SP-25

ISSN 1710-9477

Legislative Assembly of Ontario

First Session, 39th Parliament

Assemblée législative de l'Ontario

Première session, 39e législature

Official Report of Debates (Hansard)

Tuesday 24 March 2009

Journal des débats (Hansard)

Mardi 24 mars 2009

Standing Committee on Social Policy

Comité permanent de la politique sociale

Family Statute Law Amendment Act, 2009

Loi de 2009 modifiant des lois en ce qui concerne le droit de la famille

Chair: Shafiq Qaadri
Clerk: Katch Koch

Président : Shafiq Qaadri
Greffier : Katch Koch

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

http://www.ontla.on.ca/

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario

Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON SOCIAL POLICY

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Tuesday 24 March 2009

Mardi 24 mars 2009

The committee met at 1602 in room 151.

FAMILY STATUTE LAW AMENDMENT ACT, 2009

LOI DE 2009 MODIFIANT DES LOIS EN CE QUI CONCERNE LE DROIT DE LA FAMILLE

Consideration of Bill 133, An Act to amend various Acts in relation to certain family law matters and to repeal the Domestic Violence Protection Act, 2000 / Projet de loi 133, Loi modifiant diverses lois en ce qui concerne des questions de droit de la famille et abrogeant la Loi de 2000 sur la protection contre la violence familiale.

Le Président (M. Shafiq Qaadri): Chers collègues, mesdames et messieurs, j'appelle à l'ordre la session de travail du Comité permanent de la politique sociale. Nous nous sommes réunis cet après-midi pour continuer nous audiences publiques sur le projet de loi 133, Loi modifiant diverses lois en ce qui concerne des questions de droit de la famille et abrogeant la Loi de 2000 sur la protection contre la violence familiale.

ACTION ONTARIENNE CONTRE LA VIOLENCE FAITE AUX FEMMES

Le Président (M. Shafiq Qaadri): En ce moment, je tiens à souhaiter la plus cordiale bienvenue à M^e^ Julie Lassonde de l'Action ontarienne contre la violence faite aux femmes. Je vous invite à prendre place à la table des témoins. Madame Lassonde, les règles sont très simples. Vous avez en total 20 minutes pour votre présentation et s'il reste du temps après votre intervention, les députés des trois partis politiques auront la chance de vous poser des questions.

Je vous demande de commencer par indiquer votre nom pour le Journal des débats, et le plancher est à vous. Bienvenue et commencez.

M^me^ Julie Lassonde: Bonjour, et merci infiniment de me donner l'occasion d'intervenir à l'Assemblée législative de l'Ontario en français. Ça me permet d'exercer mes droits en tant que francophone selon la Loi sur les services en français; je l'apprécie.

J'interviens aujourd'hui au nom de l'Action ontarienne contre la violence faite aux femmes. L'Action ontarienne est une organisation qui a été créée en 1988 et qui regroupe une vingtaine d'organismes qui aident les femmes qui sont aux prises avec une situation de violence. L'Action ontarienne a fêté ses 20 ans à l'automne passé.

J'ai six points principaux à vous communiquer aujourd'hui, donc je vous les résume très brièvement.

D'abord, l'Action ontarienne appuie le projet de loi 133. Deuxièmement, la protection des femmes francophones passe par l'accès aux services en français. Troisièmement, je vais faire des commentaires sur les ordonnances de ne pas faire, sur les ordonnances relatives à la conduite des parties, ensuite, sur les droits de garde, et finalement sur l'amélioration de la version française des lois.

Donc, je passe au premier point tout de suite. L'Action ontarienne est heureuse d'appuyer le projet de loi 133 et considère que ce projet de loi a le potentiel d'améliorer la situation de femmes qui craignent pour leur sécurité et qu'un plus grand nombre de femmes aura accès aux ordonnances de ne pas faire.

Je passe à mon deuxième point, qui porte sur la protection des femmes francophones en particulier et qui passe nécessairement par un meilleur accès aux services en français, ce que l'Action ontarienne considère doit toujours continuer à être amélioré.

Quelques exemples de situations auxquelles les femmes francophones font face : lorsqu'elles vivent des situations, par exemple, de violence conjugale, c'est tout simplement le délai dans les procédures, et on sait qu'en termes de violence conjugale, on n'a pas à tolérer de délai. Donc, en tant que femme francophone, on aimerait que cette situation soit améliorée.

Ensuite, il y a des femmes francophones qui sont un peu déconnectées de l'actualité en ce qui concerne la violence faite aux femmes, la violence conjugale, car il y a peu de médias francophones en Ontario.

Ensuite, certaines femmes peuvent vivre un certain isolement, si on veut. Il y a plusieurs femmes francophones qui vivent dans des petites communautés dans les milieux ruraux en Ontario.

Ensuite, il y a aussi la situation des femmes francophones nouvelles arrivantes en Ontario qui, qu'elles soient dans un milieu urbain ou rural, peuvent être un peu déconnectées des réseaux qui offrent des services en français.

Je passe à mon troisième point, qui est de commenter sur les ordonnances de ne pas faire, et j'ai quelques

commentaires à ce niveau-là. En général, les changements qui vont être apportés probablement à l'article 46 de la Loi sur le droit de la famille et à l'article 35 de la Loi portant réforme du droit de l'enfance sont jugés plutôt positifs par l'Action ontarienne. Cependant, l'Action ontarienne aimerait apporter certaines réserves par rapport au test des motifs raisonnables de crainte pour sa sécurité.

Donc, il y a des aspects positifs à ce test-là et des aspects peut-être plus négatifs. D'une part, le fait d'avoir un test explicite et de requérir des motifs raisonnables peut être une bonne chose parce que ça va amener les femmes à décrire leur situation plus en détail, et si on a plus de détail, peut-être qu'on comprend mieux la situation qu'elles vivent. D'autre part, l'idée d'amener la notion du « raisonnable » comporte le risque que cette notion du raisonnable ne sera pas tout à fait assez flexible pour répondre à tous les genres de situations de violence conjugale, et peut-être que les formes de violence conjugale sont un petit peu plus subtiles et moins visibles. Donc, on en vient à se demander ce qui va être considéré comme raisonnable dans ces situations-là.

Je vous donne un exemple concret. Prenons une femme qui vient de se séparer et elle va faire des courses au centre d'achats avec ses enfants. Elle sort du centre d'achats, ouvre la porte. Le conjoint est là avec des sacs d'épicerie et l'attend pour donner ça à elle et aux enfants. La femme qui vient de se séparer n'avait pas dit à son ex-conjoint qu'elle allait faire des courses au centre d'achats. De son point de vue à elle, elle se dit, « Mais qu'est-ce qui se passe ? Il me suit ? » et elle craint pour sa sécurité. D'autre part, l'homme en question explique qu'il arrivait tout simplement au centre d'achats, il a reconnu la voiture de son ex-conjointe et à ce moment-là il s'est dit qu'il allait lui faire une surprise et faire une bonne action en apportant de la nourriture pour ses enfants. Donc, de son point de vue, il voulait faire un geste positif. Qu'est-ce que le nouveau projet de loi va faire avec ce genre de situation-là? Est-ce que la situation de la femme qui, elle, se sent contrôlée d'une façon suivie—est-ce que ça va être jugé raisonnable ?

1610

C'est ce genre de question que soulève l'Action ontarienne, et nous sommes tout à fait en faveur des changements qu'apporte le projet de loi, en notant qu'il y a une bonne compréhension de la gamme des situations de violence conjugale auxquelles les femmes peuvent faire face.

Mon autre point sur les ordonnances de ne pas faire concerne les personnes qui sont visées par ce genre d'ordonnance. L'Action ontarienne trouve très positif que l'on veuille ouvrir la porte à pouvoir obtenir des ordonnance de ne pas faire contre des personnes avec qui les femmes cohabitent : autrement dit, des gens avec qui les femmes peuvent être dans des relations conjugales à court terme. On sait bien que la violence peut se produire pas seulement dans les relations à long terme ; elle peut se produire dans les relations à court terme. Donc, c'est tout à fait logique de faire en sorte que toutes les femmes aient la même protection.

Cependant, l'Action ontarienne évidemment aimerait peut-être que le projet de loi aille un peu plus loin. C'est-à-dire, on aimerait que le projet de loi s'étende même aux membres de la famille élargie ou aux personnes qui partagent le même toit. Une des raisons, c'est que la situation de plusieurs femmes francophones nouvellement arrivées au Canada est qu'elles ont des liens très serrés avec leur famille élargie. C'est un exemple ; elles ne sont pas les seules. Par contre, dans ces situations-là, les dynamiques de violence conjugale peuvent être renforcées par d'autres membres de la famille. Donc, il pourrait être intéressant qu'elles puissent obtenir une ordonnance contre ces personnes-là. On voit que dans la Loi portant réforme du droit de l'enfance, quelqu'un qui a la garde d'un enfant peut obtenir des ordonnances contre toute personne, tandis que dans la Loi sur le droit de la famille, ça peut seulement viser les conjoints, et, si le projet de loi passe, à ce moment-là aussi les personnes en relation à court terme. Je rappelle que c'est une très bonne chose, et ça doit rester dans le projet de loi, selon l'Action ontarienne.

Mon troisième point sur les ordonnances de ne pas faire, c'est concernant la criminalisation. Encore une fois, lorsqu'on pense à cela, du point de vue des nouvelles arrivantes en Ontario, ce ne sera pas un groupe qui aura tendance à voir très positivement des solutions qui impliquent plus de criminalisation, plus de contact avec la police. Elles vont peut-être avoir un peu de réticence à interagir de cette façon-là pour se protéger.

