BILL 207: An Act to amend the Children's Law Reform Act, the Courts of Justice Act, the Family Law Act and other Acts respecting various family law matters

Brief by

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Who we are

Luke's Place Support and Resource Centre provides frontline services to women in Durham Region who are leaving abusive relationships and are involved with family law/court, and engages in research, training, education and system reform advocacy at the community, provincial and national levels. For more information: https://lukesplace.ca/

In 2020, we established the Feminist Law and Policy Reform Coalition to advance women's equality, eliminate all forms of gender-based violence and improve system responses to gender-based violence through engagement with all levels of government, the community, the media, the family and criminal law systems, police services, child protection services, immigration and refugee authorities and others to raise and advocate for systemic changes to laws, policies and services.

This brief responds to Bill 207: *An Act to amend the Children's Law Reform Act, the Courts of Justice Act, the Family Law Act and other Acts respecting various family law matters*. It expands on a submission we made to the Attorney General in December 2019, which was endorsed by more than 20 women's equality organizations, and consultations we had with MPP Lindsey Park with respect to her family law review.

Introduction

As in all our work, Luke's Place brings an intersectional, gender-based analysis focused on the lived realities of women in all their diversity and gender-diverse people to the development of our brief. We understand that other factors such as race, Black identity, Indigenous identity, ethnicity, religion, gender identity or gender expression, sexual orientation, citizenship, immigration and refugee status, geographic location, social condition, age, Deafness and disability influence women's experiences. This is true in the context of violence against women, family violence and family law.

We recognize the devastating effects settlers' colonialism has had on Indigenous women and communities. Any discussion of violence against women must consider these ongoing impacts as well as the actions and absence of actions by governments and individuals that continue to perpetuate them.

In this brief, we use 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 Ontario and Canada, women in all their diversity and gender diverse 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 misogyny, homophobia, transphobia, and heteronormative culture.

This brief draws heavily from the Discussion Paper and Brief prepared by Luke's Place and NAWL (National Association of Women and the Law) for presentation to the federal government during Bill C-78 committee hearings, which was endorsed by 30 women's equality and violence against women organizations across Canada.

Background

Over the past several months, life as most of us have known it has changed dramatically because of COVID-19. Of particular relevance to this brief, public health protocols to slow the spread of the virus have had a significant impact on family law, family court operations and services and on the lives of women with and leaving abusive partners.

In early June, federal Minister of Justice and Attorney General David Lametti announced that implementation of the revised *Divorce Act* would be delayed until March 1, 2021, because of the

pandemic and its impact on, among other things, the ability of provinces and territories to align their family law legislation with the federal legislation.

NAWL and Luke's Place convened a meeting with Minister Lametti in mid-July to discuss the repercussions of this delay, particularly as it affects women leaving abusive relationships. At that meeting, we noted that the only possible benefit to the delay would be if provinces and territories were able to use this additional time to review and revise their family laws to make them more consistent with the *Divorce Act.*

We are very happy to see Bill 207 at this time, because alignment between Ontario's family laws and the revised *Divorce Act* will reduce confusion for litigants – many of whom are unrepresented and so without the benefit of legal advice. As well, inequalities in terms of access to justice based on marital status and geographic location will be minimized.

Even as we applaud much of Bill 207, we believe it can and should go farther to ensure that post-separation arrangements for children in cases involving family violence keep both children and their mothers safe.

General Comments:

We congratulate the Attorney General for the positive changes introduced in Bill 207. We are particularly pleased that Bill 207 proposes an extensive and inclusive definition of family violence, which will now appear directly in the best interests' test. It is especially good to see that the definition uses the language of coercive and controlling behaviour and includes sexual, psychological and financial abuse as well as threats of or actual harm to animals among the types of behaviour that are

considered to be family violence. It is important that the Bill notes that conduct need not constitute a criminal offence for it to be considered in a family law proceeding.

