Legislative Summary **LS-447E**

BILL C-22: AN ACT TO AMEND THE DIVORCE ACT, THE FAMILY ORDERS AND AGREEMENTS ENFORCEMENT ASSISTANCE ACT, THE GARNISHMENT, ATTACHMENT AND PENSION DIVERSION ACT AND THE JUDGES ACT AND TO AMEND OTHER ACTS IN CONSEQUENCE

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LEGISLATIVE HISTORY OF BILL C-22

HOUSE OF COMMONS		SENATE	
Bill Stage	**Date**	**Bill Stage**	**Date**
First Reading:	10 December 2002	First Reading:	
Second Reading:	25 February 2003	Second Reading:	
Committee Report:		Committee Report:	
Report Stage:		Report Stage:	
Third Reading:		Third Reading:	

Royal Assent:

Statutes of Canada

N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in **bold print.**

Legislative history by Peter Niemczak

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INTRODUCTION

Bill C-22 implements part of a federal government strategy to modernize Canada's family justice system, as promised in the 2002 Speech from the Throne. The bill had first reading on 10 December 2002. The Child-centred Family Justice Strategy, announced the same day by Justice Minister Martin Cauchon, would include the legislative changes proposed in Bill C-22, increased funding for family justice services, and funding for the expansion of Unified Family Courts.

The bill amends the *Divorce Act*, and several other statutes, to make a series of changes to federal family law. The *Divorce Act* changes are intended to improve the manner in which decisions are made about parenting of children whose parents divorce. In addition to those changes, amendments are made to two federal statutes (the *Family Orders and Agreements Enforcement Assistance Act*, and the *Garnishment, Attachment and Pension Diversion Act*) to improve federal processes for enforcing family law orders and judgments.

DESCRIPTION AND ANALYSIS

A. Clauses 1-24 – *Divorce Act*

Clauses 1-24 of the bill amend the *Divorce Act* to replace the language of "custody" and "access" with the new terms "parental responsibility" and "contact." In addition

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* Notice: For clarity of exposition, the legislative proposals set out in the Bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both Houses of Parliament, receive Royal Assent, and come into force.

to the linguistic and conceptual changes, the bill provides courts with a new list of factors that apply to decisions surrounding the post-separation parenting of children whose parents divorce. The test for such decisions continues to be that of the "best interests of the child," but judges will now be guided by a new list of statutory criteria.

1. Clause 1 – Definitions

Clause 1 repeals the definitions of "custody" and "custody order" in section 2 of the *Divorce Act*. ("Access" is not a defined term in the Act.) The definition of "accès," currently defined as the right to visit, is repealed from the French version of the Act. New definitions of "contact order" and "parenting order," being orders under clauses 16.1(1) and 16(1) respectively, are added to the Act.

2. Clauses 2-6 – Jurisdiction

Clauses 2, 3 and 4 amend the Act's provisions governing jurisdiction in cases where both spouses commence applications for divorce, variation or corollary relief on the same day. In such cases the Federal Court, Trial Division, has jurisdiction if neither proceeding is discontinued within a certain time. The bill amends the sections to the effect that the current period of 30 days is increased to 40, and the period begins when the central registry of divorce sends notification to the spouses, rather than on the commencement of the actions. Clause 5 adds a new section 5.1, which provides that, if there is no corollary relief or variation proceeding already under way, the court of the province with which the child is most substantially connected has jurisdiction to hear a variation application by a person other than a former spouse. Clause 6 amends section 6 to require a court, where a parenting order is sought and the child involved is most substantially connected with another province, to transfer the matter to the court of that province, unless both spouses agree that the matter should not be transferred or the transfer would harm the child.

3. Clause 7 – Duty of Legal Adviser

Section 9(2) of the *Divorce Act* creates a duty for lawyers to advise their clients about the possibility of negotiating a settlement, and the availability of mediation facilities that might assist in such negotiations. Clause 7 of the bill amends that section to include a requirement to inform clients about other family justice services, as well as mediation, and a requirement that the lawyer discuss with the client his or her obligation to comply with any order under the Act.

4. Clauses 8-9 – Consequential Amendments

Clause 8 updates section 11(4) of the Act to reflect the new language of "parenting arrangements" that is proposed in this bill. Clause 9 amends section 15 to reflect the new numbers of the proposed new corollary relief sections, 16.1 and 16.2.

