

Divorce Act

way are sometimes threatened by mediation. They are afraid that it will undermine their years of training and destroy their livelihood. These lawyers must be taught that they have a vital role to play in the mediation process, either by working in conjunction with the other lawyer and a non-lawyer mediator, or by acting as mediators themselves.

Studies in the American states, where mediation has been going on for some years, show that it is most successful when carried out by a lawyer-counsellor team. This interdisciplinary approach is a recognition of the fact that divorce is both a legal and an emotional problem and that the parties are better able to handle their divorce in a constructive manner when both these issues are addressed. A legal resolution which ignores the client's psychological needs is as inappropriate as a psychological resolution which conflicts with the client's legal needs. Lawyers do not usually have the psychological awareness and interpersonal communication skills necessary to mediate custody and access issues. A mental health professional trained in this area, with expertise and experience in dealing with children, can more easily help the parties come to an agreement on these issues. However, the mental health specialist is rarely trained in the law, and the parties need a lawyer's advice about property and financial settlements. By working together, Sir, the lawyers and the counsellor can help the parties arrive at a total settlement which resolves all their problems.

● (1540)

In conclusion, these are my three suggestions for reform: greater precision in the law, unified family courts, and mandatory mediation. They work together.

Only when the provisions of the law are set out with sufficient clarity that lawyers can predict the outcome of a given case with some certainty, will both lawyers and individuals be more accepting of the mediation process. Unified family courts will provide the framework for divorcing couples to obtain both the counselling and the legal advice they need to settle their case.

There is a profound need in Canada today for the humanization of our divorce system. This will not be accomplished by providing for no-fault divorce and tinkering with other reforms. These reforms must be set out clearly in any divorce legislation, if we are to reflect the reality of what is happening when thousands of couples divorce each year. Otherwise, our present system of settling divorce problems through expensive, time-consuming and contentious litigation will only continue, and the fact that we have no-fault divorce in this country will not stop the destruction of family life as we know it.

The Acting Speaker (Mr. Herbert): There follows a ten-minute period for questions or comments.

Mr. McGrath: Mr. Speaker, I have a question for the Hon. Member. He made a very excellent and thought-provoking speech. I am disturbed by the fact that this Bill was drafted by lawyers when we should have had the Bill that had input from

family and marriage counsellors. That was one of the positive suggestions made by the Hon. Member who just spoke.

Given the fact that I agree wholeheartedly that if there is to be no-fault divorce there must be some form of mandatory mediation, what has been the experience in other jurisdictions in terms of the success ratio of this mandatory mediation and what is the time-frame involved? In fact, is there a time-frame imposed by the courts for the mediation process?

Mr. Roche: I was thinking of this Bill in relation to the Bill which we debated earlier today. The point was made at that time that if input had been made into the preparation of that legislation by the Standing Committee on External Affairs and National Defence, it would have assured a much wider and a more contemporary approach, and the Bill would have been improved prior to its being presented to us. Similarly, the Hon. Member mentioned the question of mediators. I believe that this Bill was drafted in the confines of the Justice Department and did not have sufficient input from mediators. I suggest that this raises a much larger question about how legislation comes to the House before Members have an opportunity to see it, especially those Members who are on committees that are relevant to the legislation to be introduced. Those Members who have the expertise and appropriate background would be able greatly to shorten the time needed for debate at second reading because of the input that could be given at the pre-presentation stage. That would certainly enable the House to move on to a one-day debate on second reading, provided that that input had been made in a parliamentary way.

I believe that the research and surveys show that where there is mandatory mediation in those jurisdictions where it applies, there have been significant improvements in reconciliation. Furthermore, the savings in costs that would have otherwise been used in court proceedings can be used to train more mediators. Not only is there an economic benefit at that level, there is a much greater human benefit in helping families to stay together.

Mr. Thacker: Mr. Speaker, I have a brief question with respect to mediation services. Could the Hon. Member indicate from his reading whether the mediation services are provided at public expense, or would it be by psychologists holding themselves out as professionals at the street level? Would they be triggered by the law after a divorce petition had been issued, or would it be mandatory to have a certificate from a mediator before a person issued the petition? Could the Hon. Member tell me what the practice is in the United States?

Mr. Roche: Mr. Speaker, with respect to the payment for mediation services, I believe it should be done at both levels. There should be public money available for the services and there should also be private payment by the couples concerned. In this respect, I think there needs to be a very detailed study made into how this applies to other jurisdictions so that we could advance the concept of mandatory mediation.