

*Children's Rights*

that nearly always accompany separation as to board and room and divorce. Third, certain matters have to do with the protection and social well-being of children. I will mention petitions to get the care of the child, tutelage, and judicial hearings in the area of juvenile delinquency.

Most of those matters come under the jurisdiction of the provinces and not the federal government as child protection is obviously a shared jurisdiction. However, the Department of Justice made remarkable efforts in areas under its jurisdiction to promote legislation to provide better protection for the rights of children. Some of those efforts, for example, were intended to strengthen as much as possible the family tie and find human and constructive solutions to problems which could be solved through unified family courts. There are now some provinces four or five different courts dealing with family law. Household breakdowns raise several problems that can all be brought before one traditional court or another. No court has jurisdiction to pass judgment on those matters, let alone assess the problems from which they origin. The federal government considers it necessary to put up a system of courts which would be the only one with jurisdiction in family law, not only to put an end to the scattering of family problems in federal courts but also to make available to the people a judicial institution specially designed to deal with the family as a distinct entity.

This is a new concept which offers tremendous advantages as regards the settlement of disputes and which proposes many alternatives for solving various family problems. Most of these courts would not only allow couples in the process of separation to avail themselves of consultation or reconciliation services, but they would especially help married couples from getting to that point by facilitating their reconciliation. The principal mandate of this court would be to offer services likely to help people, if at all possible, to come to some common ground of understanding, instead of resorting to prosecution. Of course, the federal government cannot institute, by its own will, such courts in the provinces, as the administration of provincial justice, including the setting up and organization of civil and criminal courts as well as civil procedure, are, in terms of legislation, a provincial responsibility. However, the Department of Justice, following the recommendations contained in the Law Reform Commission's working paper on family courts, published in 1974, has made available to the provinces funds aimed at promoting pilots experiments by way of family courts.

Another area under federal legislative jurisdiction that involves children's rights is of course the matter of divorce. As many members are aware, the report on family law put out by the Law Reform Commission of Canada was tabled by the Minister of Justice (Mr. Lang) in the House on May 4, 1976. The report urged that the children of estranged parents be the legislator's first concern. To that end, the commission recommended that the Divorce Act be amended to recognize two

basic rights of children, when their parents are divorced. The first was the right to social and psychological help, in terms of reaching the best possible arrangement in the circumstances concerning custody and education. The second was the right to financial help. The commission further recommended the establishment of a new divorce process ensuring that arrangements concerning children be made in an extra-judicial context, to reduce the current need for a defensive position in husband-wife dealings that lead to the divorce. The commission is of the view that a legal framework based on confrontation and responsibility without social and conciliation services hardly protects human or psychological values, the key factor in safeguarding children's interests.

The commission concluded that under the current Divorce Act, it is improbable or impossible in practice to examine a number of factors that are vital to children, and to openly discuss those factors. The commission recommended the setting up of a new mechanism to solve children's problems arising out of divorce, a mechanism aimed at supporting parent and court efforts to arrive at a sensible and human solution. Within that process, the commission recommended further that the court be empowered to order that a child be represented by counsel other than that of either parent. The commission finally recommended that the Divorce Act take into account children's desires, to the extent the court finds this appropriate, based on children's age and maturity. The Department of Justice is studying the recommendations put forward by the Law Reform Commission of Canada and their report on family law, as well as numerous briefs sent to the department in response to that publication and recommendations by the Law Reform Commission and other recommendations by a number of bodies, groups and individuals concerning the current Divorce Act reform.

[*English*]

Another area of concern of the Minister of Justice has been the problem of abduction of children by non-custodial parents. The Minister of Justice, as a result of his deep concern, introduced Bill C-51 on May 1 of this year in the last session of parliament. This bill proposes to amend the current section 250 to create the offence of abduction of a child under 14 by a parent either in contravention of a custody order made by a Canadian court or in special circumstances where there is no custody order in relation to that child made by the court anywhere in Canada, but the child is taken with intent to deprive the other parent or guardian or any other person who has care or charge of that child of the possession of that child. The offence would not apply to a person who abducted a child in circumstances where the court is satisfied that the obtaining or retaining of possession of that child was essential for the welfare of the child, but the amendment specifically provides that the court shall not be so satisfied by reason only of the granting of a custody order in favour of the accused after the possession of that child was obtained or retained.