5. Clauses 10-12 – Parenting and Contact Orders

Clause 10 replaces section 16 of the Act, replacing the concepts of "custody" and "access" with the new regime of parenting orders. A court will be empowered to make an order governing the exercise of parental responsibilities regarding a "child of the marriage," on the application of either or both spouse(s), or of a person who is not a spouse but is a parent of the child, or who stands in the place of a parent. The term "child of the marriage" is defined in the *Divorce Act* as a child of the spouses or former spouses who is under the age of majority, or older but unable "by reason of illness, disability or other cause" to be independent. That definition is not amended by the bill.

A parenting order can allocate parenting time to the applicants, whether spouses, parents or a person who stands in the place of a parent. Parenting time is defined as the period a child spends under the care of a person, whether or not the child is physically with that person during all of the period. A schedule of parenting time may be set out, unless a schedule would be unnecessary, and the parties' responsibilities for making major decisions about the child's health care, education and religion may also be spelled out. A parenting order may also govern responsibility for making other specific types of decisions. Unless the contrary is ordered, parenting time normally includes authority to make day-to-day decisions concerning the child. Parenting orders may also set out the dispute resolution process to be employed in future parenting disputes. Orders under section 16 may be interim, indefinite, or for a set period.

A new section 16(10) permits a court to order that any person with parental responsibilities, if intending to move with or without the child, must give notice of the move to any other person with parental responsibilities. The notice period is 60 days, unless otherwise ordered by the court. Under section 16(11), an order of parental responsibilities includes the right to make inquiries and be given information about the child's health care, education and religion.

Proposed section 16.1 permits a court to make a contact order in favour of an applicant other than a spouse. Such an application, which may not be brought by a child's parents, may be made only with leave of the court. On an application for leave, the court is required to consider all relevant factors, including the significance of the relationship between the child and the applicant, and the necessity of an order to facilitate contact between them. Contact granted under such an order could be in the form of visits, phone or written communication, or any other method of communication.

Under section 16.2, the test to be followed by courts making parenting and contact orders is the best interests of the child, as is currently the case under section 16(8) of the *Divorce Act*. Proposed section 16.2(2) sets out a series of factors to be considered by a court in determining what is in the best interests of the child. The factors include the child's needs, including the child's need for stability; the benefit to the child of maintaining relationships with both spouses; the history of care for the child; any family violence; the child's cultural, linguistic, religious and spiritual upbringing or heritage, including any Aboriginal heritage; the child's views; proposed plans for the child's care; the relationships between the child and the spouses, or the child and each sibling, grandparent or other significant person; the applicants' abilities to care for the child and to communicate and cooperate; and any court order or criminal conviction relevant to the well-being of the child.

Family violence is defined in section 16.2 to include behaviour by a family member causing physical harm, or fear of harm, to the child or another family member. It does not include acts of self-protection or to protect someone else. Family violence is to be established for the purposes of these applications on the civil test of a balance of probabilities, rather than the criminal standard of beyond a reasonable doubt.

Clause 11 replaces parts of section 17, which deals with variation applications, to reflect the new language of parenting and contact orders proposed in the bill. A new section 17(6.6) provides that in applications to vary child and spousal support orders, priority is to be given to child support. This is consistent with the current section 15.3, which deals with initial applications for child and spousal support.

Clause 11(4) repeals section 17(9) of the Act, by which the "maximum contact" principle is made applicable to variation applications. The effect of the bill is to repeal this rule for both initial and variation applications. The maximum contact principle required courts to

give effect to the principle that a child should have as much contact with each spouse as is consistent with the best interests of the child, and to take into consideration the willingness of the person applying for custody to facilitate such contact. Similar principles are reflected in the proposed section 16.2(2) list of factors to consider in making best interests determinations under the bill. That section requires the court to consider the benefit to the child of developing and maintaining meaningful relationships with both spouses, and each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse.

Clause 12 replaces sections 17.1 to 19 of the Act. New section 17.1, dealing with inter-provincial variation applications, allows evidence by affidavit, or by other means of telecommunication if the rules of the court permit, rather than on the consent of the spouses, as the current section provides.

At present, under section 18 of the Act, anyone seeking a variation of a support order whose former spouse resides in another province must apply for a provisional order, which is of no legal effect until it is confirmed by the court of the province in which the respondent resides. Proposed section 18 replaces the provisional order process with one in which the applicant spouse submits an application to the Attorney General of his or her province, and the application is forwarded to the other former spouse. Both parties have the opportunity to make submissions, whether orally, by affidavit or by any means of telecommunications permitted by the court rules; on the basis of those submissions, the court may vary, rescind or suspend the support order.