As the government considers possible revisions to Bill 207, we would like to stress the following general principles before we provide a number of specific recommendations:

- Bill 207 needs to use a gender-based analysis to ensure that changes to the *Children's Law Reform Act* reflect the gendered reality of violence within families
- Family violence must always be a relevant consideration in any court decisions about children
- No provisions in the *CLRA* should impose restrictions on women's freedom, autonomy and agency, especially as those may relate to her safety or the safety of her children
- Screening for family violence by legal advisors must be made mandatory

Context for recommendations:

The extent and pervasiveness of violence against women within the family is well-established in Canada and around the world. While this brief is not the place for a fulsome discussion of family violence, we wish to note some key points to illustrate why any changes to family laws must give this reality a high priority:

- A woman is killed approximately every six days by her partner or former partner[1]
- Family violence is under-reported to police, so much of it is unidentified. Of that which is reported, women are the victims in seven out of 10 cases[2]
- Approximately one in four women is subjected to intimate partner violence in her lifetime, with rates remaining more or less constant[3]

[1] https://www150.statcan.gc.ca/n1/pub/85-002-x/2015001/article/14244/tbl/tbl06-eng.htm
[2] https://www150.statcan.gc.ca/n1/pub/11-627-m/11-627-m2016001-eng.htm
[3] https://www150.statcan.gc.ca/n1/pub/85-002-x/2015001/article/14241-eng.htm#a8

- Children are profoundly affected by living in a home where their mother is being abused. In extreme cases, they may be killed or may witness their mother being killed[4]
- The aftermath of intimate partner violence cost $7.4 billion in 2009[5]

As mentioned, there are many welcome additions and changes in Bill 207. 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 family court proceeding.

The majority of our recommendations focus on proposing specific changes that are required to help ensure that Bill 207 will truly protect women at the end of an abusive relationship, as well as their children.

Our analysis identifies aspects of the Bill, including those that demand communication and cooperation between parents, and the unintended ways in which some aspects of communication and cooperation expected of parents during family court proceedings may obscure the realities of family violence and risk endangering women and children.

The broad definition of family violence already included in the Bill demonstrates an understanding that family violence is complex and pervasive. It is important that all aspects of the Bill are framed accordingly and with an understanding that the complexities and pervasiveness of the impacts of past violence, and indeed the ongoing occurrences of violence themselves, do not end simply because family court proceedings begin. Violence often intensifies in the months following a separation, making them the most lethal for many women who have been subjected to male violence. Ontario's

[4] http://www.learningtoendabuse.ca/our-work/pdfs/LN_Newsletter_December_2012_Issue_3_Final.pdf
[5] https://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/rr12_7/p0.html#sum

Domestic Violence Death Review Committee reports routinely note that pending or recent separation is a high-risk factor for domestic violence.[6]

Consequently, requiring that mothers continue to communicate and cooperate with an abusive former partner is not only inappropriate, it is dangerous, and potentially lethal. Nonetheless, mothers who are incapable of or unwilling to cooperate with an abusive former partner are frowned upon by the courts and may even lose primary care of the children to the abuser. Therefore, cooperation and communication provisions need to be flexible and not required in cases where there has been a history of family violence.

The definition of family violence included in Bill 207 rightly excludes self-defence. However, cases demonstrate a lack of understanding of the varieties of ways women resist and survive family violence. We hope that identification of patterns of coercion and control will help courts understand the dynamics of family violence so that acts of resistance and survival by women who have been subjected to male violence will not be considered acts of family violence.

We have concerns about the proposed mandatory requirement that alternative dispute resolution (ADR) processes be encouraged. Of course, some women find such processes empowering and/or better suited to their needs. However, ADR is not always better and, particularly in cases involving family violence, may not be appropriate at all. The flexibility offered by ADR serves some families extremely well, but in other circumstances, it can provide an abusive partner with an opportunity to manipulate and continue being abusive. The *Children's Law Reform Act* should reflect and respect women's autonomy and agency and provide them with all the tools necessary to make free and informed decisions about which process is better and safer for them.

[6] https://www.mcscs.jus.gov.on.ca/sites/default/files/content/mcscs/docs/DVDRC%202018%20Annual%20Report.pdf

Finally, harmful myths and misconceptions about the realities and dynamics of family violence still influence family law processes and decisions. Therefore, education on family violence and gender equality must be a crucial part of the reform of the *CLRA,* and implementation of Bill 207.

Recommendations:

VIOLENCE AGAINST WOMEN/FAMILY VIOLENCE

Protecting women and their children from family violence should be the key focus of all family laws, including the *Children's Law Reform Act*. 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 it 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 partner, and men are overwhelmingly their abusers,

ii) women experience family violence as a form of violence against women, and

iii) women have diverse lived experiences of family violence.

These additions would provide important clarification that the Bill 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.

