



ISSN 1710-9477

Legislative Assembly
of Ontario
Second Session, 41st Parliament

Assemblée législative
de l'Ontario
Deuxième session, 41^e législature

Official Report of Debates (Hansard)

Monday 17 October 2016

Journal des débats (Hansard)

Lundi 17 octobre 2016

**Standing Committee on
Social Policy**

All Families Are Equal Act
(Parentage and Related
Registrations Statute Law
Amendment), 2016

**Comité permanent de
la politique sociale**

Loi de 2016 sur l'égalité
de toutes les familles
(modifiant des lois en ce qui
concerne la filiation et les
enregistrements connexes)

Chair: Peter Tabuns
Clerk: Katch Koch

Président : Peter Tabuns
Greffier : Katch Koch

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 416-325-3708.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 416-325-3708.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

CONTENTS

Monday 17 October 2016

Subcommittee report	SP-3
All Families Are Equal Act (Parentage and Related Registrations Statute Law Amendment), 2016, Bill 28, Mr. Naqvi / Loi de 2016 sur l'égalité de toutes les familles (modifiant des lois en ce qui concerne la filiation et les enregistrements connexes), projet de loi 28, M. Naqvi.....	SP-3
Dr. Rachel Epstein	SP-3
Dr. Donna McDonagh.....	SP-7
Ms. Kirsti Mathers McHenry	SP-10
Dr. Carolyn FitzGerald.....	SP-14
Ontario Association of Private Adoption Practitioners	SP-16
Ms. Cheryl Appell	
LGBTQ Parenting Network	SP-18
Mr. Andy Inkster	
Ms. Julia Gruson-Wood; Mx. Emery Potter.....	SP-21
Ms. Cindy Wasser	SP-23
Mr. Neil Gardiner.....	SP-27
Shirley Eve Levitan, Family and Fertility Law; Jordan Battista LLP	SP-28
Ms. Shirley Eve Levitan	
Canada Christian College and School of Graduate Theological Studies	SP-31
Dr. Charles McVety	

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL POLICYCOMITÉ PERMANENT DE
LA POLITIQUE SOCIALE

Monday 17 October 2016

Lundi 17 octobre 2016

The committee met at 1400 in room 151.

SUBCOMMITTEE REPORT

The Vice-Chair (Mr. Jagmeet Singh): Good afternoon, members. I'm calling this meeting to order to consider Bill 28, An Act to amend the Children's Law Reform Act, the Vital Statistics Act and various other Acts respecting parentage and related registrations.

Before we get into the hearings for today, we have a report of the subcommittee. I recognize Ms. DiNovo.

Ms. Cheri DiNovo: Thank you, Chair. I move adoption of said report.

Interjection.

Ms. Cheri DiNovo: I can read it, certainly. Your subcommittee on committee business met on Thursday, October 6, 2016, to consider the method of proceeding on Bill 28, An Act to amend the Children's Law Reform Act, the Vital Statistics Act and various other Acts respecting parentage and related registrations, and recommends the following:

(1) That the committee meet in Toronto on Monday, October 17 and Tuesday, October 18, 2016, for the purpose of holding public hearings.

(2) That the Clerk of the Committee post information regarding public hearings on Bill 28 in the Toronto Star, in l'Express, on the Ontario parliamentary channel, the Legislative Assembly's website and on Canada NewsWire.

(3) That the deadline for requests to appear be 12 noon on Thursday, October 13, 2016.

(4) That, should the hearings be over-subscribed, the Clerk of the Committee provide a list of all interested presenters to the subcommittee following the deadline for requests.

(5) That each caucus provide their selections of witnesses based on the list of interested presenters received from the Clerk of the Committee.

(6) That all witnesses be offered five minutes for presentation and 15 minutes (five minutes per caucus) for questioning by committee members.

(7) That the deadline for written submissions on Bill 28 be 6 p.m. on Tuesday, October 18, 2016.

(8) That amendments to Bill 28 be filed with the Clerk of the Committee by 12 noon on Thursday, October 20, 2016.

(9) That the committee meet for clause-by-clause consideration of Bill 28 on Monday, October 24 and Tuesday, October 25, 2016.

(10) That the Clerk of the Committee, in consultation with the Chair, be authorized prior to the adoption of the report of the subcommittee to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

Now that I've read it, I move its adoption.

The Vice-Chair (Mr. Jagmeet Singh): Any discussion on the report? Seeing none, all those in favour of the report as read? All those opposed? The report is carried.

ALL FAMILIES ARE EQUAL ACT
(PARENTAGE AND RELATED
REGISTRATIONS STATUTE LAW
AMENDMENT), 2016LOI DE 2016 SUR L'ÉGALITÉ
DE TOUTES LES FAMILLES
(MODIFIANT DES LOIS EN CE QUI
CONCERNE LA FILIATION ET LES
ENREGISTREMENTS CONNEXES)

Consideration of the following bill:

Bill 28, An Act to amend the Children's Law Reform Act, the Vital Statistics Act and various other Acts respecting parentage and related registrations / Projet de loi 28, Loi modifiant la Loi portant réforme du droit de l'enfance, la Loi sur les statistiques de l'état civil et diverses autres lois en ce qui concerne la filiation et les enregistrements connexes.

DR. RACHEL EPSTEIN

The Vice-Chair (Mr. Jagmeet Singh): We'll now move to the hearing phase. I'd like to call up Rachel Epstein, please.

Dr. Rachel Epstein: Can I sit here?

The Vice-Chair (Mr. Jagmeet Singh): Yes, please, Ms. Epstein.

I'm just going to read something to you very briefly. I want to provide you with a head's up that as a witness, you have five minutes to make your presentation and then committee members will have a total of 15 minutes

to ask questions. That's five minutes per caucus. If I could please ask you to state your name for the record.

Dr. Rachel Epstein: My name is Rachel Epstein. I'm very honoured to be addressing this committee today, and I want to thank you for providing me with this opportunity to comment on the All Families Are Equal Act. As I just said, my name is Rachel Epstein, and I'm a queer parent of a 24-year-old daughter born in 1992.

Since 1997, I've been facilitating courses for LGBTQ people who want to become parents, and for 15 years I was the coordinator of the LGBTQ Parenting Network at the Sherbourne Health Centre in downtown Toronto.

I also work as a mediator with LGBTQ parents and prospective families, and I wrote a PhD dissertation about LGBTQ people's experiences with fertility clinics.

In these 20 years of working as an LGBTQ parenting advocate, educator, researcher, counsellor and mediator, I've been connected to hundreds, or actually probably thousands, of LGBTQ people as they go through the process of becoming parents.

I myself got pregnant in 1991 with the assistance of a fertility clinic and a sperm bank, and my daughter Sadie was born at home in 1992, surrounded by a very large, loving queer family of choice, including her other mother, Lois Fine. In 1992, when we tried to register Lois as Sadie's parent and to give Sadie a hyphenated version of our two surnames, our birth registration was returned to us. Lois parented Sadie for 14 years with no legal status and Sadie, for 14 years, used a name that was not her legal name.

It was not until 2006, when we were parties in the Rutherford birth registration charter challenge, that Lois was given legal status as Sadie's parent and Sadie was officially given a name change. While this was a victory, the Rutherford case resulted in non-biological parents being offered only presumptive proof of parentage, a situation that has caused much insecurity and confusion and still requires a second-parent adoption or a declaration of parentage to secure a non-biological parent's status. For this reason, I am very concerned about section 8 of this proposed act, which still offers non-biological parents only presumptive proof of parentage instead of the ironclad proof of parentage that they require.

I believe that at the heart of this legislation is the desire to provide the children of LGBTQ people and children conceived through assisted reproduction with the security that comes with having their parents legally recognized. In order to do that well, which I absolutely know is your intent, you have to understand something about our families. For one thing, many of us in LGBTQ communities have a different relationship to biology when it comes to parenting. Typically in our families, at least one, and sometimes more than one, parent does not have a biological or genetic connection to their child or children. In order to adequately and equitably recognize our families, the definition of parent has to shift from one that privileges biology to a framework that considers the simple question: Who will be acting as a parent to this child and who is the intended parent or parents? These

are the people who should be able to simply and easily, without lawyers or courts, be able to register a child's birth.

For the most part, this act does make this move. However, I am somewhat alarmed, I have to say, by section 7(1), which seems to take a step backwards to privilege a biological father, a step that elevates biological fathers above other parents, undoes the trans inclusiveness of the rest of the act and potentially causes harm and vulnerability to birth parents and their children.

I am very pleased that this act recognizes diversity in family configurations, including the recognition of multi-parent families. In LGBTQ communities, some of us parent on our own, many in couples, and sometimes three or four people come together to co-parent. Gender works differently in our communities, too. Our communities include trans and gender-queer people who complicate gender in relationship to parenthood. A trans man who gives birth might want to be that baby's father; a trans woman who provides sperm to conceive a baby may want to be that baby's mother. Or they might prefer the gender-neutral "parent." I'm happy that this act moves towards gender-neutral language and recognition of all genders instead of both sexes and doesn't assume that people are "mothers" or "fathers" based on what gametes they provide or based on whether they gave birth or not.

To go back to my daughter Sadie, she is now 24 and her partner is a trans person. They plan to have babies with the assistance of a known sperm donor, and her partner will likely give birth. I read them this deputation last night, and they said, "Tell them we"—i.e., Sadie and her partner—"need this legislation." Without legislation that clearly differentiates gamete donors from parents and that recognizes the existence and rights of trans parents, their children will not be protected.

I told Sadie that I planned to end my presentation to you here today by reading an excerpt from her affidavit from 2005. She said, "Read it and tell them that I hope my child won't have to write a similar affidavit." So I'm going to leave you with Sadie's words from 2005 about what it means to a child to not have their parents legally recognized because, as I say, I think that's what is at the heart of this bill. When she refers to her two-mom family, I ask you to substitute any of the diverse family configurations that I am hoping, and I think that we're all hoping, will be protected by this act.

1410

These are Sadie's 13-year-old words:

"I just want both my moms recognized as my moms. Most of my friends have not had to think about things like this—they take for granted that their parents are legally recognized as their parents. I would like my family recognized the same way as any other family, not treated differently because both my parents are women.

"Most kids understand that I have two moms. But a few kids are mean or just do not understand. They ask who my 'real' mom is. I explain that both of my moms are my real moms. Some adults do not understand either. It would help if the government and the law recognized

that I have two moms. It would help more people to understand. It would make my life easier. I want my family to be accepted and included, just like everybody else's family.

"Imagining winning the case, it would feel amazing. It would feel like we would not have to lie anymore. We would not have to worry about getting in trouble. Nobody could question who my mothers are anymore. I would feel more secure and safer. We could just tell the truth. I could just be who I am, and sign my own signature, Sadie Rose Epstein-Fine."

Thank you.

The Vice-Chair (Mr. Jagmeet Singh): Thank you very much. We'll begin with the government for questions. Thank you for the presentation.

I'm recognizing Mr. Berardinetti.

Mr. Lorenzo Berardinetti: Thank you, Mr. Chair, and thank you, Dr. Epstein, for your presentation.

I understand you worked with the government on this bill. I guess it was the Attorney General's office. Can you explain what that experience was like when you were working with the government?

A lot of what you said pretty well is in the legislation. I just thought when we're finished today—we're going to listen to the deputations and there will be amendments coming forward. Can you think of one amendment that we should put forward on this bill?

Dr. Rachel Epstein: So you want me to talk both to the process and to one amendment that would be good?

Mr. Lorenzo Berardinetti: Yes.

Dr. Rachel Epstein: I found the process a good one for the most part. I felt that people were listening; I felt that people were open; I felt that people were really trying to understand what LGBTQ families look like. I think that's what people have to get their heads around in order to make this piece of legislation a really good one: to really understand what our families look like. And it's hard when it's not familiar to you.

So, in terms of what amendments are important, I think dealing with that 7(1), the section about biological fathers—it really is a step backwards. For example, a birth parent who decides that she wants to place her child for adoption, under this bill, will have to get the permission from the "biological" father in order to do that. It's a step back to the Dark Ages, really. What we have now is better than that.

I think the intent was good in that section and I think that we've had a lot of discussion about the "casual fornicator." I think it's a tricky thing, that we want to make men who sire children responsible in terms of custody and support payments and things like that. Actually, what I would like to see is even those men not made parents, but still be responsible for paying child support. I don't think you have to be a parent in order to be responsible for paying child support. I think that would be a good move.

But I think that section really needs to be revamped because it's some very, very dangerous wording in there in terms of the privileging of biological fathers. It also

does our families a disservice. It devalues other parents who are not "biological" fathers.

Mr. Lorenzo Berardinetti: Yes. I don't know if I have more time left, but if anyone else on the committee wants to ask a question—

The Vice-Chair (Mr. Jagmeet Singh): Yes, you have two minutes more.

Mr. Lorenzo Berardinetti: If anyone else wants to—go ahead.

Mrs. Amrit Mangat: Thank you, Chair.

The Vice-Chair (Mr. Jagmeet Singh): Sure. I recognize Mrs. Mangat.

Mrs. Amrit Mangat: Thanks for your presentation. My understanding is that you have been advocating for this bill and you have worked with the government, as you said in your presentation before. Can you share with the members of the committee how this bill is going to be helping couples who will conceive through assisted reproduction—using the term sperm donor or something?

Dr. Rachel Epstein: I think what the bill does is that it differentiates between gamete donors, so the person who donates sperm or the person who donates an egg, or the person who is acting as a surrogate—it differentiates those people from parents, from intended parents. I think that's where there is sometimes an overlap with heterosexual people who use assisted reproduction and our communities who often are also using assisted reproduction.

But sperm and egg do not necessarily a parent make. So I think that is what this bill does that is really good, is to differentiate those things. I think that there has been a lot of insecurity in our communities, particularly when people use known sperm donors, which a lot of people do for very, very, very good reasons.

There has been a real ambiguity in the law about what are the rights of a known sperm donor, and potentially this legislation makes that clear. I think that the clearer we are about who a child's parents are and who are not a child's parents, the better it's going to be, mostly for children and mostly for everybody. I think that that is also going to make our courts less busy, because we're not going to be in court fighting about who is a parent in this situation. I work as a mediator and I certainly see those situations where people are in conflict and the conflict is about who is a parent. I'm hoping this legislation is going to clear that up.

The Vice-Chair (Mr. Jagmeet Singh): Thank you very much. My apologies, but the time is completed on this round.

We'll now move to the Conservatives. I recognize Mr. Hillier.

Mr. Randy Hillier: Thank you very much for being here. I just want you to expand a little bit more on this section 7(1), and your view on it. You said that it would cause harm. Maybe if you can explain that a little bit more. If I'm correct on hearing, your objection was in the case of an adoption, there would be required consent from the biological father, and you thought that that should not be included?

Dr. Rachel Epstein: I don't think that that should be included. I think a woman who gets pregnant, however she gets pregnant—and how the status quo is right now is that she can make the decision to place that child for adoption. So this puts women potentially in the situation of having to track down a rapist, for example, to take a very extreme situation. A woman is sexually assaulted, she gets pregnant, she decides she is going to place that child for adoption and she has to find that person who sexually assaulted or raped her and get his permission to place the child for adoption.

Mr. Randy Hillier: From my understanding of reading the legislation, at the birth registration, the mother or the birth parent would make that declaration on the birth registration and could recognize the biological father, but not necessarily so. I'm not sure why—

Dr. Rachel Epstein: I think you should check in with the lawyers—I'm not a lawyer—and I think you should check in with the people who work in adoption about what the implications of that section, the way it's currently written, are in that adoption situation. I think it's not necessarily about who goes on the birth registration; it's about whose permission is required in order to place a child for adoption.

Mr. Randy Hillier: We know, reading through this, that if it's a sperm donor, then that is not recognized unless there is an agreement of consent before conception. But if there is no agreement of consent, then that person is not recognized—there's no presumption that that person is recognized as a biological father.

Dr. Rachel Epstein: Maybe we're interpreting that piece a little bit differently. As I say, I think you should ask—there are going to be lawyers up here today. Ask them about their interpretation of that section. What I'm saying is my understanding of it, but I am not a lawyer. So check in with them.

Mr. Randy Hillier: Okay. Thank you very much.

The Vice-Chair (Mr. Jagmeet Singh): Any further questions? I recognize Mrs. Martow.

Mrs. Gila Martow: Thank you very much. I'm sort of related through marriage to two fathers who are both—you might know them, Mitchell and Oren.

Dr. Rachel Epstein: Yes, I do know them.

Mrs. Gila Martow: Just so that you know, Mitchell's mother is my sister-in-law's sister. Is that confusing enough for everybody?

But anyhow, they're both biological—and I spoke about this on Cy and Ruby's bill, that I spoke to Mitchell about these issues. One of the things that he explained that was the hardest for him was that they had to go to court and adopt the two babies that they are the biological parents for. We all understand that science has opened up a lot of doors for same-sex couples and LGBT couples, but then there are these sorts of confusing things that happen.

You can say, "Well, so what's the big deal that they had to adopt?" Well, there's the time, there's the money and there's the delay getting a passport and not being able to travel, and I think it's a little bit insulting for the

parents themselves. I think that there is a lot of work to be done, and I think that you're right that we do have to speak to legal teams about the repercussions.

1420

My guess, in terms of what you're saying about elevating biological fathers, would be that if somebody is recognized as the father, then I would assume that they should have to be consulted. But obviously in the case of rape or if you don't even know who the father is, then you haven't made any declaration about who the biological father is. I can't imagine that they would have to be consulted, but I'm looking forward to hearing from legal teams.

Is there anything that you want to add?

Dr. Rachel Epstein: No, I just really appreciate—

The Vice-Chair (Mr. Jagmeet Singh): I'm sorry to interrupt.

Mrs. Gila Martow: Time's up? Okay.

The Vice-Chair (Mr. Jagmeet Singh): Yes, time is up, but I'm sure that you'll be able to answer that question in another—

Mrs. Gila Martow: Thank you for your presentation.

Dr. Rachel Epstein: Okay.

The Vice-Chair (Mr. Jagmeet Singh): My apologies. Moving now to the New Democratic Party, I recognize Ms. DiNovo.

Ms. Cheri DiNovo: Thank you, Chair. And those are the Conservatives, by the way—just saying.

Thank you very much, Dr. Epstein, for your testimony here. I'm sorry for what you had to go through, and hopefully what we're working on now is going to make it different for families in the future. I appreciated your comments about sections 8 and 7(1). We will talk to the lawyers when they get up here.