Section 19 permits a respondent who lives in a different province from the applicant, upon receipt of an application to vary a support order, to request that the application proceed under section 18. If the respondent has assigned the support order to a government agency, then that agency, the "assignee," may request the conversion. If the respondent does not choose conversion to the section 18 procedure, then the application will proceed in the applicant's province under sections 17 and 17.1.

6. Clauses 13-15 – Enforcement and Assignment of Orders

Clauses 13-15 make very minor changes to the Act, including the addition of a heading *Enforcement and Assignment of Orders* before section 20.

7. Clause 16 – Parenting Orders and the Hague Convention

Clause 16 adds a new section 22.1, which permits the court to specify in a parenting order which person or persons has or have custody or access rights for the purposes of the *Hague Convention on the Civil Aspects of International Child Abduction*. In the absence of such a provision in a parenting order, section 22.1(2) provides that any person granted parenting time under a parenting order has custody for the purposes of the Convention. New section 22.2 provides that provincial law applies to issues concerned with parental responsibilities, unless the provincial law is inconsistent with an order under the Act.

8. Clauses 17-24 – General

Clause 17 makes section 25(2), which permits provincial bodies with authority for developing court rules to make rules governing divorce proceedings, subject to sections 18 to 19.2 and the regulations under sections 26 and 26.1 (the central divorce registry and the child support guidelines).

Clause 18 allows either or both former spouses to request that the provincial child support enforcement agency recalculate child support in accordance with the child support guidelines on the basis of updated information.

Clause 19 adds a new section 25.2, which permits the Minister of Justice to collect information from court files for research or statistical purposes. Personal information so collected may be disclosed only for research or statistical purposes to specified researchers.

Under clause 20, new regulation-making powers are to be created concerning: the collection, use and disclosure of information by the central divorce registry; the collection, use and disclosure of information for statistical purposes; and the conduct of inter-provincial variation proceedings under section 18. Clause 21 expands the powers of Cabinet to establish guidelines governing child support orders, adding the power to make guidelines respecting the production of information about the circumstances giving rise to variation applications in respect of child support orders.

Clause 22 repeals section 28 of the *Divorce Act*, which required the Minister of Justice to undertake a comprehensive review of the Federal Child Support Guidelines and to make a report to Parliament within five years of the coming into force of the section. That review was undertaken, and the Minister's report tabled in May 2002.

Clauses 23 and 24 require that the Act be amended by replacing the terminology of "custody" and "access" with parenting and contact orders in various provisions.

B. Clauses 25-41 – *Family Orders and Agreements Enforcement Assistance Act*

Clauses 25-41 would make a number of amendments to the *Family Orders and Agreements Enforcement Assistance Act* (FOAEAA), primarily to update its terminology to reflect the changes that will be made to the *Divorce Act* by the bill. New provisions empower the Minister of Justice to monitor and research the effectiveness of enforcement practices.

1. Clause 25 – Long Title

The long title of the FOAEAA is amended to add a phrase referring to the already-existing provisions of the Act governing the denial of certain licences to support debtors who are in persistent arrears.

2. Clauses 26-32 – Terminology

Clauses 26, 29 and 30 add the new terminology of parenting and contact to provisions currently referring to custody and access orders and agreements. Clause 28 removes the requirement of Cabinet approval from section 6, which deals with agreements concerning comprehensive pension plans. Clauses 31 and 32 replace words referring to officers of the court with the words "persons on the staff of the court" in sections 12 and 13 of the FOAEAA.

3. Clause 33 – Supporting Documents for Applications for Release of Information

Clause 33 deletes section 14(3) and (4), which currently sets out requirements for the contents of affidavits to accompany applications by provincial enforcement services.

4. Clauses 34-35 – Information That May Be Released

Clause 34 deletes the list currently set out in section 16 of information that may be released from federal data banks under the FOAEAA, and replaces it with a new section 16 providing that the information that may be released is that designated by the regulations. A new power to create such regulations is set out in new section 22(b.1).

5. Clause 37 – Duration of Garnishments

Clause 37 amends sections 28 and 29 to provide that service of a garnishee summons or enforcement application will bind the federal government for a period of 12 years in respect to all garnishable moneys owed to a particular debtor. The current period is 5 years.

