Education on Violence Against Women and Children, A Learning Network Webinar, 1-11; Jaffe, *supra* note 6; Special Rapporteur *supra* note 9; *Williamson v Williamson*, 2016 BCCA 87 at paras 47-48 [Williamson].

contrary to their participatory rights under the UNCRC.¹¹ The *Divorce Act* requires courts to consider psychological and emotional harm arising from parental behaviours in the post-separation context. All evidence of harm relevant to child safety should be assessed within the BIOC analysis, in accordance with the specific factors at s. 16 of the *Act*.¹²

However, as drafted, s. 16(3.1) would prevent judges from considering evidence that a parent deliberately influenced a child to reject the other parent, unless family violence is found under s. 16(3.2). This would make family violence a necessary precondition for examining such conduct.

To ensure that the primacy of BIOC factors is given due weight, including the views of the child, and to ensure family violence concerns are fully scrutinized and not displaced by counter-allegations of parental alienation, we recommend the following revisions to ss. 16(3.1) and 16(3.2) in situations of family violence:

Factor not to be considered

(3.1) In determining what is in the best interests of the child, **where the court has found family violence**, the court shall not take into consideration any allegation that a **non-perpetrator** spouse has through deliberate manipulation, persuaded or encouraged a child to become estranged from or resist contact with the other spouse.

Cases of parent-child contact problems that do not involve family violence, but where alienating behaviours are alleged, require an individualized BIOC assessment. That assessment must consider the child's views, and the impact of parental conduct on children, with specific regard to the factors in ss. 16(2)-(4). In all cases, whether or not family violence is found, children's evidence about their views and experiences must be given due weight as a matter of course in the BIOC analysis. To promote consistency in parenting time determinations and family and divorce matters more broadly, the CBA Sections recommend children's legal representation as a systemic measure to assist courts in fact-finding and in applying the BIOC factors (see Evidence from the Child, below).

Parenting Time (Subsection 16(6))

The CBA Sections welcome the proposed amendments to s. 16(6) of the *Divorce Act*, which clarify that there are no starting presumptions in the allocation of parenting time and that the only consideration is an individualized assessment of the BIOC.¹³ This is consistent with the statements of then Minister Lametti when the marginal note heading of s. 16(6) was amended from "Maximum parenting time" to "Parenting time consistent with the best interests of the child" to emphasize that there is no

¹¹ *SK v DG*, 2022 ABQB 425 at paras 177-179; *M v F*, 2022 ONSC 505 at para 15; F. Morrison, EKM Tisdall & JEM Callaghan, "Manipulation and Domestic Abuse in Contested Contact – Threats to Children's Participation Rights" (2020) 58:2 *Fam Ct Rev* 403; A Daly, *Children, Autonomy and the Courts: Beyond the Right to Be Heard* (Leiden: Brill Nijhoff, 2018).

¹² LC Neilson, *Parental Alienation Empirical Analysis: Child Best Interests or Parental Rights?* (Fredericton: Murial McQueen Fergusson Centre for Family Violence Research and Vancouver: The FREDA Centre for Research on Violence Against Women and Children, 2018) [online](#); JJ Harman, E Kruk & D Hines, "Parental Alienating Behaviours: An Unacknowledged Form of Family Violence" (2018) 144:12 *Psych Bull* 1275; BJ Fidler & N Bala, "Concepts, Controversies and Conundrums of "Alienation" *Lessons Learned in a Decade and Reflections on Challenges Ahead*" (2020) 58(2) *Fam Ct Rev* 576; M Saini, L Drozd & N Olesen, "Adaptive and Maladaptive Gatekeeping Behaviours and Attitudes: Implications for Child Outcomes After Separation and Divorce" (2017) 55:2 *Fam Ct Rev* 260; JR Johnston & MG Sullivan, "Parental Alienation: In Search of Common Ground for a More Differentiated Theory" (2020) 58:2 *Fam Ct Rev* 570; M Kline Pruett et al, "The Use of Parental Alienation Constructs by Family Justice System Professionals: A Survey of Belief Systems and Practice Implications" (2023) 61 *Fam Ct Rev* 372.

¹³ Nicholas Bala, "Shared Parenting in Canada: Not Presumed, but Increasingly Accepted" (2022) 41 *CFLQ* 155.

presumption of equal parenting time in the *Divorce Act*.¹⁴ The CBA previously raised these concerns and made similar recommendations in its submissions on Bill C-78.¹⁵

Accordingly, in s. 16(6) the CBA recommends adding the following wording to clarify and emphasize the intention of the *Divorce Act* and the proposed amendments, as has been clarified by the Supreme Court of Canada in *Barendregt v Grebliunas*, 2022 SCC 22:

16(6) In allocating parenting time, the court shall **only** give effect to the principle that a child should have as much time with each spouse **to the extent that it is in** the best interests of the child. **No parenting arrangement shall be presumed to be in the best interests of a child.**

Parenting Orders (Subsection 16.1(4.1)-16.1(4.2))

The CBA has concerns that the wording of proposed ss. 16.1(4.1)-(4.2) limits judicial discretion and fails to respect children's rights. The BIOC assessment requires a fact-specific individualized assessment of all the factors which necessarily requires judicial discretion once a parenting dispute comes before the court. Provisions that rigidly limit the types of orders a court may make risk constraining the court's ability to respond appropriately to the circumstances of a particular family in line with the BIOC.