<u>Recommendation #1</u>: Include a preamble at the beginning of the *Children's Law Reform Act*:

WHEREAS in Ontario, women are more likely than men to be victims of gender-based violence, including sexual assault and intimate partner violence;

WHEREAS Indigenous women, be they First Nation, Métis or Inuit, are disproportionately affected by gender-based violence and intimate partner violence;

WHEREAS family violence has profound negative consequences on families, children and Ontario society;

WHEREAS men[7] continue to be the main perpetrators of family violence and women continue to be the victims/survivors of family violence;

WHEREAS violence against women is a form of gender-based discrimination rooted in systemic inequalities between women and men;

WHEREAS women are subjected to family violence in multiple ways shaped by other forms of discrimination and disadvantage, which intersect with race, Black identity, Indigenous identity, ethnicity, religion, gender identity or gender expression, sexual orientation, citizenship immigration and refugee status, geographic location, social condition, age, Deafness and disability;

WHEREAS women in all their diversity and gender diverse people are also disproportionally victims of family violence;

WHEREAS the family law system should protect women from violence and not ignore or exacerbate family violence;

WHEREAS it is in the best interests of children to protect them and their mothers from family violence;

WHEREAS the Government of Ontario is encouraged to continue to monitor the progress of the status of women in Ontario;

Now, therefore, the government enacts as follows:

Recommendation #2: Include in Section 18(1) a definition of violence against women in addition to the definition of family violence:

[7] 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 in all their diversity, 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.

Violence against women is a form of gender-based discrimination, a manifestation of historical and systemic inequality between men and women and includes any act, intention or threat of physical, sexual or psychological violence that results in the harm or suffering of women in all their diversity and gender diverse people, including restrictions on their freedom, safety and full participation in society that is inflicted by intimate partners, caregivers, family members, guardians, strangers, co-workers, employers, healthcare and other service providers and that can occur in the home, at work, online, in institutions and in our communities and is experienced by women in multiple ways shaped by other forms of discrimination and disadvantage, which intersect with race, Black identity, Indigenous identity, ethnicity, religion, gender identity or gender expression, sexual orientation, citizenship immigration and refugee status, geographic location, social condition, age, Deafness and disability.

Recommendation #3: Amend section 24, the best interests of the child test, to further clarify the dynamics of family violence

Encouraging communication and cooperation between parents as well as penalizing mothers who have been subjected to abuse and cannot communicate safely with their former partner is not appropriate. We recommend removing the sections that explicitly encourage communication, because the other factors relating the best interests of the child are sufficient to ensure no child be unduly kept from a relationship with a safe parent. Alternatively, we recommend family violence be made a clear exception to these factors.

- Recommendation #3.1: Remove section 24(3)(c), maintenance of relationship with other parent, or add exception of family violence.
- Recommendation #3.2: Remove section 24(3)(i), communication and cooperation with other parent, or add exception of family violence.

(c) each parent's willingness to support the development and maintenance of the child's relationship with the other parent, *except in cases of family violence, or when it is otherwise contrary to the child's best interests to develop or maintain a relationship with the other parent*;

…

(i) the ability and willingness of each person in respect of whom the order would apply to communicate and cooperate, in particular with one another, on matters affecting the child, *except when such communication and cooperation are contrary to the child's best interests, including in cases of family violence involving either the other parent and/or the child.*

The impacts of family violence could be made stronger. The focus should be on the actual ability to parent in the best interests of the child, rather than mere willingness to do so. In addition, research demonstrates that children of mothers who have been abused do better when their mothers are safe. Thus, it is in the child's best interests that their mother be protected from ongoing and/or future family violence, and steps be taken to minimize and mitigate the impacts of past family violence as much as possible.

- Recommendation #3.3: Revise section 24(3)(j)

(j) any family violence, and in particular, but not limited to:

(i) its impact on the child;

(ii) its impact on the child's relationship with each parent;

(iii) its impact on the appropriateness of making an order that would require persons in respect of whom the order would apply to cooperate on issues affecting the child;

(iv) the importance of protecting the physical, emotional and psychological safety, security and well-being of the parent not engaging in family violence (noting that self-defense does not constitute family violence);

(v) its association with negative parenting practices on the part of the person who engaged in a pattern of family violence;

(vi) the demonstrated capacity of any person who engaged in family violence to prioritize the best interests of the child and to meet the needs of the child.