Par ailleurs, il est certain qu'il y a certains groupes de femmes qui vont continuer d'utiliser les ordonnances de ne pas faire, et, étant donné que l'un des problèmes avec ces ordonnances-là est de les faire respecter—parce que, bien entendu, si vous avez des ordonnances et elles ne sont pas respectées, ça ne sert à rien. Donc l'Action ontarienne encore une fois garde une vision positive de cette proposition, en ce sens qu'il y a certains groupes de femmes qui verront peut-être les bénéfices d'une criminalisation du non-respect des ordonnances, si ça fait en sorte qu'on voit ces ordonnances-là, qu'on les prend plus au sérieux. Donc, l'Action ontarienne n'est pas en défaveur de ça.

Finalement, pour les ordonnances de ne pas faire : la question de préparer des formules et des guides en langage clair pour que se soit un petit peu plus accessible, c'est-à-dire que les femmes comprennent de quoi il s'agit quand on parle d'ordonnances de ne pas faire. Très bonne chose. On s'attend évidemment à ce que ces documents-là soient disponibles en français, mais l'Action ontarienne veut souligner le fait qu'il arrive souvent qu'il y a des documents qui soient produits en français et en anglais et, par contre, ça ne va pas plus loin. C'est-à-dire, si vous prenez le téléphone, après avoir lu le document, pour poser une question, et vous vous heurtez à une surprise parce que vous appelez, vous parlez français, peut-être qu'il y a un manque de soutien. Il faudrait aller au-delà de juste produire le document, et ça prend le

système qui va soutenir les femmes francophones, et surtout dans les lieux où elles sont très en minorité.

Je passe à mes trois derniers points, qui sont un peu plus rapides. Pour les ordonnances relatives à la conduite des parties, les articles proposés, qui sont 25.1 et 47.1 dans la Loi sur le droit de la famille, on considère que c'est important pour empêcher l'abus lors des procédures. On sait que dans une situation de violence conjugale, ce qui peut se passer, c'est qu'une personne prend avantage du système de la justice, malheureusement, et utilise les dynamiques de pouvoir qui sont déjà inscrites dans ce système-là pour continuer de contrôler ou d'abuser de leur conjoint. On considère que ces ordonnances-là ne vont peut-être pas régler tout ce problème-là, mais elles vont apporter certaines améliorations.

Mon cinquième point concerne les droits de garde, c'est-à-dire, l'ajout de l'article 21.1 à la Loi portant réforme du droit de l'enfance. Encore une fois, il est positif de demander des affidavits aux personnes qui font demande de droit de garde. Pour ce qui est des personnes qui ne sont pas parents de ces enfants-là, la vérification des dossiers de police et de la protection de l'enfance est une bonne chose. L'Action ontarienne a des réticences tout simplement parce qu'il pourrait arriver—c'est un peu le même commentaire que celui que je viens de faire—que certains hommes qui ont tendance à avoir un comportement contrôlant veuillent faire des plaintes non justifiées pour un peu nuire à la demande de droit de garde faite par une femme.

L'Action ontarienne aimerait profiter de l'occasion pour mentionner que la difficulté qu'elle note souvent rencontrée par les femmes francophones est au niveau de modifier les ordonnances à un coût raisonnable. Elles ont de la difficulté à faire modifier les ordonnances dans des situations de violence conjugale. J'aimerais tout simplement souligner le fait qu'on a besoin de plus d'aide juridique en droit de la famille.

Mon point final est très court. C'est tout simplement de mentionner que l'Action ontarienne note qu'il y a une amélioration aux versions françaises des lois et que c'est excellent. Il y avait certaines erreurs, notamment dans la Loi sur le droit de la famille, articles 29, 34 et 35, et le projet de loi corrige ces erreurs dans la langue française. Ces erreurs étaient tantôt grammaticales, tantôt au niveau des concepts, ce qui est plus grave. Donc, on trouve que c'est excellent. Je vous remercie beaucoup.

Le Président (M. Shafiq Qaadri): Merci, maître Lassonde, pour vos remarques. Nous commençons avec les conservateurs. On a presque deux minutes et demie pour chaque côté—two and a half minutes per side. Mrs. Elliott.

Mrs. Christine Elliott: Merci, madame Lassonde. Please excuse me for not being able to respond en français; I'm taking lessons, but unfortunately I'm not sufficiently proficient to ask you a question yet.

I did have two questions, one related to the domestic violence aspect of Bill 133 and your concerns that delays are unacceptable, and the other, that you often have situations where you have other relationships, wider relationships, more short-term relationships that aren't being covered.

As you may know, the Domestic Violence Protection Act, which would have allowed access to emergency intervention orders and would have allowed dating relationships, for example, to have been included, is being repealed as part of this legislation. Would you support that, or would you feel that that should be maintained as part of a domestic violence statute going forward?

M^me^ Julie Lassonde: Je pense que l'Action ontarienne effectivement supporterait le fait qu'on n'adopte pas cet ancien projet de loi, mais je ne peux pas aller dans les détails dans mes commentaires parce que ce n'était pas le sujet pour lequel j'ai été mandatée aujourd'hui par l'Action ontarienne.

Pour ce qui est des relations à court terme, c'est vrai qu'on demande qu'il y ait une cohabitation, donc je pense qu'il n'est pas complètement écarté qu'on puisse considérer d'autres relations où il n'y a pas de cohabitation. De notre côté, pour ce qui est des mesures dans des situations d'urgence, je dirais que si vous prenez l'exemple que je vous ai donné tantôt d'une femme qui va faire des courses, c'est une forme vraiment subtile de violence. Tout ce qui est important à comprendre, c'est que ce ne sont pas toutes les formes de violence conjugale où la personne va être, à 3 heures du matin, avec un couteau planté dans l'épaule, en train de demander de l'aide.

J'ai peur qu'il y ait des mesures qui, disons, mettent l'accent sur les grandes urgences et les cas les plus extrêmes qui normalement devraient pouvoir être répondus par la police à ce moment, à toute heure du jour et de la nuit. J'ai peur que ça donne peut-être une perspective un peu étroite de la violence conjugale. Comme je vous ai dit, l'Action ontarienne n'est pas contre les mesures positives, mais on aimerait une appréciation très subtile des dynamiques de—

Le Président (M. Shafiq Qaadri): Merci, madame Elliott. Il est maintenant le tour de M. Kormos.

1620

Mr. Peter Kormos: Thank you, Ms. Lassonde. I obviously have some significant interest because I come from Welland, a strong Bill 8 community. I'm interested because we have a historic francophone community, as well as a growing francophone community of new Canadians. You write on page 7 that the new francophones coming into Canada are from Rwanda, Congo, Cameroon, Burundi, for example. That adds an extra layer, because you've got the language issue—and because we're a Bill 8 community, we can accommodate that to a certain extent—but you've got a community of new Canadians and you have some cultural changes that are happening. What do you say about that? Does this legislation consider that, in your view? Does it accommodate that? Does it provide for working with new Canadians?

M^me^ Julie Lassonde: J'ai noté certaines dispositions du projet de loi qui ne répondent pas nécessairement très bien aux communautés de femmes nouvelles arrivantes.

C'est au niveau de la criminalisation et c'est peut-être au niveau—je vais retourner à mes notes—d'inclure les membres de la famille élargie comme personnes visées par des ordonnances de ne pas faire. Alors, ce sont des exemples. Mais, étant donné que le projet de loi peut avoir des côtés positifs pour d'autres groupes de femmes, on ne veut pas s'y opposer.

Par contre, ce que vous dites de réconcilier culture et langue, c'est un point très important. Je ne crois pas que cela a été abordé en grand détail dans ce projet de loi-ci. Souvent c'est plutôt dans les mécanismes sur place, les organismes communautaires qui prennent la loi et qui font les ajustements nécessaires pour pouvoir répondre à ces communautés-là, que c'est plus efficace.

Une chose qui est assez intéressante chez les femmes francophones nouvelles arrivantes c'est qu'il va y avoir certains groupes de femmes qui parlent peut-être comme première langue l'arabe, l'espagnol, le lingala, le kirundi, qui ne sont pas de prime abord francophones mais qui vont avoir culturellement un lien avec la communauté francophone. Et c'est intéressant parce que—

Le Président (M. Shafiq Qaadri): Merci, madame Lassonde et monsieur Kormos.

M^me^ Julie Lassonde: Il faudrait répondre à ces communautés.

Le Président (M. Shafiq Qaadri): Au gouvernement, monsieur Ramal.

M. Khalil Ramal: Merci beaucoup, madame Lassonde. Notre gouvernement connaît très bien ce sujet très complexe, parce qu'il y a beaucoup d'éléments dans ce sujet. Tout le temps, notre gouvernement cherche un nouveau mécanisme pour améliorer la situation des femmes dans la province de l'Ontario, spécialement des nouveaux arrivants, des francophones, des autochtones : chaque personne qui habite en Ontario.

Dites-moi, s'il vous plaît, quel élément est le plus important pour vous pour améliorer ce projet de loi ?

M^me^ Julie Lassonde: Je pense que s'il y a un élément qui doit absolument rester, c'est la disposition qui fait en sorte que, comme personne visée, il puisse y avoir les personnes qui sont en relation conjugale à court terme.

