

Best Interests of the Child: The Canadian Campaign for Equal Shared Co-parenting (CCESP)

Summary of the Consultation Process

About the Canadian Campaign for Equal Shared Co-Parenting

Best Interests of the Child: The Canadian Campaign for Equal Shared Co-Parenting aims to reform the family law in Canada by amending the *Divorce Act* to state a rebuttable presumption of equal shared co-parenting, absent special circumstances such as abuse, neglect, or lack of capacity to care.

Equal shared co-parenting is understood to be in the best interests of children and their parents given divorce in Canada is highly adversarial (therefore highly stressful and unnecessarily expensive) and a large percentage of children after divorce do not have access to one parent (usually the father) and therefore are at a high risk of losing any meaningful relationship, guidance and support from that parent, as well as the extended family from that side. Not surprisingly, a large body of research indicates that children who lack access to both parents are more likely to suffer from negative outcomes in terms of higher rates of suicide, crime involvement, running away from home, substance abuse, teen pregnancy as well as poor educational outcomes. Many progressive international jurisdictions that have legislated a presumption of equal shared co-parenting have reported better outcomes (including lower incidence of domestic violence and better outcomes for the children).

Objective of this Consultation Path

To ensure the proposed draft of the amendment to the *Divorce Act* is in the best interests of the children and takes into account the perspective of subject matter experts and stakeholders, we embarked on a multiphase consultation path. The outcomes of this consultation will be available to legislators who are exploring the reforming of the *Divorce Act* in a way which will better serve Canadian Families. This document is a living document in which additional perspectives can be included as additional agencies and stakeholders would like to have their perspectives heard.

Asking Canadians regarding their Support for Presumption of Equal Shared Co-Parenting

A [Nanos poll](#) was conducted to gauge the preference of Canadians on this issue. Seventy seven percent of Canadians (across all regions and both sexes) indicated their support for the legislation for the presumption of equal shared co-parenting. This level of support was 7 percent higher than the previous poll 5 years earlier.

CCESP Consultations Phase I – Subject Matter Expert Consultations

The legal team affiliated with the CCESCP had prepared a proposed draft of the amendment to the *Divorce Act* to state a rebuttable presumption of equal shared co-parenting. This draft was presented to our [Equal Shared Co-Parenting Advisory Council](#) (ESP Advisory Council) made of stakeholder social agency and victim services senior leadership, academic scholars (in the areas of psychology, anthropology, sociology and gender studies, criminology), legal experts (lawyers, legal researchers, family law mediators) as well as those with lived experience of family law system. At this meeting the ESP Advisory Council members did not represent their agencies and came as subject matter experts only. This council had strong representation by women (gender distribution 13:4 F:M) and representation from several provinces (Ontario, Quebec, Alberta, British Columbia) as well as an LGBTQ advocacy agency. These advisory council members were chosen from outside of the equal parenting advocacy movement (except one who represented those with a lived experience of the family system). The ESP Advisory Council reviewed this proposed draft of the amendment at two meetings on November 6th and 7th 2023, and after comprehensive discussion, endorsed the draft with minor changes. This draft of the amendment is available [here](#). The equal shared co-parenting advocates (including the Chair) at this meeting were present to respond to questions from council members but did not have voting/endorsement privileges.

CCESP Consultations Phase II: VAW and Child Protection/Advocacy

We convened two consultation meetings (October 28th and December 11th 2025) to seek perspectives from the Violence Against Women and child protection/advocacy sectors. A broad spectrum of agencies was invited to these meetings including two women's domestic violence shelters, 3 victim services, those with child protection background, sexual assault support, justice system support, Women's support and human trafficking support agencies. Many agencies attended and actively participated.

The level of engagement of the participants on this issue was high and the participants acknowledged the benefits of equal shared co-parenting outside of special circumstances of abuse, neglect and lack of capacity to care.

During the first meeting additional names were suggested to be contacted and these were invited to the next meeting. One of these included the Office of the Children's Lawyer which was contacted and indicated they cannot be part of this process.

