

consideration and safeguards that are noted in the UNCRC, both broadly and specifically, in the articles and in the comments.

Thank you for the opportunity to present our perspective, and we welcome any questions.

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The Chair:



Anthony Housefather

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Thank you very much.

Now we'll go to Mr. Ludmer.

[Expand]

Mr. Brian Ludmer (Advisory Counsel, Canadian Association for Equality):

Thank you very much, and thanks for having me.

I'm a co-founder with Mr. Colman of Lawyers for Shared Parenting, and I'm here today on behalf of the Canadian Association for Equality.

In 2014, I participated in the drafting of Bill C-560. I was the one who came up with the operative language of a presumption, unless it could be established on evidence that the needs of the children would be substantially enhanced by a different parenting plan. That remains, in my view and the view of many you're hearing from, how to advance the best interests of children.

The fact of the matter is that adding a list of other criteria and continuing to hear about a unique and individualized approach in each case will subject the children of this country to a continuation of the litigious environment that results in the conflict that all the studies say is the principle damage to the children. They won't be damaged by equal parenting. They're damaged by the conflict over two parents, one of whom wishes to be the primary parent, hence the litigation, and the other one who is willing to share the child and co-parent.

In a sense, while you've heard from an organization representing 36,000 lawyers, you should hear from your constituents.

For over 20 years, public opinion poll after public opinion poll has reiterated that the Canadian public has a terrible experience with the current system, and that is on par with public opinion polls across North America. The current system does not work to advance the best interests of children. It says that's the goal, but in practice, if you're a family lawyer seeing what happens

out there, the current system damages children. It forces parents to triangulate the children. It causes conflict. It is maintained at immense cost, billions and billions of dollars.

There is no science that substantiates that anybody, including a judge, can say that a particular parent should see the children 37.2% of the time. The only science...and I'll differ from Ms. Landau on this. Peer-reviewed journal research, very robust, almost indisputable, and ratified by experts from around the world, substantiates that the closer you get to two primary parents after separation, the better the outcome for children. That research is thorough and cannot be minimized on sample sizes. You have to see it yourself.

The committee is getting submissions from Professor Fabricius, who drafted Arizona's legislation, from Professor Kruk and from Professor Nielsen. The joint submission of which CAFE is a part also highlights some of the leading research.

The current system is built on a series of assumptions that don't play out in real life. It produces arbitrary results depending on what judge you get, what their background is, and the day. Are they young? Are they from an urban centre? Is your case being litigated in the countryside? Which province is your case being litigated in? Those produce arbitrary results that are contrary to the goals of the legislation.

The legislation is premised, and you can tell that from the presentations you've heard today, on all the facts getting before the court and a judge somehow having the ability, in a three-day trial or a four-day trial, to figure it out.

In practice, it's not what happens. Budgets are limited. Over half of family law litigants are self-represented. When people represent themselves against a lawyer, the true family saga will never make it to the judge. Judges themselves, when they are polled and when commissions and studies are done, say they also doubt about whether they're getting it right. There are no retrospective studies of families coming through the system to determine whether today's system is working or not. Look at child outcomes three years out or five years out. The only science that's there supports equal shared parenting.

In terms of public opinion, over half or close to half of families today will get separated, so you're talking over 10 million people who will be affected, and millions and millions of children. Their actual experience with today's system trumps the experience of 36,000 lawyers.

(1605)

For 20 years the public has been telling us it's not working. You're either going through a separation yourself, or a sibling or a cousin or a best friend is. No one is satisfied with the current system.

The proposed changes in Bill C-78—the technical ones—are pretty good. You can't argue with a lot of the stuff that's there, but it was put forward as a means of advancing the best interests of children, and it fails to make any fundamental change. If you start with a system that's broken, because it's built on a series of failed assumptions, you can't rescue it with technical language. You have to try to understand the better way to do it.

If you have a rebuttable presumption of equal shared parenting.... Domestic violence issues live harmoniously today with the maximum contact principle. It doesn't stand in the way and doesn't impact on that. Same with equal shared parenting—it can live harmoniously with provisions designed to capture and separate situations where that's a concern, like alcoholism or absenteeism or a parent who is an investment banker travelling all the time.

Equal shared parenting is not for everyone, but it is for about 90% to 95% of the families who litigate. When you look at what they're asking for, they're close, but one wants to be the primary parent. We taxpayers of Canada are all paying for that. It's a very expensive system with no science to determine that it produces optimum results or even results that can justify the cost. The only science and the views of the public who live with the system.... The true experts are the public. They really don't like it and they don't like it right across North America.

There are currently proposals for equal shared parenting in at least half the States. Kentucky has introduced the first true rebuttable presumption of equal parenting. The public opinion polls and the experiences are great. Arizona had something similar about four or five years ago, and from all their polling and the results since, everybody's happy with it. Australia has been put forward as an example but maybe that's not the case. That's not what happened there. There was no problem with the equal parenting. There was a political dynamic.