M. Khalil Ramal: Merci.

Le Président (M. Shafiq Qaadri): Merci, monsieur Ramal, et merci, madame Lassonde. Au nom du comité, je vous remercie pour votre témoignage.

FAMILY LAWYERS ASSOCIATION

The Chair (Mr. Shafiq Qaadri): We'll now move to our next presenters: Ms. Wunch, Ms. Reilly and Mr. Lamourie of the Family Lawyers Association. As you've seen, there are 20 minutes in which to make your combined remarks. The time remaining will be divided equally amongst the parties. I would invite you to please be seated and identify yourselves individually for the purposes of Hansard recording. I invite you to begin now.

Ms. Sara Wunch: My name is Sara Wunch. I will be doing the submissions today on behalf of the Family Lawyers Association, of which I am the chair. To my immediate left is Mary Reilly, who actually was instrumental and did most of the written submissions; and of course, Mr. Garry Lamourie, who is also a member of our board.

While the Family Lawyers Association recognizes that Bill 133 is motivated by a desire to improve the process by which custody orders are made in Ontario and, further, to give the courts more information with which to make well-informed decisions in matters affecting the well-being of children, it is our position that the legislation in its current form will have significant and unintended negative consequences for the administration of justice and that it will create a system and process which will result in protracting the time for the resolution of issues before the court. It is our position that sections 6 to 10 of the bill will be difficult, onerous and time-consuming to implement, if in fact they can be implemented at all.

It is important to note that overwhelmingly, in the majority of cases in which a custody order is sought, there are no protection concerns. In cases where protection concerns exist, there is most often already a protection agency involved.

We must remember that custody orders are not placement orders. Parents can leave their children with family members or friends without court orders. Parental autonomy is the norm, and we have always trusted that parents will make good choices for their children without intervention. In fact, we encourage parents to make decisions with respect to their children through the negotiation of separation agreements, mediation and other methodology that results in a consent agreement and placement.

The question then becomes: What is the purpose of this legislation? Are we trying to ferret out protection cases that have been missed? Because, if so, there are better ways to accomplish that aim.

What is the standard to be? If there is society involvement and the children are in a kinship placement pursuant to a protection application, should there not be an exemption for those persons if they subsequently apply for custody?

What will happen in a case where interim orders are required? I can cite several examples of cases. One is a case where a child was sponsored by a close relative in Ontario as a result of the death of a biological mother in another country. In the absence of a custody order, that child cannot go to school, that child cannot obtain medical care, and there is no one able to sign in the event of a medical emergency. An interim order is of the utmost importance in such a case.

If in fact an unrepresented litigant comes to court with the intention of obtaining a custody order and the requirement exists that they execute releases for criminal records and existing society files, they would clearly be aware that such files exist, and they may well choose to forgo the legal custody, retain the de facto custody and go underground. The case that would most warrant this intervention would not have it.

In contested custody matters, the information required for a decision will be before the court and the process, as proposed, might not be necessary. Where the litigants are unrepresented, the increased paperwork may prove to be a daunting task, and where litigants are represented, there will be an increased cost to the clients for either privately retained or legally aided counsel.

This legislation will result in the necessity for the government to increase funding to Legal Aid Ontario, child protection agencies, the Office of the Children's Lawyer and an increase in funding necessary to run the Family Court systems. In addition, the government will need to invest the necessary funds to ensure a system is established which would enable the courts province-wide to obtain current and/or historical data on a party seeking custody of a child.

Even if such a system were implemented, it would not address the issue of applicants who have resided in other provinces or countries. If the matter is uncontested, the proposed affidavit could be made available to the presiding justice by attaching same to the consent during an uncontested trial process when the decision will be made. To provide this information to a judge at first instance is too soon.

Further, it is our position that it is not the job of the decision-maker to investigate, but, rather, that would be the job of the Office of the Children's Lawyer. In order for that to happen, there must be a change to the Courts of Justice Act, which would enable a court to compel the involvement of the OCL in cases where the initial disclosure reveals a concern.

The proposed amendments apply only to persons bringing the application for custody and/or access, but if that person is residing with someone who could potentially pose a risk to the child, it may never be known to the court. Further, if the applicant's relationships change, the new partner could also potentially pose a risk. We must also take into account that the applicant and partners may have also utilized different names. The collection of data, in and of itself, could be a nightmare in a province such as Ontario, as there is no central data bank which would allow for the search of information about non-biological parents, persons who are applying for custody of a child.

1630

Let us assume that the forms are completed and the records are now before the presiding justice. How were the records admitted into evidence? How was the court to judge the relevance? Will parties be able to challenge the relevance and the admissibility of the documentation, and who will weigh the privacy interests of non-parties to the application? The bench should not be put into the position of an investigator, as the judiciary must fill the role of impartial, dispassionate arbiter and unbiased fact-finder.

With respect to restraining orders, the current legislation provides that a court may make an interim or final order restraining a person from molesting, annoying or harassing the applicant or children in the applicant's lawful custody and may require the person to enter into the recognizance or post the bond that the court considers appropriate. Currently, if a party contravenes a restraining order, he or she is guilty of an offence, and on conviction, is liable to either or both a fine of $5,000 and imprisonment for a term of not more than three months for the first offence and not more than two years for a subsequent offence. The proposed legislation creates a higher test to be met by the party seeking a restraining order. The party will be required to demonstrate that he or she has reasonable grounds to fear for his or her safety or for the safety of his or her children. Such a test is closer to the test found in the criminal courts, and will be more difficult for applicants to demonstrate on a with- or without-notice basis. In many of these cases, the criminal courts are already involved and bail conditions exist. It is our submission that fewer restraining orders will be granted in the Family Court.

In the case where the Family Court does make a restraining order, the enforcement and prosecution will fall to the criminal courts. The criminal courts are not as astute to the nuances between the parties whose relationships have broken down. Currently, the criminal courts frequently make orders which restrict access between parents and children, which cannot be varied by the Family Court and which may not be in the best interests of the children involved.

Since 1992, a large network of supervised access centres has been created and funded by our provincial government. Often, however, we see orders from the criminal courts which mandate either no access or access supervised by a child protection agency. It is our submission that with the implementation of this amendment, the criminal bench, crowns' offices and the criminal bar will need to be educated on the appropriate orders that should be available in the face of breaches of Family Court restraining orders.

Infraction of Family Court restraining orders will result in Family Court litigants being involved in two separate court proceedings. There will be an increased caseload on an already overburdened criminal justice system and further stresses on Legal Aid Ontario, as the accused may retain criminal counsel on a legal aid certificate or avail themselves of the services of duty counsel in our criminal courts.

As a result of a conviction, pursuant to the Criminal Code, if the respondent is not a Canadian citizen, he or she may face deportation. This may result in the applicant not obtaining child or spousal support and the loss of the relationship between the child and the offending parent. This is not in the best interests of the child, and the potential loss of financial support may result in the non-reporting of domestic violence.

In closing, the Family Lawyers Association is requesting that we be given the opportunity to have meaningful input into the drafting of regulations for this legislation.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Wunch. About three minutes or so per side. Mr. Kormos?

Mr. Peter Kormos: Thank you kindly. The 13 family court judges tabled a letter, a most unusual occurrence in the 21 years I've been here, commenting on this legislation. Their focus was mostly on the child custody areas, and we know what gave rise to that part of the bill. They said, amongst other things, "We are convinced Bill 133 does not provide a workable system."

Like you, judges say it's not their role to investigate, or shouldn't be. They refer to the need to have the Office of the Children's Lawyer involved in custody where parties are unrepresented. That would mean ramping up the resources at the public level.

So what are we to do? Here we are. You accept the pension proposals in this bill—

Ms. Mary Reilly: In terms of the splitting of pensions, yes.

Mr. Peter Kormos: Yes, the methodology. But what are we to do about judges saying that Bill 133 does not address this whole area around child custody and custody applications—and you seem to agree.

Ms. Sara Wunch: From the perspective of what actually happens in the courts, the case that brought this legislation to be drafted really is not the norm.

Mr. Peter Kormos: Quite right. Thank goodness.

Ms. Sara Wunch: You're right. We thank goodness for that. That child was in the custody of those persons for months before this application was brought. If those persons had to go through this process, nothing would have changed, except it never would have made it to the court and the legislation would not have been drafted.

Mr. Peter Kormos: Fair enough. But what are we to do with this bill now? You're saying the bill doesn't address the problem. The judges are saying it's not workable.

Ms. Mary Reilly: The Courts of Justice Act allows the Office of the Children's Lawyer—and I'm certainly not speaking on their behalf. It allows for the appointment either of a social worker or legal representation. In custody and access cases, it's discretionary.

When I first heard about this bill, my first thought was, get the OCL involved. They have the resources. They can do the investigation. The Courts of Justice Act could be changed to make it mandatory for the OCL to take these types of files. At the same time, I think we recognize, as an association, that the office has to be funded properly. This will take money. Children are important. So the government will have to show a commitment to funding the OCL properly.

The Chair (Mr. Shafiq Qaadri): I have to intervene there. To the government side, Mr. Zimmer.

Mr. David Zimmer: In a custody application, given that what's in the best interests of the child is the governing principle, I don't understand why there would be any objections to having free and ready access to any criminal records of any parent or other adult applying to be involved in the custody decision. That's just beyond me. If there are criminal records out there, police records out there, that have to do with the person applying for custody arrangements, I can't get my head around why on earth you wouldn't want that to be in front of a presiding judge.

