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Bill C-223 and the evolving framework of parenting determinations in Canadian family law

By **Lorne J. Fine**

Law360 Canada (April 27, 2026, 2:53 PM EDT) -- Canadian family law has undergone sustained legislative and jurisprudential refinement over the past few decades.



Lorne J. Fine

As of April 2026, further changes are now being proposed under Bill C-223, titled the *Keeping Children Safe Act*. According to the preamble of this private member's bill — which is currently at the second reading stage — it is aimed at prioritizing the protection of children and survivors of family violence within the context of parenting disputes.

While certainly well-intentioned, Bill C-223 raises important legal questions, especially from the standpoint of lawyers representing family litigants.

Key among them is the concern that the bill would recalibrate the exercise of judicial discretion by restricting certain evidence, presumptions and remedies. This impacts not merely what evidence may be advanced, but how it must be interpreted by courts.

More pointedly for the lawyers themselves, the bill would also impose significant — yet arguably vague — new obligations around screening for family violence and power imbalances.

The existing framework around judicial discretion



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The 2021 amendments to the *Divorce Act* made sweeping reforms to the federal *Divorce Act*, which modernized the governing principles and terminology and codified the "best interests of the child" framework. The child's best interests are now the paramount consideration for s. 16(1) parenting orders and must be assessed against the non-exhaustive list of factors set out in s. 16(3). These specifically include family violence, under s. 16(3)(j).

This framework meshes with the principles set out by the Supreme Court of Canada in *Barendregt v. Grebliunas*, 2022 SCC 22, where the court noted that the best-interests analysis is "a heavy responsibility, with profound impacts on children, families and society." Since the assessment is highly fact-specific and tied to each child's unique circumstances, it is ideally made by the trial judge, who can weigh the evidence and assess credibility first-hand. For this reason, trial judges are afforded broad discretion when determining the "best interests of the child," which is to be exercised against the background of clear statutory guidance.

Restraint on evidence

Given this framework, any legislative reform that narrows or channels that broad discretion should be scrutinized carefully. This brings us back to Bill C-223, which proposes to amend the *Divorce Act* in significant — and arguably concerning — ways.

One central theme is around the treatment of evidence, particularly relating to family violence and parental alienation. The bill introduces two important shifts: it restricts the introduction of evidence around certain allegations of parental alienation and at the same time limits the inferences that a court may draw in the absence of formal findings by the police or child protection agencies.

Specifically, the bill newly introduces ss. 16(3.1) and 16(3.2); in the context of the best-interests analysis, it directs courts *not* to consider allegations of parental alienation *except* in defined circumstances — most notably where there is family violence present.

At the same time, the bill replaces s. 16(5) with a provision addressing so-called "myths and stereotypes" about family violence and directs courts not to draw negative inferences solely from the absence of formal complaints to the police or the Children's Aid Society, lack of child welfare involvement or an acquittal.

Another proposed change relates to evidence from children: the bill requires the consent of both parents before a judge may interview their child, and then only if the child's best interests, safety and privacy are not compromised. However well-intentioned, this gatekeeping mechanism may prove stifling in practice, particularly where one parent withholds that consent. A judge should be able to interview a child if the child wishes to speak to the court or if the judge believes that it is in the child's best interests.

Since these amendments impose a not-so-subtle rigidity, they may hamper the courts' mandate and impinge on judicial discretion. This veers from the flexible decision-making model that fortifies the best-interests analysis in the first place.

Recalibrating 'best interests' and parenting time frameworks

Another notable amendment in Bill C-223 is the proposed adjustment to the "best interests of the child" framework currently found in s. 16(3) of the *Divorce Act*. While the bill does not purport to disturb its long but non-exhaustive list of relevant factors, it makes targeted adjustments to them. Specifically, it outright repeals s. 16(3)(c) (which currently directs the court to consider each parent's willingness to support the child's relationship with the other) and replaces it with modifications to ss. 16(3)(i) and 16(3)(j)(i), which addresses cooperation between parents and the impact of family violence.

