



OBA Submission on Bill 207,
Moving Ontario Family Law Forward Act, 2020

Submitted to: The Standing Committee on
Justice Policy

Submitted by: Ontario Bar Association

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BAR ASSOCIATION
A Branch of the
Canadian Bar Association

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Introduction

The Ontario Bar Association (“**OBA**”) appreciates the opportunity to provide this submission to the Standing Committee on Justice Policy with respect to Schedule 1 of Bill 207, *Moving Ontario Family Law Forward Act, 2020* (“Bill 207”).

The Ontario Bar Association

Established in 1907, the OBA is the largest volunteer lawyer association in Ontario, with over 16,000 members who practice on the frontlines of the justice system and who provide services to people and businesses in virtually every area of law in every part of the province.

Each year, through the work of our 40 practice sections, the OBA provides advice to assist legislators and other key decision-makers in the interests of both the profession and the public, and delivers over 325 in-person and on-line professional development programs to an audience of over 12,000 lawyers, judges, students and professors.

This submission was prepared by members of the OBA Family Law Section (the “Section”), which has approximately 230 lawyers who are leading experts in family law. OBA members participating in this submission include lawyers who represent a wide range of clients within the family justice system, with significant expertise in provincial and federal family law legislation.

Overview

The OBA has been a strong advocate for changes that streamline and remove barriers to the family law system to increase the public's access to the help they need from lawyers. The OBA commends the Attorney General for seeking to offer clarity and equal application of laws to married and non-married spouses by responding to our call for consistency between provincial and federal laws through Bill 207.



Changes to the Federal *Divorce Act* (Bill C-78)

Amendments to the Federal *Divorce Act* introduced in Bill C-78, and scheduled to come into force in March 2021, were strongly supported by organizations representing members of the legal profession, such as the Canadian Bar Association, our national organization. Significant submissions and debate went into Bill C-78. In the House of Commons, the Standing Committee on Justice and Human Rights heard from 54 witnesses and considered 53 briefs submitted by a variety of organizations and individuals. In the Senate, the Standing Senate Committee on Legal and Constitutional Affairs also considered briefs and heard from numerous witnesses from various organizations and individuals, including the Minister of Justice and the Attorney General of Canada, the Ontario Chapter of the Association of Family and Conciliation Courts, legal academics and practitioners, and representatives from shelters serving women and children affected by violence.

The House made relatively minor amendments and the Senate made no amendments after hearing from the witnesses and considering the views from a diverse range of interested organizations and individuals on how various groups would be impacted by the Bill.

The OBA's position is that these *Divorce Act* amendments represent a fair balance of the numerous and sometimes competing interests advanced by the various stakeholders.

Without action by the provincial government, the implementation of Bill C-78 in March 2021 will impact provincial legislation in two ways: (a) creating inconsistencies between federal law and provincial law; and (b) creating voids in provincial law for matters that exist in federal law.

The Need for Consistency

Schedule 1 of Bill 207, if passed, will largely incorporate the *Divorce Act* changes into Ontario's *Children's Law Reform Act* (CLRA). The OBA strongly supports this alignment



between federal and provincial legislation based on (1) our general support for the Bill C-78 amendments; and (2) our strongly held view that inconsistencies between federal and provincial law on these issues are not in the best interests of families.

The benefits of having consistent provincial and federal legislation relate primarily to:

- Ensuring that the same laws apply to children of married spouses (generally guided by federal law) and to children of non-married spouses (guided by provincial law); and
- Creating clarity for the public, the legal profession, and third parties who are involved in and affected by family law.

These changes will help to modernize family legislation by providing further clarity around and promoting the best interests of the child, updating parenting terminology, better addressing family violence, and encouraging the use of family dispute resolution processes where appropriate.

Amendments Needed

The OBA recommends two important amendments to Bill 207, as detailed below.

Definition of “Child”

The definition of “child” in the proposed section 18(3) of the *CLRA* is limited to a child who is a minor.

This definition is inconsistent with the definition of “child” in the *Divorce Act* and the provincial *Family Law Act* for child support purposes. The *Divorce Act* defines a “child of the marriage” as:

a child of two spouses or former spouses who, at the material time,
(a) is under the age of majority and who has not withdrawn from their charge, or



(b) is the age of majority or over and under their charge but unable, by reason of illness, disability or other cause, to withdraw from their charge or to obtain the necessities of life

For the purposes of child support, the *Family Law Act* applies in respect of a child who:

- (a) is a minor;
- (b) is enrolled in a full-time program of education; or
- (c) is unable by reason of illness, disability or other cause to withdraw from the charge of his or her parents.

In fact, the *Family Law Act* provision was amended after a Constitutional challenge was brought alleging the *Family Law Act* discriminated against children with disabilities of unmarried spouses since it did not provide for support for these children when they are no longer minors as is the case with the *Divorce Act*.

The current proposed limited definition of “child” in Bill 207 will cause a similar distinction and unequal treatment between unmarried and married spouses where there is a child with a disability who is at or over the age of majority. Unmarried spouses would be required to turn to a completely different legal regime.

The OBA recommends the following amendment to the definition of “child” in the proposed section 18(3) of the CLRA:

Child

(3) A reference in this Part to a child is a reference to the child who:

(a) is a minor; or

(b) is unable by reason of illness, disability or other cause to withdraw from the charge of his or her parents.

Proposed Amendment to Section 47 of the *Family Law Act*

Section 28(3) of Schedule 1 proposes to replace language referencing an “application for custody” in section 47 of the *Family Law Act* with an “application for a parenting order respecting decision-making responsibility”.



Section 47 of the *Family Law Act* permits the Court to direct that a support application stand over until the parenting matters have been determined. This is important because under section 9 of the *Child Support Guidelines*, the division of parenting time can impact the calculation of child support.

It is critical that the Bill 207 amendment permits the Court to direct that a support application stand over until parenting time has been determined, not only decision-making responsibility.

It would be sufficient to amend this provision to specify an “application for a parenting order”, without specifically referencing decision-making responsibility and parenting time, since both are captured in the definition of “parenting order”.

The OBA recommends the following amendment to section 28(3) of Schedule 1:

(3) Section 47 of the Act is repealed and the following substituted:

Application under Children’s Law Reform Act

47 The court may direct that an application for support stand over until an application under the Children’s Law Reform Act for a parenting order ~~respecting decision-making responsibility~~ has been determined.

Conclusion

Once again, the OBA appreciates the opportunity to provide this submission to the Standing Committee on Justice Policy with respect to Schedule 1 of Bill 207, *Moving Ontario Family Law Forward Act, 2020*.