Ms. Mary Reilly: We're not objecting to as much information in front of the judiciary—the problem with this legislation is the cumbersomeness of it and how people are going to deal with it. We work in this system every day, and when you're dealing with a lot of unrepresented litigants—it's very difficult for them, first of all, to go through the process, to go down to 40 College, to get the police record check. The other issue, of course, is delay. Sometimes there are issues that have to be dealt with for these children: registering in school, getting medical—

Mr. David Zimmer: Then you have no objections to the decision-maker, the judge, having before him or her the criminal records and criminal proceedings of an applicant to a custody proceeding?

Ms. Mary Reilly: I believe the legislation calls for parents who are applying for custody to disclose that they've got a criminal record or a CAS involvement. It's the non-parent who has to provide the criminal record check. In terms of that type of information, no, obviously. But the problem is the process and how people are going to deal with this process.

Mr. David Zimmer: But you do agree that that's relevant and essential information for the judge to have?

1640

Ms. Mary Reilly: The existence of a criminal record won't necessarily say a person shouldn't be able to parent a child.

Mr. David Zimmer: I didn't say that. But that's relevant information that should be before the judge.

Ms. Mary Reilly: It could be relevant information.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Zimmer. Ms. Elliott?

Mr. David Zimmer: In what circumstances would it not—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Zimmer. Ms. Elliott?

Mrs. Christine Elliott: I'd just like to follow up on the question Mr. Kormos was asking with respect to the choices to be made here.

It seems to me—please tell me if I'm wrong—that there are really two choices. One is to follow through the set-up we've got under Bill 133, which is going to require a lot more resources for legal aid lawyers to help people complete these various affidavits, search all this information and do all the rest of it. But at the end of the day, that may or may not be complete and may put the judge in the position of having to decide something and be the investigator, which he shouldn't have to do. So it's going to be resources that are needed on one side. On the other side, you can get the Office of the Children's Lawyer involved, which is going to require more resources for them, but it seems to me that they're more equipped to be investigating this and preparing a more comprehensive report to put before the judge that will contain all the salient information.

Would you prefer the latter course of action? Is that a preferable way to deal with this?

Ms. Sara Wunch: Yes.

Ms. Mary Reilly: Yes.

Ms. Sara Wunch: No question about it. The Office of the Children's Lawyer does have an investigatory body and they're equipped to do this. They also have legal staff that are equipped to sort through information and determine what's relevant and necessary, and to deal with the privacy issues as well.

Mrs. Christine Elliott: Do I have time for one more question?

The Chair (Mr. Shafiq Qaadri): Yes, you do.

Mrs. Christine Elliott: Okay. I just wanted to ask about the recalculation of support payments and the suggestion about who or what agency will be doing that—the Family Responsibility Office, I'd think. Can you tell me your opinion of it? What I hear in my community office is that they're already overwhelmed. They wouldn't be able to do this without significantly greater resources.

Ms. Sara Wunch: I agree with that position. I think that either a different agency has to be established or there has to be an influx of funds to allow them to do it.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Wunch, Ms. Reilly and Mr. Lamourie, for your presentation and presence on behalf of the Family Lawyers Association.

BARRY CORBIN

The Chair (Mr. Shafiq Qaadri): We'll now move to our next presenter, Mr. Barry Corbin, who is presenting to us in his individual capacity and for that reason will have 15 minutes to make his remarks. Welcome, Mr. Corbin. I invite you to begin now.

Mr. Barry Corbin: Thank you very much to members of the committee for giving me an opportunity to talk about Bill 133.

As you heard, my comments don't represent the views of any organization. They are merely the observations of an estates practitioner with a keen interest in legislation that has stood at the intersection of family law and estates law for the last 23 years. My comments are very narrowly addressed to a proposed change to the matrimonial property rules. I believe my written submission was already circulated; my oral remarks will go a little bit further. I was prompted to do something by way of a presentation because when I read the Hansard reports of what was talked about on Bill 133, there wasn't one word said about this, so I thought I should say a word.

I want to preface my criticisms of the particular provision of the bill by giving you a two-minute or less review of the matrimonial property provisions of the statute. Part one is all about dividing the marriage spoils between legally married spouses when the relationship ends, whether it's on marriage breakdown or on death. What happens at the end of that relationship is that each spouse measures his or her net worth increase during the marriage years, and each spouse's net worth increase is called his or her net family property. Then, when one of the spouses makes an application for equalization, the spouse with the higher net family property has to pay an amount to the spouse with the lower net family property, and that amount is half the difference between those amounts.

When the marriage ends on separation, the date on which you make that financial snapshot is the day of separation. However, when it ends on death where there has been no prior separation, the valuation date, as it's called, is one day before death, and that's really the key to the issue I'm going to be talking about.

I'll give you an example. Whether it's a marriage breakdown or death, if one spouse's net worth increased by $200,000 during the marriage and the other one's increased by $500,000, the difference would be $300,000, and the one who had the higher net worth increase would have to pay $150,000 to the other spouse in order to give them $350,000 each of the joint net worth increase. There are exceptions to that—it's a bit simplified—but they're not relevant to the comments I'm making.

The equalization on death is quite different in several respects, and that's why this issue is of concern to me.

First of all, on death, the equalization payment is only one-way. If the surviving spouse has a higher net family property than the deceased spouse, the surviving spouse does not have to make an equalization payment to the estate of the deceased spouse.

The second thing is that when the surviving spouse chooses to elect in favour of an equalization, he or she has to forfeit whatever entitlements would come by virtue of the deceased spouse's will, if there was one, or the intestate succession rules in Ontario, when there's no will.

The third difference—and this is coming to the crux of what I want to discuss—is that when you elect in favour of equalization as a surviving spouse, you have to account for certain things that you received as a result of the death of the first spouse. The two categories of things you're supposed to account for are life insurance that you receive as a designated beneficiary and the other category is lump sum payments under a pension or similar plan, again, as a designated beneficiary. So, by way of example, if you would have been entitled, as a surviving spouse, to an equalization of $400,000 and you were the designated beneficiary for $300,000, the only amount that the estate would be obliged to pay you would be the extra $100,000.

The problem, and the one for which the amendment is proposed, is that a surviving spouse, at the moment, doesn't have to account for one category of property that he or she enjoys by virtue of the first death, and that is property held jointly with a right of survivorship.

So, you go back to the point I made that you capture the net worth increases one day before death, in the case where the marriage ends with the death of one of the spouses. At that moment, if both spouses hold property jointly with a right of survivorship, they have to account

for 50%, even though immediately upon the death of one spouse, the survivor gets the whole thing. That has been perceived as an unreasonable windfall to the surviving spouse, and it's the reason why the recommendation from, I believe, the bar association came and showed up as one more thing to credit; namely, amounts you receive under a joint tenancy that you held with the deceased spouse. So that's a good thing.

The bad thing is there are three problems with the language of the legislation that I want to identify.

Firstly, when those of us who were in law school went through, we remember joint tenancies as being all about real estate. You know quite well, I'm sure—and some of you may also have your property held jointly with a spouse or significant other or child—that you can hold property like bank accounts, investment accounts, GICs and the like, jointly with a right of survivorship. The concern I have is that if the phrase "joint tenancy"—that's the phrase used in the legislation—is interpreted restrictively to apply only to real estate, it means that property that is held jointly that's not real estate, like a bank account or investment account, will pass to the surviving spouse, who will not have to account for it, and there will be the windfall in that situation, which this legislation is attempting to fix.

The second thing is—and this stems from a Supreme Court of Canada decision in a case called Pecore that was decided a couple of years ago. It surprised all the estates practitioners in Ontario and probably the rest of the country. The Supreme Court said you can give away the right of survivorship in a bank account or investment account and keep everything else for yourself. This was news to us, because we all thought that you made a gift, when you give half, or you didn't give them anything at all. But the Supreme Court said, no, there's this new kind of account where you can give away just the right of survivorship. If that's what you have done, and you die, your spouse will be able to say, "Well, even if joint tenancies do capture personal property, this wasn't a joint tenancy." The joint tenancy is characterized—I won't go into the details—by four unities: time, possession, interest, and title. Clearly, if one spouse has only the right of survivorship and the other spouse has everything else, it can't be a joint tenancy in law. Therefore, quite clearly, anybody who has set up one of these accounts that the Supreme Court has identified as being possible will find that the surviving spouse will get everything that's in the account on the death of the first spouse and not have to account for any of it. So that is another reason why I think the language of the legislation should be cleared up.

1650

The last thing I want to talk about is that it says that this provision, along with a whole bunch of others, comes into force when the bill receives royal assent. There is a legitimate argument to be made that if the chronology of events is (a) the couple separates without an equalization payment having been sought, (b) the bill receives royal assent, and (c) one spouse dies, then the legislation doesn't apply. I think the drafters probably intended that all you do is look at the date of death, but I would suggest that there are problems there, and I think I've gone into them in the written material that I've presented.

The balance of my comments are directed at things that aren't in those written submissions. As long as you're fixing the credit mechanism, there are other problems with it that have been there for 23 years and it wouldn't be a bad idea to fix them now.

You'll remember I said that one of the things you have to credit as a surviving spouse is amounts received as a designated beneficiary under a pension or a similar plan. This question has come up, I'm sure, hundreds of times: Is a registered retirement savings plan or a RRIF a similar plan? Nobody knows. As far I know, there's no court case that has been introduced to address that question. Why not fix the problem right now by including a provision in there that says very clearly, "Is it or isn't it one of those animals?"

