

**FAMILY DISPUTE RESOLUTION INSTITUTE OF ONTARIO
(FDRIO)**

**PRESENTATION RE BILL C-78,
AMENDMENTS TO THE DIVORCE ACT**

**House of Commons
Standing Committee on Justice and Human Rights**

Additional Comments following the Presentation on Nov. 26th

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**Attention: Marc-Olivier Girard, Clerk of the
Committee**

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Dear Committee Members,

I appreciated the opportunity to present comments on behalf of FDRIO on Monday November 26, 2018.

Following my presentation, based on the questions that were asked, I felt it was important to add a few additional remarks. Much of the focus was on the question of whether a “Presumption of equal time” was in the best interest of children.

I took the position that this is not a presumption that FDRIO – or I support. I will set out some of the reasons why this presumption is not advisable. Also, I will highlight the provisions of Bill C-78 that encourage cooperative relationships between separating parents and set a climate for families to develop the type of plan that fits their unique situation. Such Parenting Plans take into account the age, stage of development, temperament and any special needs of their children.

At the outset I want to state that our position is supportive of children spending considerable time with each parent – even 50% in the appropriate cases, which are not frequent. That is, where there are 2 competent parents, with the motivation and availability to share considerable time, who are able to communicate and cooperate reasonably and live reasonably close to each other. Even if these criteria are met, the children need to be flexible, confident, usually of school age, and have had a history of being well cared for by both parents.

As separating families increasingly use alternative dispute resolution – instead of engaging in adversarial court battles, the percentage of couples who create a Parenting Plan with considerable shared time, has increased dramatically. In mediation, or a collaborative process, couples are assisted to behave respectfully, listen to each other’s concerns, and focus on what is best for their children. The conversation is not about “Parent’s Rights” or “Winners and Losers”. Couples are screened separately for appropriateness and asked if they are willing to participate in a DR process.

Reasons to Oppose a Presumption of Equal Time:

- It negates the importance of considering the various criteria that focus on a child's best interests.
- It minimizes the concerns raised about safety, violence, threats and coercion – especially at the time of separation, when feelings are running high.
- It does not take into account many significant factors, such as the age, temperament, or special needs of each child in the family.
- It does not consider individual differences in the children on all of the above, including their relationship with each other, and with each parent.
- It does not consider issues that may have caused the separation or raise questions about parenting capacity, that call for treatment, before a parent is capable of taking on the responsibility of extended time with children, such as mental health, addiction, anger management, lack of parenting experience, significant health or intellectual challenges.
- If a child has special needs – eg is diagnosed as a spectrum disorder child or with a learning disability or speech difficulty or Tourette syndrome, or anxiety, etc. – there is often a refusal by one parent, most often the father, to agree to engage the child in counselling or treatment that is recommended by a professional – and to share the cost. Professionals will not treat a child without both parents' consent, especially if there is a 'shared parenting' agreement or order. This should be considered a child welfare matter as it creates significant delays and disadvantages for children when treatment is denied after it is recommended by a qualified professional. Often the concern is that participating in treatment will itself stigmatize a child.
- It does not consider the parent's availability based on their work schedule – which may change at different times of the year (eg an accountant) or include travel for business, shift work, whether start and finish times correspond with the children's schedule, etc.
- It does not consider whether a parent entered a new relationship before the marriage ended or immediately after – this inevitably raises the conflict level

and lowers the trust, and comfort exchanging the children between homes or willingness to have the children spend time with the new partner.

- If children (especially over about 6yrs) are 'required' to spend time with a new partner, before they are ready eg they have not had time to adjust to the separation or feel secure in their new parenting arrangements, they will be very distressed – even refuse to have contact with the biological parent while the new partner is present (independent of the angry parent).
- As children move through high school, they generally prefer to be primarily in one home – where their friends can find them and they can complete their school assignments. At this age they can sustain a relationship with a parent, while spending less time – and their friends are the priority.
- If parents do not live in close enough proximity to each other, and the children's schools. Living in close proximity may not be feasible depending on their financial situation, where they work, or where their extended family (support system) or new partner lives.
- The 40% rule opened an UNFORTUNATE pandora's box of every father insisting on 40% or more time, in the belief that they would not have to pay child support. When a parent takes the position that they are NOT looking to avoid child support obligations, almost always there is more flexibility on the issue of time.
- The 40% rule causes more conflict than any other issue. If the rule were that **"children should enjoy the same standard of living in each home"**, the issue of time would be GREATLY reduced. Even if a parent has 40% of the time, it rarely reduces the other parent's costs – other than fewer meals to prepare when the children are not there.
- Next is the word "Extraordinary" to describe a s.7 extra-curricular expense. Does it mean that the activity is at an 'elite' level, or does it mean that the activity is unusual for that child, or that it is unusually costly given the family's income, or... This needs clarification as it wastes time and money and likely results in a child not being able to participate in an activity they would enjoy.

Bill C-78 very helpfully puts a premium on safety, reduction of conflict and cooperation. It strongly encourages Family professionals to advise couples to attend a cooperative consensual DR process – unless this would clearly not be appropriate. People do not get killed in mediation or cooperative processes – they get killed when they exchange accusatory or humiliating affidavits and engage in a “Winner-Loser” adversarial process.

If there are Mandatory Information sessions, Screening for DV and appropriateness, Triage to appropriate community services, with reasonable standards of training for Family professionals, then the need to impose a one-size-fits-all plan – ie a Presumption of 50%, is unhelpful. What is needed are PROPERLY funded services inside and outside the court, with a reasonable amount of time to assist the parents. Separation is a major crisis for most separating couples with many significant decisions that have long term consequences for themselves and their children.

One concern is that as DR processes have become more effective, there have been increasing cuts to the time permitted for working out agreements. Also, DR professionals are often paid VERY little for their services. As a result, less qualified professionals are hired and they are expected to put considerable pressure on clients to reach agreements too quickly. This does not allow time for hurt and angry feelings to subside, communication improved and for lasting, child centred agreements to be well designed.

I encourage the Committee to review the relevant portions of the Family DR Handbook, 6th ed. I am willing to answer further questions, if asked.

I applaud your good work and look forward to seeing the final statute.

Regards,

Dr. Barbara Landau, Lawyer, Psychologist and Mediator