No matter how you look at it, there's no meat, no evidence behind the objections to equal parenting, and there's so much for it. It will save our children from conflict, it will accord with the will of the public—that's why we're here—and it will fit the science.

I will have a printed presentation. It will be filed within the next day or two, and then I know it has to be translated, but I'll respect the time allotment today and any questions you have.

(1610)

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The Chair:



Anthony Housefather

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Thank you very much.

It's a pleasure to hear from all the witnesses. All of you were very helpful, and I appreciate the recommendations you offered, which is what we really want to hear.

We'll now go to Mr. Cooper.

[Collapse]

Mr. Michael Cooper (St. Albert—Edmonton, CPC):



Michael Cooper

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Thank you, Mr. Chair.

Thank you, witnesses.

Mr. Ludmer, I'm interested in the comments you made about the arbitrary decisions that are made from judge to judge, from province to province. Are you able to elaborate on some of the differences that you see from jurisdiction to jurisdiction? In other words, perhaps in Alberta you might be more likely to have a shared parenting arrangement than in British Columbia. I don't know. Could you comment on that?

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Mr. Brian Ludmer:

Brian Ludmer

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Certainly. Thank you for that.

Canada has some fairly robust jurisprudence because the provinces will look at other provinces' jurisprudence, but there is no doubt that certain provinces like Ontario have a much more well-developed body of law on equal parenting, with the application of the maximum contact principle to its ultimate end. In other provinces, it's very thin.

It shouldn't depend on where the family lives to get that benefit. Urban centres versus rural centres—in rural centres, sometimes there's only one or two judges in a centre, and you don't get diversity of views. They may be of a prior generation, prior to the latest social science research, or they haven't been trained in what we now know today.

Ultimately, the biggest arbitrariness is whether you're represented or not.

[Collapse]

Mr. Michael Cooper:



Michael Cooper

Caucus: Conservative

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Thank you for that.

Ms. Landau and Ms.—

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Dr. Barbara Landau:

Barbara Landau

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It's Dr. Landau.

[Expand]

Mr. Michael Cooper:

In any event, I'll be sure to refer to you by that.

Both of those witnesses made references to a lack of an individual assessment based upon a rebuttable presumption.

Could you comment on that? To me, it seems to not make a lot of sense.

[Collapse]

Mr. Brian Ludmer:

Brian Ludmer

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There still is an individual assessment, but it's put in proper context.

The state doesn't get involved with families, absent child protection concerns, when the family is intact. When a family separates, you don't have to micromanage it and do a whole university thesis on the family for the purposes of studying everything. The evidence, the public's views and the social science world tell us that if you have a normal parent who loves their children and is prepared to devote the time, that's basically all you need. You don't have to micromanage it and, as I say, get down to that detail. If there's anything material, if there's a child who has special needs, that's why it's a rebuttable presumption. A particular parent may have to go and get some training, maybe it's a health need....

Those cases, where there's something of individual focus, present themselves quite easily and are dealt with quite easily.

[\[Collapse\]](#)**Mr. Michael Cooper:****Michael Cooper**

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Could you address the concern that was raised—and I think you did touch on it a bit—about weeding out instances where domestic violence is at play? The suggestion was made that the rebuttable presumption would somehow result in overlooking domestic violence. Can you comment on that?

You did rightfully point out that under the current bill and the current Divorce Act, in fact, there is maximum parenting time that the court is required to consider. But surely you're not ordering maximum parenting time to parents who are unfit.

[\[Collapse\]](#)**Mr. Brian Ludmer:****Brian Ludmer**[View this Video](#)**Discussed Topics**[Families and children](#) [Marriage and divorce](#)

You're correct, Mr. Cooper.

You've effectively answered the question. One has nothing to do with the other. That's why the presumption is rebuttable. If there's some meat, if there's some proven allegation that has concerns for the future, that family won't have equal parenting. It's no different from today, where, instead of a presumption of equal parenting, it's a maximum contact presumption.

(1615)[\[Collapse\]](#)**Mr. Michael Cooper:****Michael Cooper**

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Dr. Landau made reference to social science data that she said was incomplete, had small samples, is biased and isn't reliable.

You made general reference to some of the social science evidence, but I would invite you to put on the record some of the social science evidence that you suggest supports the rebuttable presumption.

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Sure.

Professor Linda Nielsen at Wake Forest University has done a series of meta-analyses for many years—studies of studies—and those are now up to about 60 that she tracks from peer-reviewed journals around the world. The overwhelming majority, and I mean something like 55-plus of the 60 peer-reviewed studies, support equal parenting scientifically.

Richard Warshak of Texas, a well-known psychologist, has a study that he did in 2014, updated in 2018, that 110 leading psychologists from around the world have concurred in.

Professor William Fabricius of Arizona State University, who I mentioned, has written 30 peer-reviewed papers, speaks around the world, and is involved with the International Council on Shared Parenting. He has drafted Arizona's legislation, and then was hired to do the follow-up study.