The second thing that I think the bill could go further with is what to do about the spouse who receives RRSP or RRIF money—and remember, if it's insurance-based, you have to credit it. There's no question, because then you're into the section dealing with life insurance crediting, not with pension or similar plans. So if you've got an insurer that has issued the RRSP or the RRIF, there's no question the surviving spouse has to account for it. But that money is pre-tax dollars. You could understand if somebody got $300,000 of life insurance that they'd have to account for it dollar for dollar. But if they get $300,000 of pre-tax money, it's going to be of a lot less value to them when they collapse it. It seems to me there should be something in the legislation that says when a surviving spouse receives pre-tax dollars, they ought to get some benefit in the form of a reduction of the amount they have to credit.

I'll stop here, if anyone has any questions.

The Chair (Mr. Shafiq Qaadri): Thank you. About a minute and a half per side—

Mr. Peter Kormos: On a point of order, Chair: I'm prepared to give all of my time to Mr. Zimmer, because I think he should respond.

The Chair (Mr. Shafiq Qaadri): We note that extreme generosity. I will proceed now to offer the floor to Mr. Zimmer. We have about a minute and a half per side.

Mr. David Zimmer: Now I know why I struggled with estates law in first-year law school and went into litigation rather than estates work.

Are you Barry Corbin, the author?

Mr. Barry Corbin: Occasionally.

Mr. David Zimmer: Yes, I know. You're the expert.

I thoroughly enjoyed your presentation. I'm going to take your notes home and read them carefully tomorrow morning over my breakfast coffee, because it will be a real refresher course for me. I thank you for your submission.

The Chair (Mr. Shafiq Qaadri): Mrs. Elliott.

Mrs. Christine Elliott: Like Mr. Zimmer, I appreciate the opportunity to take a look at this in greater detail. It is something that had not occurred to me in our initial com-

ments with respect to Bill 133, but I certainly will review it. I see the amendments that you've suggested on page 3, and perhaps if we have any questions, we may contact you with respect to those.

Mr. Barry Corbin: By all means.

Mrs. Christine Elliott: We'll certainly take that into consideration. Thank you.

The Chair (Mr. Shafiq Qaadri): Mr. Kormos.

Mr. Peter Kormos: Look, this is why bills should be subjected to public hearings: because you've got people with great levels of expertise prepared to come forward and contribute to the process. We've heard several things now over the course of two days from actuaries, from lawyers, from family law practitioners.

What I'm suggesting to you, Chair, is that the government should be responding to these various concerns in an articulate way here in this committee process. If we're going to bother having a committee, then that's how it should roll out. Otherwise, Mr. Corbin and others are simply wasting their time, and none of us should want them to do that.

Thank you very much, sir. I appreciate it.

Mr. Barry Corbin: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Kormos, and thank you, Mr. Corbin, for your presence and deputation.

DSW ACTUARIAL SERVICES

The Chair (Mr. Shafiq Qaadri): I'll now invite our next presenter, Mr. David Wolgelerenter, actuary of DSW Actuarial Services, to please begin. You've got, as you know, 20 minutes in which to make your presentation, beginning now.

Mr. David Wolgelerenter: You can certainly call me David.

Thank you for the opportunity to speak today. Hopefully, people have had a chance to read my submission or will have a chance to read my submission.

Just in terms of my credentials, I should briefly say I have a bachelor of science in actuarial science and an MBA in finance. I'm a fellow of the Canadian Institute of Actuaries and the Society of Actuaries. I have close to two decades of experience dealing with pensions and quite a bit, actually, as well in the family law context. That's why I've been asked repeatedly to lecture on this topic for the Ontario Bar Association as well as Osgoode Hall continuing legal education.

In a nutshell, as you've heard from other actuaries, the pension settlement aspects of Bill 133 are very good, and that's the primary problem with the current system: the inability to settle the pension asset.

The valuation aspects, however, are highly problematic for divorcing couples and also for the pension plans. For the most part, that's because there are contradictory objectives that can't be rectified through the regulations.

Now, the surprise thing here is that the big winners in all this will be large actuarial firms and human resources outsourcing firms, which will have to set up these systems for employers. The big pension plans that you've heard come before you are in a position that they can afford to do this, and it's just a decimal point in their returns. But for smaller employers, this is going to be big bucks for them, and that will be going towards these various outsourcing firms.

One of the points I wanted to make was that I keep hearing from various sources, including at these committee hearings, that there's this myth that there are duelling actuaries wasting the courts' time. I'm one of the larger providers of this service over the last five years. In the greater Toronto area in particular, I deal with some of the larger family law firms. I've done somewhere in the range of 1,000 reports over the last five or six years, and I've actually gone to court only once on a family law-related issue. By the way, there was no other actuary on the other side. So I'm not sure where this is coming from, but every time I hear it, I think, "Huh?"

The problem with Bill 133 is that pension plan administrators, who had no intention of providing expert evidence, are essentially being asked to do just that. Many administrators now don't even put their name on correspondence for fear of being identified with it in some way. I will get letters from administrators signed "The ABC Company Pension Plan System" because if a call is returned, they want it to just go into the general queue. They're not prepared to provide expert evidence. There's also the question of whether they will be unbiased in providing the figures.

The regulations could be 30 pages long, trying to cover off every possible scenario, but the fact of the matter is, they won't cover off every scenario, so employers will be forced, to a certain extent, to take a stand on certain issues. That's just a fact; that's the way it is now. With pensions, the unusual is not that unusual, because there are so many different permutations and combinations of circumstance that can lead to different issues.

Another issue that I don't think anyone has raised is the issue of privacy. One of the first things someone will have to do now when they get divorced, if they have a pension, is immediately go to their employer and say, "I'm getting separated, and I need a valuation." I can't tell you how many times I've been told, when additional information is needed for a valuation, "Don't tell my employer that I'm getting separated. It's none of their business. Just say you need these bits of information, but don't tell them I'm getting separated, because that's my business." In due course, maybe a few years later, they would relay that information. This will essentially force them to go to their employer and say, "Guess what—I'm getting separated." If you're the non-member spouse, will you actually trust the value that's coming from the employer when that employer essentially has a closer attachment to the member spouse?

The other thing is that there's another sort of myth that Bill 133 will unclog the court system because pension plan administrators will be providing the value and not

actuaries. But I can tell you that I have a stack of files on my desk in my office, and the sole thing that I'm waiting for in order to complete the valuation is pension plan administrators providing some additional information that I had asked them questions about. I've had circumstances where family lawyers have written threatening letters to the pension plan administrators saying, "Give me the information. The court needs the valuation." It's going to an unknown individual who's part of a big system, and it just never comes. Sometimes that can take months.

1700

Turning to a different issue—and it's really the main issue about Bill 133, the valuation issue. I did a recent case where I had a 50-year-old female with 22 years of credited service in a pension plan, and the pre-tax values ranged from around $300,000—that's for retirement at age 65—to $600,000, assuming that the pension starts at age 54, almost double. The question I would ask for anyone voting on this bill is: What is the value going to be in that circumstance?

As it stands now, the retirement age is a question of fact to be determined by the court or between the parties. So coming up with a number like $600,000 will be very unfair to the plan member and will be very problematic for pension plan administrators and employers. On the other hand, coming up with a number like $300,000—the pension plans are going to come to you and say, and they have already come to you and said, "Go with the minimum commuted value," but that is very unfair to the non-member spouse. You can't reconcile those two through the regulations. I've also heard representatives of the Attorney General's office say, "Well, we'll just pick a mid-point. So let's make it $450,000—some arbitrary mid-point between $300,000 and $600,000." Now, the problem with that is, that can be very unfair, and it's not just a hypothetical exercise. It could be very evident to the court that the actual value of the pension was $300,000 as of the day of separation, and this bill would force it to be $450,000. So, if you do the math, the non-member spouse gets half of $450,000, or $225,000, and the member, seeing as the actual value in the plan for them is $300,000, will get $75,000. That's on a mid-point, let alone if $600,000 is chosen.

Incidentally, the Law Commission of Ontario specifically recommended against a single number result. That's another myth that I've heard around: that this bill is in accordance with the Law Commission of Ontario. On key provisions, it is absolutely not in accordance with the Law Commission of Ontario. They did a 50-to-100 page report detailing every last bit of pension issues in family law.

In terms of my example, you can think in terms of, what if the member intended to retire at 54 and get that larger value, essentially, and then they actually did retire at that age? Why would you want to put some artificial lower number? The opposite is true as well. If the facts of the case dictate that this person is not going to retire until 65 because they can't afford it, they've got all sorts of obligations, why would you assume immediate retirement and essentially work against them in that way? What if the plan member is deathly ill? What about income taxes? What if the plan is insolvent? There are so many issues that, when it comes down to it, ignoring the facts of the case can lead to absurd results, and sometimes they can be absurdly unfair. That will be evident to the parties; it's not, again, a hypothetical exercise.

In conclusion, I just wanted to say that the settlement options, again, are very good in terms of Bill 133, but if it's anything greater than that lower termination value, it will be a big problem for pension plans. If you look at all this, you've heard all these different actuaries coming in, and you think, "I don't really believe this actuarial valuation business, so let's just pick a number and move on," the problem with that is that there are going to be real problems for the individuals involved. If you really don't think that an actuarial valuation is the proper way to go about splitting a pension, then you can choose something like they do in BC, where they split the pension at source automatically, meaning that both spouses wait until retirement and they split the pension. That has its own share of problems, so I'm not specifically advocating it, but if you don't believe in a valuation, then don't do it. Don't put in place a system that is automatically unfair to one side or the other. And you should definitely read over the Law Commission of Ontario report.