The bill also alters the statutory approach to allocating parenting time. It eliminates the current "maximum parenting time" principle in s. 16(6) and replaces it with an express ban on any presumption that equal parenting time, shared decision-making or ongoing contact with each parent is in the child's best interests. Therefore, the bill proposes that there is no parenting arrangement that is presumed to be in the best interests of the child.

Bill C-223 attempts to refine the long-established best-interests analysis — but in a manner that dilutes the combined strength of statutory certainty and judicial flexibility. It is questionable why this is necessary when the current system is already working.

Narrowing the judicial remedies

One of the bill's objectives is to reduce the misuse of parental alienation. The bill prevents a judge from considering if a parent has alienated a child against the other parent unless family violence is found. The bill misses the fact that parental alienation may exist without physical violence. The court should be at liberty to address the emotional abuse of the child.

In addition, Bill C-223 removes entire categories from the courts' arsenal of judicial remedies. It adds s. 16.1(4.1), which prohibits courts, in a parenting order, from restricting the parenting time of a parent with whom the child has a close relationship *for the purpose* of improving the child's relationship with the *other* parent. This will impede the courts' ability to address strained parent-child relationships; the court should be able to restrict the parenting time of one parent if it will result in improving the child's relationship with the other one.

The unintended impact of the bill is that it may in fact harm children, by ignoring valid cases of parental alienation and by limiting judicial discretion to address the issue.

The bill also introduces s. 16.1(4.2), which prohibits a court from forcing a child to attend "reunification therapy." Ontario family law decisions are replete with illustrative cases in which judges — who work "in the trenches" and see a daily parade of litigants and their children — saw a clear benefit to forced reunification therapy, even when the litigants themselves may not have. For example, in *R.M. v. D.S.*, 2026 ONSC 1795, the Ontario court ordered the parents to undergo reunification therapy even though neither of them had proposed it, the Office of the Children's Lawyer generally opposed it, and their existing counsellors were unprepared to provide it.

The bill is a real concern for parents who are cut out of their children's lives by an alienating parent, as it rejects the concept of emotional "parental alienation" notwithstanding the social science that substantiates its prevalence.

Imposing new duties on lawyers

Finally, one of the more striking features of the bill is the way it imposes new duties on lawyers towards their clients.

Currently, s. 7.7 of the *Divorce Act* requires legal advisers to discuss reconciliation and family dispute resolution processes in appropriate cases. Bill C-223 eliminates those obligations where the circumstances include evidence of a risk of family violence. However, it re-casts the section to impose a new duty: to consider whether there are "reasonable grounds to believe that there is a risk of family violence toward a spouse or another family member that could adversely affect safety or the spouse's ability to negotiate a fair agreement."

Where such a risk exists, the legal adviser must take concomitant steps to implement an appropriate plan, to ensure that the family has a "safety plan" and to inform the parent of support services. In other words: screening and safety.

While the bill's objective is laudable, this obligation on lawyers is too broad and undefined. The bill does not define "safety plan," nor does it address the cost implications of the lawyer's time in carrying out these tasks. It also raises questions about how these duties align with existing professional obligations to act only on client instructions.

If the bill is enacted, mandatory training to screen for family violence and power imbalances should be required by family lawyers to ensure they discharge their role in a consistent manner.

Conclusion

Stakeholders in the family justice system may well applaud the overarching goals of Bill C-223, which are to enhance child safety and address the misuse of parental-alienation concepts.

Even so, the bill warrants careful scrutiny, since the changes — however well-meaning — limit judicial discretion when addressing the "best interests of the child." In addition, if enacted, these changes will require family lawyers to adapt quickly, particularly in how they assess evidence, advise clients and navigate increasingly structured statutory constraints.

Lorne J. Fine is the principal of Fine & Associates Professional Corporation in Toronto, where his practice is dedicated exclusively to family and divorce law. He has over 30 years of experience representing clients in complex family law matters. Lorne is a qualified arbitrator (Q.Arb) with additional training in negotiation, collaborative law and mediation. He has been regularly featured in media on family law issues, including appearances on Global Television, CHCH and as a recurring legal contributor on AM740's Goldhawk Fights Back*.*

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