

Commission in its paper on enforcement of maintenance orders back in 1976 said that the courts must in future assume the leading role in the enforcement of maintenance orders in Canada. Nothing is more obvious than that the traditional methods of enforcing judgment debts are singularly ineffective when it comes to maintenance orders. That was a number of years ago and we have not had adequate action since.

We have to ask the question: is going the Superior Court route the best way? I suggest not. We must have consultation with the Provinces and agreement on how to handle enforcement of maintenance orders. This is not something to be imposed by Parliament on the Provinces. Unilateral action by the federal Parliament is not good federalism. Further, there would be confusion in areas, such as Saskatchewan and Hamilton, where there are unified Family Courts. There divorces are handled not by a Superior Court but by a unified Family Court and it makes sense to continue those provisions. I suggest that better provisions for handling this matter have been proposed by the federal-provincial Committee on the Enforcement of Maintenance and Custody Orders in Canada. Just last summer this committee made a large number of recommendations for federal and provincial, and in some cases joint, action. I want to go over some of those which are relevant to our subject this afternoon.

One recommendation is to amend Section 15 of the Divorce Act to enable ancillary maintenance and custody orders to be registered in any court designated by the Provinces in addition to or instead of the Superior Court. This would give much greater flexibility, lower costs and much greater access. It would permit direct, one step registration of federal orders in Family Courts without the need to register in a Superior Court or use the reciprocal provincial legislation. Once registered, the order would have the same effect as if it had been issued by that court originally. That is a very practical solution and one I certainly commend.

This same committee made a number of other recommendations which are worth citing here. The introduction of a computerized system for monitoring maintenance payments as opposed to a manual system was suggested. A lot of our problem here is simply technological. We have the technology to solve much of the problem, which Manitoba and Quebec have shown. This means state-initiated enforcement, not individual initiated. We also need prompt enforcement without requiring the person to return to court to re-litigate. It should be understood that once the order is issued, it can be treated and enforced as any other court order without the requirement of the person returning to seek further enforcement measures.

Other recommendations would require provincial and federal bodies to release information required to locate persons defaulting on maintenance payments or, for that matter, in custody matters. Clearly, this is a very important matter and it should be pursued.

The previous speaker gave the excuse that there are issues of privacy at stake and he mused as to what the answer was. Is there a short answer? I suggest there is. Privacy is important but not more important than the sustenance of a family.

Alimony and Maintenance

Privacy is not more important than having an adequate amount of food on the table and the ability to pay the rent. We have too often taken the view that the person who earns the income in a family somehow has the right to spend it himself. This is clearly inappropriate. When a couple start a family there is, if not a written contract, an implied contract that the person who does not go into the labour force but looks after the children has a claim on maintenance. We simply cannot allow the breadwinner to stand on his high-horse and say, "Privacy about my financial affairs is more important than your having food on the table". There is an implied responsibility for maintenance, and that should be respected.

Another measure we need is to abolish the one-year time limit on maintenance orders. There should not be any limit. Sometimes defaults go on for a very long time and the courts have not allowed people to collect for maintenance which is more than one year overdue. There may be some instances when full recovery would be unfair and these could be looked after, but there is no reason to have an arbitrary limit on maintenance defaults.

There should be the opportunity for changes in orders to be made by a court other than the court which issued the order. This could be done in cases of mutual consent. If one party leaves the Province, there may be very good reasons for allowing another court to alter the arrangement. Legislation is also required to permit lump sum maintenance payments. This has been thrown into some ambiguity as a result of a recent court case, and we need to make it clear that in some cases this would be a very effective solution to a family's problem and we should be able to facilitate this. We need greater flexibility and we need the legislation to facilitate it.

We need legislation to provide access to other moneys of the defaulter, for example, income tax refunds, unemployment insurance and pension benefits. These are all part of the regular wage or salary, either a deferred wage or a payment in the case of unemployment insurance which is like a wage. Clearly the same principle holds, that the people dependent on the breadwinner have a real, legitimate claim on that money. Right now our laws forbid access.

Together the federal and provincial Governments must develop uniform divorce rules under the Divorce Act for the enforcement of maintenance and custody orders. We need federal-provincial co-operation to work out a flexible and efficient system.

The Minister of Justice (Mr. MacGuigan) has indicated he will be bringing in a new divorce Act. We have some indication as to what will be in it from a report released this summer regarding no-fault divorce. This is relevant to the issue of maintenance because it is partly as a result of the adversarial system which couples must go through in getting a divorce that maintenance payments are not made. One spouse must sue the other for divorce, lay blame, and this means the other spouse has to reply and find blame on the other side. In other words, our current laws on divorce create a climate of hostility and acrimony, and clearly this does not facilitate practical measures for the ongoing support of the children. The parents need