



RESPONSE TO PETITION

Prepare in English and French marking 'Original Text' or 'Translation'

PETITION No.: **421-01933**

BY: **MRS. BOUCHER (BEAUPORT-COTE-DE-BEAUPRE-ILE D' ORLEANS-CHARLEVOIX)**

DATE: **DECEMBER 4, 2017**

PRINT NAME OF SIGNATORY: **HONOURABLE JODY WILSON-RAYBOULD**

Response by the Minister of Justice and Attorney General of Canada

SIGNATURE

Minister or Parliamentary Secretary

SUBJECT

Parental rights

ORIGINAL TEXT

REPLY

The Government of Canada is committed to promoting the best possible outcomes for families going through separation and divorce. Families and courts need flexibility to craft parenting arrangements to meet the needs of each individual child in that child's specific situation.

It is important to underline that the federal government shares responsibility for family law with the provinces and territories. The federal government is responsible for the *Divorce Act*. This means it is responsible for divorces and matters related to divorce – including child support, spousal support and parenting (or custody and access) – for divorcing or divorced couples. The provinces and territories each have their own family law legislation. Provincial and territorial laws deal with child support, spousal support and parenting for separating couples who do not seek a divorce.

The *Divorce Act* is crafted in a manner that allows it to coexist harmoniously with provincial and territorial family laws, and any amendments to the *Divorce Act* should be consistent with this overall approach. It is important to note that no province in Canada has a legal presumption or "default option" of shared custody. The introduction of such an approach in the *Divorce Act* would result in inconsistencies with provincial and territorial laws. This would mean two different frameworks for separating parents based only on whether or not they seek a divorce. This could be very confusing for parents without lawyers; in some jurisdictions, as many as three-quarters of family law litigants are self-represented.

Under the *Divorce Act*, courts consider only the best interests of the child when making an order for custody and access. There is no presumption in favour of either parent. Courts must also give effect to the principle that a child should have as much contact with each spouse as is consistent with the best interests of the child. This principle applies both when parents live in the same city and when one parent proposes to move away with or without the child.

As the petition suggests, many fathers are playing a much more active role in parenting than had been common in previous generations. A legal presumption is not necessary to reflect this societal change, however, as courts and parents are already reflecting the changing roles of parents in orders and agreements. While most separating parents come up with their own parenting arrangements without seeking court assistance, when courts are involved, judges generally order some type of sharing of responsibilities between parents. In fact, a review of reported family law decisions from 2015 showed that in 79% of parenting cases, courts ordered either joint custody (where parents make decisions about their child together) or shared custody (where parents make decisions together and the child spends at least 40% of the time with each parent).

Many have raised important concerns about the danger of establishing a “default option” or legal presumption in favour of equal shared parenting. Equal shared parenting requires considerable cooperation between parents. This may be difficult in high-conflict situations, potentially exposing children to frequent arguments between their parents. A presumption could also increase litigation. Instead of being able to come to their own agreements out of court, parents who do not agree to share parenting time equally would have to go to court to explain why this arrangement would not work. Finally, a presumption could be dangerous to parents as well as children in situations of family violence.

Social science research does not support the creation of a presumption of equal parenting time. Each individual child deserves to have their own unique needs and situation addressed. The best interests of the child test allows for such an individualised approach. Rather than improving outcomes, a presumption could create problems for many families. The Government of Canada therefore does not support the creation of a presumption in favour of shared custody. Instead, it supports the application of the best interests of the child test and the principle that a child should have as much contact with each spouse as is consistent with the best interests of the child.