- Recommendation #3.4: Require clear demonstration of improvement when steps have been taken to prevent family violence: 24(4)(g))

(g) evidence that the person engaging in family violence has taken steps both to ensure they do not perpetrate further family violence, and to prevent family violence from occurring and to improve their ability to care for and meet the needs of the child and that the steps have resulted in positive changes in behaviour

Putting an end to family violence requires an acknowledgment of its dynamics of power and gender-based discrimination. We recommend an explicit recognition in Bill 207 of family violence as a form of violence against women. It is also important to frame family violence this way to ensure acts of self-defence or resistance by the abused parent, be understood as such. Currently, there is an erroneous tendency to qualify certain actions by mothers facing male-instigated abuse as family violence, when they are actually acts of resistance and self-preservation.

- Recommendation #3.5: In section 24(4), add an acknowledgment of the gendered nature of family violence to the factors already listed

Factors relating to family violence

(4) In considering the impact of any family violence under paragraph (3)(j), the court shall take the following into account:

(a.0) family violence experienced by women is a form of violence against women;

(a.01) society's interest in ending all forms of violence against women;

(a.02) systemic power imbalances between men and women and the actions that may constitute resistance or self-defence against patterns of coercion and control, and incidents of family violence;

Section 24(5), which deals with past conduct, should note that all family violence, regardless of when it took place, its form, severity and/or frequency, will always be relevant and should be taken into account when determining the best interests of the child.

- Recommendation #3.6: Clearly state that past conduct of family violence is always relevant

Past conduct

(5) In determining what is in the best interests of the child, the court shall take into consideration all past conduct relevant to the exercise of their parenting time, decision-making responsibility or contact with the child under a contact order.

Family violence always relevant

(5.1) In applying section 24(5), courts shall always consider family violence relevant, regardless of when it occurred, its form, frequency, and pattern.

Harmful myths and misconceptions about the realities and the dynamics of family violence are still widely held and may influence legal advice and decision-making in family court proceedings. Therefore, adding a section to Bill 207 that dispels these myths and misconceptions will help guide actors in the legal system to make decisions that do not endanger children or their mothers

- Recommendation #3.7: Include a new section that prohibits the court from relying on or being influenced by myths and stereotypes that deny, mischaracterize or minimize the impacts of family violence and/or blame the non-abusive partner.

The court shall not infer

In considering the existence and impacts of family violence, the court shall not draw any adverse inferences based on myths or stereotypes about family violence. In particular, but not limited to the following, the court shall not infer that:

- because the relationship has ended or family court proceedings have begun, that the family violence has ended;
- the absence of disclosure of family violence prior to separation, including the absence of reports to the police or child welfare authorities, means the family violence did not happen, or that the claims are exaggerated;
- 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;
- if claims of family violence are made late in the proceedings or were not made in prior proceedings, they are false or exaggerated;
- inconsistencies between evidence of family violence in the family court proceedings and other proceedings, including criminal proceedings, mean the family violence did not happen, that the claims are exaggerated, or that the parent making the claims is unreliable or dishonest;
- if a parent continued to reside or maintain a financial, sexual, business relationship or a relationship for immigration purposes, with a partner, or has in the past left and returned to a partner, that family violence did not happen, or that the claims are exaggerated;
- leaving a violent household to reside in a shelter or other temporary housing is contrary to the best interests of the child;

- 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, and/or
- the absence of observable physical injuries or the absence of external expressions of fear means the abuse did not happen.

BEST INTERESTS OF THE CHILD/MAXIMUM PARENTING TIME

The inclusion of family violence as an explicit factor in the best interests of the child test is a very positive step. However, there are a few places in the Bill that may continue to inadvertently entrench the idea that it is always in the child's best interest to spend a maximum amount of time with both parents, which is not supported by most research.[8] It should be made explicit that maximum contact is not always in the child's best interests, and the section should clarify that the best interests of the child must always be determined on a case-by-case basis.

Recommendation #4: Ensure that no presumption in favour of maximum contact is applied

- Recommendation #4.1: Include provision specifying presumptions not to be considered by the courts
- Recommendation #4.2: Remove section 24(6): Allocation of parenting time,

The court shall not presume

(2.1) In determining the best interests of the child, the court shall not presume any particular arrangement to be in the best interests of the child and, without limiting this, it shall not be presumed that:

(i) decision-making responsibilities should be allocated equally between parents;

[8] https://lukesplace.ca/wp-content/uploads/2013/01/When-Shared-Parenting-and-the-Safety-of-Women-and-Children-Collide.pdf; https://www.justice.gc.ca/eng/rp-pr/fl-lf/parent/2005_3/p5.html

(ii) parenting time should be shared equally between parents;

(iii) each parent should be allocated as much parenting time as possible;

(iv) decisions regarding the child should be made either by one parent or jointly

(v) there should be maximum contact between a child and parent

We are concerned that the word “strength” in section 24(3)(b) reflects 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.