The Chair (Mr. Shafiq Qaadri): Thank you, David. We'll now move to Ms. Elliott. It's about three minutes per side.

Mrs. Christine Elliott: Thank you very much for your presentation, David. Certainly, the evidence that we've heard so far from all the actuaries who have presented to us is to the same effect as your presentation: that we need to consider the separate values for the transfer value, so to speak, and then for the equalization value.

My colleague Mr. Kormos yesterday asked the question of the government as to why they chose not to consider the methods that were recommended by the law commission. I would reiterate from our side of things, as the Progressive Conservative Party, as to why that would be, because certainly it seems to be at odds with what the experts are recommending.

Mr. David Wolgelerenter: I think to a certain extent you've got different forces at work here. Pension lawyers see these ridiculous if-and-when agreements coming their way and they say, "We've just got to get rid of these one way or another." The problem is that they don't realize that that's a very small proportion of the valuations and pension splitting that goes on right now. Usually, it never comes across their desks. This is going to put thousands upon thousands of new calculations on their desks, and they haven't really grasped that.

On the family law side there's a similar issue, and they just want to simplify things. Pensions are a complex issue, so anything that simplifies it—they take a step back and say, "Okay, I guess it's good. The government will take care of it in the regulations," but they don't realize—until I tell them, of course—that it can't be solved by the

regulations because the regulations would still end up with one number that doesn't look at the facts of the case.

Mrs. Christine Elliott: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mrs. Elliott. Mr. Kormos?

Mr. Peter Kormos: Thank you kindly, sir. I refer to Mr. Zimmer often, because he's the parliamentary assistant and because I like him and because he's a capable and intelligent man—

Mr. David Zimmer: This is a set-up.

Mr. Peter Kormos: Well, no. Take a look at this presenter's qualifications. You're talking about a highly, highly qualified presenter. I had to concede yesterday that I've determined that actuaries are smarter than lawyers—I made that admission—but here's a highly qualified, competent, capable person. This is expertise. We heard from similar actuaries yesterday—a young man, also a Mercer alumni, Jamie Jocsak from Welland, who said many of the same things.

For Pete's sake, why aren't we listening to these people? Why, at the very least, isn't the government responding to these points and either persuading us that the points are poorly made or wrongly made, or that in fact these people have something? This is so bloody frustrating. These people spend a lot of time preparing this stuff. They come here, they want to be part of a process, they want to make things better in the province. I'm frightened that people aren't going to listen to you; that's what I'm fearful of, sir.

Thank you very much for coming. I appreciate your contribution on this.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Kormos. To Mr. Zimmer.

Mr. David Zimmer: So just on your delay concern, do you know that the act says that the pension administrator has to provide the report within a prescribed period? Are you aware of that?

Mr. David Wolgelerenter: What is that prescribed period and when will the plan member be actually applying for it, is the question.

Mr. David Zimmer: That leads me to my second question. You're right: You've got a very impressive resumé and you're very knowledgeable. How would you like to work with us on the regulations. It's a compliment to you.

Mr. David Wolgelerenter: I appreciate the compliment; thank you. The problem, as I've stated before, is that the regulations can't solve this problem. The act has to be changed in order to solve the problem.

Mr. David Zimmer: How would you like to work with us on some of these matters?

Mr. David Wolgelerenter: I would be happy to.

Mr. David Zimmer: All right. There's somebody at the back of the room there who's going to get your card and speak to you before you leave.

Mr. David Wolgelerenter: Sure.

Mr. David Zimmer: That's "Action this day," as Churchill used to say.

Mr. Peter Kormos: What's your retainer?

Mr. David Zimmer: It's all in the public interest here.

Mr. David Wolgelerenter: Exactly.

Mr. David Zimmer: I'm serious; I'll speak to you. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Zimmer, and thank you, David, on your deputation on behalf of DSW Actuarial Services.

ONTARIO ASSOCIATION OF CHILDREN'S AID SOCIETIES

The Chair (Mr. Shafiq Qaadri): I now invite Ms. Lewis, Ms. Rowden and Ms. Engelking on behalf of the Ontario Association of Children's Aid Societies. Welcome. I invite you to please begin now. Please identify yourselves.

Ms. Jeanette Lewis: Thank you, Dr. Qaadri. I'm Jeanette Lewis, executive director of the Ontario Association of Children's Aid Societies. With me is Tracy Engelking, senior legal counsel at the Ottawa children's aid society and chair of the senior counsel network.

Let me begin by stating that our association supports the principles of Bill 133, which include enhancing the safety of children at risk or who may become at risk; addressing the real concerns about the security and safety of many women and children when partners separate or attempt to separate; and achieving fair, equitable distribution of family assets when partners separate.

The OACAS acknowledges the stress of family breakup. Issues related to violence or threats, unfair division of assets and adequacy of child support are all factors that affect the daily work of children's aid societies. We hope that Bill 133 will effectively resolve some of these problems and that the bill will alleviate some of the factors that contribute to child protection concerns.

1710

The OACAS respects the expertise of others who can respond with authority to the elements of the bill related to restraining orders, division of family property, pensions, child support and registration of names. We trust that their comments will help to strengthen the legislation.

Our comments are focused on those areas where the child welfare system has expertise, and this includes the four-pronged approach found in sections 6, 7, 8 and 9 of the bill: plan of care, police record checks, CAS record checks, court record checks. OACAS believes that wherever possible, improvements should be addressed in legislation. While we realize that some of the issues may be dealt with in regulation, it is important that those reviewing the draft legislation and those involved in its passage understand what it can do to protect children and what limitations and liabilities exist. The OACAS is committed to continuing to work with the Ministry of the Attorney General and the Ministry of Children and Youth Services to achieve a framework that best protects children.

Now I'll invite Tracy Engelking to address the specific concerns in the proposed legislation.

Ms. Tracy Engelking: Thank you very much. It's a pleasure to be here.

We have provided written submissions, so I don't propose to go over those in detail. You have them available to you. Although we have provided submissions on several aspects of Bill 133, there are two overriding issues with the bill for children's aid societies. They are, firstly, the exclusive reliance on self-disclosure of applicants, essentially to ensure the protection of children, and of course the inherent vulnerabilities that are contained therein; and second, the presumption or assumption that it is relatively easy or straightforward to obtain access to children's aid society information and records.

As Ms. Lewis has referred to the four-pronged approach contained in sections 6, 7, 8, and 9—and I will refer briefly to some of those sections—I can tell you that our overriding preoccupation is of course with section 8, which proposes a scheme relating to access to information from CASs.

With respect to section 6, our comments are on page 2 of our submissions. Again, although this is relating to any applicant, it is based on self-disclosure or self-declaration, so the same issues would be relevant. I echo the comments of the Family Law Association a little earlier with respect to—some of them may just be capacity issues: a person's capacity to put forward that information, and that they will require significant assistance, as applicants, to do that. The other issue, of course, is with respect to reliability of that self-disclosure.

Then, also, as it relates to section 6, there are issues with respect to the reference to involvement in proceedings. It's just a cautionary note for the committee that the vast majority of involvement that people have with children's aid societies is not in-court proceedings. It relates to voluntary involvement or, indeed, child protection investigations.

With respect to section 7, this is for non-parent applicants, and some of the same issues may arise with respect to definition of "records." There is of course a criminal record check, which is an RCMP record, and then there are police record checks and occurrence records, which are involvement with the police, so they could require some clarification with respect to section 7.

With respect to section 8, our submissions are on page 3 of the submission. Our position is that if we are attempting to do this to ensure that a judge has access to all of the information they will need to make a decision in the best interests of the child, we need to do it effectively and efficiently.

There are, as you know, 53 children's aid societies in the province of Ontario. They all keep their own records; they all keep them differently. Many will keep them in the name of the primary caregiver, which is usually the mother, so a non-parental applicant may or may not show up in a records check for a CAS. There is no overall comprehensive system that is provincially based, although the single information system is something that is a work in progress and we suspect will be a work in progress for many, many years to come in the future. But there is a system that keeps track of who has been investigated, and that system is referred to colloquially as the fast-track system. It will record a person's name, a person's date of birth and a jurisdiction.

A second related issue is that of extraprovincial records. If a person had child welfare involvement in British Columbia, Quebec or New Brunswick, it will not be readily available through any check of any Ontario children's aid society.

If I could just refer to page 3 of our submissions: As I've indicated, a check of an individual CAS will not reveal involvement with another CAS in Ontario. The only way that that will be revealed currently in Ontario is through a fast-track check. So the Ontario Association of Children's Aid Societies is recommending that a mechanism be put in place. Again, if the objective of the amendment to the legislation as it relates to children's aid society records is to ensure that a judge has access to information, then the recommendation of the CAS is that a mechanism be put in place that will allow a fast-track check to be made by some centralized body, be that by the clerk of the court, by a CAS jurisdictionally based where the application is taking place, or by the Ministry of Children and Youth Services, which is where the fast-track system is housed.

What we see as a potential is for a two-stage inquiry. So the initial request is made through fast-track, and if it reveals the involvement of a children's aid society, then a second stage can take place where the judge can seek records from the particular children's aid society, because fast-track will not provide you with details of the involvement; it will simply advise you that there has been an involvement.