Paragraph 16.1(4.1)(a) appears intended to prevent the courts from restricting parenting time or a child's contact with a parent with whom they have a close relationship to improve the child's relationship with the other parent, in response to allegations of parental alienation. However, as drafted, the provision refers only to a "spouse," even though parenting orders frequently affect the child's relationships with other family members, including siblings and extended family. The provision as drafted could also be interpreted too broadly or applied contrary to the BIOC. Courts must retain the ability to restrict parenting time for legitimate best interests reasons, even if the court order may have the effect of improving the child's relationship with the other parent. As drafted, it could be interpreted to prohibit such orders where that effect is present, even if it is not the purpose of the order.

Paragraph 16.1(4.1)(b) prevents courts from ordering a child to attend "reunification therapy" unless both spouses consent. No mention is made of the child's consent. Failure to bring a child's voice and experience into decisions about any therapy runs contrary to BIOC and the UNCRC, as well as consent to treatment legislation in several provinces.¹⁶ Further, requiring both parties to consent removes judicial discretion and may allow a party to intentionally frustrate the process by refusing to provide consent.

Emerging case law, research and commentary have raised concerns about the potentially harmful effects of enforced "reunification" efforts.¹⁷ However, the proposed definition of the term "reunification therapy" in 16.1(4.2) appears overbroad. As written, it captures a wide range of therapeutic or clinical services, such as mental health supports, that may assist children and families, in appropriate circumstances.

¹⁴ Barendregt *supra* note 8 at para 135 confirmed that the court should only give effect to the "parenting time factor" *to the extent* that it is in the best interests of the child.

¹⁵ CBA Bill C-78, *supra* note 2 at p. 7.

¹⁶ See, for example, *Health Care Consent Act*, 1996, SO 1996, c 2, Sch A, [online](#).

¹⁷ Williamson *supra* note 10, at paras 45-46; *AM v CH*, 2019 ONCA 764 at paras 41-47; *VL v ML*, 2019 ONSC 7367 at paras 124-126; *ST v JT*, 2019 SKCA 116 at paras 78-82; *MPM v ALM*, 2021 ONCA 465 at paras 34-37; *Cousins v Healey*, 2024 ONSC 688 at paras 41-43; *Spencer v Spencer*, 2024 ABKB 274 at paras 23-24; Jaffe, *supra* note 6; Special Rapporteur, *supra* note 9; C Houston, *Case Comment: Undermining Children's Rights in AM.v CH*, (2020) Can Fam LQ, 39, 99; R. Birnbaum & N. Bala, *A Retrospective Study of Outcomes of Custody Reversal in Parental Alienation Cases*, (2024) 75 UNB L J 6.

Evidence from the Child (Section 16.1(1.1)-16.1(1.2))

The CBA has long supported children’s meaningful participation in matters which directly affect them, consistent with their rights under Article 12 of the UNCRC, including the right to participate directly in judicial processes.¹⁸ While the CBA supports the intent of s. 16.1(1.1) of Bill C-223 to ensure that children’s views are considered in matters arising under the *Divorce Act*, significant amendments would be required before this provision can be supported.

Judicial interviews

Wording similar to s. 64 of Ontario’s *Children’s Law Reform Act* should be incorporated, subject to the comments below regarding the child’s consent. The provision should require that the judicial interview be recorded and that the child be entitled to consult counsel and have counsel present during the interview.

The child’s consent should be obtained before the court seeks information or evidence directly from the child. Regarding s. 16.1(1.1)(a), the child’s willingness to communicate with the court should be the only consideration.

Subsection (b) “both spouses agree” should be removed. The determining factor should be whether the child wishes to speak to the court. Requiring parental agreement may create a barrier where a parent believes the child’s views do not align with their own.

With respect to s. 16.1(1.2), information obtained through a judicial interview must be disclosed to the parties if the judge intends to rely on it in deciding an issue. The child should be informed of this requirement in advance when giving consent. Disclosure should only occur after the child has had an opportunity to review the transcript of the interview and the parts the court intends to disclose, and to make any necessary revisions.

