

● (1530)

Finally and most important, Mr. Speaker, the current adversarial manner of settling the ancillary issues in divorce proceedings must be done away with through a system of mandatory mediation throughout the country. Divorce mediation is a structured process, usually involving both a counsellor and a lawyer, whereby these professionals help a divorcing couple work out problems regarding their children, property and finances without going to court. It is a time limited, practical process which focuses not on past wrongdoings but on future life goals for all family members. Particular attention is paid to the needs of the children. Whereas the traditional adversarial system fragments the family by focusing only on such questions as "What can I get?" or "How can I get even?" the mediation process forces the husband and wife to concentrate on their children's interests as well as their own. In short, divorce mediation is a rational, commonsense alternative to the adversarial process.

Although it is fairly new in Canada, divorce mediation has been an accepted way of resolving disputes for some years in the United States. An article which appeared in the *Wall Street Journal* some time ago reported on the two-year wait in family courts for hearing contested divorces. The solution advocated by one judge cited in the article was to get divorce out of the court system. The judge said that it is the ideal thing for mediation. The article went on to describe one American lawyer who refused to represent in the traditional way the parties involved in a divorce. Instead, he acted as a mediator, encouraging his clients to work out their own solutions to custody, property and maintenance problems. These matters, he maintained, were too important to be left to what he described himself as "a stranger in a black robe".

As the Canadian divorce rate increases, we must inevitably adopt the same approach to mediation as we now see growing more common in the United States. Most states have a no fault divorce. Mediation has been a natural outgrowth of that development. Studies show that in those states where mediation has been made mandatory, parties reach their settlements in a short period of time and at a fraction of the cost of court proceedings. Mediated settlements are also much more likely to last, minimizing the need for variation in the applications in the future. More important, husbands and wives are able to continue dealing with each other as parents and the children adjust to the separation much more readily.

Unfortunately, Sir, the sole reference to mediation in the proposed Bill creates a duty which is likely to become a mere formality. A clause of this Bill states that a lawyer must, in the absence of any real prospect of reconciliation, inform his client of the mediation facilities known to him which might help the parties negotiate corollary matters. While this legislative recognition that mediation has a role to play in the divorce process is welcome, the duty created by the Bill is not for a divorcing couple to seek mediation, but simply for lawyers to advise their clients of any mediation facilities known to them. The problem with this is that many lawyers are not in favour of mediation. That is the truth of the matter. This is not

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simply because it will reduce their incomes, but because they have been so strongly schooled in the adversarial process that they are reluctant to relinquish control to a mediator. They are also largely unaware of what mediation entails and how it works in practice. Thus, they have no real interest in or knowledge of the mediation facilities in their community and are not likely to recommend them strongly to their clients. Many lawyers now comply with the requirements of Section 7 of the present Divorce Act to inform clients of marriage counselling and guidance facilities only in a very cursory manner, perhaps assuming that by the time the client walks into their office, reconciliation or counselling is no longer appropriate.

Lawyers who may be in favour of mediation may not practise in an area where mediation facilities exist. These facilities are now found mainly in large Canadian centres, primarily in Toronto. Mediation must be made available to all divorcing persons, wherever they live in Canada.

The question of the cost of mediation must also be considered. Professional mediators charge fees of at least \$60 an hour. Their services may not be available to all persons, particularly where a provincial legal aid plan is paying for the service. The Minister of Justice has expressed the hope that the money saved by the provinces through streamlining the actual divorce proceedings will be ploughed back into mediation and conciliation services. However, there is no guarantee that this will be done. Funds also need to be set aside for the training of professional mediators, for the education of the public and of the legal profession as to the benefits of mediation, and for the establishment of court and community mediation facilities.

The public is, by and large, in favour of mediation. Those mediators already in practice report a large number of inquiries from members of the public interested in finding out more about mediation. However, legislative acknowledgement of mediation, in more than just an offhand way, together with public seminars on the topic, are needed to convince those individuals with sufficient funds to litigate and those who feel they will obtain a better result in court to undergo mediation.

Funds must also be made available to train more professional mediators. Provincial associations of family mediators have begun to codify standards and ethics for divorce mediators, and courses designed to train mediators in accordance with those standards have been developed in major centres. However, more funds are required to make these courses available right across the country. Much more time and money must be devoted to educating lawyers about mediation. Because most divorcing couples now visit a lawyer before any other professional, that person has enormous influence over the way the divorce will be handled. If the lawyer does not advocate mediation, chances are the case will be handled in the traditional, adversarial way.

Law schools have begun to incorporate interviewing and counselling courses into their curricula. Mediation is now being taught to lawyers at the bar admission course level. However, lawyers already used to practising in the adversarial