But the government did need to act. You were part of the charter challenge, so I just wanted to say that they were under a bit of time crunch to act, to get something done. We tabled Cy and Ruby's Act about a year ago, but they had to act by the end of last month, actually. Could you talk about that a bit? Because that didn't come through in your testimony.

Dr. Rachel Epstein: Talk about—

Ms. Cheri DiNovo: The fact that the government had to act according to the courts, that they had to bring in legislation.

Dr. Rachel Epstein: My understanding—and again, there were people closer to it than me, because I actually wasn't officially part of the charter challenge; I was a part of the old charter challenge. My understanding is that Cy and Ruby's Act got stalled and it wasn't moving anywhere. So then a new charter challenge, which represented people in many diverse family configurations, was launched. As a result of that, the government was told that they have to act and that they need to do something to fix this, that the hoops that LGBTQ people have to go through to register their children are discriminatory and need to be changed. I think that that's the basis of why this is happening.

Ms. Cheri DiNovo: Absolutely. That's pretty critical. September 30, I believe, was the date that they had to act by, and they did. I just wanted to make sure that that gets on record, that the prior situation was ruled discriminatory by the courts.

There's been a little bit of backlash in the press, talking about wanting to take mothers out of the equation, that we're not going to be using the term "mother" anymore. Could you talk about that, as a mother?

Dr. Rachel Epstein: I think that anybody who wants to be a mother can be a mother and anybody who wants to be a father can be a father and anybody who wants to be a parent can be a parent. I understand that there's a new drop-down box that's available to us. I'm hoping that that will be widely available, because my understanding is that it's available in one place but not in others, and you have to know where to go. My hope is that there will be soon a drop-down box that allows people to choose their designations. Whatever you're registered as officially, you can also always choose to have your children call you what you like. So I don't think there's any move to get rid of mothers or get rid of fathers. I think that it's just a move to really recognize gender, sexual orientation, family diversity, the broad range of family configurations that exist right now in our society, and to really recognize and protect the children in those families.

Ms. Cheri DiNovo: And this has repercussions for children, dramatic repercussions. One of the instances that we've been talking about around this bill is that unless you're seen as a parent legally, you may not be able to take your child to a doctor, if that child is in an accident or is in a critical situation that needs critical medical care. Again, you have a family where one person can't seek medical care for their child in what could be a very serious situation. So again, this is better for the children's health, as well as the children's well-being and all of the rest.

Dr. Rachel Epstein: It happens in medical situations, in school situations; travelling becomes really complicated. It becomes even mundane things. Our daughter—we went to apply for a passport for her. Two things happened: She filled out the whole passport and she signed her name "Sadie Epstein-Fine," which was the name that she had been using all of her life. It wasn't her legal name, though, because we weren't allowed to do that. Then we realized, "Oh, my God. She just signed the wrong name on her passport application. We have to do it all over again."

But then her other parent, her other mother, took the passport application to get the passport, and they said, "You can't do this. You're not a parent." She said, "Well, I am a parent," and they said no. So she was not allowed to take our daughter and put in her passport application.

Ms. Cheri DiNovo: Thank you very much.

The Vice-Chair (Mr. Jagmeet Singh): Thank you so much, Ms. Epstein, for your presentation and for answering the questions today. Thank you again for being here.

Dr. Rachel Epstein: Thank you very much.

DR. DONNA McDONAGH

The Vice-Chair (Mr. Jagmeet Singh): The next presentation will be by a telephone conference call. The next presenter is Donna McDonagh. Are you on the line, Ms. McDonagh?

Dr. Donna McDonagh: I am.

The Vice-Chair (Mr. Jagmeet Singh): Excellent. If you would just hold the line for a quick moment, I'm going to introduce quickly—I'll just give you the names of all the members who are present in the committee.

Dr. Donna McDonagh: Thank you.

The Vice-Chair (Mr. Jagmeet Singh): From the government, we have Mr. Ted McMeekin, Ms. Amrit Mangat, Ms. Cristina Martins, Mr. Lorenzo Berardinetti and Mr. Lou Rinaldi.

From the Progressive Conservatives, the official opposition, we have Mr. Randy Hillier and Ms. Gila Martow; and from the third party, NDP, we have Ms. Cheri DiNovo.

Interjection.

The Vice-Chair (Mr. Jagmeet Singh): Oh, and I'm the Chair—sorry, I should introduce myself. My name is Jagmeet Singh and I'm the Chair today.

Dr. Donna McDonagh: Thank you. I apologize that I am not able to be there in person today. My flight was supposed to arrive at Billy Bishop at 12:30 but no flights are arriving in Toronto because of the weather today, so thank you for accommodating me via telephone conference.

The Vice-Chair (Mr. Jagmeet Singh): No problem. I just have to give you one quick heads-up—my apologies, Ms. McDonagh—that you have five minutes to make a presentation. Then the committee members will have 15 minutes to ask questions, and that's five minutes per caucus.

Dr. Donna McDonagh: Okay.

The Vice-Chair (Mr. Jagmeet Singh): Please feel free to begin whenever you're ready.

Dr. Donna McDonagh: Thank you.

"Presumptive proof of parentage"—those four words cost me hundreds of thousands of dollars. More importantly, the toll those words have exacted on my health, psyche and heart is beyond measure. Most importantly of all, those four words affected my daughter, her emotional and financial well-being, having had her parents before the courts for two years in conflict over my parental status. If I never hear those words again, it will be too soon. Those four words changed my life forever.

I should not need to be speaking today. This matter should have been put to rest years ago. With the Rutherford decision in 2006, many, including myself, believed it had. I am the mother of a fabulous, soon-to-be 10-year-old. My former partner is the biological mother. I am also an applicant in the charter challenge *Grand v. Ontario*. I was so pleased that the LGBTQ2 community had won the Rutherford case so that I was not required to formally adopt my own child, something lesbian friends whose

children were born in the 1990s were forced to do at a cost of thousands of dollars.

On our daughter's Statement of Live Birth, also known as the long-form birth certificate, I am specifically named as a parent. Our daughter was the first baby in Ottawa to be immediately registered with the particulars of same-sex parents, something that was celebrated by family and friends. At the time of registering her birth, I was under the impression that in accordance with Justice Rivard's decision in Rutherford, my parental status was legally acknowledged for all purposes. I had every reason to be confident that I was a full and equal parent before the law. My intention would never have been to accept a lesser parenting position in a two-tiered hierarchy. During the pregnancy, wills and powers of attorney were changed to reflect our intention. Because the new birth registration forms would not be available until January 2007, we had to wait to register our baby.

To bridge that two-month gap, we obtained a joint order of custody declaring our intention to be co-parents with equal say in our child's life. My name was on her birth certificate and our daughter's last name was a hyphenated hybrid of both her mothers' surnames. We decided my ex-partner would use the moniker "maman" and I would use "mommy." I was granted paid and topped-up parental leave. My ex-partner was self-employed and returned to work shortly after our daughter's birth while I stayed home with her for 11 months.

I had successfully applied for our baby's health card and social insurance number and was named as parent on the application for a passport. Unfortunately, my understanding of the scope of the ruling was mistaken and none of these things seemed to matter. This devastating realization became apparent after our separation. I will never forget the moment when my lawyer informed me that the other side was arguing I was not a legal parent, only a presumptive parent, and that my presumptive parental status was not recognized under the Children's Law Reform Act. They were arguing I would need to file a police records check with the court and complete a separate portion of the application as a non-parent.

My entire world crumbled upon hearing that my parental status was seriously in question. It was Kafkaesque, a surreal distortion accompanied by an immense sense of impending danger. This was my daughter, the child whose birth had been lovingly anticipated and prepared for; the child I had held for hours in the vacated delivery room, every imaginable emotion reverberating through my body after my ex-partner had been whisked away for emergency surgery; the child I had comforted, rocked to sleep, fed, nurtured, dressed, tickled, taught, taken to playgroups, doctors' appointments, was there for her first steps, her first laugh, word, tooth, her very first fidgety night with the three of us in the same hospital room and my ex-partner needing to sleep. I held my daughter all night long in a chair by the window and we watched the sun come up. I was acutely aware of how much my life had changed. As I rocked her, I softly told her I would do

anything for her, now and for always. She knows this story. Every now and then she says, "Mommy, tell me again about holding me all night long and watching the sun come up."

1430

What do you mean, I'm not her parent? There are discrepancies in definitions and legal loopholes in parental recognition, and Bill 28 is trying to set this right. Let's make sure it does, completely and equitably.

I have been a victim of the government's failure to responsibly address these problems. The bitter irony is that rather than improve and protect my status, Rutherford made me more vulnerable. I thought I was protected without an adoption order, but I was not. The question of my legal status as a parent plagued me throughout the custody proceedings, diminishing my position and setting the stage such that I was constantly having to spend precious time, emotional energy and money to prove my equality.

It is in our children's best interests to have the certainty and safety that comes with having all their parents recognized as their parents at birth. Appropriate and accurate recognition of their family is always in children's best interests. Equal recognition, protection and responsibilities in parenting is a non-starter.

As a psychologist, I am acutely aware of vulnerability and protective factors for children. Among the things that figure prominently are (1) a sense of identity, and (2) an absence of conflict. I know this as a psychologist, and I live it as a mother.

A sense of identity does not solely come from a molecule, biology or genetic matter. It comes from security and stability; it comes from attachment and relationships; it comes from love. So the fact that all our children know who their parents are and they have certainty around that and that they know that nobody can disrupt that is very important for children's well-being. It's fundamental.

As for conflict and how detrimental this can be to children's best interests, there is an abundance of scholarly literature and research on this topic in relation to children and families and, unfortunately, to custody. The vast majority of it comes from heteronormative family structures. High-conflict custody cases are far more prevalent in heteronormative scenarios than in a scenario like mine. Wherever they exist, though, these cases present a sad testament to our legal system and to the best interests of children. It is not uncommon in such cases that there are attempts to maximize and manipulate to take advantage.

What makes my situation unique is not that it involved a same-sex couple, but that the legislative contradictions post-Rutherford provided those strategic advantages to the other side. The government's failure to properly amend the Children's Law Reform Act following Rutherford had very real implications in my legal battle for shared and equal custody and access. It facilitated discriminatory arguments, lengthened and complicated an already high-conflict family law proceeding, and im-

perilled the best interests of our child. The argument that I was “only a presumptive parent” plagued me throughout my struggle. And let me be clear here: When I speak of my time before the court, I am speaking only of custody, of access, and not property. From my disadvantaged position, court proceedings were a nightmare. I desperately tried to convince judges, family assessors and so forth that I was legit, that I was a parent.

There was blatant discrimination: for example, a court-ordered family assessment where the assessor states that although I am an important caretaker in our daughter’s life, I am not a mother; there can only be one. Let there be no doubt in the eyes of the court that a caretaker is not equal. Let there be no doubt that this is discrimination. Let there be no doubt that this is heart-wrenching for a parent. To this day, I’m not sure how I was still standing at that point, but every parent knows just how far we can reach when we’re fighting for our lives, for the lives of our children.

I’m almost done.

How did it end? Well, my daughter is very clear that she has two mothers. I have a declaration of parentage, and joint custody and access. But most parents don’t need declarations of parentage; they are recognized at birth, fully and completely and equally.

And it isn’t over. I live under the constant threat of being pulled back into court where I’m still struggling to be recognized substantively as equal. As I mentioned at the outset, the financial cost of this legal battle was enormous, and recovering from this will take the rest of my working years. And how do you recover from human rights being trampled upon? Let’s be clear: This is a human rights issue of fundamental importance to the well-being of children.

You do whatever you can to help change things. Upon hearing of Cy and Ruby’s Act, I wrote Cheri DiNovo, asking what I could do to help. I started a petition and, myself, garnered over 1,000 signatures. I showed up repeatedly at my MPP’s—now the Attorney General’s—constituency office in Ottawa with these petitions. And you speak to a standing committee, which is what I’m doing today. Most of all, you hope that no one else will have to go through a similar ordeal because you would not wish that on anyone.

The Vice-Chair (Mr. Jagmeet Singh): Ms. McDonagh, thank you so much. We’ll begin questions with the official opposition, beginning with Mr. Hillier.

Mr. Randy Hillier: Thank you, Ms. McDonagh, for joining us today and sharing your story with us.

I want to explore a little bit more some of the elements that your story raised. You’ve spent a number of years in the family law courts under this presumptive proof of parentage—that you dislike that term so much. Within this bill, there are still those elements present. As you read through the bill, if there is a consenting agreement between people, the courts will take that into consideration and it will be recognized, but the agreement in itself is not enforceable by the courts. You had agreements ahead of time as well, much like what this bill envisions.

My question really is, I’m wondering if we are giving our family courts enough resources or enough guidance with this legislation when or if there are family breakdowns—if you could maybe comment on that part of it. Do you think our family courts will be better suited to deal with breakdowns under this bill, or are there other items that we ought to be including in the bill?

Dr. Donna McDonagh: It’s a good question, Mr. Hillier. First of all, I don’t think that Family Court is the place for any of this, quite frankly, and it should be avoided at all costs. I think that that is possible with this bill. I think that there should be no distinction in status between children as a result of the way in which they were conceived or the relationship status, gender or sexual orientation of their parents.

I think that that is clear in this bill. There should be no difference between the spouse of a same-sex partner and the spouse of a heterosexual partner. Right now, certainly as currently drafted, it’s my understanding that they have made that distinction. We don’t need that distinction. It’s in the interests of the children and the parents and the public that people who are intending to parent a child are respected at birth and then throughout. If that is made clear in the registration process and in the Children’s Law Reform Act, then it won’t be a burden on our family law system.

If I were a man, the Children’s Law Reform Act would have protected me. Everything would have been exactly the same, but because I would have been male, not female, the Children’s Law Reform Act would have recognized me. That’s a ridiculous piece of minutiae. We need to level the playing field, no hierarchy—and then that would help, Mr. Hillier, you’re right, because we don’t want this battled out in court.

Mr. Randy Hillier: I was looking at the California statute. In that statute, they had also provided guidance to the courts on how to determine both custody and dependency. I’m just wondering if our legislation isn’t somewhat deficient in providing better clarity to our courts.

Dr. Donna McDonagh: Mr. Hillier, I think that really, at some point in time, what needs to be done is a radical overhaul of the Family Court system and whatnot. This legislation, if it is actually done properly in a way that does not create a hierarchy of parenting, will keep these kinds of situations out of the courts. Then let the court system fix itself.

We can do this with Bill 28. We need to enshrine equity in this bill, not have a hierarchy in parenting, and then we’ll be okay for the children, whether or not their parents remain together. I think that’s the vision I would like to see: that there is no hierarchy of parenting and that when a family structure—it’s difficult enough when a family collapses. Let’s keep it out of court for these kinds of things. Let’s keep it out of the front end. Let’s not have to have more lawyers involved in writing agreements and creating all of this paperwork.

Mr. Randy Hillier: I would agree with you 100%. If we can keep it out of the courts, that would be the best solution.

The Vice-Chair (Mr. Jagmeet Singh): Thank you, Ms. McDonagh. Thank you, Mr. Hillier. We have to move on to the next round of questions, beginning with Ms. DiNovo.

Ms. Cheri DiNovo: Thanks, Donna. Thank you for your testimony. I'm sorry that you had to go through what you had to go through. Hopefully, with the passage of this bill, with some significant amendments, we can make your experience a relic rather than the template.

1440

One of the concerns—and I think Mr. Hillier touched on this—that was raised in debate was that with new kinds of families being recognized, with equality of families being recognized, the courts would get busier because of breakups. But what your story seems to indicate is that, in fact, the reverse would be true: that if we had equality before the law for a variety of family forms, this would free up court time, not congest the courts more. What would you say about that?

Dr. Donna McDonagh: I could not agree with you more, Ms. DiNovo—absolutely. That's the right way to do it. That protects our children. That protects their parents. That puts our resources where they actually need to be. I could not agree with you more. Let's get this bill right—equality right across the system, no hierarchy in parenting—and we'll all be miles ahead.

Ms. Cheri DiNovo: The other thing you touched on is the enormous cost, even before the separation of you and your ex, for parents under this current system to go through the paperwork of adopting a child. That's not a feasible option for many folk who don't have resources. So, really, we're dealing with a class aspect to this as well. Maybe you could comment on that.

Dr. Donna McDonagh: Absolutely. I think you've already mentioned, with Dr. Epstein's comments, all of the potholes that you could fall into, in terms of the immediacy of hospital and emergency situations and how long it takes to actually get the paperwork in place and the cost of putting that paperwork in place. We shouldn't be encumbering the financial well-being of any of these children based on needless legalities that are actually unequal. Most families don't have to go through this.

I have a declaration of parentage. I wish I didn't need one. I am my daughter's parent and have been since the day she was conceived. That's the vision in this act. That's the vision I think that you and Mathers McHenry and Joanna Radbord have envisioned, in terms of unencumbering our legal system, unencumbering the finances of families and letting us just get on with it. Parenting is difficult enough—and fun enough—but we shouldn't be making it more costly and cumbersome and fraught with nerve-racking anxiety at all.

I liked what you said, Ms. DiNovo, just now: "Let's make this a relic." Nobody—nobody—should go through what I have gone through.

Ms. Cheri DiNovo: All the parents in the room are nodding their heads. Amen to that. Thank you.

The Vice-Chair (Mr. Jagmeet Singh): Moving now to the government, I recognize Mr. Berardinetti.

Mr. Lorenzo Berardinetti: Good afternoon, Ms. McDonagh. I just wanted to ask a quick question from the government side. I understand that the government worked with you to draft this bill. How was your experience working with the government to draft this bill?

Dr. Donna McDonagh: That's a great question. I actually wasn't working terribly much with the government. I certainly made myself known to the minister. He is my MPP. I pushed this issue when it was before the Legislature under Cy and Ruby's Act, with petitions and whatnot, and I'm an applicant on the charter challenge. So I have been in contact with Joanna Radbord and Martha McCarthy's office, and Kirsti and Jennifer, although they're not applicants on the charter challenge. The other applicants, in terms of trying to envision this right bill—let's be clear, there are aspects around this presumptive proof of parentage that aren't in Cy and Ruby's Act and don't need to be in this one. We can make this a bit better so that potholes aren't there. Certainly, when I have run into Mr. Naqvi in Ottawa—he knows me now. He knows my daughter now. He has been very aware of what's been moving forward over the course of the summer. Certainly the minister's office has been incredibly forthcoming with me, Susan and others in the office, in terms of keeping me abreast of developments. So no complaints that way, but I do want to reiterate that I'm speaking today because it's not quite right yet. There are things that still need to be changed to get us where we need to be.