6. Clause 38 – Demand to File a Tax Return

Clause 38 adds a new section 37.1, which permits the Minister of National Revenue to demand that a debtor file a tax return in a year when the Minister knows or suspects that garnishable moneys would be owed to that debtor if a return were filed.

7. Clauses 39-41 – General

Clause 39 repeals section 77, which protects the federal government from liability under the FOAEAA, but that section is re-inserted by clause 40, and renumbered 78.2. A new section 78.1 is also added, permitting the Minister of Justice to monitor the effectiveness of practices under this Act and conduct research for related purposes.

C. Clauses 42-59 – *Garnishment, Attachment and Pension Diversion Act*

These clauses make a number of very technical, minor changes to the *Garnishment, Attachment and Pension Diversion Act* (GAPDA), including a number to address English-French concordance.

1. Clauses 45-52 – Part I, Garnishment and Attachment Proceedings

a. Clause 45 – Effect of Payments

Clause 45 adds a new section 11(3.1), clarifying that payment from the federal government to a provincial enforcement service under the GAPDA is effective in discharging a debt, as would be a payment into court. A new section 11(5) would provide that if more is paid to a creditor than was owed, then the excess becomes a debt due to the federal government, recoverable by deduction from any other moneys owed to that creditor.

b. Clause 49 – Effect of Payments by Senate, House of Commons or Library of Parliament

Clause 49 adds a new section 23(3.3) clarifying that payment by the Senate, House of Commons or Library of Parliament to a provincial enforcement service under the GAPDA is effective in discharging a debt, as would be a payment into court. Also, a new section 23(5) provides that if more is paid to a creditor than was owed, then the excess becomes a debt due to the Senate, House of Commons or Library of Parliament, recoverable by deduction from any other moneys owed to that creditor.

c. Clause 50 – Priority, No Liability

Clause 50 adds a new section 28.1, which provides that a garnishee summons for the enforcement of a family support obligation has priority over one for the enforcement of another type of debt. It also adds a new section 28.2 protecting the federal government and the Senate, House of Commons and Library of Parliament from liability arising from actions under Part I of the GAPDA.

d. Clause 52 – Monitoring and Research

This clause permits the Minister of Justice to monitor the efficiency of garnishment policies under Part I of the GAPDA, and to conduct related research. Information obtained for research and monitoring purposes may be released only to government or parliamentary employees, or to provincial enforcement services.

2. Clauses 53-59 – Part II, Division of Pension Benefits

a. Clause 55 – Diversion of Greater Than 50 Percent

Section 40.1 of the GAPDA allows for the diversion of more than 50 percent of a net pension benefit where the support order or judgment is for arrears of payments. Clause 55 amends that section to provide that the amount diverted may exceed 50 percent only when the percentage is specified in the order or judgment.

b. Clause 57 – No Liability

Clause 57 adds a new section 40.1, which protects the federal government from liability for any action under Part II of the GAPDA.

c. Clause 59 – Monitoring and Research

This clause permits the Minister of Justice to monitor the efficiency of pension benefit diversion policies under Part II of the GAPDA, and to conduct related research. Information obtained for research and monitoring purposes may be released only to government or parliamentary employees, or to provincial enforcement services.

D. Clause 60 – *Judges Act*

Clause 60 amends section 24(4) of the *Judges Act* to increase the number of salaries that could be paid at one time for judges appointed to Unified Family Courts from 36 to 98.

E. Clauses 61-66 – Consequential Amendments

Clauses 61-66 make a series of amendments to the *Criminal Code* and the *Firearms Act* to reflect the new terminology of parenting and contact orders proposed in the bill.

F. Clauses 67-74 – Transitional Provisions, Coordinating Amendments, and Coming Into Force

Clause 67 provides that divorce proceedings commenced before section 10 of the bill – which deals with parenting orders – comes into effect will be determined under the current *Divorce Act* rather than the bill. Clause 68 specifies that the coming into force of the changes proposed under the bill will not constitute a material change of circumstances, for the purpose of variation applications. Clause 69 provides that orders made under the current *Divorce Act* may be amended or varied under the new provisions as amended by the bill, as if the order were a parenting or contact order rather than a custody or access order.

Clause 70 provides for provisional orders made before clause 12 of the bill comes into force, but not yet served on the respondent, to be treated as inter-provincial applications under the new section 18(2), rather than as a provisional order as set out in the current Act. If a provisional order made before that time has already been served on a respondent, then it will be dealt with as a provisional order under section 19 of the current Act.