In order to ensure their perspectives were taken into account, those who were invited but were not able to attend the meeting were sent a copy of the summary of the perspectives and asked to comment. Some senior leadership who was not able to attend sent delegates and few were not able to participate due to perceived conflict of interest or time capacity.

After the October 28th meeting Yellow Brick House, a Women's DV shelter in the York Region, sent a number of thoughtful questions and concerns and these were discussed at the second meeting and responded to their satisfaction. These questions/concerns and the corresponding responses are included in the Appendix II in case it would be helpful to address similar queries in the future.

Summary

Comprehensive social science research indicates that absent special circumstances, children benefit from meaningful contact from both parents post-divorce. Consultations were carried out with Canadians, subject matter experts, as well as stakeholder agencies (including VAW and child protection sectors) regarding a proposed amendment to the divorce act which includes a rebuttable presumption of equal shared co-parenting.

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Perspectives from the Participating VAW/Child Protection Agencies from Phase II Consultations

The following perspectives have been offered by the participating agencies in the Phase II VAW/Child Protection agency consultations in regards to the implementation of an equal shared co-parenting amendment to the *Divorce Act*.

Core Principles:

- **Children best thrive with the support of both parents, absent special circumstances such as abuse, neglect or capacity to care.**
- **Best Interests of the Child:** Equal shared co-parenting should be based solely on the best interests of the child and not viewed as a right of either parent.
- **Voluntary Participation:** Parent must be willing to assume care of the child
- **Gender Neutrality:** The gender of the parent should not be a determining factor regarding whether a parent receives equal time and/or equal decision-making responsibility.

Rebuttal and Evidence Standards:

- **Evidence-Based Rebuttal:** Rebutting the equal shared co-parenting presumption must be based on evidence.
- **Reasonable Evidence:** The threshold of evidence required for rebutting the presumption should be reasonable.
- **Risk Assessment:** Industry best practice risk assessment tools for coercion and control should be employed to assess the rebuttal of the presumption.

Assessments and Capacity:

- **Voice of the Child:** The voice of children should be considered following an assessment by a trained child expert to ensure a lack of manipulation by either parent.
- **Parental Capacity:** The capacity to parent should be considered as a rebuttal factor.

Logistics and Process:

- **Guidelines on geographical separation:** Clear and consistent guidelines should be established as to when geographical separation constitutes a rebuttal factor.
- **Mediation:** Mediation should remain as the process of choice during the divorce proceedings (noting that Bill C-78 has been in effect as of March 2021 and already includes this point).
Mediators use the presumption of equal shared co-parenting as a starting point.
- **LGBTQ Considerations:** Specific perspectives for LGBTQ couples are to be clarified by the LGBTQ community representatives.

Appendix I

List of Invitees and Participants for CCESP Consultations Phase II: VAW and Child Protection/Advocacy

Name of Invitee (* Attended)	Title	Agency (Perspective)
Nivedita Balachandran	ED	Women's Centre of York Region (Women's support including IPV)
Jackie Ben-John	ED	Women's Support Network ED (Women's support including sexual victimization)
Talya Breslin (sent delegate)	ED	Jewish Family and Child (Child protection and IPV support)
Karema Burnett*	Service supervisor	Dnaagdawenmag Binnoojiiyag Child & Family Services (Indigenous Community, child protection)
Ellen Campbell*	CEO	Abuse Hurts (Sexual assault)
Alexandra Crawford (sent delegate)	Senior manager	Central Region, Dnaagdawenmag Binnoojiiyag Child & Family Services (Indigenous Community)
Laura Davidson**	CEO	Children's Aid Society of York Region (Child protection)
Carla Devlin*	ED	Canadian Centre for Men and Families (for the purpose of these consultations: indigenous perspective,