Long answer; sorry.

Mr. Lorenzo Berardinetti: Thank you very much. That's all.

The Vice-Chair (Mr. Jagmeet Singh): Thank you very much, Mr. Berardinetti. Thank you so much for your presentation today, Ms. McDonagh.

Dr. Donna McDonagh: Thank you.

MS. KIRSTI MATHERS MCHENRY

The Vice-Chair (Mr. Jagmeet Singh): We'll now move to the next presenter, Kirsti Mathers McHenry. As you've heard, you have five minutes to make your presentation to the committee and then 15 minutes of questions. Please begin whenever you're ready.

Ms. Kirsti Mathers McHenry: My name is Kirsti Mathers McHenry. Together with my wife, Jennifer, I am the mother of Cy, aged two, and Ruby, aged six. We've been working on changing the law in Ontario around parental recognition now for about two years.

In Ontario, the law tells us who is a parent. The law tells us who is a parent at the time a child is born and the law tells us who is a presumptive parent and who can become a parent later through adoption or by getting a declaration. These laws were written before same-sex couples, multi-parent families and assisted reproductive

technologies were widely acknowledged or used. The current law, as it stands, leaves some of us out.

Today, I'm going to tell you my story. I'm telling you my story because I hope it convinces you of three things: First, the law has to change; second, the new law needs to be as inclusive as possible and needs to cover as many children and as many families as possible; and third, parents like me need certainty. We don't need presumptive status; we need full recognition as parents.

I would also ask that you keep the children in mind as we go through this process, because that's really what this is about. The children are the people who are made vulnerable by the current law. They are the ones who are put at risk and they are the ones who most need this change.

This is a hard story to tell. As we have worked on this for the past two years, I keep thinking that it's going to get easier to talk about these things, but it's not. Telling these stories really brings me back to a time and a place that is frankly inconceivable, I think, for many people. It brings me back to a place when the law stood between me and my daughter and threatened to create a situation where I could not care for her as a newborn. It takes me back to a place where I was told in no uncertain terms by my government that I was not a parent and would not be counted as one. These are difficult memories, and I hope that you'll bear with me today.

When my wife was in labour with our daughter, Ruby, who is now six, there was a period of time—it might have been two hours; it could have been longer—when both of their hearts were doing bad things. There was a fetal heart monitor tied up to Ruby and there was a heart monitor tied up to my wife and there were two pieces of paper emerging from those machines that documented their heart rates. It was the first thing that the doctor looked at when she walked in the room and it was the last thing she looked at when she walked out of the room.

The nurse had explained to me that there was a shaded band in the middle of those two pieces of paper and that as long as the heart rates were within that shaded band, everything was okay; that was normal. Frankly, for a period of hours there was not very much ink inside that band. Both Ruby's heart and my wife's heart were vacillating between being much too high—the heart rate was much too high—and much too low.

I remember thinking that my wife was going to die. I remember thinking that our baby was going to die. And then I remembered that I would not be a legal parent to Ruby when she was born.

I held my wife's hand and I watched those two rolls of paper unspooling and recording the heart rates. There really are just no words to describe the waves of fear that hit me. I was afraid for my wife's life, I was afraid for our baby's life and I was afraid that I would have to hand our newborn over to a stranger instead of caring for her myself.

They were both fine. We survived, and we left the hospital together happily after visits from grandparents and uncles and aunts. Months later, we went to court, all

three of us, with our lawyer, to make me a legal parent and get a declaration. As a lawyer, I hated that process more than I can explain.

1450

I went to law school because I believe the law can make the world better. I think it can help people. I went to law school because I believe in justice and I believe in fairness and I believe in equality. Having to go to court and have a judge agree to call me a parent and that that was in my child's best interests offended all of those principles. It made me feel lesser, and it is not something that straight people whose wives give birth have to do. They don't have to be asked to be recognized as a parent; they simply are.

What made it worse was that the judge was supportive. She treated it as though it were an adoption, as though it were a celebration of a child coming into the family, but that wasn't our experience. We had celebrated our daughter coming into our family. We had celebrated at the hospital when she was born. We celebrated the first time we heard her heart beat in utero. We celebrated when we found out my wife was pregnant. The legal process was not a celebration; it was acutely stressful. No matter how remote a chance, there was the possibility that the judge wouldn't like me. There was the possibility that the judge could say that it was not in my daughter's best interests to have me recognized as her parent.

The judge, at the end, suggested that we take a picture to commemorate the event, and, in shock, I posed for the camera. I'm still angry at myself for not saying something in that moment. I wish that I had said that this was not a celebration, that this was discrimination, and that if I was a man, we wouldn't have to do this. But we were done and I was legally a parent.

Four years later when my son Cy, who is now two, was born, life was very busy. I filled out my application for parental benefits and I began a parental leave in September 2014. After many visits to Service Canada, many phone calls and many, many weeks, I received a letter and a phone call advising me that I was not going to be receiving parental benefits because I was not a parent. Again, until we went to court and got a declaration of parentage, I was not recognized and my government would not acknowledge me as a parent or provide me with the benefits that I was entitled to.

Jennifer and I had discussed challenging the laws around parental recognition after Ruby was born, but when Cy was born and I was denied benefits, we decided that we had to do something so that other families didn't have to face that same discrimination. So I reached out to the Premier and to my MPP and we initiated the law reform process that led to Cy and Ruby's Act.

Last year, we worked on Cy and Ruby's Law, which was a bill modelled on the British Columbia legislation. This year, we've worked with the government on the All Families Are Equal Act. In the two years since I was denied parental benefits, many, many babies have been born and many parents have faced the same fears that I

faced and that same vulnerability, knowing that the law did not protect their children and knowing that the law did not recognize their families.

The Vice-Chair (Mr. Jagmeet Singh): Ms. McHenry, my apologies; I hate doing this—

Ms. Kirsti Mathers McHenry: That's totally fine.

The Vice-Chair (Mr. Jagmeet Singh): The five-minute mark has been reached; it has actually been exceeded a bit. I didn't want to cut you off, but we're set by these times and I wish we weren't.

I have to begin with the third party now. Ms. DiNovo will ask questions and perhaps deal with any other issues you have.

Ms. Cheri DiNovo: Thank you, Kirsti, and thank you for all you've done and all Jennifer has done and thank you for Cy and Ruby.

You are a lawyer and you were part of the challenge, or at least you know about it and you know about the pressure to act. However, in the current iteration of this bill, Bill 28, there are some significant amendments that have to be made. Talk to me about why it's important that we make those amendments. Also, if we don't make those amendments, is this a bill that would solve your situation or that you could support and that would keep you out of court again trying to get yet another bill done?

Ms. Kirsti Mathers McHenry: I think everyone has said that it has been a collaborative effort under short timelines. We've worked with the government on this. As it stands, I think there are a few sections that require significant amendments. I'm going to highlight three or four of those, and I will leave it to the people who are expert in areas like surrogacy to address those areas.

The first section that needs to be addressed is section 2. I'm not an estate lawyer, but as I understand it, as it's currently drafted, it would effectively require our families to go back and redraft all of our wills. The purpose of this, for many of us, is really to avoid going to lawyers, avoid incurring legal fees and avoid court dates. If we were to pass something that required us all to go out and get new wills, I think that would be a mistake, and I don't think that's the intention.

The second section that I think deserves an amendment—and I think this one doesn't sound important, but I really think that this is at the heart of everything we're trying to do—is subsection 4(4). When the Children's Law Reform Act was passed, it was initially designed to eliminate discrimination between children who were born to married couples and children who were born to unmarried couples. The language in the act says now that there's no distinction between the status of a child born inside marriage and a child born outside marriage.

We'd like to update it so that it reflects the changes that we're trying to make today. We'd like it to read that there is no distinction between the status of a child based on the parent's or parents' sexual orientation, gender identity, marital status, family status or use of assisted reproduction.

Again, this is one of the sections that will guide the courts and guide all of us as we go on to interpret the

other sections of the legislation, and I think that's a very important amendment.

We've heard a bit about sections 7 and 8. Those sections require a great deal of work. The language in sections 7 and 8 is not trans-inclusive. It is not inclusive of people with diverse gender identities. It really undoes a lot of the good work that is elsewhere in the act, and I think that's unfortunate.

We've talked a bit about the elevation of biological fathers. A lot of us have struggled with this, and I think it's an important issue. I think what we are trying to do is make sure that in appropriate circumstances, men are recognized as fathers, and men who want to parent and want to be involved have the opportunity to come forward and be recognized. We want to avoid children languishing in foster care because their birth mother wants to give them up for adoption and she either can't find the birth father or doesn't know who that person is. We need to avoid that circumstance.

As we've talked about the various different ways that we could approach this issue, we've come to the conclusion that it's simply not necessary to add that kind of language. The current statute is doing a fine job of protecting men. They don't seem to be hard done by. Men who want to parent can go to court. They can get recognition. Men are frequently recognized by the birth mother and placed on the birth certificate. There are presumptions that work in favour of men.

So there doesn't seem to be anything broken with what's happening now. The new language that has been proposed has, frankly, enormous consequences, particularly in the adoption realm, and I think that's problematic, and I don't think anybody really wants babies languishing in foster care.

And beyond that—

The Vice-Chair (Mr. Jagmeet Singh): Ms. McHenry—

Ms. Kirsti Mathers McHenry: Sorry.

The Vice-Chair (Mr. Jagmeet Singh): I apologize.

Ms. Kirsti Mathers McHenry: That's okay.

The Vice-Chair (Mr. Jagmeet Singh): We've exceeded the five minutes again. I apologize. I really hate doing this, because I think it's so important for you to share.

Thank you, Ms. DiNovo, for your question.

We'll move now to the government side, recognizing Mr. McMeekin.

Mr. Ted McMeekin: What a long and tear-stained trek you've been on. This is really important stuff.

Ms. Kirsti Mathers McHenry: It is.

Mr. Ted McMeekin: Really important. I'm touched and moved by your story.

Ms. Kirsti Mathers McHenry: Thank you.

Mr. Ted McMeekin: I don't have any specific questions. I just want to say thank you for coming and sharing it with us and opening my eyes a little bit to the importance of this.

Ms. Kirsti Mathers McHenry: I'm glad. Thank you.

The Vice-Chair (Mr. Jagmeet Singh): I recognize Ms. Martins.

Mrs. Cristina Martins: Thank you, Ms. Mathers McHenry. It's great to hear you here today. Thank you for sharing your story with us here and for all the work that you have done as well in this area.

You spoke a little bit—and I think it was Dr. Epstein who actually brought this up as well—about the children not knowing, or not having a legal certainty about, who their parents are. What are the downfalls of legal uncertainty for a child, the child that doesn't have two legal parents recognized? What is the downfall on that?

Ms. Kirsti Mathers McHenry: I just think back to Ruby in that hospital room, right? If it's not clear who a child's parents are in that kind of immediate period after the child is born, there's no certainty around who can make health care decisions for that child. There's no certainty around who can take the child home from the hospital.

We had a doctor refuse to deal with me. We brought Ruby in for the one-day checkup, or something like that. It was 12 hours after we'd been released from hospital, and we had to bring her back to get her weighed and all that stuff. The doctor wouldn't talk to me because I wasn't the birth parent, so we had to wait for Jennifer to come—slowly, at that point—from the car to the waiting room.

I just think that if Ruby had needed medical attention in those first hours or first days after she was born, and Jennifer had not been with us—if she had not been in a position to be making medical decisions—there would have been moments and hours lost as people struggled to figure out who could make that decision. Did we have to get a court order? Would I have to call my in-laws? Could they have consented? These are the kinds of things you're thinking about in that hospital room. Who can make these decisions? How do I protect this child that I signed up to protect? That was the job description. I wanted a baby. I wanted to protect her. I wanted to take care of her. To worry about who would be able to make those decisions and to have to bring in my in-laws, who are wonderful people—but to give them the power to make those sorts of decisions when a parent is standing right there is just horribly wrong.

1500

Mrs. Cristina Martins: I know that Cy and Ruby are both very young children. Thinking ahead, how important is it for them to know that there are two parents legally recognized in their lives versus what we have right now, which is no legal certainty around parentage?

Ms. Kirsti Mathers McHenry: Having gone to get the declarations, Cy and Ruby are in a pretty good situation, but it was really those intervening months where we did not have the declarations in place.

I'm the person in our family who does all of the forms. I'm the one who goes to ServiceOntario and renews health cards. I couldn't do any of that stuff. We've talked about the mundane aspects and we've talked about some of the more serious aspects, but, really—I was there. I

was present. I was married to Jennifer. There was absolutely no reason why I should not have been recognized as a full and equal parent. I think anything in this bill that doesn't take us at least that far is a mistake and an opportunity lost.

The Vice-Chair (Mr. Jagmeet Singh): That concludes the time.

Now we'll move to the official opposition. I recognize Mr. Hillier.

Mr. Randy Hillier: Thank you for being here today. I'd like you to finish off some of your comments on sections 7 and 8. Also, if you feel comfortable giving us your opinion on if the legislation is sufficient in providing guidance to the courts on matters of custody and support in the case of—we know that in this legislation, up to four parents would be recognized in a child's first year. I'm just wondering, as a lawyer, if you feel comfortable in providing any opinions on custody and/or support in those cases.

Ms. Kirsti Mathers McHenry: The reality is, if you have a three- or four-parent family or a two-parent family and there's a conflict about custody and access or support, they will end up in court. If they end up in court, I think the current law does a fine job of providing guidance to the courts about how to make those decisions. Those cases are happening now. Where there's a dispute, people are in court and judges are making decisions. That's fine.

I think the benefit of this law and—what this will do is clarify who counts as a parent and who doesn't count as a parent. A whole portion of the litigation that's currently happening is just going to evaporate because we'll know who is a parent. So instead of a three- or four-parent family having to go to court and argue, first, about who is a parent and who is not a parent and then get into the custody and the access or the support question, the question about parentage will be clear and they'll be able to get to the access and the support determinations.

I think the existing law is fine, although I would definitely ask the actual family lawyers about that.

Mr. Randy Hillier: I don't think we have any of the family law organizations making presentations to this committee.

Ms. Kirsti Mathers McHenry: I'm not sure. But there are a number of practising family lawyers—Shirley Levitan and Joanna Radbord will be able to speak to that and answer that better than I would.

Mr. Randy Hillier: If you have any further comment on sections 7 and 8—you were commenting on amendments or what you see as some deficiencies in these sections.

Ms. Kirsti Mathers McHenry: The argument I would make is that women who are in my circumstance need protection. I think Donna's story is illustrative of the ways in which we are vulnerable and the ways in which our status as parents has been challenged, and I think we need the protection that's provided by full parental recognition.

As I was saying, the current system seems to work okay for fathers. They're able to get recognition; they're able to get declarations, when it's suitable. I think the goals around having babies be able to be adopted in a streamlined fashion are well served by the current legislation. Certainly, we've not heard any complaints about the legislation, as it stands, working to the detriment of fathers.

While we all want fathers to be acknowledged in appropriate circumstances, we're concerned, I think, from our perspective about sperm donors who are not fathers, who didn't mean to be fathers, who didn't want to be fathers, who agreed not to be fathers. We don't want to drag those people in and give them a status that they don't want and—

Mr. Randy Hillier: Yes, I thought that was fairly covered in—

Ms. Kirsti Mathers McHenry: I think that is fairly covered, but I think there's a tension created by section 7(1). It frankly goes further than what is needed to protect fathers and it creates a lot of other problems around issues of trans-inclusivity and around some of the sperm donor circumstances. Frankly, if it's not broken, I'm not sure why we would need to fix it.

Mr. Randy Hillier: Thank you.

The Vice-Chair (Mr. Jagmeet Singh): Thank you very much.

DR. CAROLYN FITZGERALD

The Vice-Chair (Mr. Jagmeet Singh): Carolyn FitzGerald?

Dr. Carolyn FitzGerald: Correct.

The Vice-Chair (Mr. Jagmeet Singh): Excellent. Thank you so much for being here. You have five minutes to present and then there will be 15 minutes of questioning. Please begin whenever you're ready.

Dr. Carolyn FitzGerald: Thank you. My name is Carolyn FitzGerald. I am a mother and a lesbian. My partner, Keri Lynn, and I have two children. Ben is 14 and Sam is 10.

I gave birth to Ben in 2002. I became pregnant with the help of a hospital fertility clinic using an anonymous sperm donor.

Prior to getting pregnant, we knew that Keri Lynn would have to adopt Ben in order to have full and equal status as one of his parents. However, we were extremely worried about how to protect Keri Lynn's legal rights in the interim and how to ensure that our wishes for Ben would be fulfilled in the event of my death.

Our family lawyer helped us to prepare wills and powers of attorney that clearly articulated our desire for Ben to have full and equal access to both his parents throughout his life. We also stipulated our wish that Keri Lynn would be Ben's legal guardian in the event of my death. However, our lawyer did warn us that none of these documents would guarantee the protection of Keri Lynn's rights, given that courts always have the discre-

tion to make a decision in the best interests of the child in the event of a dispute.

Shortly after Ben's birth, I completed the Statement of Live Birth, and we awaited our copy of the long form of Ben's birth certificate so that we could begin the adoption process.

The adoption process was time-consuming and expensive. I can estimate that the entire process cost thousands of dollars. More worrisome, Ben spent the first year of his life with no assurance of Keri Lynn's legal rights and responsibilities as one of his parents. The process itself was deeply offensive to our family. The essence of the process was one of Keri Lynn seeking permission from strangers to be the parent of her own child. However, at the time, we had no other options and so we proceeded.

Three years later, I got pregnant again using the same anonymous sperm donor. We underwent the same process with our lawyer prior to Sam's birth. He was born in November of 2005. His birth was difficult and we both suffered life-threatening complications. The uncertainty of Keri Lynn's legal status as his parent added enormous stress to the stress that we were already experiencing.

Thankfully, Sam and I survived with no further complications. As before, I completed the necessary forms so we could begin the adoption process.

Soon after, we learned of the Ontario case *Rutherford v. Ontario*. We understood from this court decision that lesbian parents who used an anonymous sperm donor were now allowed to include both biological and non-biological parents on the Statement of Live Birth.

