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Policy Submission on Bill C-223: Judicial Discretion and Family Law Reform Legislative Analysis and Recommendations

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Preliminary Observations

At the outset, the Bearing Institute acknowledges an important and commendable feature of Bill C-223. The bill explicitly rejects any presumption of equal parenting time or shared decision-making responsibility. Parenting outcomes should emerge from evidence, not formula. That affirmation of individualized adjudication is significant and should be preserved.

The bill also strengthens screening for family violence, emphasizes coercive control, and directs courts to avoid reliance on myths or stereotypes. These provisions recognize that harm may be psychological as well as physical, and that coercive control can profoundly affect a child's well-being.

However, as Parliament advances reforms to address coercive control and family violence, it must ensure that other complex relational harms are not inadvertently minimized — particularly parental alienation and loyalty conflicts.

Neurodevelopmental Vulnerability and the Limits of a One-Size-Fits-All Approach

Bill C-223's framework for assessing a child's best interests requires careful calibration when applied to children with autism spectrum disorder. A well-documented feature of ASD is black-and-white thinking — difficulty processing ambiguity or relational nuance. In high-conflict separations, this neurological vulnerability can be exploited in ways that a generalized statutory framework may not adequately capture.

When one parent repeatedly communicates fear-based narratives, all-good or all-bad characterizations, or messaging that frames the other parent as dangerous, an autistic child may internalize those messages rigidly and literally — not as a matter of choice or preference, but as a direct consequence of their neurological profile. The resulting behavioural presentation can be clinically indistinguishable from authentic preference: refusal to transition, sudden rejection of a previously loving parent, repetition of adult language, and escalating hostility inconsistent with the child's developmental history.

A legislative framework that does not explicitly account for this vulnerability risks treating manipulated responses as independent expression. Parliament should ensure that Bill C-223's provisions for considering the child's views include explicit guidance that neurological and developmental context must be assessed by qualified clinicians before those views are weighted by the court.

Terminology Instability and Its Consequences for Courts

A significant and underexamined problem in family law proceedings is the instability of clinical terminology in the area of parental alienation. In some professional and policy circles, the term "parental alienation" has been replaced with "resist-refuse dynamics" — a shift encouraged by certain professional associations. While the underlying behavioural patterns remain clinically real and observable, the terminology used to describe them in expert reports now varies considerably across practitioners.

This creates a practical problem in courtrooms. When a child psychologist uses "resist-refuse" in a written report to describe behaviour that courts and clinicians have historically recognized as parental alienation, opposing counsel may argue — and has argued in Canadian proceedings — that parental alienation has not occurred because that specific terminology was not used. The psychologist may then be required to clarify verbally, mid-proceeding, that the conduct described as resist-refuse corresponds to what courts have historically recognized as parental alienation. This is not a hypothetical scenario — it is an emerging pattern in complex parenting litigation that is consuming judicial time and creating unnecessary uncertainty in cases where a child's welfare is at stake.

Legislative reform should remain grounded in clinical reality and judicial experience rather than ideological reframing. When terminology becomes politically contested, courtrooms risk becoming battlegrounds over language rather than forums focused on child welfare. That concern becomes more significant when contested terminology is embedded directly into statutory language — as it is in Bill C-223.

The Risk of Restricting Judicial Consideration of Deliberate Manipulation

As noted in Hansard on November 5, 2025, Liberal MP Pam Damoff emphasized that courts must avoid relying on myths or stereotypes when assessing allegations in family law proceedings. That objective is important and widely shared. Preventing reliance on stereotypes, however, is different from preventing courts from considering credible evidence of deliberate manipulation where such evidence exists.

Similarly, in Hansard on January 28, 2026, Conservative MP Helena Konanz expressed concern that Bill C-223 "would prohibit judges from considering evidence of parental alienation in family law cases" and that "an absolute prohibition on considering this evidence seems, at best, misguided." Earlier in second-reading debate on October 23, 2025, Bloc Québécois MP Andréanne Larouche similarly cautioned that while Bill C-223

advances family safety, "the fight against domestic violence must not be used as a pretext to gloss over legitimate psychological realities." Together, these remarks reflect a broader concern that judicial discretion should not be constrained where complex relational harms are alleged.

Bill C-223 contains the following provision:

"(3.1) In determining what is in the best interests of the child, the court shall not take into consideration any allegation that a spouse has, or is likely to, through deliberate manipulation, persuade or encourage a child to become estranged from or resist contact with the other spouse."

