

**Submission by the Barbra Schlifer Commemorative Clinic
on
Bill 207: Moving Ontario Family Law Forward Act, 2020
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**

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Introduction

The Barbra Schlifer Commemorative Clinic ("the Clinic") is the only Clinic of its kind in Canada, providing specialized services for women who have experienced violence. Since 1985, the Clinic has developed extensive experience and expertise serving and representing women who have experienced intimate partner or "domestic" violence. This expertise has been the foundation for a vigorous history of advocacy on all issues of violence against women. The Clinic also works on various law reform activities, both within Canada and internationally, consulting with all government levels on policy and legislative initiatives that impact female survivors of gender-based violence. Based in Toronto, the Clinic has assisted more than 80,000 women. Last year we worked with 9,000 women, with more than 2,000 receiving legal services in the areas of family, immigration and sexual assault.

The Clinic's Interest in Bill 207

The Clinic thanks the Standing Committee on Justice Policy for welcoming feedback on Bill 207. Family law is a significant focus of the Clinic's work, including legal advice and representation as well as support through the court process at Toronto's three family courts. We assist women with such family law issues as applications for Restraining Orders, orders regarding child custody and access, as well as child support.

The Clinic welcomes many of the changes proposed in Bill 207. Many of the proposed amendments to the *Children's Law Reform Act* ("CLRA")¹ will promote access to justice for many women in Ontario through consistency with many positive amendments in the *Divorce Act*².

¹ *Children's Law Reform Act*, RSO 1990, c C.12.

² *Divorce Act*, RSC 1985, c 3, amendments coming into force on March 1, 2021.

Specifically, the Clinic supports the broader definition of family violence in Section 18(2) and the mandatory consideration of family violence when the Court is considering the best interests of the child in Section 24(4). The Clinic hopes the following considerations will further strengthen the reforms to Ontario's family law system for the safety of women and children.

Presumption of Equal Parenting Time in Situations of Family Violence

We are concerned that there continues to be a presumption that allows an abusive parent to be granted unsupervised access to the children of the relationship. The Clinic believes that this presumption is contrary to the best interests of the children and the abused parent, individually, and also because the safety of children and their mother are inextricably linked.

Proposed Section 24(5) of the *CLRA*, as set out in Bill 207 states that:

In determining what is in the best interests of the child, the Court shall not take into consideration the past conduct of any person, unless the conduct is relevant to the exercise of the person's decision-making responsibility, parenting time or contact with respect to the child.

The Clinic submits that the section should more expressly direct the Court to consider the past conduct of a parent whose behaviour constitutes family violence, when determining the best interests of the child. We believe that when Section 24(5) is read together with Section 20(1), which presumes that each parent is equally entitled to have custody of a child post-separation, the need to expressly consider past family violence when determining the best interests of the child is imperative. Furthermore, Section 28(6) that gives a parent exclusive authority over day-to-day decisions during their parenting time heightens the risk of abuse of children and their

abused mothers if past family violence has not been expressly considered. We believe that the statute should expressly state that past family violence must be considered when considering the best interests of the child to prevent the possibility of future harm should an abusive parent manipulate the children, contradict the decisions of the other parent, or disregard the parenting schedule as a further means of abuse.

Focusing on Experiences of Racialized Communities

A study by the Children's Aid Society of Toronto determined that there is a disproportionate number of Black families involved in the child protection system and receiving services from a child protection agency.³ Systemic discrimination is also dire for Indigenous communities in Ontario. While Indigenous peoples are 4.1% of the population, Indigenous children represent about 30% of all foster care children.⁴ The Clinic is concerned that Bill 207 does not adequately address this systemic problem and should expressly include language that recognizes the different and intersecting impacts of the family law system on Black and Indigenous women and children.

Recent amendments to Ontario's child protection legislation, the *Child, Youth and Family Services Act*, directly acknowledge that race, ancestry, ethnic origin, and family diversity must be considered when providing services in the best interests and well-being of children.⁵ We believe similar language should be incorporated into Bill 207 to acknowledge the unique

³ Children's Aid Society of Toronto, "Addressing Disproportionality, Disparity and Discrimination in Child Welfare" (July 2015) <<https://www.torontocas.ca/sites/torontocas/files/baccc-final-website-posting.pdf>>.

⁴ Ontario Human Rights Commission, "Interrupted childhoods: Over-representation of Indigenous and Black children in Ontario child welfare" (February 2018) OHRC <<http://www.ohrc.on.ca/en/interrupted-childhoods#4.1.Indigenous%20children>>.