		human trafficking, sexual abuse)
Cassandra Diamond*	Founder	BridgeNorth (Human trafficking)
Gillian Freeman**	ED	York Region Victims Services (Victim support)
Ana Fremont*	Director	Yellow Brick House Women's DV shelter (Women's IPV and shelter support)
Bev Freedman (feedback given through one-on-one meeting)	Retired School Board Superintendent, education consultant	Children and youth education
Nancy Friedman*	Registered Social Worker and Youth Therapist	Win Win Counselling (Child protection)
Sadita Graham	Acting ED	Sandgate (Women's IPV support)
Clovis Grant (sent delegate)	CEO	360Kids Youth Shelter (Youth homelessness)
Marlene Hamm	ED	OAITH (Women's IPV shelter/support)
Lorris Herenda (sent delegate)	ED	Yellow Brick House (Women's shelter and IPV)
Pamela James*	Director, Family Services	Jewish Family and Child Services (Women IPV victimization)
Kerrie Kortis*	Clinical Director	Cedar centre (Childhood trauma)
Deanne Kukulewich*	ED	Rose of Sharon (Perspective: teen Moms)

Elisha Laker	ED	York Region Family Services (Family support)
Paula Loughlin	ED	Victim Services of Kingston (Victim support)
Sheri MacDonald*	ED	Victim Services of Haldimand Norfolk Mississaugas of the Credit First Nation (Perspective: Victim support)
Sanaz Milanzadeh*	Director	John Howard Society of York Region (Justice and enforcement system support)
Marie Morton**	ED	CAYR Connections (LGBTQ community)
Shannon Speirs (sent delegate)	ED	John Howard Society of York Region (Justice and enforcement system support)
Allison Peck*	ED	Cedar Centre (Childhood trauma)
Marcie Pekar*	Manager, Youth Mental Health Services	360Kids Youth Shelter (Youth Homelessness)
Karen Todd*	ED	Bridge North (Human trafficking)
Justin Trottier*	CEO	The Canadian Centre for Men and Families (Men's IPV victimization)
Samantha Ward*	Project Hope Lead	Cedar Centre (Childhood trauma)
Susan Warren	Director	York Region Family Services (Family support)

Bijan Rafii*		Chair, Equal shared co-parenting advocacy
Julien Meyer		Equal shared co-parenting advocacy
Elliott Katz*		Equal shared co-parenting advocacy
George Piskor*		Equal shared co-parenting advocacy
Sherry Barna		Equal shared co-parenting advocacy
Carol Metz Murray*		Equal shared co-parenting advocacy

*In Attendance

**Communicated that they will not be able to participate in this process either due to conflict of interest/agency mandate or time capacity

Appendix II

Canadian Equal Shared Co-Parenting Campaign (CCESP) Consultation Phase II- VAW and Child Protection/Advocacy Sector Response to Yellow Brick House Feedback Brief, November 2025

Yellow Brick House has provided a well-considered list of questions to the Canadian Campaign for Equal Shared Co-Parenting (CCESP) Steering Committee. The document has been replicated with responses provided below under 'Response Comment'.

Section A. Safety, Evidence, and Legal Thresholds

1. Safety & Burden of Proof

What specific safeguards will be built into the next draft of the legislation to ensure that survivors of coercive control or non-physical forms of abuse are protected, and are not required to meet an unreasonably high standard of proof to secure safety for themselves and their children?

Rationale Coercive control and psychological abuse rarely produce tangible evidence. A high evidentiary threshold risks leaving survivors and children unprotected until harm occurs.

Response Comment:

These considerations are addressed as part of existing extensive *family violence* provisions as part of the best interest factors in s. 16(3) of the *Divorce Act* highlighted in **red** below:

Best interests of child

16 (1) The court shall take into consideration only the best interests of the child of the marriage in making a parenting order or a contact order.

(2) When considering the factors referred to in subsection (3), the court shall give primary consideration to the child's physical, emotional and psychological safety, security and well-being.

