

Canada Weekly

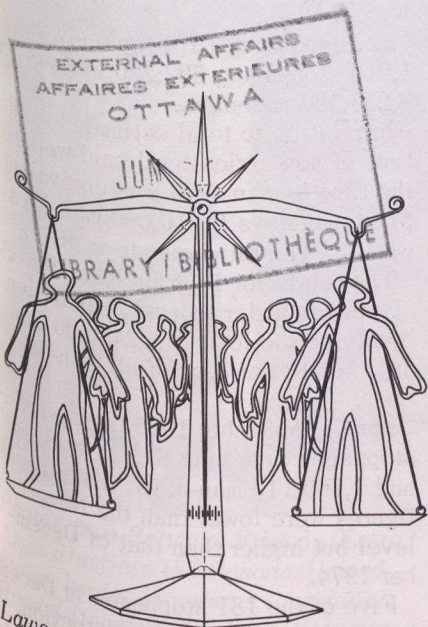
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Laws and institutions...like clocks, must be occasionally cleaned and wound up, and set to true time (Beecher).

Marriage breakdown recommended as sole grounds for divorce

In its report on family law tabled in Parliament on May 4, the Law Reform Commission of Canada proposes abandoning the Victorian "fault or accusatory" approach to the divorce process. Instead, it recommends a process that focuses on the social and economic implications of marriage breakdown for the spouses and their children, based on finding fair and constructive solutions to the problems resulting from the ending of marriage. The new process should offer no confirmation of accusations of guilt and no legal results should be allowed to follow from claims by one spouse that the other was at fault — not financial advantage, not a right to dissolution and not a privileged position respecting the children.

Key reform

The Commission sees the elimination of the fault and conduct assessments of the present law as a key reform. Such a change would provide results that are not at present available under the law. Under the proposed reforms, no spouse would be required to defend his or her vital interests by attacking the other; spouses could examine alternative solutions without the need for adversarial disagreement on the question of dissolution; and spouses would not be threatened with financial or other disadvantage because of the compromise and admission of inappropriate behaviour that is essential to any genuine attempt at reconciliation.

Simple notice

The Commission proposes a process for dissolution of marriage that begins with a simple and non-accusatory notice. There would follow a minimum period of time (for example, six months) during which the spouses can consider reconciliation. If they are unable or unwilling to reconcile, this period allows them time to agree (if possible) on financial and property affairs and arrangements that are in the best interests of their children.

If the spouses have settled their affairs and if the court sees no prospect for reconciliation, the case can proceed to dissolution after expiration of the initial period. If the spouses are unable to agree on money, property and children, the court, after expiration of the initial period, can either order a trial of these issues, or can order an extension of time (for example, up to six more months) for the spouses to continue negotiations. The court can also order an extension of time for further attempts at reconciliation.

If the time has elapsed for agreement on money, property and children and no agreement has been reached, the court must try these issues.

Marriage breakdown: only basis

When questions of money, property and children have been settled, either spouse may apply for dissolution. The Commission recommends that the only basis for ending a marriage should be the failure of the personal relationship between the spouses, expressed as "marriage breakdown". Since each spouse must live with the other, rear children and make the marriage work, marriage breakdown should be conclusively established by the testimony of either spouse. This is instead of allowing the court to decide what some fictitious "reasonable person" would say about the quality of the relationship between the husband and wife and whether it ought to continue. In technical terms, matters affecting money, property or children would be "justiciable"; marriage breakdown would be "non-justiciable".

The report proposes a new type of court — the unified family court — where all significant family law matters would be consolidated. At present family problems are dealt with in as many as four or five courts in one province.

The report, which culminates four years' work, also includes recommendations on maintenance, property settlements, and children's rights.