The two concepts at s. 16.1(1.1)(c) should be separated. With respect to the child’s safety and privacy, these considerations should not be used as a reason to decline hearing from the child. Instead, the court should take appropriate measures to protect the child’s safety and privacy. With respect to the second concept in subsection (c), the provision should clarify that a judicial interview is not a substitute for the child having independent legal representation.

Other ways a child’s view and preferences may be obtained

A child’s views and preferences may also be obtained in other ways, such as the “voice of the child” report, which is available in many jurisdictions in Canada. The current wording of the amendment suggests this would not be available to a judge when considering if the evidence of a child should be heard.

Amicus curiae

As currently worded, the provision contemplates “the presence of an *amicus curiae*.” In most Canadian jurisdictions, however, *amicus curiae* are not routinely available in family court and are not supported by dedicated funding. It is therefore unclear whether the federal government intends to provide funding to enable the meaningful availability of *amicus curiae* in family court proceedings.

Legal representation

The UNCRC recognizes legal representation as an essential procedural safeguard when a child’s best interests are being assessed and there is a conflict between the parties. It is also a necessary element of

¹⁸ CBA *Alternative Reports to the Committee on the Rights of the Child*, [February 2020](#), [October 2020](#), [April 2022](#); CBA *Child Rights Toolkit*, [online](#).

children’s access to, and meaningful participation in, family justice processes.¹⁹ Consideration should therefore be given to adding specific provisions regarding legal representation for the child, such as the following:

Legal representation of child

- (1) A child may have legal representation at any stage in a proceeding under this Act which involves parenting, contact or child support issues.

Court to consider issue

- (2) Where a child does not have legal representation in a proceeding under this Act which involves parenting, contact or child support issues, the court,
 - (a) shall, as soon as practicable after the commencement of the proceeding; and
 - (b) may, at any later stage in the proceeding,
 determine whether legal representation is desirable to protect the child’s interests.

Direction for legal representation

- (3) Where the court determines that legal representation is desirable to protect a child’s interests, the court shall direct that legal representation be provided for the child, unless the court is satisfied, taking into account the child’s views, given due weight in accordance with the child’s age and maturity, that the child’s interests are otherwise adequately protected.

Rights of a party

When the court authorizes a lawyer to represent the child, then the child has the rights of a party.

Relocation (Sections 16.92-16.93)

The CBA Sections urge caution regarding the proposed amendments to relocation provisions in the *Divorce Act*.

The 2021 *Divorce Act* amendments introduced a more predictable approach to relocation, including mandatory notice, clarification of the applicable burdens of proof when proposing relocation, and relocation-specific best interest factors. The 2021 amendments explicitly included family violence considerations in the best interests analysis under s. 16. The relocation provisions at s. 16.92(1) set out additional factors that courts must consider, alongside the best interest factors in s. 16. As with all matters under the *Divorce Act*, relocation decisions must be based on BIOC as the paramount consideration, without any presumption against relocation.

Relocation and family violence

The CBA has no objection to the proposed amendment to s. 16.92(1)(a) emphasizing family violence as a reason for relocation. However, courts are already required to consider family violence in the best

¹⁹ Committee on the Rights of the Child, *General Comment No. 14* (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para 1), UN Doc CRC/C/GC/14 (2013), at paras 85, 96; CBA Submission, *Rights of the Child on Children’s Access to Justice and Effective Remedies* (August 2024); C Tempesta, “Legal Representation as a Necessary Element of Children’s Access to and Participation in Family Justice”, in M Paré et al (Eds), *Children’s Access to Justice: A Critical Assessment*, (Cambridge, UK: Intersentia, 2022); The Hon D Martinson and C Tempesta, “Young People as Humans in Family Court Processes: A Child Rights Approach to Legal Representation”, (2018) 31:1 *Can J Fam L* 151; A Daly, *Children, Autonomy and the Courts: Beyond the Right to Be Heard* (Liedien: Brill Nijhoff, 2018).

interests analysis, under ss. 16(2), 16(3)(j) and 16(4) as relevant to relocation.²⁰ The CBA also supports the addition of Section 16.92(1)(b.1) which requires consideration of the impact on the child of prohibiting relocation.

The CBA recommends reconsideration of the amendment to s. 16.92(1)(g) which invites speculation about whether a parent “is likely to comply with” obligations under a court order. This wording risks creating a blanket exception to compliance with court orders where family violence is alleged but not proven. The wording could be amended to state “**has complied with**” to anchor the analysis in prior conduct. The latter part of the suggested amendment, i.e., “taking into account the impact of family violence on their ability to comply with their obligations” is supported.