The cautionary note that we have—and much of this is contained on page 4 of our submissions—is that, as I indicated, CASs keep records differently and, additionally, they may have different search mechanisms in terms of whether you will be able to actually access information on the person that you're looking for the information for. Again, as the Family Lawyers Association indicated earlier as well, names change and partners change and people moving in and out of the house change. So getting access to information on all the people you will need access to may prove challenging as well.

We, therefore, recommend that any legislation which is seeking records from a CAS through the mechanism that is contained in Bill 133 include a provision that saves children's aid societies from liability if that information is missed, because there's every potential for that to happen, based on how the records are kept. As well, records are mixed, so they would have other people whose information perhaps should not be put in the hands of the applicant or before the court contained in the records as well. So there are privacy issues.

1720

The other issues have to do with—and Ms. Lewis suggested that we would like as much to be covered in legislation as is possible—some clarification with respect to what we mean by "records": records of an adult, records of a child? What do we mean by "opened file"? All of that is contained in our submissions.

The other recommendation that we have, and it's not something that will be a surprise to you, is that we anticipate that this will require increased resources to children's aid societies if they are going to have to be responding to requests from an applicant in a custody situation and to requests from a court in a non-parental custody situation to respond to their search for records.

There are issues with respect to the sharing of information between children's aid societies and the fact that part 8 of our legislation has never been proclaimed. We are dealing with that as it relates to a review of our legislation, but it is related to this issue as well.

I think we want to reiterate that no system will be foolproof and that whatever mechanism you put in place may not achieve the results in terms of being able to identify in the specific records.

In conclusion, as Ms. Lewis has indicated, we fully support the principles of the bill insofar as they're intended to protect children from harm. Our position is that there are risks as they relate to self-declaration and also, perhaps, to the adequacy of the plans of care that are provided. There is clarity required with respect to what you mean by a police record and there are significant gaps in the ability of a CAS to check records without the use of the fast-track system, though, as I've indicated, self-declaration is probably the only way to get at records that are extraprovincial. Again, there's just the caution to the committee that the vast majority, 75%, of child protection involvement is not in court proceedings.

OACAS is committed to continuing to work with the Ministry of the Attorney General and with the Ministry of Children and Youth Services to achieve the best possible outcomes for children.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Engelking and Ms. Lewis. We've got a minute and a half per side, beginning with Mr. Kormos.

Mr. Peter Kormos: I'm fine, thank you, Chair.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Kormos. To the government side.

Mr. David Zimmer: Thank you, Chair.

I know that you were sitting there while we had the presentation from the family law association.

Ms. Jeanette Lewis: Family Lawyers Association.

Mr. David Zimmer: I'm sorry; Family Lawyers Association. You heard their concerns about what should be disclosed, that not necessarily everything should be disclosed. What do you have to say about their concerns?

Ms. Tracy Engelking: I would concur that there are privacy issues in relation, as I've indicated, to other people whose information would be contained in our records and who may not be involved in the proceeding that's before the court. So that's certainly something that would have to be sorted out, and I don't think it's clearly sorted out by the way the bill is written right now. So I would share that concern.

Mr. David Zimmer: What do you think about the narrower issue; that is, the disclosure of any relevant information to the judge by the—I'll refer to them as the custodial applicant?

Ms. Tracy Engelking: I guess the challenge is to—

Mr. David Zimmer: As opposed to other people who may be mentioned in the same report.

Ms. Tracy Engelking: Right. The challenge is relevant and the challenge is the vetting process, which is why I have said that that will mean increased resources for children's aid societies. If we're going to spend time vetting our files to be able to provide it to a custody applicant or a court in a custody application, it will require resources to do that. Our files are voluminous oftentimes, and mixed, as I've said, and partners change and jurisdictions change.

Mr. David Zimmer: So your concern is not so much—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Zimmer. Mrs. Elliott.

Mrs. Christine Elliott: Thank you very much for your presentation. I think it's really critical that you're here today, and I thank you for that, given the role that you are being asked to play in this bill.

You've made some really critical recommendations for change here—and the overall conversation about the self-reporting. Even if these recommendations were taken into consideration, would you still feel comfortable with the system as set up, or would you prefer a system where, as the Family Lawyers Association have recommended, we proceed to have the Office of the Children's Lawyer investigate? I'd really appreciate your comments on that.

Ms. Tracy Engelking: I'm not sure that we can comment clearly on a proposal that the Office of the Children's Lawyer investigate. When they do investigate, there is a mechanism in place for them to have access to our records. But, as the Family Lawyers Association indicated, currently their involvement is discretionary. I think it varies from jurisdiction to jurisdiction as to when a children's lawyer will even be appointed or when an assessment from a children's lawyer will be ordered by the court. It's certainly different in our jurisdiction than in some others, with respect to what age the children are and whether they can reasonably instruct counsel and things like that, as opposed to an automatic appointment.

Mrs. Christine Elliott: But the self-reporting aspect of it seems to still be a concern of yours. Even when you set all these systems up in place, it really depends on that. Is that something that we should be depending on? Isn't that somebody who may have something—

The Chair (Mr. Shafiq Qaadri): With regret, Mrs. Elliott, I'll have to intervene there and thank you, as well as Ms. Lewis and Ms. Engelking from the Ontario Association of Children's Aid Societies.

ABORIGINAL LEGAL SERVICES OF TORONTO

The Chair (Mr. Shafiq Qaadri): I'd now invite our final presenter of the evening, and that is Mr. Jonathan Rudin of Aboriginal Legal Services of Toronto.

Welcome, Mr. Rudin. As you've seen, you have 20 minutes in which to make your presentation, which begins now.

Mr. Jonathan Rudin: I'd like to thank the members of the Standing Committee on Social Policy for this opportunity to present our perspective on Bill 133.

My focus today will be narrow. It will be regarding the amendments to the Children's Law Reform Act regarding the information required when a non-parent applies to the court to seek custody of a child.

Before I begin my substantive submissions, I want to provide a little bit of background about Aboriginal Legal Services. ALST was founded in 1990. One of the main objects for which we were incorporated was to assist aboriginal community members in exercising control over the justice-related issues and factors that affect them.

ALST operates five main programs: the court worker program; the Gladue aboriginal persons court program; the community council program; the Kaganoodamaagom program, which is our victim rights program; and the legal representation program.

Our court worker program includes criminal, youth and Family Court workers. Our Family Court worker assists aboriginal people in many different areas, including referring clients to duty counsel and advice counsel, and helping individuals understand the process that they need to follow in order to gain custody of a child that they are not a parent to.

In addition to our English name, by way of a traditional naming ceremony, we received an aboriginal name: Gaa kina gwii waabamaa debwiwin, which translates as "all those who seek the truth." We do not see this so much as a description of what we do; rather, it's a direction to us to try to find the truth in the various endeavours that we undertake, and it's in that spirit that we appear before the committee today.

The proposed amendments to the Children's Law Reform Act were developed to try to ensure that the courts had the necessary information they required before making important decisions about whether a non-parent would have the care and custody of a child. The need to keep children safe is a vital one, and all of us share responsibility for that.

Our concern with the proposed amendments, however, is that they may not in fact accomplish their desired goals; rather, from our perspective, they may discourage worthy aboriginal individuals from seeking custody of children.

We have two specific concerns with regard to the legislation. First, if the implementation of the legislation is not carefully undertaken, it may simply discourage many competent aboriginal caregivers from applying to the court for custody of children because of things they have done or things that have happened to them in the past. Second, the fees associated with things like CPIC checks, if forced to be borne by applicants, may discourage aboriginal people on social assistance from even applying to the courts.

1730

I'd just like to give a little bit of background on these issues before I go back to the substantive submissions. First of all, traditionally, aboriginal people have taken a broad view of who can and should be responsible for raising a child. That expression, "It takes a village to raise a child," is an African expression, but aboriginal people, as indigenous peoples, share that viewpoint. The perspective does not just have historical weight; it's true today. Aboriginal children are often raised by aunties, uncles, grandparents, nephews and nieces. Non-nuclear family arrangements are quite natural for aboriginal families.

Also, what must be kept in mind is that socio-economically, aboriginal people are at the bottom of the ladder in Ontario and in Canada, and this is true of aboriginal people who live on reserve and aboriginal people who live off reserve. Basically, whatever people don't want, aboriginal people have more of, and whatever people do want, aboriginal people have less of. In particular, in the context of this legislation, aboriginal people have less income than non-aboriginal people and are thus more reliant on social welfare payments.

In addition, as a result of government-sponsored practices such as the residential school system, aboriginal people are overrepresented in the criminal justice system and in the child welfare system. In other words, it's more likely that an aboriginal person would have a criminal record than a non-aboriginal person, and it's more likely that an aboriginal parent will have had dealings with a child welfare authority than a non-aboriginal parent.

Finally, to put these submissions in context, one of the notions that's central to aboriginal culture and traditions is the notion of healing. There are restorative justice programs that are becoming quite prevalent for all peoples across Ontario, and many of them trace their roots to aboriginal practices and values. At the heart of restorative justice and healing processes is the knowledge that people can and do change; that a person cannot be understood simply by reading their criminal record or knowing that they have had a child apprehended. Indeed, many of the respected elders in the aboriginal community have had times when their lives were not exemplary. It's the fact that they've completed a healing journey that makes them so respected in the community.

At ALST, our aboriginal justice program, the community council relies on a dedicated group of volunteers who meet with offenders to share the stories of their lives and to help put these people on a healing path. One of the reasons they're so effective in their work is that they understand, from a very real personal sense, what people in trouble with the law are going through and similarly

what's happening with people involved with children's aid and child welfare authorities.