COMMENTARY

When parents separate, some of the most difficult choices they make deal with the schedules and residence of their children, and whether responsibility for making decisions about the children will be assumed by one parent or shared. If those parents divorce, any parenting decisions they cannot make themselves will be governed by the federal *Divorce Act*.

Under Canada's Constitution, authority to legislate in relation to family law is shared between the federal and provincial/territorial governments. While the *Constitution Act, 1867* reserves the area of divorce to the federal Parliament, it grants jurisdiction with respect to property and civil rights to the provincial legislatures. Parliament has exclusive jurisdiction to legislate in the area of divorce law, which includes corollary matters such as support and custody. Provincial legislation in the family law area covers all matters related to the separation of unmarried couples; it also applies to matters such as property division, enforcement of support and other obligations, as well as support and custody in cases involving unmarried couples or married couples where no divorce is sought. Provincial law also governs adoption, child protection, change of name, and matters related to the administration of the courts.

Canada's family law system – the primary federal component of which is the *Divorce Act* – focuses on the best interests of the children in guiding parents who are making decisions about the children's living arrangements and parental authority for decision-making. The current language of the *Divorce Act* permits courts to make orders about custody of, and access to, children whose parents divorce. A similar test guides judges making custody and access decisions under provincial family statutes. In recent years, a number of criticisms have been levelled at this system, raising questions about its effectiveness as the forum for resolving disputes and its ability to enable families to recover and move on.

The term "custody" had its origins in the common law and meant the physical care of, and control over, the child. The term has been broadened to include the whole range of guardianship rights and responsibilities – the duty to maintain, protect, educate and provide for the child, and the power to discipline. When marriages are intact, custodial rights are vested in both parents; when the parents separate, those rights are generally divided between them.

Access rights include the right to visit with the child, as well as rights to information about the child's well-being, education, medical needs and religion. Although the

most common arrangement is for one parent to be granted custody of the children, with the other granted access according to a detailed schedule, in some cases custodial rights and responsibilities are divided between the parents. Where the parents are to share custody of their children, the plan may involve substantially equal sharing of decision-making power or residential time, or both.

Critics of the family law system have long argued that undue attention is paid to the rights or interests of parents, obscuring the needs of their children. Some charge that gender bias in the family law system unfairly favours women by awarding custody to them disproportionately often. Men's or fathers' rights groups have organized in many communities to press for shared parenting or joint custody arrangements to be recognized as beneficial to children, or even for such arrangements to become the norm. They cite the destructive consequences for both children and fathers of minimal father-access, and the too-frequent exclusion of fathers from their children's lives post-divorce.

On the other hand, a number of women argue that gender differences in parenting in both intact and divided families mean that they must shoulder an unequal burden for parenting, resulting in disadvantage to them at home and in the workplace. They argue that mother-custody recognizes and continues the arrangement most families adopt before separation, preventing undue disruption to the children. These women generally advocate recognition of their pre-separation parenting roles, and seek improved legal responses to the economic consequences that women and their children often experience upon separation or divorce. Also, a number of women argue that the family law system fails to protect mothers and children adequately from domestic violence.

The language of custody/access has been extensively criticized as promoting a winner-loser result, which can be destructive because it exacerbates conflict between parents and can result in the marginalization of the non-custodial parent, who may feel that he or she is reduced to the status of visitor in the life of a child. Even the word "custody" is problematic because of its application in the criminal justice field. The words custody and access are seen as inappropriate for describing the role, rights and responsibilities that separated and divorced parents retain toward their children.

During the 1996-1997 parliamentary study of Bill C-41, which amended the *Divorce Act* to provide for the establishment of mandatory child support guidelines, witnesses

raised concerns about the inadequacy of the legal system's mechanisms to deal with custody and access following divorce. Responding to these appeals, a joint parliamentary committee was struck to study the issues facing children whose parents divorce, and to look for better ways to ensure positive outcomes for these children. This Special Joint Committee on Child Custody and Access, co-chaired by Senator Landon Pearson and Roger Gallaway, MP, began its public hearings in February 1998.

The Special Joint Committee's report, entitled *For the Sake of the Children*, was tabled in December 1998. It contained 48 recommendations covering many aspects of the contentious area of custody and access law and practice. The Committee had heard from more than 500 witnesses during 39 public meetings held in every province. The report contained dissenting opinions by the Reform Party, the Bloc Québécois and the New Democratic Party.

