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MEMORANDUM

TO: Members of the Standing Committee on Justice and Human Rights, House of Commons

FROM: Peter Jon Mitchell, Program Director, Family
Andrea Mrozek, Senior Fellow, Family

DATE: October 22, 2026

SUBJECT: Study of Bill C-223: An Act to Amend the Divorce Act

WHO WE ARE

Cardus is a non-partisan think tank dedicated to clarifying and strengthening, through research and dialogue, the ways in which society's institutions can work together for the common good.

ISSUE

The private member bill proposes to increase the obligation of legal advocates and the court to assess the risk of family violence. The amendments compel the court to consider coercive control and provide the court with tools to further determine the best interest of children.

RECOMMENDATIONS

Cardus supports the increased focus on proactively assessing the risk of family violence, and the acknowledgment family violence does not end at divorce. Other elements of Bill C-223 require further consideration. Cardus recommends the following:

- Ensure the Divorce Act preserves the court's discretion to consider opportunities for reconciliation in the absence of family violence and where the court determines to be appropriate.
- Remove proposed amendments Section 16.3(1) and Section 16.3(2). Whereas Bill C-223 recognizes that allegations against parents of manipulating, persuading or encouraging child estrangement can be unfounded and misused, the amendments are a blunt response that will impede the court in the determination of the best interest of children.

BACKGROUND

Reconciliation

Some marriages are irreconcilable. Some marriages are unsafe to continue. For many others, divorce finalizes the fracturing of a relationship intended to be permanent. This fracturing is emotionally difficult and financially devastating for adults. Divorce is also correlated to poor outcomes for children including depression and mental health concerns.[1] Bill C-223 obliges legal advocates and the court to assess the risk of family violence to protect spouses and children. In the same way, the harms of divorce should be mitigated through the consideration of reconciliation where violence is absent and where appropriate.

The *Divorce Act* compels legal advocates "to draw attention of the spouse to the provisions of the Act that have as their objective the reconciliation of spouses…" [Sec. 7.7(1)] The *Divorce Act* also

[1] Cherlin et al., "Effects of Divorce on Mental Health Through the Life Course"; Kalter, "Long-Term Effects of Divorce on Children"; Ross and Mirowsky, "Parental Divorce, Life-Course Disruption and Adult Depression"; Lewis and Blakeslee, *The Unexpected Legacy of Divorce*.

compels the court to determine if there is no possibility of reconciliation prior to divorce proceedings [Sec. 10 (1)], and empowers the court during any stage of the divorce proceedings to adjourn proceedings to provide opportunity for reconciliation if there is evidence for the possibility of reconciliation [Sec. 10 (2)].

Bill C-223 proposes to repeal Sec. 10 (1), removing the duty of the court to determine there is 'no possibility of reconciliation' before divorce proceedings. The bill also proposes to amend Sec. 10 (2), removing the discretion of the court to adjourn proceedings at any stage to provide opportunity for reconciliation. The proceedings may be adjourned only at the request of both spouses.

Parental conflict prior to divorce may lead to poor outcomes for children, but substantial evidence suggests that divorce itself harms children as noted previously. The court is charged with determining the best interests of the child. By removing or significantly limiting the discretion of the court to adjourn proceedings to provide opportunity for reconciliation, the bill may unintentionally inhibit a reconciliation that is positive for adults and in the best interest of a child.

Those who experience divorce are at higher risk for financial hardship, and poorer health among other outcomes.[2] In light of this, it is prudent for the court to consider the potential for reconciliation in the interest of the individuals involved and in the interest of society.

Manipulation and the Best Interest of the Child

Whereas the Act recognizes allegations of manipulation, persuasion or encouragement of estrangement of a child can be misused, the addition of section 16.3(1) and 16.3(2) is a blunt response with the potential to contravene the best interest of the child.

Academics Bala, Birnbaum and Farshait argue that alienating behaviour has a negative effect on children. They cite evidence suggesting that adults who experienced alienation in childhood reported challenges such as depression, substance use, and difficulty forming close relationships.[3]

The harm to children associated with parental behaviour that manipulates, persuades or encourages estrangement from another parent must be considered in the light that unfounded allegations of this behaviour are used by some parents and at times by perpetrators of family violence. Evidence from Ontario suggests the court has acted with prudence in evaluating allegations. Bala, Birnbaum, and Farshait found that over a three-year period in Ontario, the court made a finding of alienation in just 36 percent of cases where allegations were raised.[4] When findings were made, the transfer of primary care was rare. It is Bala, Birnbaum, and Farshait's determination that the court must carefully consider what are often complex factors in determining allegations of alienation. Near blanket bans such as section 16.3(1) and 16.3(2) fail to provide the tools for this attentive consideration.

CONTACT

We would welcome the opportunity to meet with you and assist with future considerations on this issue. Please do not hesitate to contact us at pmitchell@cardus.ca.

[2] Khorunzhina and Fischer, "Divorce and Financial Well-Being"; Martinuk, *Marriage Is Good for Your Health*.
[3] Bala et al., "Children Resisting Contact & Parental Alienation," 10.
[4] Bala et al., "Children Resisting Contact & Parental Alienation," 17.

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SOURCES

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