(3) In determining the best interests of the child, the court shall consider all factors related to the circumstances of the child, including

(a) the child's needs, given the child's age and stage of development, such as the child's need for stability;

(b) the nature and strength of the child's relationship with each spouse, each of the child's siblings and grandparents and any other person who plays an important role in the child's life;

- (c) each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse;
- (d) the history of care of the child;
- (e) the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;
- (f) the child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage;
- (g) any plans for the child's care;
- (h) the ability and willingness of each person in respect of whom the order would apply to care for and meet the needs of the child;
- (i) the ability and willingness of each person in respect of whom the order would apply to communicate and cooperate, in particular with one another, on matters affecting the child;
- (j) any family violence and its impact on, among other things,**
 - (i) the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child, and**
 - (ii) the appropriateness of making an order that would require persons in respect of whom the order would apply to cooperate on issues affecting the child; and**
- (k) any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child.

For greater clarity, family violence is defined in s.2(1) which specifically lists coercive and controlling behaviour:

family violence means any conduct, whether or not the conduct constitutes a criminal offence, by a family member towards another family member, that is violent or threatening or that constitutes a pattern of **coercive and controlling behaviour or that** causes that other family member to fear for their own safety or for that of another person — and in the case of a child, the direct or indirect exposure to such conduct — and includes

- (a) physical abuse, including forced confinement but excluding the use of reasonable force to protect themselves or another person;
- (b) sexual abuse;
- (c) threats to kill or cause bodily harm to any person;
- (d) harassment, including stalking;
- (e) the failure to provide the necessities of life;
- (f) psychological abuse;
- (g) financial abuse;
- (h) threats to kill or harm an animal or damage property; and
- (i) the killing or harming of an animal or the damaging of property; (violence familiale)

2. Evidence vs. Professional Assessment

The draft refers to “evidence” as the basis for rebutting the presumption. How will the legislation distinguish between courtroom-level evidence and professional risk assessments, so that early indicators of harm can be acted on *before* violence is formally proven?

Rationale Child-welfare and trauma-informed practice operate on professional judgment and risk probability, not strictly on admissible legal proof. This distinction is vital for early intervention.

Response Comment:

The proposed amendment works within the existing civil law (‘balance of probabilities’) standard under which “evidence” includes **professional assessments**, clinical risk tools, police/CAS records, shelter or counselling documentation, and sworn testimony from qualified practitioners.

Canadian courts already weigh “professional judgment” when determining best interests. The distinction is not between “courtroom evidence vs. assessment,” but between **probative information vs. allegation without foundation**, ensuring that early indicators—such as coercive control scoring, risk flags, or trauma responses—are acceptable bases to rebut the presumption even prior to formal findings of violence.

3. Evidentiary Threshold in Domestic-Violence Cases

Bijan mentioned that courts often apply a higher standard of proof in domestic-violence cases. How will the amendment ensure that survivors are not disadvantaged by this elevated threshold, and that credible professional assessments can still inform judicial decisions?

Rationale A heightened proof requirement contradicts the “best interests of the child” principle and delays timely protection.

Response Comment:

There may have been a misinterpretation of the presentation as Bijan did not mention “courts often apply a higher standard of proof in domestic-violence cases”. In family law, all issues are adjudicated under the **civil balance of probabilities**, not the criminal standard. This was reaffirmed in *Barendregt v. Grebliunas* (SCC 2022), where the Court emphasized child-safety primacy and accepted broad forms of evidence.

For DV issues, courts routinely apply a higher level of **scrutiny** under the civil standard. Professional DV assessments, lethality screens (e.g., Danger Assessment), and patterns of coercive control can be deemed “sufficient indicators of risk” for immediate judicial discretion, ensuring that survivors are not forced into lengthy evidentiary battles before protection is granted.

4. Parental Alienation and Misuse Risk

Since “parental alienation” claims are frequently raised in custody disputes, what safeguards will prevent their misuse against survivors of violence, particularly when there is documented coercive control or ongoing intimidation?

Rationale Equating alienation with child abuse can enable abusive parents to weaponize the term to regain control, undermining safety and survivor credibility.