The Committee's recommendations addressed legal issues at the international, federal and provincial levels, as well as other questions, such as funding, social policy and education. With respect to the *Divorce Act*, the Committee recommended that the terminology of "custody" and "access" be replaced with a new concept of "shared parenting." This concept, as the report stresses, was intended not to create a presumption in favour of joint custody, but to enhance the roles of both parents in their children's lives, regardless of the residential arrangements that may be made. The Committee also recommended that decisions about post-separation parenting arrangements be made on the basis of the "best interests of the child," and that the *Divorce Act* be amended to include a list of statutory criteria to be used in determining a particular child's best interests. Although not completely consistent with the Committee's recommendations, Bill C-22 reflects the Committee's conclusions in some key areas. The bill changes the language of custody and access, replacing it with concepts of parental responsibility and contact, and it adds a list of statutory criteria for the best interests determinations to be made by courts.

The Government responded to *For the Sake of the Children* with a document entitled *Strategy for Reform*, released in May 1999. That document refers to the Justice Department's statutory obligation to provide Parliament, by 1 May 2002, with the results of a comprehensive review of the provisions and operations of the Child Support Guidelines and the determination of child support. The Department's announced intention was to integrate the development of reforms to custody and access issues into that ongoing review process. Further

study and research were also to be carried out jointly with the provinces, including public consultations on specific reform proposals in 2001.

The federal, provincial and territorial governments initiated a joint consultation process in April 2001 to give Canadians the opportunity to share their views with governments on custody, access and child support issues. Members of the public and interested professionals were sent a discussion document entitled *Putting Children's Interests First: Custody*, *Access and Child Support in Canada*, and could respond to it until July 2001. The paper reviewed the current services and laws responding to the areas of child support and custody/access, listed a series of legislative and service options, and asked for participants' preferences regarding each of the options.

The report resulting from these consultations, *Report of Federal-Provincial-Territorial Consultations on Custody*, *Access and Child Support in Canada*, was released in November 2001. The information gathered through the consultation process was intended to assist the Minister of Justice in preparing the report required for the statutory five-year review of the Federal Child Support Guidelines. The Minister's report, entitled *Children Come First: A Report to Parliament on the Provisions and Operation of the Federal Child Support Guidelines*, was tabled on 29 April 2002. That report was followed by the November 2002 final report of the Federal-Provincial-Territorial Family Law Committee: *Children Come First*. Many of the issues and possible directions for reform explored in these documents are consistent with the proposals announced in December 2002 as the federal Child-centred Family Justice Strategy, which includes Bill C-22.

Predictably, reaction to Bill C-22 has been divided and, in some cases, heated, and has focused primarily on clauses 10 to 12, which deal with parenting and contact orders. The absence of a presumption in favour of joint custodial arrangements has been seen by some as a failure to attach sufficient importance to the role of both parents in their children's lives following divorce. The removal of the "friendly parent rule," or the maximum contact rule, that is currently found in sections 16(10) and 17(9) of the *Divorce Act* has been criticized as a change that promotes mother-custody and perpetuates gender bias in the system. However, as noted above, the principle behind that rule would not be deleted from the Act altogether. Bill C-22 would promote the desirability of a child's maintaining meaningful relationships with both parents through the inclusion of that factor in the statutory list to be set out in new section 16.2.

The effectiveness of changing the language of custody and access in favour of new language such as "parental responsibilities" and "contact" – as has been done in a number of other countries in recent years, including the United Kingdom, France, Australia and some U.S. states – has not yet been demonstrated. Some critics suggest that in order to actually reduce conflict between separating spouses and promote better outcomes for their children, factors other than legislation will have to change. Parenting roles in intact families as well as in separated and divorced ones, and societal attitudes toward parenting, may also have to change significantly before a pattern of healthier, less adversarial post-separation parenting decision-making emerges for more couples.

Besides Bill C-22, the Child-centred Family Justice Strategy announced in December 2002 also includes increased funding for family justice services such as mediation, parenting education and other court-related services. The federal commitment is for $63 million in new funding over five years to the provinces and territories. Another $16.1 million is committed to the expansion of Unified Family Courts across the country, to provide for 62 new judges. Unified Family Courts are seen as better able to promote positive outcomes by permitting one court level to handle all family law matters, presided over by judges with special expertise in family law and the difficulties facing families during and after separation.