The CBA is concerned with the proposed amendment in s. 16.92(2) as it would create significant practical difficulties and instability in relocation determinations. The amendment introduces a presumption that a parent will move regardless of whether the child’s relocation is prohibited. Moreover, s. 16.92(3) directs the courts to disregard existing parenting-time arrangements when applying s. 16.92(2). This aspect of the relocation framework was extensively studied during the 2021 *Divorce Act* amendments and need not be reopened at this time.

Burden of proof

The proposed amendments to s. 16.93, and the associated shift in the burdens of proof, raise significant concern for the CBA. The current relocation regime, established under the 2021 *Divorce Act* amendments, is structured around the child’s lived parenting arrangement and distinguishes between situations where the relocating parent exercises substantially equal parenting time and those where the relocating parent has the child for the vast majority of the time.²¹

Bill C-223 would fundamentally alter this framework. It proposes that where the child spends “the majority of their time” in the care of the relocating parent, the court must authorize the relocation unless the opposing parent proves both that (a) the relocation is not in the child’s best interests, and (b) it is in the child’s best interests to reside primarily with them. Conversely, where the opposing parent has the majority of parenting time, the relocating parent would bear the burden of proving that the relocation is in the child’s best interests.

The practical implications of this approach are concerning, particularly how it may affect litigation dynamics. By introducing presumptions that may turn on even a marginal majority of parenting time, the amendments risk incentivizing strategic “jockeying” over minor variations in time allocation solely to shift the burden of proof. This may distort litigation behaviour and undermine the child-centred best-interests analysis the *Divorce Act* is intended to promote.

Conclusion

Bill C-223 addresses an important issue by seeking to strengthen systemic responses to family violence and enhance protections for children in the context of separation and divorce. The considerations outlined above are intended to present the impacts of the proposed legislation in light of the practical realities of family law proceedings. The CBA Sections would welcome the opportunity to assist Parliament further in its study of the Bill.

²⁰ *Divorce Act*, RSC 1985, c 3, s 16, [online](#); see also: Barendregt *supra* note 8 at para 147 and *Shipton v Shipton* 2024 ONCA 624 at paras 25-29, 41: The ONCA held that the trial judge had erred by failing to properly assess the BIOC, specifically the mother’s allegations of coercive control. The Court held that such allegations must be evaluated with an awareness that they are difficult to prove, that children may experience harm through indirect exposure, and that material evidence cannot be ignored.

²¹ R Thompson, “Bill C-223: Bad ideas on child relocation” (29 October 2025) *Law360 Canada*, [online](#).

To summarize:

- We appreciate the inclusion of the UNCRC in the Preamble, subject to the corrections noted.
- We support the duty of legal advisors to screen for family violence although we are concerned with the feasibility of these additional duties on legal advisors.
- We recommend the Committee reconsider limiting dispute resolution alternatives in matters involving family violence given the Divorce Act already permits this exclusion, and the categorical restriction may discourage disclosure and limit trauma-informed resolution.
- We support the efforts to strengthen the BIOC analysis and propose wording to ensure the intent of the proposed legislation is met.
- We welcome the clarification that there are no starting presumptions in the allocation of parenting time although we have concerns with the proposed wording of the amendment and propose a less complex formulation that achieves the intended impact.
- We support the objective of preventing the misuse of parental alienation claims once a court has found family violence but propose more careful wording to avoid unintended consequences, ensure that courts retain the ability to consider all relevant evidence within the best-interests-of-the-child analysis, and ensure that allegations of alienation do not overshadow family violence concerns or diminish the weight given to children's views and experiences.
- The CBA Sections are concerned with the proposed amendments around parenting orders and propose that the provisions be revised to preserve judicial discretion, respect children's participation rights, and narrow the definition of reunification therapy to ensure courts can act in the child's best interests.
- We propose significant amendments to the proposals regarding the views of the child to ensure that children's voices and experiences are meaningfully heard in matters arising under the *Divorce Act*, including stronger safeguards for judicial interviews and recognition of the need for legal representation for children in family justice processes.
- The CBA Sections urge caution in reopening the relocation framework established in the 2021 *Divorce Act* amendments, which created a balanced and predictable system. We are concerned that many of the proposed amendments regarding relocation will unnecessarily increase parenting time disputes and litigation and propose revisions to address these concerns.

While we support the objectives of strengthening systemic responses to family violence and prioritizing child safety, including children's emotional and psychological safety, the CBA Sections also recommend targeted federal investment in expanding Unified Family Courts and in training for legal professionals to better understand and apply developing law and research as a necessary complement to the amendments to the *Divorce Act*.

We thank the Standing Committee for the opportunity to make these submissions on the proposed legislation and would be pleased to provide any additional information or to appear before the Committee to assist in its deliberations.

Yours truly,

(original letter signed by Yasmin Khaliq on behalf of the Section Chairs listed below)

Tracy C Brown
Chair, National Family Law Section

Tina Parbhakar
Chair, National Child and Youth Law Section