Response Comment:

For context, parental alienation (PA) is alleged in 10%-30% of contentious custody cases. While counterclaims of abuse do indeed occur in parental alienation cases, data shows that abuse is not an issue in over half of the cases (Harman & Lorandos, 2020; Harman, Leder-Elder, Biringen, 2019). Additionally, a key factor is to differentiate “estrangement due to abuse” from “alienation due to manipulation.”

The primary safeguard are the *family violence* provisions included in the *Divorce Act*. As noted above, courts have always been sensitive to any issues of abuse, including within the complicated context of PA. As borne out by recent studies, (counter) claims of abuse in PA cases receive careful screening and scrutiny by the courts (Harman & Lorandos, 2020; Harman, Giancarlo, Demosthenes, Ludmer, 2023)

5. Child Stability and Geographical Distance

How will the proposed presumption account for the developmental need for stability and continuity—schooling, friendships, routines—when parents live far apart or in different jurisdictions?

Rationale Frequent transitions between homes can disrupt attachment, learning, and recovery; distance must be evaluated as part of the best-interest test.

Response Comment:

The presumption is **not rigid** and automatically yields where distance undermines a child's routines, peer networks, or developmental stability. Courts routinely modify schedules—extended weekends, 2-2-5-5 only when feasible, or primary residence with extended holidays—based on logistical and emotional needs. Research shows that shared parenting works best when parents live reasonably close; therefore, distance becomes a **rebuttal factor**, safeguarding children from excessive disruption.

6. Implementation and Monitoring

If the presumption moves forward, will a cross-sector advisory body—including VAW agencies, child-safety experts, and survivors—be established to monitor outcomes and recommend adjustments?

Rationale Continuous oversight ensures the amendment does not unintentionally endanger families or escalate litigation.

Response Comment:

The proposed amendment does not specifically propose post-implementation outcomes although the federal government routinely commissions evaluative studies in family law

without legislative directive. Post-implementation outcomes are typically analyzed in academic articles.

The ameliorative benefits of shared parenting are largely settled social science and are reflected in the increasing prevalence of shared parenting in Canada and other countries.

Among other findings, results from other jurisdictions indicate improved child well-being, decreased child pathologies, fewer case filings, reduction in DV and improved child support compliance.

Having said this, the campaign will be setting up an advisory board and VAW and child advocacy sectors will be invited as members.

Section B. Voice of the Child & Parenting Capacity

7. Voice of the Child and Safety

How will the next draft ensure that the voice of the child is formally recognized and given appropriate weight, in alignment with the UN Convention on the Rights of the Child, especially when a child expresses fear or refusal to visit a parent?

Rationale Children's expressed wishes—particularly in contexts of violence—must meaningfully influence decisions. Forced contact can retraumatize and undermine trust.

Response Comment:

The Divorce Act explicitly requires to consider the “voice of the child” as a factor in determining the best interests of the child under s. 16(3)(e) regardless of cause (see fact sheet [here](#)):

- e) the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;

Likewise, “voice of the child” reports are recognized aids in provincial legislation.

8. Role of the Ontario Children's Lawyer (OCL)

As the Office of the Children's Lawyer has not yet participated, will your team formally engage OCL and equivalent child-representation bodies before legislative recommendations are finalized?

Rationale OCL offers neutral, justice-based representation of children's perspectives—essential for legitimacy and alignment with child-rights standards.

Response Comment:

The proposed amendment is to federal legislation whereas OCL refers to a provincial office under Ontario jurisdiction.

The amendment works within existing legislation which already includes OCL (or provincial equivalents) participation.

OCL has already been contacted and waiting to hear back.

9. Risk Assessment Integration

You mentioned that skilled assessors can manage complex cases. How will the legislation embed validated risk-assessment tools and professional judgment in decision-making, rather than relying solely on courtroom evidence?

Rationale Safety cannot depend only on proof; credible professional assessments must be explicitly recognized as grounds for limiting or varying parenting time.

