



www.themfla.com

EMAIL hjenkins@harrisonpensa.com

Delivered By E-Mail: amanda.iarusso@ontario.ca

January 17, 2020

Amanda Iarusso
Senior Policy and Legal Affairs Advisor
Ministry of the Attorney General
McMurtry-Scott Building
720 Bay Street, 11th floor
Toronto, Ontario
M7A 2S9

Dear Ms. Iarusso:

Re: Submission re: Bill C-78 and Ontario Legislation

We are an organization of approximately 90 family law lawyers practising in the County of Middlesex. The purpose of this letter is to set out the position of our members in response to the Attorney General's request for the Federation of Ontario Law Associations to provide feedback to the proposal to incorporate the changes to the *Divorce Act* under Federal Bill C-78 into Ontario legislation.

We circulated a copy of Bill C-78 and invited all members interested to provide feedback. We also held a meeting wherein those opinions were discussed in greater detail. In general, it is the position of our members that the federal and provincial legislation should be consistent and that legislation that works in conjunction with Family Law Orders should also be consistent to ensure that the legislation is user friendly and consumer focused.

Changing References to Child Custody and Access

Our members advised that it was their position that the terminology used for parenting terms should be consistent in both the provincial and federal legislation. If the terminology was not consistent, it could lead to the parenting terms of Orders having the perception of having a different meaning, depending on which legislation the Order was made pursuant to. Some of our members indicated that they had already begun to use the term "decision-making" rather than "custody" as it reduced perceptions of favouring one parent and generally reduced conflict. Our membership also identified that the judiciary may take issue with Orders that refer to "decision-

making” that are made pursuant to the *Children’s Law Reform Act* if “decision-making” is not included in the legislation.

A concern raised by our membership is how Family Law legislation will work with intersecting legislation and services. For example, when parents enroll their children in school, they must advise the school what the custodia arrangement is in place (i.e. if they have sole custody, joint custody or if the other parent has sole custody). There are similar requirements when applying for passports and other legal documentation. Further, the *Income Tax Act* has definitions related to custody and parenting time and requirements related to parents and their ability to claim the Child Tax Benefits and to claim the children as eligible dependants.

Our membership identified that there needs to be better education both for the public and for service providers so that the legislation is “user friendly” for parents. Our membership was also concerned that parents may be placed in situations where they have to provide their entire Court Order to a service provider, school, etc. to provide clarity as to who can make a decision. Family Court orders may contain information that the parties do not want shared, for example, income information, division of property, etc.

There was a consensus within the membership that changes in the legislation would represent an opportunity to provide comprehensive public education. The inconsistency between intersecting legislation (for example, the *Children’s Law Reform Act* and the *Income Tax Act*) make it difficult and confusing for the public who have to navigate and interpret how the legislation applies to their Orders after the Court process has concluded.

Adding New Requirements in Relation to Family Dispute Resolution

While our membership is very supportive of dispute resolution, there was some concern about the requirement for dispute resolution being in conflict with the voluntary nature of mediation. Mediation is not fruitful if the parties do not wish to participate.

Amending/Expanding the Best Interests of the Child Test

As previously stated, it was the general opinion of our membership that the legislation should be consistent and it was noted that if the test in one legislation is more comprehensive than it is likely that jurisprudence under the other legislation would effectively apply the same test.

New Definition in Relation to Family Violence/ Legislative Test for Child Relocation

Our membership generally had a favourable perspective with respect to providing definitions in relation to family violence. Our membership distinguished situational violence and systemic abuse and how the two scenarios may differently impact an individual’s parenting. It was noted that if there was abusive behaviour, particularly if it continued after separation, it would likely impact parenting. Our membership agreed that the Court should consider violence when determining if parents can cooperate on parenting issues and if they can communicate effectively.

It would also be beneficial to codifying violence. Some of our members voiced the opinion that allegations of domestic violence and broad allegations of “abuse” are being over pled and that the legislation providing guiding principles as to how the Court was to consider family violence would be a helpful benchmark for both family law litigants and the judiciary.

Our membership was similarly happy to include a legislative test for relocation as it will likely assist parties and the Court. However, it was identified that test of “significant impact on the child’s relationship” is a vague definition and it is likely to applied differently based on the parties’ residences (for example, parties who reside in a small town compare to a larger center) and that the circumstances of the parties. Our membership agreed that it would likely be up to the Courts to determine how the test would be applied on a case-by-case basis.

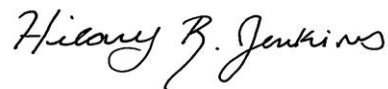
Thank you for allowing us the opportunity to express our concerns and suggestions, which we hope you will take into serious consideration.

The feedback and consultation process with our members was undertaken in consultation with the Middlesex Law Association, as members from both organizations have expressed similar concerns with respect to the expansion of paralegal services into the area of family law. It is our understanding that the Middlesex Law Association may be preparing a similar submission.

Yours truly,

Middlesex Family Lawyers’ Association

Per:

A handwritten signature in cursive script that reads "Hilary B. Jenkins".

Hilary Jenkins (Middlesex Family Law Association Member)

cc. Jennifer Wall (Middlesex Law Association, by e-mail)