



October 30, 2017

Angela Marie MacDougall, Executive Director
Battered Women Support Services
PO Box 21503
1424 Commercial Dr.
Vancouver, BC
V5L 5G2

Honourable David Eby
Minister of Justice
Justice Services Branch
Ministry of Justice
PO Box 9222 Stn Prov Govt
Victoria, B.C. V8W 9J1

RE: Provincial Court Family Rules Project

Dear Mr. David Eby,

I am writing on behalf of Battered Women's Support Services ("BWSS") and the many thousands of women we have served and continue to serve across British Columbia.

Established in 1979, for over 39 years, BWSS has provided continued support and advocacy for women who have experienced abuse, while also providing province-wide training and education on violence against women to a host of community-based services, police services and government agencies.

BWSS is aware that the Ministry of Justice is currently involved in a project amending the Provincial Court (Family) Rules ("PCFR"). As part of the consultation process, representatives from BWSS participated in a consultation with various members of the Ministry of Justice on October 11, 2017. Regrettably, our participation in the consultation and our initial review of the government's Overview and Consultation Presentation by the Justice Services Branch has caused us significant concerns about the government's proposal and the potential impact of the proposed changes on women, and particularly women who are leaving abusive relationships.

The Overview and Consultation Presentation declared that the proposed amendments to the PCFR are intended to "improve [the] process for how families resolve family law matters" and "embody the principles underlying the *Family Law Act*". We unequivocally reject the approach adopted by the Ministry of Justice under this proposed plan, which we consider to be creating further barriers to women accessing justice.

Since before 1994, BWSS has been on record opposing alternative dispute resolution in

cases where women have experienced abuse including violence. In the past 23+ years, we have observed the increase of the depth of analysis articulated combined with an increase in the related apparatus within legal systems which has contributed to a climate where alternative dispute resolution is now believed to be a more viable option as the legal systems become more sensitized.

As we noted in 1994, which remains in effect in 2017, women are losing custody of their children. Women are being forced into contact with men who have battered them. Allegations of child sexual abuse are being dismissed without investigation as false and vengeful charges by embittered mothers (aka parental alienation). Children are being ordered by the courts to spend weekends with fathers who have abused them. Children are not always returned from access visits: some are kidnapped and taken to other provinces or countries. Women's parenting role and skills are being devalued, while even the most negligible contribution to parenting is honoured if it's made by the father. Parenting arrangements are being used by the abusive father to prevent paying child support, while the bulk of child-rearing expenses fall to the battered woman. Indigenous women, Immigrant women, Black women, Women of colour, women with disabilities, lesbians, poor women – and their children – are suffering these realities more acutely and with less recourse. And all this is happening in the name of equality and fairness and with claims of concern for children.

In particular, we strongly oppose the continued over-reliance on alternative dispute resolution processes, termed "Consensual Dispute Resolution" ("CDR") under the proposed plan. Our longstanding direct experience as well as extensive research in the field has repeatedly demonstrated that alternative dispute resolution processes, including mediation, are neither safe nor appropriate for women, particularly when there is a history of relationship violence. These processes are founded on the presumption of equal bargaining power between participants, which disregards the obvious and, often profound, power differences between men and women. These power differences, which are particularly acute in violent relationships, leave women in a significantly vulnerable position. The impact of such power differences is strongly exacerbated when women are mandated to participate in a process where the goal is to reach an agreement with their abuser about significant issues such as parenting arrangements, child and spousal support, and property division.

Because of women's unequal access to social and economic resources, many women are forced to self-represent in family law proceedings. The majority of men who are abusive and controlling continue extending their power and control over their former partner through disputes about custody and access, child support, and through their financial capability to access the family law system. Through alternative dispute resolution process such as CDR, it is expected that two parties will come up with an agreement that will benefit both parties and their children. However, in situations where there is abuse and violence in an intimate relationship, we have one party, usually the woman, whose goals are to live free from violence, to protect her children, to have access to financial sustenance, and who is having to negotiate with the other party,

usually the man, who is seeking to maintain power over and control of the woman. It is important to remind the Honourable Minister that alternative dispute resolution happens within a patriarchal structure that has privileged men. Whenever an agreement is made in these circumstances, it will be an agreement that cannot be enforced, and it will contribute to perpetuate the oppression of women and children. It ultimately will put women and children at risk.