Response Comment:

The proposed legislation utilizes the existing range of legislative as well as validated **tools**—such as the Ontario Domestic Assault Risk Assessment (ODARA), Danger Assessment, and child-exposure risk screens—alongside professional clinical judgment. This ensures that safety decisions are grounded in **evidence-based risk probability**, not restricted to proven incidents. Embedding tools provides uniformity and reduces judicial inconsistency while strengthening child protection.

10. Forced Visitation and Trauma

Given the increase in violence during confinement situations such as COVID-19, how will the amendment prevent scenarios where equal-time arrangements effectively compel children or survivors to spend time with a perpetrator?

Rationale Equal-time frameworks can unintentionally recreate entrapment dynamics. The presumption must yield to safety considerations.

Response Comment:

The shared parenting legislation works within the best factors list of s.16(3) in which inappropriate **and prohibited** where coercive control, ongoing intimidation, or credible risk of harm exists. The presumption **yields automatically** to safety considerations.

11. Parenting Capacity vs. Presumed Equality

The proposal assumes both parents are equally capable of shared parenting. How will the amendment ensure that actual parenting capacity—rather than presumed equality—is evaluated as part of determining the child's best interests?

Rationale True equity rests on demonstrated capacity, safety, and stability, not on automatic equality between parents.

Response Comment:

The presumption of joint or equal parental responsibility or parenting time does not in fact presume both parents are equally capable but rather that both parents meet or exceed capability threshold under the best interest's factor list of s.16(3).

Courts have long recognized that custody decisions are not a beauty contest with only one winner.

Assessment of parental capacity will be determined under existing court competency levels in accordance with the provisions of the *Divorce Act*.

12. Embedding Independent Assessments (Section 3 Model)

Has the committee considered formally embedding independent parenting assessments—similar to Section 3 evaluations—into the legislation as a required safeguard in high-conflict or violence-related cases?

Rationale Standardized independent assessments could improve consistency, reduce bias, and strengthen safety-focused decisions.

Key Concerns

1. Safety and Evidentiary Thresholds – The proposal requires *evidence* of harm to rebut shared parenting, setting an unreasonably high bar for survivors of coercive control or non-physical abuse.
2. Some of the evidence and studies chosen to build the case are deterministic -The loss of a father is the most prevalent risk factor for early childhood trauma, as an example.
3. Absence of a Gender- and Trauma-Informed Lens – Suggests removing gender language risks erasing patterns of gendered violence and unequal caregiving capacity.
4. Voice of the Child – Children's perspectives are not structurally embedded in the amendment; particularly, the *Office of the Children's Lawyer (OCL)* has not been consulted.
5. Risk of Misuse of “Parental Alienation” Claims – Equating alienation with child abuse could enable abusers to discredit survivors and regain control through litigation.
6. Consultation Gaps – Major VAW and child-protection agencies were not initially engaged, raising questions about legitimacy and balance of input.

Response Comment:

Embedding independent assessments in high-conflict or violence-flagged cases is fully consistent with trauma-informed practice and is already a part of normal court practices. Whether '**standardized' assessments**' would be beneficial is part of an ongoing debate beyond the issue of the proposed amendment with many practitioners arguing that there is not enough agreement for a standardized approach but rather, at best, reliance on best practices.

With respect to shared parenting, existing provisions under s. 16.6 (1,2) define the functional contents of a parenting plan.

Parenting plan

16.6 (1) The court shall include in a parenting order or a contact order, as the case may be, any parenting plan submitted by the parties unless, in the opinion of the court, it is not in the best interests of the child to do so, in which case the court may make any modifications to the plan that it considers appropriate and include it in the order.

(2) In subsection (1), *parenting plan* means a document or part of a document that contains the elements relating to parenting time, decision-making responsibility or contact to which the parties agree.

Although there is no '**standardized**' Parenting Plan, AFCC-ON has developed a best practices plan ([here](#)) that captures shared parenting issues. The AFCC-ON project has apparently found favour in other jurisdictions.