

*Divorce Act*

a judge today, and next week obtain the divorce, as is now possible in such states as Nevada in the United States, and in Mexico where you can get a "quickie" divorce in a matter of days or weeks.

It is easily overlooked, however, that what we have now is divorce on demand when, in one way or another, the legal grounds, which may have little or nothing to do with the actual problems facing the spouses, are fulfilled. Most divorces are uncontested but many are based on a bargaining process, often harmful and expensive, that not only shatters the family but also its individual members. The fact that divorce is a painful process does not foster family stability in Canada. It only fosters pain.

Traditionally, for example, the law has not considered the work of the homemaker as a contribution to or as having anything to do with the acquisition of property in marriage; equally it did not foresee that women could be independent and responsible for their own lives. Whether the changes in the position of men and women in society and their relation to each other are good or bad is a matter for partisan discussions. That the situation is different there can be no doubt, and this difference must find its expression in the law. There is an evolution in this area at this time, if not a revolution. The law therefore cannot be fixed but must have room to evolve creatively, allowing men and women to define their own roles within marriage, supporting rather than confining individual choices.

I would like to point out especially how children are affected and that they should have some say about their future. Yes, even young children should have that right, if not through their own voices then through those of others who will take the stand for them.

The position of children is even more difficult than that of parents. Although protected by a system of obligations, they have never had independent legal claims. They have no standing to make their voices heard in a system that allows one parent to deprive them of the other because of an instance of adultery. I do not suggest that they should have such a right, but neither do I suggest the retention of the system we have. What we should have is a process that tries to get to the reality of why one parent would seriously consider doing this in the first place, a process in which children are hurt, in which their interests are always important and at times dominant, one in which children do not serve as bargaining pawns or as objects to be kept and used.

Many parents involved in a marriage breakdown cannot see beyond their own needs. The process for dissolution of marriage must compensate for this. It is also important for children to understand as best they can—and this is often a great deal better than we assume—what the situation is and what their parents are facing. A new approach to the problems of children when marriage breaks down is essential.

● (1742)

The main thrust of this speech, therefore, is on the change of perceptions of family relationships and a change of the means

[Mr. Parent.]

for resolution of family problems. First, as was mentioned earlier by the hon. member for Toronto-Lakeshore, we need courts which are capable of assisting constructively in such resolutions.

Second, we need a legal framework which recognizes present day conditions in dealing with the responsibilities and expectations of members of families.

Third, we need a new legal process for dealing with a family in crisis which abandons concepts received from the past which have become artificial and destructive in the context of present family life in Canada. This process should also give us a better understanding of what divides families and what is needed to preserve their stability, something which should be, although it is not now, an effective function of the law.

Changes must be made, and that must be done in close co-operation with the provinces if it is not to lead to further fragmentation. Various provinces have already made advances in this area, and others are in the process of preparing for significant changes. The Government of Canada has also made some beginnings, but further steps are necessary if the present ferment of study, exploration and experimentation is to be fruitful. I have some specific suggestions which I would like to put on the record.

I suggest that the only basis for dissolution of marriage should be the failure of the personal relationship between husband and wife.

The doctrines of matrimonial offence, matrimonial fault, collusion or connivance should be inapplicable in all future marriage breakdown cases.

All adversarial pleadings should be removed from the law of dissolution of marriage. The dissolution process should be commenced by either or both spouses filing with the court a simple and non-accusatory notice of intent to seek dissolution.

Dissolution of marriage should be a ministerial act of the court, established in a formal but not adversarial hearing.

A husband and wife should not be required to separate or live apart as a condition of participating in the dissolution process. Nor should remaining together prejudice any right or otherwise adversely affect the legal position of either spouse. I raise this because of the financial hardship which is imposed on one or the other spouse if he or she has to move out of the house while the other spouse stays in the house. There is the upkeep of an extra home, and this need not necessarily be the case.

With regard to financial settlements I suggest that the settlement of property matters and financial provision on dissolution of marriage should be done in the context of economic readjustment and kept separate from matters relating to the breakdown of the personal relationship between the spouses.

Property acquired, for example, by either spouse during the marriage by gift, inheritance, bequest, trust or settlement should be exempt from sharing.