This clause does not merely avoid the term parental alienation. It directs courts not to consider allegations that one parent deliberately manipulated a child to become estranged from or resist contact with the other parent. The substitution of the word "resist" in place of established terminology does not eliminate the underlying behaviour. It reframes it.

In high-conflict cases, deliberate manipulation is not hypothetical. It is sometimes proven through expert evidence, documented communication patterns, and behavioural indicators. A statutory instruction preventing courts from considering such allegations risks removing an important analytical tool from judges tasked with assessing complex psychological dynamics. Parliament may wish to amend subsection (3.1) to clarify that courts retain judicial discretion to consider credible, evidence-based findings of parental alienation, including deliberate manipulation supported by expert assessment. Nothing in this concern diminishes the reality of coercive control or family violence. Courts must remain vigilant in identifying genuine abuse. The question is whether Parliament should prohibit judicial consideration of deliberate manipulation where credible evidence exists.

This concern is compounded when the bill simultaneously expands mechanisms for directly hearing the child's views while restricting judicial consideration of manipulation that may influence those views. An autistic child, or any child who has been exposed to coercive control or deliberate alienation, may sincerely express views that have been shaped by manipulation. Without careful clinical assessment, courts risk treating influenced or fear-based narratives as independent and authentic preference. The child's voice should inform the court, but it must be evaluated within the full psychological and relational context, including expert psychological assessment where appropriate.

Structural Gaps: Financial Consequences and Systemic Inequity

Canada's family law system contains structural gaps that Bill C-223 does not fully address. In many cases, a protective parent cannot afford the legal costs required to prove alienation. When alienation is established, there are often no meaningful statutory consequences to deter its continuation.

Financial consequences compound the problem. When parenting time shifts because a child has been influenced to reject a parent, support formulas may operate mechanically. In some high-conflict cases involving findings of parental alienation or family violence, the non-offending or protective parent may nevertheless be required to pay significant child and spousal support due to threshold-based calculations.

Where a court has made findings of family violence, requiring the victim to provide ongoing financial support to the perpetrator may create a continuation of economic dependency that is difficult to reconcile with the protective aims of family law. Financial interdependence after proven abuse may perpetuate economic control rather than promote autonomy and stability.

There is also a rarely discussed economic consequence: the interaction between child support, spousal support, and the Mortgage Stress Test in cases involving findings of parental alienation or family violence. When support formulas are applied without sufficient discretion after findings of abuse, the paying parent's obligations can increase substantially. These payments directly affect debt-to-income ratios, potentially making home ownership unattainable for the protective parent while improving the recipient's financial position. Housing stability is closely tied to child well-being. This structural imbalance warrants policy attention beyond the immediate scope of Bill C-223.

Recommendations for Legislative Consideration

Within the spirit and objectives of Bill C-223, Parliament may wish to consider the following refinements:

1. Maintain the explicit rejection of any statutory presumption of shared parenting.
2. Ensure findings of family violence or coercive control have meaningful consequences across all aspects of family proceedings, including financial determinations.
3. Clarify how courts distinguish between coercive control, resist-refuse dynamics, and deliberate parental alienation.
4. Provide judges with explicit discretion to impose remedies or costs in proven cases of parental alienation.
5. Include explicit statutory guidance that neurological and developmental assessments must inform any judicial consideration of a child's expressed views in high-conflict proceedings.

Broader reform agenda requiring additional legislation:

6. Create statutory consequences for deliberate parental alienation.
7. Reform child support rules to allow discretion where alienation findings are made.
8. Abolish entitlement to spousal support for perpetrators of family violence.
9. Adjust Mortgage Stress Test rules where courts have made findings of alienation or violence.
10. Re-examine aspects of the no-fault divorce framework in high-conflict abuse cases.
11. Increase federal judicial appointments to superior courts hearing family matters in order to reduce delays in cases involving children. Prolonged delays between separation, trial, and judgment can entrench harmful dynamics in high-conflict families. Timely adjudication should be recognized as an essential component of a child-focused family justice system.

Conclusion

Parenting outcomes should emerge from evidence, not presumption. Judicial discretion must remain the cornerstone of child-focused decision-making. The Bearing Institute respectfully urges Parliament, in its further consideration of Bill C-223, to ensure that the legislation strengthens protections for children while addressing the broader structural inequities encountered by families in high-conflict proceedings.



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