Based on this belief, we stopped the adoption process and applied to the Ontario government to amend Sam's birth certificate. The request was approved, and we received a new copy of the birth certificate listing my name under "mother" and Keri Lynn's name under "father." Obviously, Keri Lynn is not Sam's father, but there is no other option available to us.

Because our request was approved, we interpreted this to mean that this document was sufficient to establish our equal legal rights and responsibilities as parents—after all, this is all that is required of heterosexual couples.

Last year, when news of Cy and Ruby's Act was reported in the media, we were utterly shocked to learn that the government had never addressed all the legislative problems identified by the *Rutherford v. Ontario* case, and that our names on Sam's birth certificate were insufficient.

We learned that under the current legislation, as the biological parent to Ben and Sam, I am their legal parent. Through adoption, Keri Lynn is the legal parent of Ben. However, she is only considered the presumptive parent of Sam, and therefore does not have the same legal rights and responsibilities for Sam as she does for Ben.

In other words, we have two children, both chosen and equally loved by their parents, but one who is left vulnerable and unprotected by the law.

1510

It is difficult to find words to express how awful it is to know that one of our children has lived without the

same legal rights and protections as the other. It has been devastating for us to imagine that Sam could be treated differently in the event of my death, in the event of an unimaginable separation and custody dispute, or in the event of a dispute of wills on Keri Lynn's side of the family.

As a mother and as someone with her PhD in psychology, I can tell you that it would be shattering to any child to be treated differently from every other member of his immediate and extended family, and it is incredibly difficult to know that we have unknowingly incurred this risk for the last nine years. Clearly, the law as it stands is not in the best interests of our children.

We need the government to recognize that the current law suffers from the worst form of discrimination, in the sense that it is a law that protects some children and leaves others vulnerable. We need the government to understand that we are chosen, purposeful, intentional families.

We need the government to ensure we get automatic and immediate recognition of our status as parents, from birth and beyond. We need the government to recognize that it is not okay to give heterosexual parents automatic recognition and make our families see lawyers and go to court.

We need the government to draft legislation with language that includes all of us, those of us who define our role as mother, father or parent. Our children's birth certificates are, frankly, an embarrassment to our family—crossed out, written over, redone and, in the end, an inaccurate description of our family—a constant reminder of the discrimination that we still face, despite that it is 2016 and we live in a province that is supposed to be a world leader in human rights.

Finally, we need the government to create legislation that protects children already born under this outdated legislation, not just those who are born after changes are made. What we don't need is legislation that leads to further confusion and complications, that works for some families and not others, that gives LGBTQ families the idea that we are protected when we are not.

Making these changes is the only way to ensure that all of Ontario's children have the same legal rights and protections, no matter their parents' sexual orientation, gender identity, marital status or family status, and no matter the exact nature of their conception.

The Vice-Chair (Mr. Jagmeet Singh): Thank you so much. We'll begin first with the government, starting with Mr. Berardinetti.

Mr. Lorenzo Berardinetti: Thank you very much for your presentation today. I have a question to ask you: How important is it for a child that there's no legal uncertainty about who their parents are? How important is it for the child to know for sure who their parents are? What are the downfalls of this legal uncertainty as far as the child is concerned?

Dr. Carolyn FitzGerald: I think it's difficult to find words to capture the importance of the protection for all of our children. I was an applicant in the charter chal-

lenge, as was my partner and my children, and I believe that this committee will have access to those documents. I'd strongly encourage you to read Ben and Sam's affidavit, which describes how important it is and how hard it has been for them to know that they are treated differently from their friends, classmates and peers. I think they can probably say it better than I can, but in the end, I would say that it is everything to know that our family is safe and secure, as we define our family.

Mr. Lorenzo Berardinetti: Anything further? I think you've covered the question pretty thoroughly. I will try to get a hold of those affidavits.

I think that's it, Mr. Chair. I'm fine.

The Vice-Chair (Mr. Jagmeet Singh): Thank you very much, Mr. Berardinetti. Any other questions from the government side? No?

I move now to the official opposition. I recognize Ms. Martow.

Mrs. Gila Martow: Thank you very much. I think that what's so important when we have these deputations where people give presentations is to hear all the practical issues. Sometimes we're addressing bills and we hear from experts—they call them stakeholders—and we don't actually hear from the people who are going to be affected by the changes.

One of the things that myself, as a parent, I was always so happy about was when my kids turned 16 and I didn't have to get that letter from the other parent saying that I could travel out of the country with them. I wonder if you, on behalf of yourself or I assume you have a bit of a network of families who have been struggling with some of these issues: How does that become a problem? If somebody is not recognized as a parent and if somebody is presumed to be a parent, what kinds of problems arise at the border?

Dr. Carolyn FitzGerald: Travelling is complicated for our family. It starts from being very careful about where we travel and where we don't travel. We can't take our Canadian assumptions with us and assume that every place we go is safe for our family to go; it is not. So that's the first decision. When we do travel, we travel with a very thick legal folder. We travel with our adoption papers, with the birth certificates—the long form of the birth certificates—with the statements of live birth and so on and so forth. We are prepared for problems. We have only been challenged once so far, at the Detroit border crossing. Fortunately, we had all the paperwork with us, so that we were able to travel as a family and come back as a family as well. But it is certainly a complicated business for our family.

We've circumvented some of the problems that some of the other families are telling you about because we were able to give them Keri Lynn's last name. This was initially rejected by the Ontario government when we filled out our forms. However, I am a force to be reckoned with when it comes to my children, and I was able to work my way up the chain and convince that person to make an exception in our case. Keri Lynn being able to give them their last name I think has allowed us to avoid

some of the problems that others have found. I would hope, though, in the future, that nobody else would have to fight as hard as our family has had to fight to be defined as we define ourselves.

Mrs. Gila Martow: I think that one of the concerns is that we get into making the changes, and nobody ever wants to fix one problem by creating other problems. That's why we really need to put our collective heads together and consider all of those potential ramifications, especially, if you could consider, if there's four parents: Would one parent travelling with a child or children have to get letters from three other parents giving permission? Maybe those people are available, maybe they're in the country, maybe you remember—I find it hard enough to get one letter. I can't imagine how difficult it would be to remember and get it done and get it notarized and that sort of thing.

Dr. Carolyn FitzGerald: I would hope that that would be a principle that the committee uses when drafting this legislation. Are you asking LGBTQ families to jump through different hoops than a heterosexual family with just a mother and a father? If you are asking us to jump through special hoops, through different hoops, to work harder, then there's something wrong. I can sum it up best by saying: If we offer rights to some people and not others, those aren't rights; that's privilege. And I don't want to live in that province.

Mrs. Gila Martow: I really appreciate you coming in today, and I want to just mention that people have to be aware of what you brought up. I hadn't really considered that about what countries and where people travel, that it's not the same as in Ontario. So we're very lucky to be living here.

Dr. Carolyn FitzGerald: Yes, we are. Thank you.

The Vice-Chair (Mr. Jagmeet Singh): Thank you so much, Ms. Martow. Thank you so much for your responses.

I now recognize Ms. DiNovo from the NDP.

Ms. Cheri DiNovo: Thank you for your testimony, especially for going over the birth certificate issue, because that can be confusing for some folk who are listening and don't know all the ins and outs of this.

Just to get back to what Ms. Martow was saying, certainly there shouldn't be any difficulty with a four-parent family more than a two-parent family in terms of crossing borders. We can never control what other countries do. That's a simple reality, but it doesn't mean we ever have to drop our human rights to match their lack of human rights. I just want to put that out there. Again, we hope we live in a different world and we should all be working towards the place where there aren't 80 countries in the world that criminalize homosexuality.

To get back to your story in terms of your children now—I'm going to use a new term, because we talk about grandfathering clauses; I'm going to say "grandmothering" clauses here. But in terms of this bill, have you had a chance to read—

Dr. Carolyn FitzGerald: Yes, I have.

Ms. Cheri DiNovo: You have.

Dr. Carolyn FitzGerald: Yes.

Ms. Cheri DiNovo: So in terms of this bill helping your child, talk to us a bit about that.

Dr. Carolyn FitzGerald: Okay. Well, because I was an applicant in the charter challenge, we were able to get a declaration of parentage. I think we're at the point where we don't need to go through the adoption process for Sam. I think that we've done everything we possibly can to cover ourselves.

1520

That said, I certainly do have some concerns about the bill, as it's currently written. I'm confused about section 2. I'm confused about whether or not we will have to write new wills. We have spent so much money on legal costs as it is, and I'm concerned that I'm going to have to go back to our family lawyer, get another interpretation and perhaps rewrite the wills and perhaps ask Keri Lynn's parents, our grandparents to our children, to rewrite their wills as well. I don't want that. I don't want that to be the case. I don't think that's appropriate.

I'd also like to make sure that this bill addresses equally children born before and after this bill passes. Every single friend that I have that has children of a similar age is in a similar boat. Some children have been adopted; others, they didn't think it necessary to adopt. Although we have been fortunate enough to address our problems, there are so many families in Ontario that are in legal limbo. I think this legislation needs to address those families that are already in existence, not just the families that come into creation from that day forward.

Ms. Cheri DiNovo: Thank you.

The Vice-Chair (Mr. Jagmeet Singh): Thank you so much for your presentation today. Thank you for your story.

ONTARIO ASSOCIATION OF PRIVATE ADOPTION PRACTITIONERS

The Vice-Chair (Mr. Jagmeet Singh): The next presenter will be from the Ontario Association of Private Adoption Practitioners. We have Cheryl Appell—I hope I pronounced that right.

Ms. Cheryl Appell: You absolutely did. Thank you.

The Vice-Chair (Mr. Jagmeet Singh): Okay, excellent. Thank you so much for joining us. You have five minutes to present and then 15 minutes of questions.

Ms. Cheryl Appell: All right. This association is made up of adoption agencies, licensees, adoption lawyers, social workers, approved adoption practitioners who do home studies, social workers who work with birth parents considering adoption, and also social workers and practitioners who work with families who are hoping to adopt a child in care, in the care of the children's aid society. Just so that I don't forget, I just want to make sure—there's a lot of talk about adoption. I am talking primarily about the changes to the adoption rules that would result, I think, as an unintended

consequence here, but protection proceedings are equally affected by the impact of the drafting of this bill.

I want to say that the people in that association—their work centres on family formation and permanency for children. They completely and utterly back the objectives of this bill, but we just take the position that expanding the class of fathers or co-parents, the definition of parents whose consent would be required or for whom there would have to be a court order dispensing with consent, expanding that to all biological fathers, all putative fathers—as I said, we really do believe that to be an unintended consequence of the way this has all been drafted, because this was there before. The legislation now, the Children’s Law Reform Act, does recognize that a child is the child of his parents, but they’ve carved out the definition of “parent” for the purposes of consent to adoption and protection proceedings as well.

The way this is worded now, we would require any putative father, any biological father, no matter what his relationship, however casual the relationship between the parents, whether he was known or ascertainable, whether his identity was even ascertainable, whether he was prepared to acknowledge that he was the father of the child—this could even be a sexual assault. But the current definition, the one that is in the Children’s Law Reform Act now, has been found by the courts to be deliberately restrictive and exhaustive. It’s on purpose; it’s not every biological father no matter what. But it brings within that definition persons who have taken some action vis-à-vis the mother or the child, other than simply participating in the act that resulted in the conception of the child.

If you look at section 137(1) right now, for a biological father’s consent to be required, it’s not hard for someone interested to qualify. He would have to have either been married to or lived with the mother in a relationship of some permanence at the time of the birth or 300 days before. He would have had to have signed the birth registration or shown a settled intention to treat that child as his, acknowledged and supported the child—as well, if there was any kind of court order agreement requiring him to pay support or giving him any custody or access, or if he had been found or declared by a court to be the father of the child. Right now, the legislation also permits a father to file a statutory declaration, which is a one-page no-fee document, in the Office of the Registrar General, saying, “I’m the father of the child.” Just by doing that, his consent becomes necessary. So it’s very easy.

I’m very disturbed that, in the legislation, the way it’s currently worded, that recourse has been taken away. I just don’t understand. I guess it was taken away because if all biological fathers are fathers, then nobody has to protect their rights by filing a declaration. But the whole scheme of the act, which has been looked at by many courts, was that there could be easy recourse—that either someone was involved in the life of the child or the mother or could get easy recourse by filing this thing. So I think this has to stay in.

I think there are, clearly, other amendments that have to happen in order for us not to totally mess with legislation that has a different purpose than this legislation; that is, the adoption legislation.

I just want to say that adoption legislation is totally a creature of statute. There isn’t anything more important for a Legislature to have to consider, when they are looking at the rules for adoption, than whose consent, whose approval, is necessary before that child can be placed for adoption.

The courts recognize that the Legislature looked at this—that there were competing interests, that there were policy objectives. In the end, they came down on wanting to make sure that there was certainty and integrity of the process and that children could be placed in permanent homes within reasonable times and that their adoptions would not be held up, that they could be completed. There have been some courts that said, “Have we created the best possible set of rules that mankind could?” and the answer is, no, of course not. But if we’re going to look at changing all of that, it has to be done considering the objectives, considering the policies, with research, with fulsome debate. It can’t just be an unintended consequence.

I should also tell you that I’m old enough to remember when this experiment happened before. Before 1978, the legislation had said parent “means” and then had that list of categories. In 1978, it was changed—

The Vice-Chair (Mr. Jagmeet Singh): Ms. Appell, my apologies. I wanted to give you some leeway, but we’ve gone a couple of minutes over the five minutes.

Ms. Cheryl Appell: All I want to say is that the result was that all parents, all biological fathers were included. Once the court made that determination, this thing got amended so fast that it made our heads spin—to then say “means” and not “includes.” We’re just doing the same thing here.

The Vice-Chair (Mr. Jagmeet Singh): We’ll begin with the official opposition. Mr. Hillier.

Mr. Randy Hillier: Thanks for being here today.

We’ve had a number of people talk about this section, 7(1), and the presumptive biological father. We’ve heard a number of things—that it could be applied to anyone, but I’m not sure. Under 7(1), it does recognize the biological father, but then under section 7(2) of that, it then lists the criteria of what a biological father is, and it includes one who is included in a conjugal or marital relationship. It lists five different criteria that could be used to determine biological fathers.

1530

Ms. Cheryl Appell: Except that the way it’s worded, that’s a presumption that goes nowhere. It says that all biological fathers are fathers. That’s a presumption section, but it’s nowhere.

In the old legislation, the Child and Family Services Act incorporated part of the Children’s Law Reform Act but only the presumption section, so that section that you’re speaking about, which would have listed those people that were qualified—that’s why I think it’s a mis-

take, quite honestly. The way this is drafted, it no longer does that. It says that a parent is a parent in section 4 of the Children's Law Reform Act, which includes everything, just about everyone, including section 7, because that encompasses all of it. I'm sorry; I just don't have this legislation in front of me. In addition, someone who has shown a settled intention—and there are other categories of persons. But instead of carving out only the presumption, the way it's worded now takes you back to the whole of the legislation, including section 7(1). So, honestly, I truly believe it's an unintended consequence and a drafting error.

Mr. Randy Hillier: So are you suggesting that this 7(1) or (2) has to be also brought over into the children and family law reform bill?

Ms. Cheryl Appell: What I'm saying is that what I would like to see—I think it is possible, and I do believe that there are lawyers working on putting forward a draft that would integrate all of this and would meet all the objectives of this legislation plus would not totally mess with the adoption legislation.

Mr. Randy Hillier: That's what I'm trying to get at. You said that this would require, for adoption, to go out and get consent from whoever was the sperm donor. But that's really not what 7(1) and (2)—it lays out that criteria—

Ms. Cheryl Appell: It only lays out presumptions—only presumptions. It doesn't say that a person that doesn't fall within the presumption is not a parent. That's the current law. The Child and Family Services Act now says that a parent is defined as a person who falls within the presumptions, which are now 7(2)—the presumptions of the Children's Law Reform Act—at the time, it was section 8(1) 1 to 6—plus some other categories of persons. In this draft, it doesn't say that. It no longer says only the presumption; it says that anyone who is a parent under—

Mr. Randy Hillier: That's not under 7(1) or 7(2). Where would it be?

Ms. Cheryl Appell: It's incorporated, because if you look at 38(5) or (11), it incorporates virtually any parent that is recognized in the current drafting of this bill, and that includes biological fathers. Instead of saying "just those people that fall within the presumption"—it doesn't say that. That's why I think it is an error in drafting.

I should also add that there was a letter by the association that I believe was sent to most members of the committee. I do have hard copies to give out here if anyone doesn't have it and is interested.

The Vice-Chair (Mr. Jagmeet Singh): Thank you so much.

Mr. Randy Hillier: I'd like a copy of that if you have one.

Ms. Cheryl Appell: You'd like a copy? Yes, okay.

The Vice-Chair (Mr. Jagmeet Singh): That completes our time for this rotation. We'll move now to the New Democratic Party: Ms. DiNovo.

Ms. Cheri DiNovo: Thank you, Mr. Chair. Thank you for your presentation. Very succinctly, because we've

heard other concerns about 7(1) too, what would you do to change it?

Ms. Cheryl Appell: I think there are choices. One choice is to go back to carving out and just having presumptions in that definition. The other is to integrate and change the wording of sections 7 and 8 and then, looking at 38(5) and (11), it will refer to parents that are recognized, declared or presumed under the Children's Law Reform Act. I don't know if it's ready for distribution, but there is a draft with what I think is very important in it. It would allow a statutory declaration to be filed by any father who is not a donor. It integrates the concerns; let's put it that way.

Ms. Cheri DiNovo: Okay. Thank you very much.

The Vice-Chair (Mr. Jagmeet Singh): Now we're moving to the government side. I recognize Mr. Fraser.

Mr. John Fraser: Good afternoon, Ms. Appell. Thank you very much for being here and for wading through something which is fairly complicated and, I think, giving us a bit more clarity around this.

Paul Conlin, who is a lawyer in my riding of Ottawa South, contacted me several weeks ago on exactly what you were talking about. I know that adoption, with the exception of the consent of the biological father—it's a drafting glitch that the government intends to correct as we go forward. Setting that aside, it does not substantially change any of the other adoption rules.

Ms. Cheryl Appell: No. Other than what I've just said about the statutory declaration, which I think is important, no. I think everyone is supportive of the other changes; absolutely. I recognize that you will require some changes to make sure that the consent of those persons who are recognized under these new rules would be needed for adoption. The lesbian co-parent has to be recognized. If there was a step-parent adoption, that person's consent would have to be obtained.