⁵ *Child, Youth and Family Services Act*, 2017 SO 2017, c 14, Sched. 1, s. 1(2)(3)(iii).

experience of Black and Indigenous families when determining parenting and the best interests of the child.

Risk Assessment

The Clinic submits that risk assessment must be a focal point at every stage of the family law process. Our decades of experience working in the violence against women sector, alongside research, show that the most dangerous time for a woman experiencing violence is leaving the abusive relationship. Women are nearly six times more likely to be killed by a legally separated partner than a current partner.⁶ Although one in seven female victims of spousal violence in Canada obtained a Restraining Order,⁷ one-third of those women said that the Restraining Order terms were breached.⁸ Partner violence does not stop after separation. The family law process is often used by abusive partners to manipulate and assert power and control over women.

The risk of violence and death increases at the time leading to and after separation.⁹

Courts, Judges, and lawyers must all understand that risk assessments must be conducted throughout the course of family law proceedings as situations, risks and triggers may change. The Clinic further submits that violence is not always visible. Many women are silenced by their ex-partners out of fear and may not disclose to lawyers or the Court that violence occurs. Cases

⁶ Maire Sinha, "Family violence in Canada: A statistical profile, 2011" (25 June 2013) at 43 *Statistics Canada* <<https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2013001/article/11805-eng.pdf?st=GR9Z-Gst>>.

⁷ Maire Sinha, "Measuring violence against women: Statistical trends" (25 February 2013) at 99 *Statistics Canada* <<https://www150.statcan.gc.ca/n1/pub/85-002-x/2013001/article/11766-eng.pdf>>.

⁸ *Ibid.*

⁹ Office of the Chief Coroner Province of Ontario, "Domestic Violence Death Review Committee 2018 Annual Report" (December 2019) at 5 and 14-15, *Ontario Ministry of the Solicitor General: Office of the Chief Coroner* <<https://www.mcscs.jus.gov.on.ca/sites/default/files/content/mcscs/docs/DVDRC%202018%20Annual%20Report.pdf>>.

like these make it even more important for all family law professionals to thoroughly screen for violence and carry out effective and practical risk assessments.

More Use of Gender-Based Language

The Clinic commends the approach to family violence in Bill 207, which provides a broader and more nuanced understanding of family violence and how it can manifest. The Clinic is concerned, however, that the Bill lacks gendered language. While the wording of Bill 207 attempts to address multiple forms of abuse, it does not acknowledge that the majority of victims who face abuse are women and gender non-conforming persons¹⁰ and that family violence is most often perpetrated by men.¹¹ We believe it is important for Bill 207 to contextualize and center the interests of women and their children so that legal practitioners, the judiciary, and the general public better understand the purpose of these amendments and how to best interpret the law. This will then ensure better decision-making and more consistency across the legal landscape.

Importance of Specialized Legal Services

In the Clinic's view, Bill 207 should expressly acknowledge the importance of specialized legal services to women and gender non-conforming persons. Specialized legal services for survivors of domestic and intimate partner violence provide a trauma-informed, intersectional, and holistic approach to the delivery of legal services. Women and gender non-conforming persons are better served in an environment with this specialized expertise that can provide assistance with their legal issues, as well as connect them to other resources including but not limited to:

¹⁰ *Supra* note 8 at 11.

¹¹ *Supra* note 8 at 8.

counselling services, safety planning and risk assessment, legal education, and referrals to community-based services for food security, child care, healthcare and much more. Specialized legal services assess and can holistically provide services to address the collateral consequences of family law issues. Many of the Clinic's clients also experience criminal law, immigration law, and housing issues that we are equipped and experienced to handle under one roof. Survivors of intimate partner and domestic violence have suffered trauma. They may experience referral fatigue if they are being sent to numerous agencies to deal with one issue at a time. The legislation should make explicit recognition of the value of specialized services in better serving survivors of violence and how they are on the front lines of client work and creating structural change to improve the lives of women facing violence and their families.

Concluding Remarks

We thank the Standing Committee on Justice Policy for the opportunity to provide submissions on Bill 207. The Clinic believes that the considerations discussed above for: 1) challenging the presumption of equal parenting; 2) including consideration of race and Indigenous background in the *CLRA*; 3) imposing mandatory risk assessments; 4) including gendered language and 5) acknowledging the importance of specialized legal services will improve the family law system in Ontario by promoting safety, equality and access to justice for all women and their families. The Clinic commends and supports many of the proposed amendments. We would welcome the opportunity to discuss our concerns further and make more specific recommendations in response to the Bill.