

Lawyer issues clarion call for fixing family law

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For Law Times

▶ SPEAKER'S CORNER

For more than 20 years now, we have been talking about improving access to justice in Canada. Yet we have made barely any progress. The time for talk is over; the time for action is now.

The lack of justice in family law — the area I have been practising for 20 years — is a particular travesty.

Simply put, improving access to justice in family law means reducing the time and costs to get divorced.

This is why I have launched a campaign on the issue. I am advocating for desperately needed changes in family law. I ask the politicians responsible for divorce law to recognize their obligations to all Canadians.

I have sent every federal MP as well as all MPPs and dozens of other politicians across Canada the first in a series of white papers examining the processes that make separations take too long and cost too much.

The first white paper contains observations from the battlefields and is available online at itstimeforjustice.ca. There will be five more editions of the white papers.

The Canadian divorce rate is currently at 38 per cent. This means family law directly affects 38 per cent of Canadians. Indirectly, it affects everyone in Canada.

Just because young children can't vote doesn't mean our politicians don't represent them when they're looking to improve — or stall or ignore — laws about their parents' breakup. In fact, it's quite the opposite. We should worry about the negative impact of a lengthy divorce fraught with emotion and stress on children.

Those inside the legal world, of course, know the problems and bottlenecks well. But the politicians responsible for our laws and the journalists responsible for explaining just about everything to just about everyone are less aware of the problems.

It is only when Canadians go through the process of separation and divorce that the gaps, cracks, and disconnects become obvious. I can provide a few examples.

As many lawyers know, every month's delay in family court is a big proportion of the life of a child. There are two problems. The first problem is a judicial system filled with delays. And the second problem is that one or both of the spouses often move at too slow a pace.

One time, a woman came into my office saying she and her husband needed to separate. "We aren't getting along," she said.

"I think he should move out of the house, but he refuses. We're arguing all the time, and it's just an awful place for the kids."

And here's where justice bogs down. I can't bring a motion in family court to force him out of the house until after we have a case conference. And if I apply today, I'll probably get my case conference scheduled four or five months from today. And the motion to force him to move out will take another month or two after that. I don't get to open my mouth to get him out of the house for six or seven months from the start. If I am unsuccessful, we may have to wait a whole year for a trial date. In the meantime, everyone suffers, especially the children.

There are other issues at play. In my view, we need to start thinking not of winning or losing but of creating a satisfactory outcome for our clients by letting them keep as much of their money as possible for themselves and the children instead of forcing high lawyer bills.

The reality in family law is that everybody is going to lose. The real goal should be limiting how much you are going to lose.

If a couple wants to be good and fair to each other, they can probably reach a deal quite quickly and save money. An expensive, high-conflict dispute arises when one person acts unreasonably and the other side must fight.

In one case, I was representing the husband against a wife who had publicly stated that her goal was to bankrupt him. As the case proceeded to his advantage, her behaviour became vicious and she said she was going to burn down the family home rather than have it sold. The court struck her pleadings, meaning the judge ruled she had no standing. And she had such large legal bills, including a costs award making her pay her husband's costs, that she ended up with nothing and living in poverty.

Politicians, then, need to start addressing these issues. The separation and divorce process itself, including child access, custody, and support, is subject to the Federal Divorce Act for married couples. This means federal MPs are responsible for changes to the act.

Provincial law governs the division of property, which makes MPPs and provincial politicians across Canada responsible. Common law couples are often subject to provincial laws governing child access, custody, and support.

Change must start with new legislation. Federal and provincial politicians must change the laws and regulations that drag out divorce and increase costs.

To make that happen, we need ideas. Part of the job of politicians is to think of improvements to governing Canada. I'm nudging Canadian politicians to make family law more efficient and less bureaucratic.

Besides the politicians, I have also sent my "It's Time For Justice" white paper to more than 100 journalists. I ask journalists for their own ideas, too. I am asking journalists to help hold Canadian politicians accountable.

Equally important, I am looking for help. I cannot effect change by myself. I am looking for comments and constructive ideas from anyone who wants to help.

Please don't stand back. Get involved. **LT**

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