Mr. John Fraser: Yes, I think it's critical that in the society that we live in, we afford all parents the same rights.

Ms. Cheryl Appell: We absolutely support that. Absolutely.

Mr. John Fraser: Okay. Thank you very much for coming and for explaining this to us and highlighting your concerns. All the members appreciate it very much.

Ms. Cheryl Appell: Thank you.

The Vice-Chair (Mr. Jagmeet Singh): Thank you very much, Mr. Fraser.

Thank you so much for your presentation today.

LGBTQ PARENTING NETWORK

The Vice-Chair (Mr. Jagmeet Singh): We now move to the LGBTQ Parenting Network. Do we have an Andy Inkster? Excellent. Thank you so much for joining us. You have something you'd like to hand out? We'll have the Clerk take that. Thank you so much.

As you probably already heard, you have five minutes to present and then there will be 15 minutes of questioning. Please begin whenever you're ready.

Mr. Andy Inkster: Good afternoon, everyone. First, I want to say thank you so much for having us here to speak to this. I am the health promoter for the LGBTQ Parenting Network, which is a health promotion program at Sherbourne Health Centre. We're a small program.

I'm sending around a handout for you. We have our birth recognition info sheet. This represents a tremendous amount of work that I engaged in over about a year with two law students. You would think—and I thought when I started this process—that it would be so simple to download an info sheet from ServiceOntario and add a couple of paragraphs, maybe an insert. I had big ambitions that we would just send out this new info sheet and say, "Here's your extra piece because you're LGBTQ." It didn't work out that way. As you'll see in a moment, we have 12 pages of information for people on birth registration. That's solely on birth registration. We also have additional info sheets on second parent adoption and declarations of parentage. It is one of the most frequently asked questions that we deal with. I want to underscore the testimony given by Donna, by Rachel and by Kirsti that these situations are not unusual. These are the folks I talk to every day.

In addition to the info sheet, we have an entire FAQ section on our website of two pages explaining to people what you are just beginning to unravel, which is the difference between being a presumed parent and having definitive proof of parentage. This is not intuitive for families. So we need a better system.

We've spoken at length about 7(1) and I recognize it's being changed so I won't address it directly, but I will say that we share those concerns.

The principle that underlies this legislation for us is that no child should face discrimination or be treated differently based on who their parents are, how many parents they have or what the sexual orientation or gender identity of those parents is. This is what should be at the heart of this legislation.

There have been some concerns around how we address the issue of certainty for children. I would venture to you that certainty is the basic building block upon which child development is based. Children develop attachment, and within attachment they create the necessary conditions for them to develop as human beings. Certainty is a reflection in law of that attachment. It is fundamental to who we are as human beings, as people and as Ontarians.

1540

This legislation clearly reflects what we believe as Ontarians. We believe that people are equal. We have laws that get at this. For example, we have Toby's law, which is now part of the Ontario Human Rights Code, which has been interpreted to ensure that Ontarians should be accurately reflected on government documents in terms of their gender. It's now time for our legislation that defines our families, our basic social unit, to clearly explain that all families are equal and to set a framework within which Family Court decisions can treat these families as equal. This is really what we need from this law.

Currently, there are so many information barriers for parents. You've seen all these resources we've just handed around. I talk to parents every day who don't know how to fix their kid's birth registration. We need to deal with the families—once we get this law in place, our next step is a clean-up mission, because we have literally hundreds of two-mom families in Ontario who are recognized as being "mother" and "father/other parent." All of those people who are listed as "other parent"—a great number of them would also like to be "mothers." We need to fix that too.

LGBTQ parents have to figure out as soon as their child is born how to do the birth registration. Usually, if they know, they come to me ahead of time or come to us and download the info sheet and get some information. But I'm often in the uncomfortable position of telling a new family that they need to go in to ServiceOntario in person and learn how to navigate this system. As someone who works in health care, the last thing I want to do is tell people to take their two-day-old baby down to a ServiceOntario centre and stand in line for hours. No offence to ServiceOntario, but it's not a great spot for a newborn.

The challenge we face is that LGBTQ parents are navigating a system where it's set up for two-parent, heterosexual families. Two-parent, heterosexual families don't have to think about these things. This entire system is set up for them. We have an opportunity here to make sure that this system is set up for all of Ontario's families.

Right now you can get recognized, but you need to go to court to do it and you need to know you need to do that. With the current system and the situation that Donna alluded to in her testimony on the phone, a lot of families believe that once they're on the birth certificate, they're golden. They are not; they are second-class parents. Their parenthood is always questionable.

The presumption of parenthood is simply not enough. New parents often don't know this, number one. If they do know this, a lot of new parents don't have the money to hire a lawyer to make an argument before a judge, to seek a declaration. Others don't even know it's a possibility, and still others are simply unaware that they need to do anything differently than their straight family and friends.

We have been telling LGBTQ Ontarians for a long time that they are equal, so shouldn't they be? Thank you.

The Vice-Chair (Mr. Jagmeet Singh): Thank you very much for your presentation.

We begin with the third party. Ms. DiNovo.

Ms. Cheri DiNovo: Thank you so much, Andy. Thank you for all that you've done and you do. Hopefully, upon passage of this bill, your life will become easier.

Mr. Andy Inkster: I just need to write new info sheets now.

Ms. Cheri DiNovo: This is a precursor on Cy and Ruby's Act. I already thanked Kirsti and, of course, Jennifer, for their work on that.

There have been some concerns about sections of this bill. Have you had a chance to look over that and see if there are any amendments that jump out at you?

Mr. Andy Inkster: Obviously, as I alluded to, section 7(1)—we've signed on to the statement of principles that a few of the families put together. Our concern primarily is around clarifying that the presumption of parentage is not enough. We need definitive parentage for all of our parents.

Ms. Cheri DiNovo: Right. And in terms of grandmothering all of those families that you've already worked with, it's difficult in legislation to go back, rather than look forward, but any thoughts about that—any suggestions?

Mr. Andy Inkster: I think we need to move quickly. I'm speaking to a family right now who had a baby last week. Their baby is 10 days old. They went to the hospital. They trust their health care providers. They had information from me and they had an email with the new form from the Office of the Registrar General. The nurse at the hospital brought them a laptop and said, "Here's the birth registration form." They said, "Great, the new one. Andy told us we're going to be some of the first families." They filled it out, and then they realized it didn't have the right drop-down menus they were expecting, with "mother/mother." And so they filled it out, assuming they could change it after, and they haven't been able to change it. So I would suggest that those grandmothers-in families are still being created.

As soon as they called me and said they were running into problems, I advocated for them; I worked at very high levels to try and get that changed. Then I immediately picked up the phone and called two other families I know who have newborns and said, "Hold on. Make sure you fill out the right form."

We're continuing to make these messes that we need to clean up. I think that it's not necessarily handled, though, through legislation. I think a quick order to ServiceOntario to issue new birth certificates—I don't see how that's difficult. They're paper.

Ms. Cheri DiNovo: Okay. Thank you very much.

The Vice-Chair (Mr. Jagmeet Singh): Thank you for your answers. Moving now to the government, I recognize Mr. Berardinetti.

Mr. Lorenzo Berardinetti: Thank you, Mr. Inkster, for being here today. This bill is designed to ensure that all families are treated equally. Can you explain to the committee how this bill is supposed to help families who use assisted reproduction?

Mr. Andy Inkster: This has been an interesting part of this legislation because, initially, my understanding was that we were working to create equality for LGBTQ families. Obviously many LGBTQ families do use assisted reproduction, but the groups are not interchangeable.

This legislation, as it's currently drafted, in my view has the impact of creating an equal playing field because until now there has not been equality. This is an issue Donna talked about on the phone, where if a man was

infertile and used a sperm donor to create his family, two women were not on the same footing—and still were not after the Rutherford decision. In a sense, this is designed to address that.

From the perspective of assisted reproduction, the definition is quite broad. It's part of my organization's role to make sure that people are clear that assisted reproduction currently means, under federal regulations, any conception outside of heterosexual intercourse. There's a bit of a slippage there. We often say "assisted reproduction" when we actually mean "higher levels of assistance." Surrogacy is often the issue that comes to mind.

Many men—cis men—and trans women in the LGBTQ communities, as well as other folks, use surrogacy to create their families. We know that streamlining the process to have the intended parents recognized is in everyone's best interest. Someone who's a gestational carrier for someone else, has carried a baby for them for nine months, doesn't want to be the parent of that child. They shouldn't be forced to be a parent temporarily. I understand that the legislation currently is worded to allow seven days. That makes sense because it enshrines the protection of the surrogacy agreement, which is new. And that's good, because we often have challenges where intended parents want the agreement recognized, gestational parents or surrogates want the agreement recognized, and medical professionals are not sure how to proceed. This gives them clear guidance. That is good. We don't have a problem with it from that perspective, and we think it will streamline the process and reduce some of the legal barriers for families.

Mr. Lorenzo Berardinetti: Thank you.

The Vice-Chair (Mr. Jagmeet Singh): Thank you for your answers. Moving now to the official opposition, Ms. Martow.

Mrs. Gila Martow: I'm going to continue a bit in the same vein. I think my biggest concern, on a personal note, is that doctors and nurses have enough to worry about at the hospital with a newborn without worrying about which form to present. We should really streamline things; it should be so much more clear-cut.

I've had two cases just very recently, and I'm sure my colleagues have had many more, where the mother's or the father's name—one letter was missing or whatever on the live birth form and they had problems getting a passport. They had to go back and change the birth certificate. I think that if there was sort of a linkage system, almost, when you're filling out that form—the way when you're filling out an airline ticket is how I describe it. When you put in your Aeroplan number, right away you have to have your name spelled correctly because otherwise the Aeroplan number will say it's not valid. So with all the computers and all the technology, it would be very nice if, when you're filling out the forms, things are much more explanatory and simple.

What I wanted to ask you is, what recommendations would you make in terms of just making life so much easier, not just advocating on behalf of having the parents

being able to say “mother” and “mother” on a birth certificate, but even further than that, in terms of registration for schools, camps and things like that? What are your concerns that you would like to see addressed?

Mr. Andy Inkster: I think on the ground a lot of these issues have actually been dealt with, right? Schools often have a procedure where you can list multiple parents for pickups and drop-offs. People on the ground are dealing with this complexity all the time. I think that’s really important about this legislation. A lot of the so-called backlash against it has been a misunderstanding of what this will mean, right? We’re not taking the title “mother” or “father” away from anybody by recognizing parents alongside them. We’re not creating a situation where schools are forced to recognize anything differently than they already are.

1550

Currently, camps and schools are very accustomed to having multiple-parent families. Most of those families are not LGBTQ families. Most of those families are heterosexual families where people have broken up and remarried, and there are stepmothers and stepfathers involved. So we’re figuring that out already. This isn’t anything new in that regard.

Mrs. Gila Martow: That’s a great explanation. Thank you very much.

The Vice-Chair (Mr. Jagmeet Singh): Thank you so much for your presentation.

MS. JULIA GRUSON-WOOD

MX. EMERY POTTER

The Vice-Chair (Mr. Jagmeet Singh): We’ll move now to the next presenter. Do we have Julia Gruson-Wood and Emery Potter? I hope I pronounced your names right.

Please take a seat. Thank you so much for joining us. You’ll have five minutes to present and then 15 minutes of questioning. Thank you so much for being here. Begin whenever you’re ready.

Mx. Emery Potter: Hello, everyone. My name is Emery and this is my partner, Julia, and we are here with our four-month-old new baby, Goldie. I speak to you as a member of the LGBTQ community who wants to see our families recognized and protected by law, as a gender non-binary birth parent who wants to see a trans-inclusive bill, as well as as a health care provider who provides primary care to the LGBTQ community.

As a nurse practitioner, I want a bill that provides clarity and transparency for health care providers providing family planning counsel. Starting a family should not start with a visit to me followed automatically by an appointment with a lawyer. As a new birth parent, I want to emphasize how important it is that our families are included and recognized through the passing of a bill like this.

Inaction is not an option. Our families will continue to exist regardless of the passing of the bill, and the ones who will be hurt by inaction are our children.

Ms. Julia Gruson-Wood: This is my baby, who I love with all my heart and who I have been ready to parent since she was a big, exciting idea and a little squiggle on the ultrasound screen.

I think of all the hours and hours of time and thousands of dollars Emery and I had to spend to get this government to recognize me as a parent and recognize Emery properly as a non-female birth parent. I’m angry that the months preceding and proceeding the birth of our child—months that should be dedicated to preparing and learning about this little creature—have been weighed down by unequal parenting laws.

I think about my heterosexual friends who’ve had babies through intercourse and how different our experience and that of our LGBTQI friends has been from theirs. While they were family planning, they didn’t, just because of their sexuality and gender identity, have to spend their money and time getting advice from lawyers who try to protect them against the myriad of ways in which the law discriminates against their families.

They aren’t required to report to the government how they conceived their child. They haven’t worried about whether their method of conception will influence their parental status. They haven’t had to think night after night about forms and documents. They haven’t had to familiarize themselves with family law, because their parental status doesn’t hang in the balance of correctly abiding by jargony, maze-like statutes that were built around protecting a form of family that isn’t yours.

They haven’t had to lie on their child’s birth registration because they can’t afford to seek legal counsel to secure their parental status. They haven’t had to suffer through being misgendered on their child’s birth certificate just so their child could have one. They haven’t had to figure out how to fit their families into check boxes that don’t make any sense for their family, like “birth mother,” “father” or “other parent.”

They haven’t had to seek out independent legal advice for themselves and their known donor, to the tune of about \$700 an hour, and pen a donor agreement that would not even be held up in court as a definitive contract of parental rights just because it’s the only thing that offers partial parental security.

They haven’t had to wait for months for their child’s birth certificate because they were told by Service Canada that the people working behind the counters “wouldn’t have a clue how to help them complete the form.”

They don’t have to worry about their parental status being revoked in a legal dispute simply because they’re not the birth parent. They don’t have to choose between two bad options of adopting their child as a step-parent or being declared as the parent of the child they’ve conceived of and always intended to raise.

They don’t have to worry that if their partner dies during birth, they might not be allowed to raise their baby, and they don’t have to worry about whether they’ll be able to receive the available parental benefits.

They don't have to consider whether or not the government will deem their family legitimate, in short. Their parental status isn't questioned or scrutinized.

Instead, they can put those thousands of dollars we've spent on legal fees into paying rent, taking vacations, buying groceries and baby things etc. They can spend their time with their baby resting and taking care instead of worrying about securing parental rights. They can spend their time being a family instead of spending their time trying to prove they're a family.

They can enjoy the freedom to just be, to figure out this wacky, amazing, incredible, overwhelming experience of raising a life and they can do so with a law that actually cradles them. We want also to be cradled.

Not only are these differences between straight and queer families unconstitutional, but they create cultural barriers between families. As the former unequal marriage laws did with privileging certain kinds of love, family law privileges certain kinds of families, and this quite frankly creates a certain level of resentment interpersonally and systemically.

Mx. Emery Potter: Donors have also had to risk their own familial security to donate to LGBTQ families. They have to trust the family they're donating to not to take advantage of the fact that the law still, in many cases, aligns biology with parental status.

Both parties worry and hope that neither party will take advantage of the weak laws that have the potential to work against every actor involved in making and sustaining LGBTQ families.

All parties have been forced to play a game of family roulette for far too long, and we've played this game because of how badly we want, and how much we love, our children, but it's time—and it has been time since even before Rutherford in 2006—for this to stop.

We need this new bill to understand and truly inscribe that while some parents share a biological connection, parenting is actually about more than biology and is sometimes nothing about biology. Parenting is more than gender identity and is not necessarily tethered to any gender role in particular. Parenting is about taking primary responsibility for a young life. Parenting is about commitment, care and devotion. Parenting is not about presumption; it's about intention.

The Vice-Chair (Mr. Jagmeet Singh): Thank you for your presentation. We'll begin with the government. I recognize—who would like to?—Mr. Berardinetti.

Mr. Lorenzo Berardinetti: Thank you for your presentation. It was very touching and moving. I just had a question to ask you. It has been suggested that this bill would clog up the courts, while the purpose of this bill is to prevent parents from having to go to court. Can you explain how this bill will ensure that more parents would not have to go to court?

Ms. Julia Gruson-Wood: Yes, sure. The double standard of having it be required that all queer families go to court to acquire a declaration or an adoption clogs up the court. I remember that we were in a court of law at some point, and one of the lawyers was like, "Oh, I have

15 declarations today." And that's just another day of the week. That's clogging up our courts.

Mr. Lorenzo Berardinetti: Yes.

Ms. Julia Gruson-Wood: This would actually streamline processes, and it would, I believe—and I'm not a lawyer; there are lots of lawyers here, but I'm speaking as a lay person, and from my perspective and from reading the bill, the bill actually provides clarity and transparency of roles, or it's getting to that point. It's not quite there. There are a lot of edits that need to be made. But ideally the bill would—by showing intended parentage, that would be the basis of the law, and there wouldn't be confusion and there wouldn't be the possibility of custody disputes that are based on the presumptive parentage that—

Mx. Emery Potter: Donna.

Ms. Julia Gruson-Wood: —Donna spoke about.

Mr. Lorenzo Berardinetti: Thank you very much.

The Vice-Chair (Mr. Jagmeet Singh): I recognize Mr. McMeekin.

Mr. Ted McMeekin: I'm not a lawyer either but that doesn't mean I can't practise.

I was intrigued as you described the difficult circumstances that you went through around ServiceOntario and people saying, "We wouldn't even begin to know how to do these forms." So I just wanted, rather than ask a question, to make a statement, Mr. Chairman, that when—I guess I have to say "if"—this legislation is amended and passed, I want to make sure that we are very, very strongly proactive about instructing ServiceOntario, putting whatever manual or form or clearance in place so that—the last thing I ever want to hear as an elected person is somebody struggling to realize that what they believe are and ought to be their human rights are being tangled up by some well-meaning but uninformed bureaucrat who's incapable of facilitating something as simple as two loving parents wanting to get on with life.

Thank you for that. If we could note that in the minutes, I think that would be really important to get across, because a lot of these agencies are privately run. But that's another issue for another day. We need to make sure that's clear.

The Vice-Chair (Mr. Jagmeet Singh): Thank you very much, Mr. McMeekin. That's duly noted. Everything that has been said today is recorded, and we'll note that as well—in Hansard, yes.