While the proposed rules will require Family Justice Counsellors (“FJC”) to screen for violence and provide exemptions from the mandated CDR for families with violence, it is our position that such screening will not be meaningful and effective within a system that prioritizes CDR. This is especially true because under the proposed model, women will be repeatedly directed at every step of the proceeding (assessment with the FJC, mandatory CDR, First Appearance with a family justice manager, and Family Case Conference with a judge) to settle the matter without going to trial. In particular, it is concerning that the screening tool requires FJCs to ask two direct questions about violence. We know that many women, including most particularly Indigenous women, women of colour and immigrant women, do not directly disclose violence and that supporting women to do so requires both highly specialized expertise and a commitment to validating women’s experience. We believe that this cannot be achieved by expecting women to disclose intimate and disturbing details about their family life in a meeting they are required to participate in before they are permitted to have an appearance before a judge.

Further, we are also concerned that the prioritization of CDR fails to recognize the continued impact of violence and the nature of the power and control dynamics involved in abusive relationships. While the proposed rules may allow for safeguards during the process of mediation, such as shuttle mediation, the proposal does not account for the precarious position of women post-mediation. Specifically, the proposed plan disregards the obvious fact that signing an agreement does not negate the power imbalance between the parties, and that women and children continue to withstand the worst of the negative consequences flowing from abusive and violent partners refusing to comply with agreements. In our experience, women are then left with no recourse but to approach the courts to enforce the agreement, causing them significant financial and emotional distress.

It has come to our attention that there are some organizations with mandates to provide legal services and advocacy for women who support mediation in cases where a woman is self-representing. BWSS is prepared to stand alone based on our years of legal advocacy and law reform experience and the thousands of women who access our services annually. We have witnessed the systemic oppression of women who experience violence, control, and abuse by a male partner, and who are forced to navigate the legal system in order to access a level of freedom. This occurs while the systems fails to recognize that alternative dispute resolution process are never appropriate in the instances where abuse and violence are present. Women and their children in these instances are best situated when they have the benefit of legal

representation such as a lawyer. Alternative dispute resolution processes in these instances do not ultimately reflect financial savings; in fact, the cost shows up in many other areas but most importantly in the further dismantling of the relationship between non-offending parents and their children.

Until the beginning of the twentieth century, woman and children were seen as property of men under English common law. This paternal doctrine gave fathers absolute rights to their children if the marriage broke up. This practice carried into Canada and the B.C. *Equal Guardianship of Infants Act*, passed in 1917 gave women of European descent equal rights with their husbands in custody matters. The concept of gender neutrality has come into prominence in recent years in response to feminist challenges of gender bias in the system. Feminists have challenged the notion that women must be solely responsible for the care of children. We challenged men to spend more time doing housework and caring for children. We sought recognition for our contributions to the family as mothers, homemakers, and wage earners. We have sought new laws that would reflect this changing view of gender roles. Gender neutrality has become the assumption of actual equality and now permeates the family law systems. Gender neutrality is the lens through which “best interest of the child” is being interpreted. At BWSS, we reassert that contact with an abusive parent is not in the child’s best interest. When an abusive father is awarded custody it is his rights and interests that are taking precedence over the child’s.

Children who have witnessed their mother’s abuse are also being abused and they experience the impact. With alternative dispute resolution processes, unfortunately, FJCs, judges and others in the legal systems are continuing to place an overriding importance on children’s contact with their father, even if that father is abusive.

The application of gender neutrality is based on the false notion that both parents are equally situated and share equal parenting abilities. Men have power in society and this is reflected in their power over women. Women continue to be the primary caregivers of children. Upon separation and divorce, many women are relegated to a position of relative poverty and this is held against women as it is demonstrated repeatedly through our experience that the legal system will hold women accountable to patriarchal standards but are unwilling to hold fathers to female standards when it comes to parenting.

Gender neutrality and standards based on it may appear to be democratic and fair but in reality, this concept pretends that social inequalities between women and men do not exist.

Moving on, we would also like to express our dissatisfaction with the creation of new forms, called “Schedules”, which will be specific to the relief requested by parties. The PCFR Project claims to be aimed at creating forms that are more user-friendly. However, in our opinion, adding additional forms for each type of relief requested presents an additional barrier to accessing the courts, particularly as we continue to receive concerning feedback about the current forms and their inaccessibility.



In conclusion, it is our position that the proposed plan for amending the PCFR falls short of its goals. Specifically, the continued reliance on alternative dispute resolution, the inadequate tools for screening for violence, and the creation of individualized Schedules will give the illusion of levelling the field and will create additional barriers for women accessing the family justice system. In fact, these changes will make justice more unattainable for women generally, with specific impacts for women leaving abusive relationships.

Please feel free to have your staff contact me should you require any further information on our services or on our perspectives on the proposed changes to the PCFR. I can be reached at director@bwss.org or 604-808-0507.

Thank you for your time and consideration.

Yours sincerely,
Battered Women's Support Services

A handwritten signature in black ink, appearing to read "Angela Marie MacDougall".

Angela Marie MacDougall
Executive Director