These are people of international reputation and it's all high-level, peer-reviewed journals. I don't accept any assertion that there is not robust science about equal parenting.

[\[Collapse\]](#)**Mr. Michael Cooper:****Michael Cooper**

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Thank you.

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The Chair:**Anthony Housefather**

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Mr. McKinnon.

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Mr. Ron McKinnon (Coquitlam—Port Coquitlam, Lib.):**Ron McKinnon**

Caucus: Liberal

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Thank you, Chair.

I guess I'll stick with Mr. Ludmer for the moment.

You mentioned peer-reviewed studies that cite that if the child can have two parents the better off the child will be, and that many studies speak of the virtue of shared parenting. I wouldn't disagree with that, but it's a far cry from that to presume in any given case that there is a circumstance of equal parenting.

This bill is founded on the principle of the best interests of the child. What's wrong with starting from that point and evaluating the circumstances as they play out?

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Because you'll have a continuation of the current system of non-stop litigation bankrupting families, continuing to drain tens of billions of dollars of taxpayer money to fund a system for people to litigate over children.

The point of a rebuttable presumption is the flip. You start with the scientific view and the view of the public. Remember what the public wants. You start with that view and say, unless it's disproved, we can be pretty comfortable that it will be okay. It'll be in the children's best interests. That's what the science tells us.

We don't need to worry and do these huge expensive studies. The average family can't afford a two-week trial. The public can't afford all these conflictual families to have two-week trials, so we say we know they're going to be fine. We can't do any damage with equal shared parenting for a normal family.

[\[Collapse\]](#)**Mr. Ron McKinnon:****Ron McKinnon**

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I guess that's the problem with that hypothesis. We don't know that it's a normal family. If it's not, it seems to be a harmful presumption.

If you could answer that quickly, then I'd like to pass it over to Dr. Landau and—

[\[Collapse\]](#)**Mr. Brian Ludmer:**

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I'll rephrase the question. How do we know it's a normal family? How can we be comfortable?

The types of abnormalities that would impact on parenting time are starkly obvious. A very broad range of parenting produces healthy children. Your average person, if they love their children, if they try hard, if they're there for their children, do a little reading, they're normal. Any abnormalities will stick out like a sore thumb. It is that group of people—the vast majority of our population—that we say the exercise, the cost, the conflict, the stress on the children, is not worth the upside, because the end result might be that you don't get 50% but you get 37.2%. However, if you're not normal, you'll still damage the children.

(1620)[\[Collapse\]](#)**Mr. Ron McKinnon:****Ron McKinnon**

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Thank you.

We'll let Dr. Landau, Ms. Rauch and Ms. Del Rizzo respond, if they would.

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My understanding is that in Australia and in all the states that tried the presumption of shared parenting, they withdrew it. Only Kentucky continues to have that presumption.

Since the last time we reformed the Divorce Act, we've had a lot more encouragement of alternative dispute resolution and of professionals to screen for domestic violence. The result has been a tremendous increase in shared parenting, co-operatively among parents. There is nothing to prevent parents from working out an arrangement of equal parenting if that makes sense to them in their circumstances. Parents have gone from almost a minimal involvement of fathers to a far greater increase in fathers' involvement in the last 30 years. That's been a good thing, and it's largely been the result of consensual dispute resolution in cases that warrant it.

When we talk about the idea of all these trials, only 1% to 2% of family cases end up in trials, but they do spend an awfully long time and a lot of wasted money working their way through the court system. What I really like about this legislation is that it does put a focus on concern about safety and if you manage to get over that hurdle, encouraging people to use consensual dispute resolution results in lots of sharing, but sharing based on the unique circumstances of the family. What's the availability of both parents, based on their work schedule? What's the age of the children? Do they have mental health or addiction issues that need to be addressed? Do they have special needs children? It works out a parenting plan that is unique for the family.

[Collapse]

Mr. Ron McKinnon:



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What's wrong with the idea of presuming equal parenting, shared parenting, and having to prove otherwise?

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Dr. Barbara Landau:**Barbara Landau**[View this Video](#)**Discussed Topics**[Families and children](#)[Marriage and divorce](#)

I think we have sufficient.... I think the very fact that this legislation has encouraged so much of a focus on safety and well-being shows we have some serious concerns.

Some 20 to 30 years ago in the House of Commons, they laughed at the issue of domestic violence. We don't laugh anymore. We take it seriously, and we also take seriously the experience and the ability and the motivation of people to parent, and encourage them to work out their own plans. I would emphasize mandatory information sessions for parents early on where they learn what a parenting plan is, how to address the different topics that are now in this legislation and about things that will reduce their conflict. Then I think the outcome will be far more sharing of parenting, of responsibilities, not the fighting over labels, which you've gotten rid of in this bill.

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Could we get a quick answer from the CBA?

[\[Collapse\]](#)**Ms. Melanie Del Rizzo:**