Recommendation #5: Replace “nature and strength” by “quality” in section 24(3)(b).

(b) the *quality* of the child’s relationship with each parent, each of the child’s siblings and grandparents and any other person who plays an important role in the child’s life.

CUSTODY AND ACCESS/DECISION-MAKING RESPONSIBILITY AND PARENTING TIME

The present language with respect to decision-making is somewhat vague; creating an opportunity for an abusive partner to manipulate the intention of the legislation in order to intimidate and control the child’s other parent.

Recommendation #6: The meaning of decision-making responsibilities needs to be further clarified as follows:

Decision-making responsibility means the responsibility for making all significant decisions about a child’s well-being, including decisions about:

(a) where the child will reside;

(b) with whom the child will live and associate;

(c) the child's education, including what school the child shall attend, and participation in extracurricular activities, including the nature, extent and location of such activities;

(d) the child's cultural, linguistic, religious and spiritual upbringing and heritage, including, if the child is Indigenous, the child's Indigenous identity;

(e) giving, refusing or withdrawing consent to medical, dental and other health-related treatments, including mental health treatments, such as counselling or therapy, for the child;

(f) applying for a passport, travel document, licence, permit, benefit, privilege or other government-issued documents for the child;

(g) giving, refusing or withdrawing consent for the child, if consent is required;

(h) receiving and responding to any notice that a parent or guardian is entitled or required by law to receive;

(i) requesting and receiving health, education or other information respecting the child from third parties;

(j) starting, defending, compromising or settling any proceeding relating to the child, and

(k) identifying, advancing and protecting the child's legal and financial interests.

The Bill must be clear that day-to-day decisions cannot conflict with decisions made by the parent with primary decision-making responsibility. As it is currently worded, section 28(6) may provide abusive fathers with the opportunity to exploit decision-making responsibilities to make decisions not in the child’s best interests and to undermine and threaten or otherwise exert control over the mother.

Recommendation #7: Amend section 28(6) so that that day-to-day decisions cannot conflict with decisions made by the parent with primary decision-making responsibility and remove the words “exclusive authority.”

Day-to-day decisions

(3) Unless the court orders otherwise, a person to whom the court allocates parenting time with respect to a child *may, subject to compliance with best interests of the child principles set out in this Act*, make, during that time, day-to-day decisions affecting the child.

Day-to-day decisions shall not conflict

(4) Notwithstanding section 28(6), a parent shall not, during allocated parenting time, make decisions that conflict with decisions made by the parent with primary decision-making responsibility, or that are contrary to the best interests of the child.

The language related to contact orders is not specific enough, could be open to multiple interpretations and would be made stronger if it directly referred to the best interests of the child.

Recommendation #8: Add clear reference to best interests of the child for contact order determinations in section 28(1)

Section 28(1)

(d) In determining whether to make a contact order under this section***,*** *after having considered factors referred to in section 28(1)(c),* the court shall consider all *other* relevant factors, including whether contact between the applicant and the child could otherwise occur, for example during the parenting time of another person.

RELOCATION

Women in or attempting to flee abusive relationships need to be able to do so, with their children, quickly and easily. In many cases, their safety can only be ensured if the abusive partner does not know their new location. The provisions on relocation should reflect these realities.

Recommendation # 9: Make the family violence exemption from the notice requirement clearer and more effective and clarify that the application for the exemption can be done in the absence of any other party

Notice

Section 39.3 A person who has decision-making responsibility or parenting time with respect to a child and who intends a relocation shall, at least 60 days before the expected date of the proposed relocation, notify any other person who has decision-making responsibility, parenting time or contact under a contact order in respect of that child of the intention.

…

(3) The court may grant an exemption from all or any part of the requirements to give notice under subsection (2) if it is satisfied that

(a)notice cannot be given without incurring a risk of family violence by the other parent or a person having contact with the child, or

(b)there is no ongoing relationship between the child and the other parent or the person having contact with the child.

(4) An application for an exemption under subsection (3) may be made in the absence of any other party.

Preventing a mother's relocation is a way for an abusive former partner to maintain coercive control, so escaping family violence should be clearly provided for in the relocation section. In addition, the section should reflect that ensuring the mother's well-being is in the child's best interests.

