

*Divorce Act*

distinguish between the grounds for divorce and the questions of custody of, and access to, children, property division and financial support, which must be decided before the divorce itself can be granted.

It is relatively easy to change the grounds for divorce. Reform in this area has been long overdue and, although provision might be made to retain fault grounds in circumstances where it would be unjust to force a spouse to wait a full year for a divorce, this can be done relatively easily. It takes much more courage to institute the kind of reform required to really change the way Canadians separate, divorce and then restructure their family lives today.

The adversarial approach to divorce proceedings, which is inevitably followed today, has numerous disadvantages. It is incredibly expensive. Estimates are that Canadians have spent over \$500 million in legal fees over the past ten years. However, the emotional and psychological costs, both to the parents and to the children, have been even greater. Because the adversarial process forces the parties to take polarized, extreme positions, there is inevitably a winner and a loser, with the result that the parties come out of the process angry and bitter toward each other. Any possibility that they could have resolved their differences in a rational manner and continued to act as co-operative parents to their children is destroyed in the process.

How do we make the resolution of custody and financial issues less adversarial so that husbands and wives can spend less time fighting with each other and more time restructuring the family's future? I submit that there are three main ways: first, we need more precision in the law. Divorce legislation must provide concrete guidelines to the legal profession and to society, not vague statements of intent. The reason the courts are clogged with family disputes today, to the point where it can take two years to resolve all issues, is that even lawyers with the best of intentions cannot advise their clients with any degree of precision what a court will order in their particular case. The law is too general to allow any real predictions to be made.

Legislative steps have been taken to clarify the questions of custody of, and access to, children, but provisions regarding maintenance payments, which are the subject of most court applications today, are still unclear. The objectives of maintenance payments set forth in the Bill do not begin to address the problems enunciated in the recent Supreme Court of Canada decision in the Messier case. To simply state that a maintenance order is designed to relieve any grave economic hardship is to invite future litigation.

What are the rights of the young woman with small children who does not wish to work for several years while she raises her children? What of the older woman with little education and no marketable job skills who has become financially dependent on her husband during a long marriage? Are both these women going to be required to work to fulfil a requirement of economic self-sufficiency? How is "grave economic hardship" to be defined? Is the purpose of maintenance to compensate a spouse for the dependency created by a long

marriage, or simply to allow her time to become self-sufficient? If the objectives of maintenance, and the circumstances in which one spouse is entitled to maintenance, are not more clearly set out, this Bill will only result in an increase in adversarial proceedings.

Specific provisions are also needed with respect to the enforcement, as well as the criteria, of maintenance orders. As long as the law allows for a situation where 75 per cent of maintenance orders are in default at any given time, the courts will continue to be crowded with wives trying to enforce these orders. A central registry for maintenance orders, together with a stricter policy of enforcement, is clearly required. The federal Government cannot abdicate its responsibility in this regard by saying that these matters all fall within provincial jurisdiction. Joint action by the federal and provincial governments is required, and the federal Government must take the initiative in implementing these proposals.

Unless we have precision in the law, with specific proposals regarding criteria and enforcement of maintenance orders to the point where lawyers can advise their clients with some degree of certainty as to their rights and obligations, we are going to continue to see a flurry of litigation as judges are asked to interpret the law. The law should be clear enough so that adversarial proceedings are not necessary, in most cases, to resolve issues.

The second major way, Mr. Speaker, in which divorces can be handled in a simpler, more constructive manner, is through the nation-wide implementation of unified family courts. This type of court system has two main advantages. It provides husbands and wives with a single forum to settle all issues regarding their children, property and finances. The present system, which still exists in most Canadian centres, involves application to one court for custody and another court for maintenance and property orders, and still another for the divorce decree itself. This system is complex, unwieldy and very expensive, and any reform in the area of divorce must deal with this problem.

A unified family court has the added advantage that counselling services are available at three stages of the separation and divorce process. Pre-divorce counselling, when undertaken early enough, sometimes has the result of allowing people to reconcile before being caught up in an irreversible legal proceeding. Surely, this is a welcome and important aspect of divorce reform which must be encouraged. Even when the parties have decided to divorce, the counselling and conciliation services enable them to resolve all matters relating to their children, property and finances in a meaningful and constructive way. Finally, post-divorce counselling, designed to assist those parents and children for whom the divorce was a traumatic experience in dealing emotionally with the divorce and sorting out of their future, has been successful in minimizing the return to court by bitter and angry spouses bent on changing custody and maintenance orders. Again, federal and provincial co-operation is required to set up unified family courts across the country. The federal Government must be the leader in this area.