Given these considerations, let me turn to the two concerns we have with Bill 133.

The amendments to section 1 of the Children's Law Reform Act will require individuals who are not parents of a child, but are seeking custody of a child, to provide to the court a CPIC record, and they must request of certain children's aid societies that any records they may have regarding them be provided to the court.

We understand why this information is being sought. Certainly, there are circumstances where the fact of a person's prior criminal record or involvement with a child welfare agency would be relevant considerations in the determination of the suitability of a parent. At the same time, I think we all can recognize that the simple fact that a person has a criminal record or has had dealings with a child welfare agency should not bar them from ever raising a child. We would urge the committee to ensure that it is understood by everyone involved in the process that having a criminal record or a history of involvement with child welfare is not necessarily an absolute bar to gaining custody of a child. In addition, it's important that all information packages and forms that individuals are required to fill out to gain custody of a child make that explicitly clear.

As an example, at ALST we require CPIC checks for individuals who are volunteering with our community council program. On our application form we state, "For the safety of our adult and youth participants, we do require a criminal reference check. A criminal record does not prevent a person from becoming a volunteer."

We've never had any objections by anyone to obtaining a criminal record check under those circumstances but, of course, those individuals know they're applying to volunteer with an aboriginal organization that's aware of the dangers of over-reliance on things like CPICs. An aboriginal person may well feel much less comfortable when applying to the court to gain custody of a child, knowing that this information is required of them; therefore we stress the importance of making it clear that this is simply one bit of information that will be factored into the decision of whether a person can obtain custody of a child.

The reason this is important is because it must be kept in mind that many child custody arrangements are informal. Approval by the courts is not required for a person to parent a child. Court approval can certainly make it easier for the non-parent who has custody of a child, but it's not essential. If the criminal record and child welfare checks are seen by potential caregivers as bars to approval by the court, what will occur will be a rise in informal child custody arrangements. An increase in this phenomenon does not make children safer, although it does insulate the court and court personnel from any accusations if something tragic occurs with the child. The purpose of this legislation, however, should not be to shield court personnel but rather to protect children.

Now, as I mentioned, not all child custody arrangements are approved by the court. In our experience in assisting aboriginal parents or non-custodial individuals trying to obtain custody of a child, one of the reasons that many aboriginal non-parents seek court approval of their gaining custody of the child is so they can obtain the child tax credit or an increase in their ODSP payments to allow them to better provide for the child. Wealthy parents who can provide non-parents with direct financial assistance do not need to rely on the courts for approval of their arrangements.

This, then, leads to our second concern: the cost. This may not seem like much. A CPIC report costs 30 or 40 bucks to get; it doesn't seem like much. But if a non-parent is seeking custody and they, for example, are on social assistance, where are they going to get that $30 or $40 from? If we truly wish to encourage all potential individuals who can look after a child to take on that responsibility, then it's vital that Ontario Works and the Ontario disability support plan provide the money necessary as a supplement for a person seeking custody of a child to obtain a CPIC check. It would be cruel to force a person on limited means and fixed income to bear that cost on their own.

We realize that the purpose of these amendments was not to make it more difficult for aboriginal people to obtain custody of children, but we also know that aboriginal people can be and are adversely affected by rules and regulations of general application. We're concerned that without consideration of the particular needs of aboriginal people, they will find it more difficult to obtain custody of children than non-aboriginal people. That would further perpetuate systemic discrimination against aboriginal people and would simply be wrong.

Thank you for allowing us to make this submission.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Rudin. We have about three minutes per side, beginning with the government. Mr. Zimmer?

Mr. David Zimmer: You know, you raise a very interesting point in your submission here, that the aboriginal community—just let me refer to it here—has a broader view of who can and who should be responsible for raising a child. I suppose that also applies to a number of other, more recent immigrant groups to Canada from different parts of the world. Frankly, I hadn't thought of it from that angle.

But to your concern about the records being produced and reports of the children's aid society being to the detriment of the parent applying or the custodial applicant applying, isn't what we're trying to do here what best meets the needs of the child? That being the case, isn't it best to get all of the information on the table and then let a judge assess it? The judge may accept parts of it, all of it, none of it—whatever. But isn't that the assessment process?

Mr. Jonathan Rudin: There's no question. But this is the difficulty: If an aboriginal parent thinks, given their experience with the world—and it's not an untoward assumption—that the fact that they have a criminal

record means they will be judged more harshly and that they won't be considered, then what will happen is people won't apply to the courts; there will be informal arrangements made and people won't bother going to the courts. If no one goes to the courts, then there's no screening. That's why we say it's essential that all the documents, everything that's produced—and I realize that on one level, this is beyond a regulation, but all the documents have to make very clear that if you have a criminal record, that's not setting you up for a no. If people think it's setting them up for a no, if people think involvement with child welfare sets you up for a no, then the people won't apply.

Mr. David Zimmer: And essentially, that's a communication issue between the system, if this system is adopted, and getting that message out that, "Look, give us all the information," and what's in the information is not necessarily a bar; that's up to a fair-minded judge to assess in the best interests of the child.

Mr. Jonathan Rudin: It's vital that that information get out, and in fact I think it's vital that it starts now, because people already are starting to think that they're going to have to provide this information.

Mr. David Zimmer: So what kind of a communication process would you see, from your experience, in getting that information out to custodial applicants?

Mr. Jonathan Rudin: Well, I—

The Chair (Mr. Shafiq Qaadri): I'll have to intervene there. Mrs. Elliott, please.

Mrs. Christine Elliott: Thank you very much for your comments and for representing the concerns of aboriginal people. I appreciated your concerns.

Again, following the line that Mr. Zimmer was speaking about with respect to the concern that if there had been a criminal conviction, you have to disclose that and it has to go before a judge, it also begs the question of, what does a judge do with that? When they get that information, they don't have that background, they don't know how important, how relevant, that may or may not be. So there has been a suggestion—again, I've asked previous people about this—that the Office of the Children's Lawyer be involved with that to help sort through all of that before it gets to a judge. Do you think that would be of any benefit for your clients?

Mr. Jonathan Rudin: I can't actually speak to that. I will say that in our Gladue program, we often produce reports for aboriginal people who are before the criminal courts, and part of the purpose of that is to explain the relevance, the significance, of the criminal record and whether it remains relevant today. I don't know, frankly, whether the Office of the Children's Lawyer is equipped to provide that sort of information as it relates to aboriginal families.

Mrs. Christine Elliott: I appreciate that. Thank you.

The Chair (Mr. Shafiq Qaadri): Mr. Kormos.

Mr. Peter Kormos: I'm inclined to agree with you. Nobody here at Queen's Park had to submit to a criminal record check before they were allowed to take their seat. It might have been an interesting threshold to have to pass.

Interjections.

Mr. Peter Kormos: I want to ask you, when the Office of the Children's Lawyer investigates a matter, is there a fee back to the applicant?

Mr. Jonathan Rudin: No.

Mr. Peter Kormos: Well, you see, this is what makes the judges' proposal all the more interesting. Thirteen Family Court judges in some of the busiest family courts in the country wrote to this committee, saying, "However, an investigation by the Children's Lawyer is, in our view, the clear solution to the problem of custody cases where parties are unrepresented or where an application is unopposed and a judge has reason to be concerned adequate information is not being provided to the court. This solution addresses a critical problem in the courts, while respecting the need for judges to maintain their traditional and crucial role as independent adjudicators in the adversary system." I read that quickly because we've got a tough Chair. Are you inclined to agree with that proposal?

Mr. Jonathan Rudin: Again, I think it is important to have context. I can't say that we think that the Office of the Children's Lawyer necessarily—

Mr. Peter Kormos: Quite frankly, not having a criminal record doesn't say anything either, does it? The fact that somebody doesn't have one doesn't speak to their character—

Mr. Jonathan Rudin: No.

Mr. Peter Kormos: —or lack of propensity for violence etc. Thank you kindly, sir.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Rudin.

Before moving to close the meeting for the day, I will just remark, I think legislative research will probably confirm that criminal checks are party-specific, Mr. Kormos.

Having said that, if there's no further business of this committee, then this committee is adjourned till Monday, March 30, at 2:30 p.m.

The committee adjourned at 1742.

CONTENTS

Tuesday 24 March 2009

STANDING COMMITTEE ON SOCIAL POLICY

Chair / Président
Mr. Shafiq Qaadri (Etobicoke North / Etobicoke-Nord L)

Vice-Chair / Vice-Président
Mr. Vic Dhillon (Brampton West / Brampton-Ouest L)

Ms. Laurel C. Broten (Etobicoke–Lakeshore L)
Mr. Kim Craitor (Niagara Falls L)
Mr. Vic Dhillon (Brampton West / Brampton-Ouest L)
Ms. Cheri DiNovo (Parkdale–High Park ND)
Ms. Helena Jaczek (Oak Ridges–Markham L)
Mr. Shafiq Qaadri (Etobicoke North / Etobicoke-Nord L)
Mr. Khalil Ramal (London–Fanshawe L)
Mr. Peter Shurman (Thornhill PC)
Mrs. Elizabeth Witmer (Kitchener–Waterloo PC)

Substitutions / Membres remplaçants
Mrs. Christine Elliott (Whitby–Oshawa PC)
Mr. Peter Kormos (Welland ND)
Mr. David Zimmer (Willowdale L)

Clerk / Greffier
Mr. Katch Koch

Staff / Personnel
Ms. Marta Kennedy, research officer,
Research and Information Services