Recommendation #10: Add factors relating to family violence to relocation factors

- Recommendation #10.1: Clearly state that family violence should be taken into account, including if opposition to relocation is an attempt to maintain coercive control
- Recommendation #10.2: Include the mother's safety as a factor for authorizing relocation

39.4 (3) In determining whether to authorize a relocation of a child, the court shall take into account the best interests of the child in accordance with section 24, as well as,

…

(h) any family violence and the factors in section 24(4);

(i) whether the relocation would protect the parent seeking the relocation order from the risks and/or ongoing impacts of family violence;

(j) whether the opposition to relocation by a parent is an act of coercive control and/or will perpetuate family violence.

We are concerned the burden of proof sections are unnecessarily ambiguous, in particular the expression "substantially comply." However, we do not recommend defining compliance by using percentages. We suggest some changes below, but believe the section deserves further clarification.

Recommendation #11: Amend section 39.4 to clarify the language.

Burden of proof — person who intends to relocate child

39.4 (5) If the parties to the proceeding substantially comply with an order, family arbitration award or agreement that provides that a child spend equal time in the care of each party, the party who intends to relocate the child has the burden of proving that the relocation would be in the best interests of the child.

Burden of proof — person who objects to relocation

(6) If the parties to the proceeding substantially comply with an order, family arbitration award or agreement that provides that a child spend 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.

We strongly support the **Factor not to be considered** in section **39.4 (4).**

ALTERNATIVE DISPUTE RESOLUTION PROCESSES

Though diversity in dispute resolution processes is positive, Bill 207 must respect women's freedom and agency by allowing them to make fully informed choices about what processes best suit their needs. Special attention needs to be paid to what processes should be recommended in family violence cases, where alternative dispute resolution processes can provide abusers with ongoing contact with and the opportunity to continue abusing their former partner.

Recommendation #12: Remove the focus on alternative dispute resolution and include reference to family violence.

Family dispute resolution process

33.1 (3) To the extent that it is appropriate to do so, *especially with regard to the risks that ongoing contact between parents may pose in cases of family violence*, the parties to a proceeding shall *consider resolving* the matters that may be the subject of an order under this Part through an alternative dispute resolution process, such as negotiation, mediation or collaborative law.

Those involved in the family law system should have a duty to prevent violence against women and their children. This duty extends to the advice to be given on the process options that are available in

relation to post-separation parenting arrangements. Before advising in favour of any particular legal process, legal advisers should be required to screen for family violence. In addition, they should fully inform their clients on all available processes and advise them based on the facts of their situation. The blanket duty on legal advisers proposed in section 33.2(2) to 'encourage' an alternative dispute resolution process may put abused partners and/or children at risk of family violence.

Recommendation #13: Include a duty to screen for family violence and inform clients on all available processes.

Section 33.2

Duty to discuss and inform

(2) It is the duty of every legal adviser who undertakes to act on a person's behalf in any proceeding under this Part

(a) to assess whether family violence may be present, using an accredited family violence screening tool, and the extent to which the family violence may adversely affect

(a)the safety of the party or a family member of that party, and

(b)the ability of the party to negotiate a fair agreement.

(a.1) to inform the person of all the available processes to resolve the matters that may be the subject of an order under this Part, including alternative dispute resolution processes.

EDUCATION

Misunderstandings and misconceptions about family violence and gender equality continue to cause problems in family court proceedings. The successful implementation of Bill 207 will depend on providing legal advisers and decision makers with education and resources to ensure they understand the complexities of family violence and have access to training on appropriate use of

family violence screening tools so they can take family violence into consideration at every stage of family court proceedings.

Recommendation #14: Under Duties, include an education requirement for all those involved in the family court proceedings.

Education

33.2 (4) Family law services, courts, and legal advisers must complete family violence and family violence assessment training and practice requirements set out in the regulations.

FUNDING

Many of the issues women face in family court are triggered or exacerbated by a lack of resources required to face an onerous and complex system. In this context, it is also important to recognize that women are often less financially secure than men, and financial imbalances between former partners increase women's vulnerability. Bill 207 as well as our recommendations are much less likely to have the desired positive impacts on women, and on poor women particularly, if the positive changes reflected in the Bill are not accompanied by serious investments in legal aid funding of family courts.

Recommendation #15: Under a scheme to be set out in regulations, provide that the provincial government allocate adequate funding to Legal Aid Ontario to ensure sufficient levels of funding for family law.