

The civil courts are constituted for the purpose of dispute resolution and dispute settlement, of adjudicating conflict and providing judgment based on principles of law, fairness and truth. The conflicts of matrimonial and child custody disputes are especially difficult. In these conflicts, the purely legal issues are accompanied by undischarged and negative human emotions such as vengeance, regret, anger, self-deception and wounded vanities.

Honourable senators, the former Attorney General of Ontario, the Honourable Marion Boyd, and the well-respected Chief Justice of Ontario, the Honourable Roy McMurtry, in cooperation with the bar of Ontario, resolved to examine the current state of civil justice in Ontario. A small task force, co-chaired by the Honourable Mr. Justice Robert Blair and Sandra Lang, Assistant Deputy Attorney General, conducted a broad review of the civil justice system in Ontario which included public hearings. Their first report, entitled "Civil Justice Review," was released March 7, 1995.

Mr. Justice Blair reports that:

Unacceptable delays and mounting costs, with their attendant implications for inaccessibility and mistrust of the system, have become endemic.

Further, Mr. Justice Blair states that the civil justice system is "in a crisis situation." He tells us that family law was the area of civil justice which dominated the task force's public consultation phase. Accordingly, it devotes an entire chapter, chapter 16, entitled "Focus on Family Law," to this concern.

The prime function of the courts is to make judgments. To do this, a judge makes a determination of the facts. Truth is critical to this process. Truth is so pivotal that, for centuries, the courts have employed the technique of swearing oaths in judicial proceedings. Courts have received evidence both in sworn written affidavits and in sworn oral testimony in open court. The making of statements under oath is the phenomenon of compelling truth by binding the conscience of the person sworn to tell the truth. The oath binds the conscience of the deponent by a solemn appeal to the deponent's deity or faith.

Honourable senators, I am loyal to those beliefs which insist on a solemn commitment to the act of swearing an oath, particularly in legal and judicial proceedings. I believe this loyalty is shared by most Canadians. The oath taken by witnesses in court reads:

I swear that the evidence to be given by me shall be the truth, the whole truth, and nothing but the truth, so help me God.

The swearing of an oath is so reverent and so respectful of truth in judicial proceedings that the Parliament of Canada prescribes a criminal sanction against falsehood in sworn testimony. *The Criminal Code of Canada*, Part IV, determines that such malfeasance is an offence against justice. Part IV is entitled, "Offences against the administration of law and justice", and its Sections 131 to 139 speak to the issues of falsehood, untruth and prevarication under oath in judicial proceedings.

Section 131(1) states:

...every one commits perjury who, with intent to mislead, makes before a person who is authorized by law to permit it to be made before him a false statement under oath or solemn affirmation by affidavit, solemn declaration or deposition or orally, knowing that the statement is false.

The Criminal Code makes no exception for lawyers or anyone counselling perjury.

The report's "Focus on Family Law" chapter reveals much about the current state of the practice of family law in Ontario. Mr. Justice Blair Stated:

Lawyers were criticized for their drafting of lengthy, damaging, and sometimes unsupportable affidavit material.

The Review was told frequently about...the often poisonous nature of lengthy affidavit materials.

We were told...that perjury in these affidavits is rampant.

...it is clearly a perception...that such perjury goes unpunished.

He further stated:

Concern and frustration were expressed about the number of allegations made in affidavits that were not capable of being substantiated in any way.

Some contents of affidavits...were reported by members of the public to be damaging forever.

...lawyers...taking on family cases when they are not sufficiently experienced or qualified to do so.

Mr. Justice Blair's Review findings about family law practice are disturbing and troubling. They tell us, sometimes boldly and sometimes in understatement, that false statements under oath, perjury and malice are part of the routine proceedings of the practice of family law in the Province of Ontario. These findings tell us that the course of justice is being corrupted and perverted. These findings have been confirmed to me by several barristers in practice in Ontario who inform that false statements under oath in judicial proceedings are an "epidemic."

Honourable senators, the case of Reverend B. is an example of the use of falsehood in judicial proceedings in a child custody dispute. It is a traumatization of two little girls and a father who has suffered an enormous personal and financial cost. I should explain that I am using initials to protect the children who are still minors.

The case is as follows: Reverend B., an Anglican minister, and Mrs. B. were married for 10 years with two girls, aged two and four. Mrs. B. left her husband, Reverend B., taking the two children, all the household furniture, all their joint savings and departed with her lover, a convicted criminal. Separation and child custody proceedings followed. Months later, when it appeared that Reverend B. might be awarded custody of the children, Mrs. B., after taking legal advice, suddenly announced