We begin now with the official opposition: Ms. Martow.

1600

Mrs. Gila Martow: Thank you very much for coming in and sharing your family and your story with us, even though it's frustrating and you've spent enough hours advocating on behalf of this issue. I think that there's a lot of public awareness work that we have ahead of that. I think we're all aware of that. Part of that with ServiceOntario—I'm reminded of what was just yesterday in the news. A woman put up her hand on a plane and said she was a doctor, and the stewardess couldn't understand that this young black woman was a doctor, for some reason, couldn't accept that at face value.

I wonder what you would recommend in terms of public awareness, not just for ServiceOntario, but public awareness in general and whether you think work needs to be done. My concern is that Ontario is so progressive that when we're crossing borders into other countries, there could be problems. Should there be awareness for people from Ontario where it's safe to travel or where it isn't? Do you have any concerns?

Mx. Emery Potter: My only concerns as it is now, in crossing the border, is it's very confusing. People have the child's parents listed as different things. What's happening now is that there is a lack of clarity. Hopefully this bill would actually make it more clear that this person is the parent and this other person is the parent and another person is the parent—however it may be. That would be integrated in the bill and create clarity.

Mrs. Gila Martow: My concern is that it will be clear in the bill in Ontario, but we cannot expect people outside of Ontario to understand Ontario's laws. Do you have any concerns that things have to be clearer on our passports or clearer on papers?

Mx. Emery Potter: I think other provinces are moving forward with similar types of bills, so it's not just in Ontario that families will be recognized. Already, queers—just speaking from experience—when we take a vacation, we don't go to just any country. We look into whether or not it's safe and how to have our families stay safe. It would be great if our government was supportive of our families. That would probably help quite a bit if we did get into trouble across the border.

Ms. Julia Gruson-Wood: Those are big, interesting questions that I feel like I need to—the other aspect of it, about the social outreach piece of it—

Mrs. Gila Martow: You might even want to think about it and get back to us. We're all amenable to hearing from people in the community. Anybody who is going to hear about it later on and anybody who maybe isn't speaking today, we're really interested in hearing from. Hindsight is always 20/20—I was an optometrist so I like to use that expression. You can never make things perfect, but we really want to make things as good as we possibly can.

Ms. Julia Gruson-Wood: One thing I would initially suggest is that it's very complicated looking online and figuring out what you need to do. There needs to be something much simpler so that you're not weighted down in pages and pages of documents—and there's now a special form for the birth certificate we didn't even know existed. There needs to be something online, as well as many other things that need to be done. At least online, there needs to be a simpler process to understand what you need to do to be recognized with this new bill.

Mrs. Gila Martow: Thank you so much for coming in, and congratulations.

The Vice-Chair (Mr. Jagmeet Singh): Thank you very much. We now move to Ms. DiNovo with the NDP.

Ms. Cheri DiNovo: Thank you for coming in. I'm sure you haven't had a lot of sleep. Congratulations. I remember it still. It was many, many years ago, but I remember it.

Thank you for all you've done, too, on this file. To Ted's point and also to Gila's, really about forms, it's absolutely critical. It's not in this legislation, but it will flow, one would hope, from this legislation, that those forms—both as a way of grandmothering in some of these changes but also of making it much simpler and not insulting, because it's insulting right now to queer families.

Thank you for bearing with this process. That goes for everyone, really, who has testified. It's really quite shocking, what you have been put through. You shouldn't have to go through that. It's enough just to have a baby; it truly is.

I would just like to give you my remaining minute if there's anything you want to say to the committee, that you want us to walk away with.

Mx. Emery Potter: We need to get this bill passed. Right now, Goldie doesn't have a birth certificate. She doesn't have a passport. We really want her to be recognized and for us to be recognized as parents and for all of our queer families to feel protected by this law.

Ms. Julia Gruson-Wood: And for donors to have security, too. That's a big part of it.

Ms. Cheri DiNovo: Thank you.

The Vice-Chair (Mr. Jagmeet Singh): Thank you very much.

MS. CINDY WASSER

The Vice-Chair (Mr. Jagmeet Singh): The next presenter is Cindy Wasser. Thank you for joining us. As you heard, you have five minutes to present and then 15 minutes of questioning. Please begin whenever you're ready.

Ms. Cindy Wasser: My name is Cindy Wasser. I am, first and foremost, a mother, married to a man, who had to have her children conceived with the assistance of ovum donor and gestational carriers. Secondly, I am a lawyer. I spent 20 years of my life devoted to the criminal justice system, and then I became a fertility lawyer because the system failed me.

The story of my surrogacy—my first journey—is one that actually has become well known in the community and published in Toronto Life magazine, but at the time that I endured it, it was a very private story.

I wish to say, before I really get into my submissions, that it is a great honour for me, as someone who is so devoted to the law, to appear before this honourable committee. And I wish to say that I support Bill 28 and its laudable intent to assist intended parents to achieve their dream of legal parenthood in both an affordable and accessible manner.

However, I have noticed several issues where the bill could benefit from clearer drafting. My written submissions that were sent in this morning will cover those, and I have also lent my name to the submissions and draft amendments that will be filed by others. I am also prepared to answer questions on those amendments.

After suffering the pain of infertility and accepting that my only realistic pathway to motherhood included

the donor and carrier, I was deeply offended to learn that in order to become a mom legally, I needed judicial authority. While I was willing to challenge the legislation at that time, the result would likely have entailed a lengthy delay in obtaining parentage in a legal way, not to mention the added bonus of greater financial expense. At the point when my first daughter was born, my husband and I had already spent upwards of \$80,000 for her creation. The legal expense for the declaration of parentage was going to cost us more than \$6,000. My husband, who is a very private man and a saint, was not willing to be the test case, and so I respected his wishes and we applied for the declaration. My experience changed my life tremendously. I vowed to help other parents become families through the use of surrogates and hoped that they would never have to go through what I did to become a mom.

As a fertility lawyer who practises solely in the area of surrogacy, I have to say, however, that not one of my clients in the last eight years has been willing to take the time to challenge this law. I feel the need to publicly commend the Grand applicants and the others who have spoken before you, and their counsel, for their courage, which will benefit all families, not just those within the LGBTQ community.

There are several issues that I wish to address—one with respect to the issue of confidentiality in 17.3. I believe it may be inadvertent, but it is currently confusing as to whether it will apply to the streamlined process that is expected to occur. In my view, all documents filed by all intended parents and surrogates must be kept confidential, save and except for the issued birth certificate.

1610

I also fail to understand why there is a seven-day cooling-off period before a surrogate can provide her consent to us. In my legal opinion, it is arbitrary and may not survive the challenge. I understand from where it comes in the adoption context, and so I think it may be worth considering a definition of surrogate that distinguishes between the woman who is known as a traditional surrogate and uses her own ova and that of the gestational carrier, who is not at all genetically connected to the child she carries. The cooling-off period has no place in the situation where a gestational carrier who has no genetic attachment to the child has agreed to provide parental rights to the lawful parents and has undergone extensive medical, psychological and legal counselling prior to the transfer.

I also wish to address you on what I believe will be the submissions of some of my colleagues who do not share my full appreciation of this bill. You might hear from some that it is dangerous to dispense with full judicial oversight of the parentage process. But we can look to, as an example, the last several years in British Columbia, where a statutory declaration has dispensed with the need for judicial oversight in most situations. We have heard no evidence of abuse as a result. My colleagues may warn you of their anecdotal evidence of potential abuse

with clients who might have lied about parenthood until they learned of the requirement for DNA and judicial oversight. I say that it matters not whether the heart-broken or culturally terrified parent is genetically related. Given that the birth registration is allowed in Ontario without regard to genetics, why must we humiliate that person further? An amendment, however, requiring a statutory declaration might be the compromise my colleagues and I can endorse.

Some people may also come before you advocating for a system that continues to acknowledge that a carrier is a legal mother. Although those of us who needed these women to create our families are eternally grateful to them, it is far more than we should accept to refer to the carrier as the legal mother of our children. I, not the surrogate, became the real mother of my child from the moment I dreamed of her, prior to the declaration, the birth, the transfer; prior to the creation of an embryo, to the ova retrieval; prior to the agreement of our ovum donor to assist us. It was from the moment I dreamed and planned with my soulmate to create my daughters. I deserved to be treated as any other woman who planned and dreamed to be a mother. I am a real mother.

In the new scientific world that allows men only to be parents, this legal right should be extended equally to them and to all of the communities you have heard from today.

In this wonderfully tolerant land we call Canada, it should be an automatic right to all who come here. Please do your part to make this the reality in Ontario, where you have the jurisdiction to do so. Thank you.

The Vice-Chair (Mr. Jagmeet Singh): Thank you very much. We begin with the official opposition, starting with Mr. Hillier.

Mr. Randy Hillier: Thank you very much for being here and sharing your story today. You mentioned, at the beginning of your comments, confidentiality. This is something that I was wondering if you might be able to offer an opinion on or expand upon—I haven't seen it clearly in the legislation—about the release of information, medical history, under this legislation, with up to four parents being identified as parents. It's not clear to me, in the legislation that we see, how relevant medical history, in years to come, that the child may need to find out—is that addressed or is it weak or should we consider that aspect in more detail?

Ms. Cindy Wasser: I think it's an excellent point, and thank you, Mr. Hillier, for raising it.

As a fertility lawyer, I am always encouraging people who use the assistance of a donor to enter into a contract with that donor, not so much for the issue of determining parentage, but in order to have rights established between the parties for further disclosure of medical information.

I was told that I didn't need a contract when I began the donor process, even when my donor became known to me. I'm just lucky that she is an incredible woman and I know she will contact me if, God forbid, she ever becomes ill.

My contracts with my clients and their donors state that there will be mutual disclosure of any genetic illness

in the future, that there will be recognition that the child may one day want to know this person, and that he or she, the donor, will agree to meet that child. That may not be enforceable, because you can't take someone kicking and screaming to Tim Hortons to meet the child they created, but at least it gives them a chance to obtain independent legal advice, as well, before they understand what a great gift they are giving and the long-term consequence of it.

Mr. Randy Hillier: But in your reading of the bill right now, is there any requirement for genetic donors to provide any information that may be relevant, may be important in the health and development of the child?

Ms. Cindy Wasser: They provide a consent, under the federal legislation, when they attend at a clinic, and the consents themselves will usually allow for them to provide that information to the clinic eventually. But we're often talking about young women, when we're talking about egg donors especially, many of whom I've noticed are around the age of 20 or 21. I myself read those consents as the intended parent and at that time really didn't contemplate what it meant. I have read stories of ovum donors who later created their own children and wondered about that half-sibling of their own child out there. I wonder that for my own children.

So I think the requirement of legal advice that is required for the surrogacy arrangement in this bill is something to be contemplated for donors. Right now, the law does not require anywhere, at any level, that donors have legal advice.

Mr. Randy Hillier: Right, and therefore no requirement to provide unless it's—

Ms. Cindy Wasser: Nothing in law.

Mr. Randy Hillier: And if it is included in the donor agreement, that's still a civil matter which would require the deep pockets of going through the legal system to enforce.

Ms. Cindy Wasser: Yes. I do tell all of my clients in the surrogacy situation, as well, that the ability to enforce the contract is not practical: for one reason, the other side may not have the financial means to pay out even if you were to win; secondly, a lot of the things you might be asking them to enforce would be contrary to other legal issues.

Mr. Randy Hillier: I'm just wondering if another generation from now will be going back and looking at the—and we've seen that this comes up these days, about finding out medical history of adopted children etc. I'm wondering if we ought to be looking at some function within this legislation that mandates or compels relevant medical history.

Ms. Cindy Wasser: As a mother, I applaud that. As a lawyer, I find that it is something I would encourage, because I find that when I speak to my clients who are considering sometimes only ovum donation—they will carry their babies—the last thing they have even contemplated is future medical information of their child. They have spent more time looking at the physical characteristics of the donors on profile lists than thinking

about the long-term health of the child they created. I may be a rare person who did care about that, and so I chose to make my donor known to me and a part of my children's lives to some extent. She's not a mother; she's not a parent, but I know I can count on her for that information.

Mr. Randy Hillier: Thank you.

The Vice-Chair (Mr. Jagmeet Singh): Thank you very much, Mr. Hillier. That completes that round. We move now to Ms. DiNovo for the NDP.

1620

Ms. Cheri DiNovo: Thank you very much, Cindy, for your testimony. Thank you for bringing a new point of view, which is that of the heterosexual and the interest served to straight couples by this bill as well. I think it's important to note that this also helps straight couples.

You signed on to support Bill 28 with the potential amendments here, and thank you for that as well. I'm wondering if you could just talk about maybe a couple of those amendments that you think are important, while we've got some time.

Ms. Cindy Wasser: The ones that I would like to see that I have delivered myself relate to, as I said earlier, the definition of the surrogate. With respect to the need to have independent legal advice prior to entering into the contract, there may also be what I think is an unintended drafting that suggests it is only the surrogate herself who needs, along with the parents, to enter into this contract.

In a situation where the surrogate is in a committed relationship, it is most lawyers' views—those of us who practise in this field—that her partner needs to get legal advice and be a part of the contract—perhaps not the consent, if there is such a document later, but he or she must have independent legal advice along with the surrogate. They don't have to be separate. It's a very difficult process and they should be part of it together.

The other thing I'd like to address is the seven-day cooling-off period, as I did earlier. It creates another conundrum if everyone remains in hospital. The current drafting says you will go to the surrogacy agreement and the parents, if it's in that agreement—which it almost always is—will have lawful authority as parents up into that seven-day period.

Then it says that any provision of the agreement respecting those rights after that period is of no effect. In essence, the surrogate has day seven only. If she doesn't sign the consent on day seven because she can't—for example, she's in hospital with complications—the surrogacy agreement giving the parents total lawful authority is of no value and it becomes a shared responsibility. It's a conundrum if the baby is also in the hospital, for the hospital. They're been listening to the parents for the seven days and now it's shared. The surrogates, as you've heard, do not want that responsibility.

I also think we've talked about some forms. There is a significant one that needs to be created for all hospitals in Ontario that is consistent about rights and responsibilities, understanding, of course, the Morgentaler aspect of the fetus having no rights as a person until that moment

of birth. We can create a form—I am confident in our collective intelligent abilities—that speaks to the child that will be born and the consent for the future to take place when that child has rights.

Confidentiality of all documents, not just those under the court declaration: that all reference to surrogates should be kept sealed at vital statistics or in any other department where they might be filed. We haven't seen them so it's hard for me to comment, but those are important.

Finally, I'd like to talk about the lack of enforceability of surrogacy agreements. I'm not sure why that section exists. I'm not sure why we wouldn't agree to enforce an agreement entered into with independent legal advice for all parties. It is a contract.

Some terms, we have to understand, such as "selective reduction" or "termination of pregnancy," would never be enforceable, but they would otherwise be a breach of a contract remedied, if possible, by some other means. I think they should be considered enforceable so that we give clarity to all those entering into that process. They all want that clarity.

Ms. Cheri DiNovo: Thank you very much.

The Vice-Chair (Mr. Jagmeet Singh): Thank you so much. We now move to the government. I recognize Mr. Berardinetti.

Mr. Lorenzo Berardinetti: Ms. Wasser, thank you for your presentation today. I'm just going to follow up on the section 10 part, the surrogacy part of the bill. The bill makes several amendments that would protect the surrogate, recognize the surrogate as a parent when the baby is born, and basically recognize that the surrogate and the intended parents enter into a written surrogacy agreement before the child's conception. Each intended parent received independent legal advice, as you've touched upon already, before entering into the agreement, and the surrogate provides written consent to give up her parental status upon the birth of the child, and a cooling-off period of seven days, which you've talked about here as well, following the birth of the child, during which the surrogate cannot give up her parental status.

So there are some safeguards provided. How important are these safeguards? You've commented already on some issues around the surrogacy stuff, so—

Ms. Cindy Wasser: Proper legal advice, which is difficult for you to legislate because the law society does not distinguish between what type of lawyer—it just says that we have an obligation not to go beyond our realm of experience. Those of us who practise in that area always fear that somebody's friend who is a real estate lawyer will draft the surrogacy contract.

Right now, most of the clinics will demand that a letter be obtained from the lawyers saying that proper advice was given—and my letters always say "by fertility lawyers." That is an important thing.

I think that legal advice for the surrogate's spouse or partner, if there is one, is critical. I think that the rights and obligations of the intended parents must be defined right away, that there should not be a cooling-off period.

We deserve to be considered the parent right away, as soon as there is a legal child in existence.

Mr. Lorenzo Berardinetti: As a lawyer myself—I've been in politics for a long time—I know that in the law society, there are certified specialists in various jurisdictions. Do you think it would make a difference if they seek advice from a certified specialist?

Ms. Cindy Wasser: The certification process is a complicated one, and it also has certain limitations about at what point a lawyer can apply and what it means to be certified. It's also a costly one. Although I practised criminal law for 20 years and was a highly respected, high-profile criminal defence lawyer, I actually never applied for certification. I didn't see the point. I don't think anyone questioned my skill in that field. I became a fertility lawyer and developed the skill quickly, partially because of my personal experience, but also because I was capable. I don't think it's that; I think it's making sure that it's an area in which you practise and are fully aware of. The other day, a lawyer asked me if they could purchase an egg donor agreement from me, and I said, "It's not that; it's not the money. I would never sell that. I would give it if I knew that you were practising in the field and would know what to do with it properly." I think that is something that, ethically, all lawyers must deal with.

I want to believe, and I do believe, as all people are very good, that all lawyers are mostly very good and ethical. There will always be a problem, but we can address it by making sure that the bill itself says that all parties receive legal advice. You could draft it to say "by counsel who practise in the field of fertility law," but that might be problematic. It's something to consider.

The Vice-Chair (Mr. Jagmeet Singh): That's all of our time. Thank you, Ms. Wasser, for your presentation.

Our next presentation is from Donald Melanson. Do we have Donald Melanson here? No? One more time: Donald Melanson?

Interjection.

The Vice-Chair (Mr. Jagmeet Singh): And a final time: Donald Melanson. I've just been advised that we needed it three times.

Mr. Lorenzo Berardinetti: Mr. Chair, could we have a five-minute break?

The Vice-Chair (Mr. Jagmeet Singh): Yes, I would love to do that. Would everyone be agreeable to a five-minute recess? Excellent.

We are recessed for five minutes, returning at—what time would that be?

Interjection.

The Vice-Chair (Mr. Jagmeet Singh): Sure.

The committee recessed from 1629 to 1639.

The Vice-Chair (Mr. Jagmeet Singh): Thank you, everybody. We'll be beginning back with the committee hearings. I call the committee back to order.

Before we address the next presenter, we have a request from Mr. Hillier.

Mr. Randy Hillier: Chair, I would like to ask our legislative research branch if they could provide the com-

mittee members a synopsis of similar statutes in British Columbia and in California, and any of the variances between those jurisdictions and this legislation; and also, if there are any relevant legislative reviews or analyses that may help the committee as we review this bill.

The Vice-Chair (Mr. Jagmeet Singh): Thank you very much, Mr. Hillier. As everyone heard, it's a request to have a comparative analysis of similar legislation from other jurisdictions which are close and persuasive in nature: California and BC. That is no concern; that is something that's very appropriate to do, and so requested.

We are now moving to the next—

Mr. Randy Hillier: And that was to be available before clause-by-clause consideration.

The Vice-Chair (Mr. Jagmeet Singh): Right, sorry. And we'll note that that should be available before clause-by-clause consideration. Is that something that legislative research can do? Yes? Excellent. Done.

MR. NEIL GARDINER

The Vice-Chair (Mr. Jagmeet Singh): Moving on to the next presenter, we've received word that Mr. Melanson had withdrawn his name because his presentation was not relevant to today's hearings, so we now have Neil Gardiner as the next presenter. Is Neil Gardiner present?

Interjection.

The Vice-Chair (Mr. Jagmeet Singh): Sure. His time was supposed to be for 5 o'clock, so it's a little bit early. Is a representative from Shirley Eve Levitan, Family and Fertility Law, Jordan Battista LLP—

Interjection.

The Vice-Chair (Mr. Jagmeet Singh): Oh, Neil. Perfect.

Mr. Neil Gardiner: I took my recess too literally, it seems.

The Vice-Chair (Mr. Jagmeet Singh): No, no, you're still early, technically, for your time. But we have an opening now, so we will begin with you, then.

Mr. Neil Gardiner: That's great.

The Vice-Chair (Mr. Jagmeet Singh): Just to give you a heads-up, it's five minutes to present and then five minutes of questioning per party.

Mr. Neil Gardiner: That's great.

The Vice-Chair (Mr. Jagmeet Singh): Okay, when you're ready.

Mr. Neil Gardiner: My name is Neil Gardiner. I am a resident of Toronto, Ontario. I am a self-employed musician, artist and husband and father of two wonderful young children now at the age of 19 and virtually 17.

My points are few, other than to allow the committee an opportunity to ask someone with some insight into being an artist, into life as an artist and into some of the predicaments, if you wish, that come along with being an artist, and to give you an opportunity to ask any questions that might have something to do with your bill.

I have experience, over the period of raising my children, of working part-time while my wife works very capably as a manager at a hospital in Parkdale. I have worked all this period evenings doing rehearsals and gigs not paying a great deal, as you can imagine, in my chosen profession and calling, but nonetheless during the day time doing part-time work with the Canadian Music Centre as well as working as the staff person at the Canadian League of Composers, an association/union representing concert music composers across Canada.

I have some insights into what artists deal with in their rather precarious positions. I know that there are actually other organizations now available that speak specifically to the precarious nature of employment among artists and musicians like myself, but in light of this standing committee and the bill before you, I just wanted to make myself available should there be any questions related to particularly musical artists that I have insight into, having also run world music workshops and non-traditional musical sectors. So I'm available or, if you like, you can feel free to excuse.

The Vice-Chair (Mr. Jagmeet Singh): Mr. Gardiner, just to clarify, today's bill is Bill 28. It's about the Children's Law Reform Act—

Mr. Neil Gardiner: Correct.

The Vice-Chair (Mr. Jagmeet Singh): Oh, you're aware of that?

Mr. Neil Gardiner: Yes.

The Vice-Chair (Mr. Jagmeet Singh): Okay. I'll begin with the third party. Any questions?

Ms. Cheri DiNovo: Do you have anything to say about Bill 28?

Mr. Neil Gardiner: Do you have any specific questions related to being an artist that may impact on Bill 28?

Ms. Cheri DiNovo: It doesn't really have anything to do with being an artist. That's why I'm just asking you if there was something you wanted to raise.

Mr. Neil Gardiner: Well, I am concerned about particularly the situations that artists get into regarding their matrimonial situations, perhaps—marriage, divorce, having children, custody. A lot of these things, regardless of the cultural background, tend to be put into different scenarios once the precarious nature of artists is the economic reality and, therefore, I thought it might actually have some relevance to your committee, but I understand if you feel that it may not.

Ms. Cheri DiNovo: Thank you.

Mr. Neil Gardiner: You're very welcome.

Ms. Cheri DiNovo: I have no other questions.

The Vice-Chair (Mr. Jagmeet Singh): We move now to the government. Any questions—

Mr. Ted McMeekin: The government passes.

The Vice-Chair (Mr. Jagmeet Singh): The government passes? Okay.

Any question on behalf of the official opposition?

Mr. Randy Hillier: Yes. This is a bill that is about parentage. It was a wide-ranging scope in changes to

family law. There's nothing intrinsically or specifically about artists in this bill.

Maybe if you take a moment—what is intrinsically different about artists, when it comes to family law and the recognition of who ought to be defined or presumed to be a parent, that this bill addresses or seeks to change in the laws of the land?

Mr. Neil Gardiner: Yes. It seems to me that there are some custodial issues. There are issues regarding the perception of artists, in terms of their employment, being well represented as potential parents. I don't want to go into talking about the moral stereotypes or stigmas that go along with being artists, because we would get into other types of prejudices that would be far broader.

But I think artists do become exceptionally under-represented in many aspects of society and in many of the bills, if you wish. As Bill 28 that you're looking at is going through, I would, as with other bills, think that there are additional concerns. Addressing with an artists community could help the government to understand better the ramifications of the socio-economic realities of being an artist here in Toronto and, more importantly, in Ontario for this bill.

Mr. Randy Hillier: Do you have anything to provide to the committee?

Mr. Neil Gardiner: I would love to provide you with a document of 25 pages by the end of your committee sitting, if that would be of order. I would be glad to write something up.

Mr. Randy Hillier: Thank you.

The Vice-Chair (Mr. Jagmeet Singh): Any further questions?

Mr. Gardiner, the Clerk will take your information. If you do want to submit something, submissions are until tomorrow at 6 p.m.

Mr. Neil Gardiner: Excellent.

The Vice-Chair (Mr. Jagmeet Singh): There are no further questions, so thank you so much, Mr. Gardiner.

SHIRLEY EVE LEVITAN,
FAMILY AND FERTILITY LAW
JORDAN BATTISTA LLP

The Vice-Chair (Mr. Jagmeet Singh): The next presenter will be from Shirley Eve—and I hope I'm not pronouncing this wrong—Levitan, Family and Fertility Law. Yes, I see somebody coming forward from Jordan Battista LLP. Excellent. Do we have Shirley—now, is it Levitan?

Ms. Shirley Eve Levitan: Yes.

The Vice-Chair (Mr. Jagmeet Singh): Oh, it is? Great—and Kelly Jordan. Excellent. Shirley Levitan, principal for the law firm; and Kelly Jordan of Jordan Battista LLP. Both are present, and you are providing some documents. Thank you so much.

As you've heard, you have five minutes for your presentation, which will be followed by 15 minutes of questioning—and that's five minutes per caucus. If you

have additional documents, the Clerk will pick them up from you.

Ms. Shirley Eve Levitan: Yes, as I was told, not part of my five minutes.

I do have some amendments to the bill that were presented by all the signatories here. We've all agreed to these particular changes. I understand that copies are going to be made. Then there are those of us who are discussing other further changes, in particular, right now, with respect to surrogacy.

The Vice-Chair (Mr. Jagmeet Singh): And that's one complete document that needs to have copies, or is that what you submitted?

Ms. Shirley Eve Levitan: That's correct.

The Chair (Mr. Jagmeet Singh): Okay. Our Clerk won't be able to make those while you're giving your presentation, but we'll have those delivered to the members of the committee.

Ms. Shirley Eve Levitan: Yes, there's one copy of changes to the bill at large, and then there are 25 copies of changes specifically to section 10.

The Vice-Chair (Mr. Jagmeet Singh): Okay, we'll hand those out then. The specific changes to section 10, you said?

Ms. Shirley Eve Levitan: Section 10, yes—subsection 17(3) and then subsection 9(7) of the Vital Statistics Act.

The Chair (Mr. Jagmeet Singh): Okay, we'll have those handed out then. I think that the Clerk caught that, so that's great. Please begin your five minutes whenever you're ready.

1650

Ms. Shirley Eve Levitan: I'm Shirley Eve Levitan, and I practise family and fertility law. My colleague is another family and fertility lawyer, a partner of Jordan Battista, and she's also a lesbian mother of donor-conceived children.

Very quickly, we would like to applaud the bill's recognition of multi- and LGBTQ-parent families, the provision for increased security for children vis-à-vis parentage and more gender inclusiveness for parentage. I would applaud but it'll take up too much time. Thank you.

The issues we'd like to raise now—and I understand and agree with the changes that are made in the bill that's going around. Section 7(4) versus section 5: The bottom line there and the result is that someone who has sex, for lack of a better word, with a pre-conception agreement gets a pass on any parental obligations, but if you donate your gametes via a clinic, then you have an additional hurdle. I don't know, and I don't believe, that was perhaps the intent, but again there is a change made to section 5 in the one copy that's being copied now. It has again been dealt with by Ms. Radbord and others, and we support that change. I'm going to go on because it has been dealt with.

Confidentiality in section 17.3 is a very important issue. Providing that section 70 of the CLRA should be applied with the modifications that are necessary isn't

enough. These children deserve the same rights of privacy as children of adoption, and so we are proposing that 17.4 require the entire court file to be sealed, as well as the government files, in declaration applications in order to preserve and provide the same privacy to the children born of reproductive technology that is provided in adoption. In fact, my understanding is that in the minutes of settlement signed in the Grand matter, that was one of the provisions of agreement. I can't stress this enough. They deserve to be safe from public scrutiny and judgment, and the opportunity to be told about their conception background by their family, as are children of adoption, and not by some newspaper article sensationalizing the whole thing.

The last issue we'd like to discuss are declarations of parentage. I don't agree with my colleague, who I believe spoke about this a little earlier. I think they need to be preserved in surrogacy situations. I've been working in this area as part of my family law practice for 20 years. I was also a licensee for private adoption.

What I find somewhat ironic and a bit contradictory is that at the same time the federal Liberal government is coming out with regulations to section 12 of the Assisted Human Reproduction Act to provide some guidance as to what expenses are required, this bill, at the same time, is going to be taking away the best oversight and check and balance we have, which is a judicial declaration.

When you look in the world of adoption, we have social workers; we have lawyers. We have criminal sanctions for payment—\$25,000 or up to three years in prison, or both, for receipt or payment of consideration in connection with an adoption consent. You've got all these professionals who are licensed by your government, and yet what is required in order to make that adoption final? A court order.

Despite the fact that there are professionals involved and we've got counsellors and social workers and lawyers, we still feel very strongly that the ultimate protection and the ultimate oversight to keep the check and balance and ensure there is compliance at both the federal and provincial levels is a judicial declaration. I find that it's contradictory. It doesn't make much sense to me.

I also understand—and Ms. Appell would know better than I because she is the adoption expert here—that in British Columbia they're also more generous with their adoption regime. I believe that there are expenses that can be paid in British Columbia that here would be completely disallowed. It's a different mentality there, and I think it's different policy. To adopt a policy there where they also have a different policy with adoption and to try and transport that to this government and our society and our values—I don't know that that works.

We've seen situations in particular with traditional surrogacy where there is a serious potential for fraud. So in section 10 that I've provided in my changes, I've taken away the seven-day waiting period. I think it could cause serious havoc in hospitals. If you have the surrogates, and the intended parents have the same rights as parents in the first seven days and you've got a child in the ICU and

you've got a surrogate who's gone, who's going to give instructions? Hospitals are already very concerned about who they're supposed to taking instructions from. That's a problem.

It eliminates the need to differentiate between four-or-fewer-parent families and more-than-four-parent families because if you're using a surrogate or gestational carrier then you should just get a declaration regardless.

I think it also eliminates the need to differentiate between traditional surrogacy and gestational surrogacy, "traditional" meaning when the birth mother is also the genetic mother, and "gestational" meaning when she has no genetic connection. Because right now you don't differentiate, and I know why you've thrown the seven days in: It's to mirror the adoption regime. But I don't think there's any need for that if we throw back in the declaration oversight.

The Vice-Chair (Mr. Jagmeet Singh): Thank you very much. You finished right on time at five minutes, so that's great.

We begin with the government. We'll start with Mr. Berardinetti.

Mr. Lorenzo Berardinetti: Did you want to go ahead?

Mr. Ted McMeekin: No, thanks. You go.

Mr. Lorenzo Berardinetti: No? Okay.

Thank you for your presentation. The purpose of the bill is to prevent the clogging up of the courts. Right now, many presenters and the government have realized that some of these issues can be dealt with through the statutes so people have to go to court and spend time with litigation. You say this bill is clogging up things when it's meant to expedite things and clean up the system a bit, make it easier so families don't have to go through this whole process.

Ms. Shirley Eve Levitan: I don't know that I was suggesting that this bill is clogging things up. First of all, in non-surrogacy situations, parentage should be granted automatically. When you've got a lesbian couple and the birth parent has a child and it's a known donor, right now they've got to get a declaration. I'm not suggesting that that should be required in that kind of scenario; I'm suggesting only when there is a surrogate involved.

The irony, I think, with what you're saying is that omitting that last step, which is really—we're in court for five minutes, literally, 10 minutes; it's not a big thing, and it's on consent for the most part. I think by eliminating that step you're going to invite more litigation. I think it's entirely possible that it could lead to a bigger problem and do the very thing that you're trying to prevent, which is clogging up the court system.

We're only human, right? So the regs are going to come out at the federal level. The reason that we have judges is because lawyers disagree. I can tell you from practising in this area for so many years that one of the main things that we have in preventing many of these contracts from going off the rails, and all parties have their own respective vulnerabilities in these arrangements, is because we say, "A judge is going to be looking at this in the end."

You can't do A, B, C. We have to make sure. We have to be cognizant of this reality. It's the same thing in adoption. What's the difference? You have the same kind of vulnerability. You have intended parents who are desperate to be parents; you have a woman who has her own kind of vulnerabilities. You've got lawyers; you've got social workers—but again, they're licensed. In fact, you've got an even higher level of professional intervention there and you still need to go to court to get an adoption order. So I'm not quite sure why that should be different to have that oversight and the safety for everybody. It just doesn't make sense to me, given that you want everybody to be protected—I think. I don't know; maybe you don't.

Mr. Lorenzo Berardinetti: We're here today because the courts asked us to change legislation or to make sure that it's expedited in certain circumstances.

Ms. Shirley Eve Levitan: Right. And I think that, in the example I've given you, in particular when you've got lesbian co-mothers, one example is the non-birth mother not having to go and adopt her partner's child or having to get a declaration of parentage when the donor is known. She would be automatically recognized as a parent. I'm not suggesting that be changed at all. I'm talking about when another person is having a baby for you. I think that's different.

Mr. Lorenzo Berardinetti: Okay.

The Vice-Chair (Mr. Jagmeet Singh): No further questions?

Mr. Lorenzo Berardinetti: No further questions.

1700

The Vice-Chair (Mr. Jagmeet Singh): Thank you very much. We move now to the official opposition. I recognize Mr. Hillier.

Mr. Randy Hillier: Thank you for coming here today and helping us try to understand all the different elements of this bill, which are substantial. A couple of things, if I could get you to comment: You mention one thing—serious potential for fraud with surrogacy. I'm not aware of that, and maybe if you could share with the committee just what that is.

Ms. Shirley Eve Levitan: I'm speaking—

Mr. Randy Hillier: And one other thing is, I'm going through a little bit of the brief that you've put, and you struck out surrogacy for up to four intended parents. That's something that I'm not quite sure of why—in the bill right now it has a limit of four parents. It seems that you've struck that out in your suggested amendments. Maybe you could speak to that element as well.

Ms. Shirley Eve Levitan: Okay. In terms of fraud, the concern is more with respect to the traditional surrogacy situation, when you've got someone who is carrying a child of whom she is the genetic mother, and she's also the birth mother. So you're talking much more of an adoption-like scenario. I think that the potential there for possible payment in exchange for a child or coercion or taking advantage of vulnerabilities of women in that situation could be heightened if you take away the traditional oversight.

Mr. Randy Hillier: Right.

Ms. Shirley Eve Levitan: I just do. Again, isn't that why we have judges granting adoption orders? I could be wrong. I don't even think you can get the birth mother in an adoption a tube of toothpaste without getting government approval. It's very, very strict.

Mr. Randy Hillier: And this is important. Myself, I have very little—well, I have no first-hand knowledge or experience with surrogacy or with reproductive technologies. My knowledge is limited to what I see in the media. It's important that we have a better understanding of what is actually happening in practice and what people have experienced.

Ms. Shirley Eve Levitan: That's one example. I think another example is, again, in negotiating these contracts, everyone involved has specific vulnerabilities. I do think that if everyone knows that at the end of it a judge is going to be reviewing this, it helps; it's a check and a balance. It simply is.

Mr. Randy Hillier: Right.

Ms. Shirley Eve Levitan: It keeps it confined. We don't know what these regulations at the federal level are going to come out with. We don't know how it's going to be enforced. I don't want to be so arrogant as to say I'm speaking on behalf of everybody, so I won't, but I can't even imagine—are there going to be surrogacy police officers? Are they going to appoint these inspectors to go into medical offices and legal offices and pull files? Talk about litigation: That would keep the courts busy for quite some time, dealing with privacy issues and charter issues and all those constitutional issues, because you require a third party to have a child.

Mr. Randy Hillier: In addition to that, about the four parents, are you aware of other federal or other provincial legislation where this bill would be problematic or contradictory or that other amendments would be required at the federal level, for example, to make this seamless or less problematic?

Ms. Shirley Eve Levitan: I can't speak to what other provinces might do. I can tell you that, for example, Saskatchewan, I think it is, will allow a birth to be registered in the name of up to four people from the get-go, but that's not using a surrogate. That's when you've got one birth parent and other birth parent, and if, at the time of birth, they have partners who have an intent to parent, those partners can be named as the initial parents. That's a different kind of scenario than the one I'm speaking to. I really am limiting my comments, for the most part, to the world of surrogacy—and privacy. That is a very, very serious issue, I think.

Mr. Randy Hillier: So in the case of surrogacy, maybe just for my own understanding, you've struck out “up to four intended parents.”

Ms. Shirley Eve Levitan: Because I'm not differentiating between—I'm saying that if a surrogate is used, whether there is one intended parent or 12 intended parents, there should be judicial oversight.

Mr. Randy Hillier: Right; okay.

Ms. Shirley Eve Levitan: Which is a very separate issue—right?—from not having a surrogate and having your partner named, if you were a birth parent, from the get-go.

The Vice-Chair (Mr. Jagmeet Singh): Thank you so much. My apologies for interrupting, but that completes the time for this questioning. We move now to the third party and Ms. DiNovo.

Ms. Cheri DiNovo: Thank you for coming, and thank you for your insight. It hasn't yet been handed out to the entire committee, but there is a list of amendments that you've apparently signed off on and agreed to.

Ms. Shirley Eve Levitan: Yes.

Ms. Cheri DiNovo: That's quite extensive here, so I just wanted to draw the committee's attention to that—this is being run off as we speak—and that you're in agreement with that, as well. It's coming.

Ms. Shirley Eve Levitan: Many people worked very hard on that.

Ms. Cheri DiNovo: Exactly. So, in essence, you support Bill 28 as amended with this package?

Ms. Shirley Eve Levitan: With this package, right. I would just like to make it very clear, though, that with respect to statement number 5, again, other than surrogacy, if one of the parents is the birth parent, then yes, there should definitely be parental recognition for that parent's partner without judicial intervention. We absolutely support that.

Ms. Cheri DiNovo: Wonderful. Really, that's my only question. Keep tuned for this package.

Mr. Randy Hillier: You got the early package?

Ms. Cheri DiNovo: Hot off the press. It's being circulated, yes.

The Vice-Chair (Mr. Jagmeet Singh): Please, no one bring any sort of motions of privilege that someone got it first. There are all sorts of issues we can't deal with right now.

Thank you so much for your presentation.

Ms. Shirley Eve Levitan: Thank you.

CANADA CHRISTIAN COLLEGE
AND SCHOOL OF GRADUATE
THEOLOGICAL STUDIES

The Vice-Chair (Mr. Jagmeet Singh): Our final presenter for today will be the Canada Christian College and School of Graduate Theological Studies. Is there a Charles McVety present?

Interjection.

The Vice-Chair (Mr. Jagmeet Singh): Okay. Well, that's understandable, because the time allotted was 5:40 and we're a little bit early. Give me a moment to consult.

This is the proposal, members of the committee, if you're agreeable: We've been telling the presenters, the deputants, to arrive about 20 minutes early, and that would be 5:20. If he does arrive at roughly that time, I think we'll be able to commence. So the proposal would be to have a recess until 5:20. Is everyone agreeable with that?

Excellent. Recessed until 5:20.

The committee recessed from 1708 to 1722.

The Vice-Chair (Mr. Jagmeet Singh): I call the committee back to order. We are hearing from deputants with respect to Bill 28. Our final deputation for today will be from the Canada Christian College and School of Graduate Theological Studies. I believe we have Charles McVety, the president, present.

Thank you so much, sir. Please feel free to take a seat and introduce yourself as well as anyone who's with you. You have five minutes to present, which will be followed by 15 minutes of questioning and which will be split up, with five minutes per caucus. Whenever you're ready to go, please feel free to begin.

Dr. Charles McVety: First of all, I want to thank the committee for hearing us today. We thank you for some good work in this legislation. I have to tell you that I am quite surprised to see some things.

First, I'll introduce Dr. Ryan McVety, the general counsel for Canada Christian College, and his wife, Lindsay; and my wife, Dr. Jennifer McVety, who is the registrar at our institution. We're very happy to be here today and we thank you for taking time to hear from us.

On two counts I'm very happy to see that this legislation, on a number of occasions, recognizes a baby at the time of conception as a child. And a "child" is a legal term for a person. Our family has a long history of fighting for person status. My grandmother Jean McCaffrey was Nellie McClung's close friend. Nellie McClung lived in my grandmother's house, and they fought against parties like this to establish rights for women. The Persons Case was very important in our Canadian history, and today we sit here to fight again for the rights of women.

I'm also quite surprised that in this legislation the writer has not followed the Premier's decrees and has recognized that there are two sexes—male and female—not the six sexes that she teaches to our children, and refers to the two sexes and genders quite commonly as him and her, or variations of this.

However, though, I want to say for the record that I am under no delusion today that the social activist nature of this committee will listen to what we are saying, because I don't see as official members—with the exception of Randy Hillier, I see a group of people who are committed to re-engineering the family. So I don't see that you will listen to our concerns, but I'll give them to you anyhow.

Bill 28 is exactly that: a bill to re-engineer the family in a way that has never been done in the history of mankind, a way that flies in the face of science. It does so under the specious argument that it is doing this to fulfill the needs of the modern family—the modern family that has somehow changed from biology and science. This, of course, is nonsense, but more egregiously, the bill, under Premier Kathleen Wynne's administration, is being rushed through Parliament without due process and without hearing from the public, without a mandate and without really any validity in the democratic process.

This bill outlines, as Ms. Wynne has campaigned for, to re-engineer the family and remove “mother” from family law. In fact, it describes a birth parent, which means, in relation to a child, the person who gives birth to the child. This is wrong-headed. This is wrong in every way. Science says that this birth parent is a mother, and a mother is not something that should be removed. In fact, 17 times this bill states that the act is amended by striking out “mother” and substituting “parent.”

I just can’t fathom a government that would even consider such legislation. Why the war on mothers, I ask you? Mothers are the bedrock of society. Their love gives us life. A mother can take the place of all others, but no one can take the place of a mother. “Mother” is a term of endearment. It’s a term of respect. It’s a term that cannot be replaced by “birth parent.” To remove “mother” is wrong-headed, disrespectful and, I believe, abhorrent.

If these changes are made, with Wynne’s new family construct, to law, the classrooms of our province will also be changed. The basic principle in our society is that the law is a teacher. When you change the law, you change the classroom and you change the curriculum. We’ve already seen this in other instances, and now what you’re doing here today is rushing through legislation to change the curriculum, once again, to remove this respectful term of “mother” from our family law.

This is a social experiment, an experiment that has never been done in the history of mankind. The potential of peril to children is spectacular. Yes, you can go about whatever business you wish, but to conduct this social experiment on our children without examining this, to put four non-blood-related people in charge of a child automatically with the power of law—

The Vice-Chair (Mr. Jagmeet Singh): My apologies. The time is up for the five minutes of presentation. We now move to the questioning period. I always hate interrupting people.

I have to move now to the official opposition. Mr. Hillier.

Mr. Randy Hillier: Thank you for being here. I know that the committee is a little ahead of schedule.

Dr. Charles McVety: Let’s get to the Blue Jays.

1730

Mr. Ted McMeekin: Are you a Blue Jays fan?

Dr. Charles McVety: Absolutely.

Mr. Ted McMeekin: Good man.

Mr. Randy Hillier: Have you had time to review the bill in its entirety, and if so, have you had the opportunity to focus on any proposed amendments to the bill or are there any other specific items in the bill that you want to bring to the committee’s attention?

Dr. Charles McVety: Of course, you only introduced this bill 12 days ago. It’s being rushed through in record time. Complicated legislation like this usually takes months and this is days.

We have examined the bill with lawyers and with social policy advisers, and we believe that the bill needs to be dramatically rewritten to respect the age-old position of mother. Yes, it also removes “father,” and you

may ask me why I don’t focus on “father.” Well, nobody really cares about the fathers. We care about the mother, because the mother is the bedrock of civilization, the bedrock of society. So yes, we can submit proposed amendments, and I would start by not striking “mother” from family law.

Ryan, do you have anything to add to that?

Mr. Randy Hillier: Have you looked at any of the other elements? If you’ve got any comments on—the bill does permit up to four parents.

Dr. Charles McVety: Yes.

Mr. Randy Hillier: Clearly you can see—I’m just speaking about this in very legal terminology—if a bill is going to permit four different people to be parents, then you need to have a change in the legal definition or a change in labels, a change in names, from the historical recognition of those terms.

Dr. Charles McVety: Sure. There’s no question that when surrogacy comes into play, there needs to be some recognition, but remember, we already have this. It’s called adoption. Parents can be well recognized through the process of adoption, which is a judicial process that recognizes some of the historical facts.

But if you look at surrogacy—frankly, I’ve talked now to three different lawyers. I’ve talked to a number of different people. We’re not sure how you come up with four parents. It’s not defined well in this legislation, and I believe it’s convoluted. Just think of the custody issues with four parents who are unrelated to the baby. What happens when those so-called four parents break up, which, unfortunately, happens most of the time, not part of the time?

This legislation doesn’t give any type of order in how these four parents and their rights over this child will be divvied up. It’s already difficult enough with Family Courts dealing with divorce between a man and a woman, or now between two people. Now you’re going to introduce the new construct of four parents? It’s really amazing.

Mrs. Gila Martow: Chair, I just want to make a very quick comment. I know of a lot of four parents. It’s second marriages, where there’s the stepmother and step-father. I just wanted that to be on the record, that I know of a lot of four-parent situations that work very well.

The Vice-Chair (Mr. Jagmeet Singh): Thank you. We’ve exceeded the time. We have to go to the next member. Now we move to Ms. DiNovo from the NDP.

Ms. Cheri DiNovo: Just a few inaccuracies that I want to point out: This is not a bill that has taken 12 days. In fact, it has taken over 10 years. The courts have ruled on this, and the courts gave the government a mandate that they had to come up with new legislation by the end of September because this government is in breach of human rights where LGBTQ families are concerned. That’s number one.

Number two: “Mother” is not struck out in this legislation. In fact, you’re sitting in front of a number of mothers behind you, many who have two mothers in their families. Some have three and potentially four mothers in

their family under this legislation. So, in fact, it's broadening the definition of mother, for mothers.

Third of all: Yes, absolutely, heterosexual parents have four-parent families all the time. Those who are divorced and remarried are a classic case.

Four: Protecting children is what this bill is about. It's protecting the children of LGBTQ parents.

Finally, speaking as a United Church minister and as a theologian—I have my doctorate from U of T—and sitting across from another United Church minister, Mr. McMeekin, I have to say that—and I think I speak for other Christians who actually follow in the steps of Jesus Christ and who talk about love, compassion and acceptance and inclusion—I will pray for you and your family. I will pray that the people that listen to you actually open their hearts and actually read Scripture, and not quote from Scripture in a way that does disservice to the words of, I think, the one that we all follow, or many of us follow in this place. I would hope, really, Mr. McVety, because I have been debating you for at least a decade of my life—going on 20 years now—that finally, finally—I'm sad to see that your children are here because God forbid—literally—that they should have children who are LGBTQ, because my suggestion would be that they would love them if they were. My hope is—

Dr. Charles McVety: Can I interrupt?

Ms. Cheri DiNovo: No, no. No, it's my time now. Sorry.

Dr. Charles McVety: Okay.

Ms. Cheri DiNovo: I would hope that the love that you spread would extend to everyone, without judgment. That goes for same-sex marriage, which I know I've debated you on. You lost that one, sir. You're going to lose this one too. And it's very good for the children of this province.

Dr. Charles McVety: Chair?

The Vice-Chair (Mr. Jagmeet Singh): There was no question posed, so there's no—

Dr. Charles McVety: I must be able to respond.

The Vice-Chair (Mr. Jagmeet Singh): I know, but there was no question posed, though, at this point.

Dr. Charles McVety: I did not come here to be attacked.

Ms. Cheri DiNovo: Neither did we.

Dr. Charles McVety: I did not come here—by you, by this committee, to attack my Christian faith and to attack my Christian standing.

Ms. Cheri DiNovo: Neither did we and neither did they.

Dr. Charles McVety: I would ask the member to withdraw her attack.

Ms. Cheri DiNovo: Absolutely not.

The Vice-Chair (Mr. Jagmeet Singh): There was no question asked at this point. Unless Ms. DiNovo has a question—

Ms. Cheri DiNovo: No.

The Vice-Chair (Mr. Jagmeet Singh): No question. So there are no questions that were posed.

We move now to the government side.

Mr. John Fraser: Thank you very much for being here today. I'd like to respond to this as a bedrock father and the son of a bedrock father—that's not a Flintstones reference. One thing my father taught me very clearly was that the key ingredient for a child to succeed in life is a loving parent or parents that expressed a genuine interest in that child. That was the ingredient. Despite anything else—despite whoever they were, whatever their station was in life—that was the key to success.

Standing in front of a piece of legislation like this is actually preventing and putting a blockage in front of those parents who have a love and a genuine interest. So I differ with you, sir, and I respect your right to come here and tell me that and tell us all that. We do have a democratic process, and that's what we're doing here right now.

Dr. Charles McVety: I'm sorry—

Mr. John Fraser: No, no. You don't need to be sorry. I just want—

Dr. Charles McVety: No. I'm sorry that this is not a democratic process.

Mr. John Fraser: It is a democratic process. Very clearly it is. We could debate—

Dr. Charles McVety: No, it's a kangaroo court; that's what it is.

Mr. John Fraser: If you'd let me finish. You had an opportunity to speak at the beginning of this meeting; it's now my opportunity.

Do you realize that a mother and father will still appear on the birth certificate?

Dr. Charles McVety: Sure.

Mr. John Fraser: Okay. Do you realize that in 1999, I think, Alabama finally repealed its interracial marriage laws? In this province, we used to segregate—

Dr. Charles McVety: It's a specious argument.

Mr. John Fraser: It's not a specious argument. If you'd let me finish, then follow. The process of good government and a good society is examining what our biases are and looking at those, and continually doing that. The failure to continue to do that is a society that does not progress.

So I differ with you, sir. I thank you very much for coming here today. I do want to again stress that this is a democratic process. There is a mandate, not just in the government but inside this Legislature, to examine those things that are important to the people who we represent, and that's exactly what we're doing here right now. I do appreciate your participating in that process. Thank you very much.

Dr. Charles McVety: Thank you.

The Vice-Chair (Mr. Jagmeet Singh): I acknowledge Mr. McMeekin.

Mr. Ted McMeekin: Thanks for coming. I have been sitting here for about five hours now, listening to a whole bunch of delegates. We'll do the same again, Reverend, tomorrow, praying for the gift of discernment, which is something we should all, as Christians, be concerned about.

I appreciate your being here. I'm a bedrock father too.

Dr. Charles McVety: Amen.

Mr. Ted McMeekin: Amen, brother; amen. So it's important, men and women having opened themselves up, to discern what needs to happen and what's in the hearts of people, and listen carefully. I listened carefully to you and I'll listen carefully tomorrow to all those who come before us, because that's what we do here, or what we try to do here on a good day. I think today is a good day. I think we've heard a lot of good people share a lot of good ideas, including you. Thanks for being here.

Dr. Charles McVety: Thank you, but I do believe that two days is insufficient for such complicated legislation.

The Vice-Chair (Mr. Jagmeet Singh): Sorry, sir; there was no question posed. The way it works is, a member asks a question. That was no question posed.

This completes the round of questioning at this point. There is no further business unless there is further business. Thank you very much for your deputation today.

Mrs. Gila Martow: I just want to remind everybody that they can submit in writing or email.

The Vice-Chair (Mr. Jagmeet Singh): Sure, I can make that reminder. Just to remind: Anyone is able to make a written submission, and the deadline is 6 p.m. tomorrow.

I recognize Mr. Fraser.

Mr. John Fraser: I just want to correct my record. When I was speaking to the witness—sorry, I'm just cor-

recting my record to a previous witness, not for your testimony. Sorry.

The Vice-Chair (Mr. Jagmeet Singh): Yes, you can always correct your record.

Dr. Charles McVety: I did print out copies of my presentation that I only got halfway through.

The Vice-Chair (Mr. Jagmeet Singh): Okay, thank you very much, Mr. McVety. Noted. The Clerk is now taking possession of that, and we'll distribute that for you. Thank you, sir.

Yes, Mr. Fraser?

Mr. John Fraser: In my questioning of Ms. Appell, I mentioned that I spoke to Paul Conlin. In actual fact, I spoke to Paul's wife, JoAnne Conlin. I want to correct that record.

The Vice-Chair (Mr. Jagmeet Singh): That is duly noted.

Mrs. Gila Martow: Thanks. I was really worried.

The Vice-Chair (Mr. Jagmeet Singh): Hansard, can you please make note of that correction? Thank you very much, Mr. Fraser.

Mr. John Fraser: It's important back home.

The Vice-Chair (Mr. Jagmeet Singh): Any other discussion? Any other business? Seeing none, the committee is adjourned till tomorrow at 4 p.m. Thank you so much to everybody.

The committee adjourned at 1743.

STANDING COMMITTEE ON SOCIAL POLICY

Chair / Président

Mr. Peter Tabuns (Toronto–Danforth ND)

Vice-Chair / Vice-Président

Mr. Jagmeet Singh (Bramalea–Gore–Malton ND)

Mr. Granville Anderson (Durham L)

Mr. Lorne Coe (Whitby–Oshawa PC)

Mr. Vic Dhillon (Brampton West / Brampton-Ouest L)

Mr. John Fraser (Ottawa South L)

Mrs. Amrit Mangat (Mississauga–Brampton South / Mississauga–Brampton-Sud L)

Mrs. Gila Martow (Thornhill PC)

Mr. Ted McMeekin (Ancaster–Dundas–Flamborough–Westdale L)

Mr. Jagmeet Singh (Bramalea–Gore–Malton ND)

Mr. Peter Tabuns (Toronto–Danforth ND)

Substitutions / Membres remplaçants

Mr. Lorenzo Berardinetti (Scarborough Southwest / Scarborough-Sud-Ouest L)

Ms. Cheri DiNovo (Parkdale–High Park ND)

Mr. Randy Hillier (Lanark–Frontenac–Lennox and Addington PC)

Mrs. Cristina Martins (Davenport L)

Mr. Lou Rinaldi (Northumberland–Quinte West L)

Clerk / Greffier

Mr. Katch Koch

Staff / Personnel

Ms. Carrie Hull, research officer,
Research Services