FOR THE LOVE OF OUR CHILDREN!

BRIEF on Bill C-22

An Act to amend the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act, the Garnishment, Attachment and Pension Diversion Act and the Judges Act and to amend other Acts in consequence

Presented to the
Standing Committee on Justice and Human Rights

By the
Organization for the Protection of Children's Rights

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EXECUTIVE SUMMARY

As a registered charity whose mission is to defend and protect the rights of children and adolescents in difficulty and, more particularly, those individuals experiencing problems associated with family conflicts and/or the breakdown of their family, the Organization for the Protection of Children's Rights (OPCR) is pleased to have the opportunity to present its views and recommendations to the Standing Committee on Justice and Human Rights regarding Bill-C22 (*Divorce Act*).

This brief expresses our concern that the *Divorce Act* as amended by Bill-C22 does not sufficiently recognize the simple physical fact that children do have two parents, fails to ensure the right of the child to maintain personal relations and direct contact with both parents on a regular basis as set forth in the Convention on the Rights of the Child, and that this in turn will severely limit the legal system's ability to work in the best interests of children – which is the stated objective of the reform of the *Divorce Act*.

The brief reviews the empirical evidence on the effects of divorce and their implications in terms of what measures and policies will be effective in ensuring the respect of the best interests of the child. Based on this review, it is apparent that there is a significant difference between children from divorced and intact families on various indices of well-being; that, of all the things that detrimentally affect children, continued parental conflict before, during and after separation or divorce, particularly if focused on the child, is the most damaging; and that the legal system as it is now exacerbates this form of parental conflict. Leading us to conclude that policies and programs that decrease children's exposure to such conflict would be beneficial to children.

We then go on to note that most, if not all programs and policies determined to be conducive to the best interests and well-being of children are of a non-judiciary nature, focusing on the need for non-adversarial dispute resolution mechanisms, parenting education programs and preventive measures before divorce proceedings are even filed or considered. This highlights the fact that overfocusing on legislation misses the mark. Families would be better served by government providing the necessary legal framework and incentives to facilitate the implementation and development of specific psychosocial services such as those we recommend, namely:

1. The introduction of a free, mandatory and non-judiciary system of family mediation;
2. The creation of a prevention and reconciliation system for couples and families in difficulty;
3. The elimination of adversarial terminology;
4. The creation of a Specialized Family Court where judges have an extensive background in family law as well as in psychosocial matters;
5. The creation of a Formal Complaints Office;
6. The integration of parental responsibilities into the education system.

The brief concludes by urging government to endorse these recommendations and to shift the focus of legislation away from the rights of the mother and/or the father towards the rights of the child and the duties and responsibilities of parents with regard to ensuring the well-being of their children. For the greater good and the love of our children, families and society as a whole.

INTRODUCTION

The Organization for the Protection of Children Rights (OPCR) is a registered charity which, with the help of its multidisciplinary team of professionals, has been defending the rights of children and adolescents in difficulty and, more particularly, those individuals experiencing problems associated with family conflicts and/or the breakdown of their family, since 1983.

During our 20 years of community service, we have witnessed the economic, social and human costs of marital dissolution and divorce proceedings on children first and foremost, but also on parents, grand-parents and other members of the extended family, as well as on society as a whole. A reform of the *Divorce Act* is long overdue.

How can a custody and access case drag on for years? Why do parents feel compelled to take all available means at their disposal – from making unproven allegations, to filing for adoption or avoiding application of a court decision by moving to another province – to win or at least not to lose at any cost? Why do some parents resort to such extreme behaviour as kidnapping or murdering their children (and often the spouse as well) followed by suicide? Why do so many parents abandon or put an end to their parental responsibilities following a court decision? Why is it necessary to have a law to enforce payment of support orders? Are these the actions of parents who do not love their children or are these unwanted effects of the current legal process? Where is the best interest of children in all of this? These are legitimate questions, which should be addressed by Bill C-22.

The reform of the *Divorce Act* represents a unique opportunity to implement changes that will enable the legal system to meet, in concrete terms, its obligation to work in the best interests of children. These changes will have to build upon the knowledge that divorce and other disruptions in family life impact not only the individuals directly involved but also have serious consequences on society at large and that legislation's role should not be to "force" or "impose" a solution but to provide parents with the appropriate incentives and tools to make the best choices for the sake of their children, themselves and all other family members.

Our view is based on the fundamental fact that children inherently have two parents. Therefore, any law should recognize that fact and protect children's right to continue to have two parents who should remain involved in their lives even after separation or divorce, except in very specific cases where violence or abuse are present.

We are deeply concerned that the *Divorce Act* as amended by Bill C-22 does not sufficiently recognize the simple physical fact that children do have two parents, fails to ensure the right of the child to maintain personal relations and direct contact with both parents on a regular basis as set forth in the Convention on the Rights of the Child, and that this in turn will severely limit the legal system's ability to work in the best interests of children – which is the stated objective of the reform of the *Divorce Act*.

Divorce is already a highly charged and painful personal experience for all involved and is especially traumatic for children who naturally love both of their parents. This pain should not be further compounded by an adversarial process that encourages parents to litigate their differences instead of resolving them. Prevention and education emphasizing dispute resolution are much better alternatives to address what is above all a human rather than a legal matter.

OPCR'S POSITION

Canada is one of the 191 United Nations affiliated countries to have signed the Convention on the Rights of the Child (CRC) in 1989. The rights and principles set forth in the Convention provide the framework for the views and recommendations expressed in the present brief.

Article 3 (paragraph 1) of the Convention states that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be the primary consideration. It is also the professed objective of Bill C-22.

The question is whether the measures put forward in Bill C-22 are consistent with the rights set forth in the Convention and will in fact enable our legal system to meet, in concrete terms, its obligation to work in the best interests of children.

The Convention clearly states the rights of the child as well as the attendant responsibilities of parents and the State in ensuring the respect of these rights in various circumstances, including the separation/divorce of his/her parents:

States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, *that such separation is necessary for the best interests of the child*. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence (Article 9, Paragraph 1).

States Parties shall respect *the right of the child* who is separated from one or both parents *to maintain personal relations and direct contact with both parents on a regular basis*, except if it is contrary to the child's best interests (Article 9, Paragraph 3).

States Parties shall use their best efforts to ensure recognition of the principle that *both parents have common responsibilities for the upbringing and development of the child*. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. *The best interests of the child will be their basic concern* (Article 18, Paragraph 1).

For the purpose of guaranteeing and promoting the rights set forth in the present Convention, *States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities* and shall ensure the development of institutions, facilities and services for the care of children (Article 18, Paragraph 2).

States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development (Article 27, Paragraph 1).

The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development (Article 27, Paragraph 2).

States Parties, in accordance with national conditions and within their means, *shall take appropriate measures to assist parents and others responsible for the child to implement this right* and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing (Article 27, Paragraph 3).

Section 16.2 paragraph (1) *Best interests of child* and paragraph (2) *Factors court to consider* of Bill C-22 posit the best interests of the child as the overriding consideration of the court with respect to making parenting orders, contact orders and support orders and list the main factors used by the court to determine what is in the best interests of the child. The legislation fails to recognize however that it is in the best interests of the child to benefit from joint parenting. The legislation should create a presumption in favour of joint parenting. The presumption being rebuttable on clear and compelling evidence that joint parenting is not in the child's best interests.

The absence of such a provision in Bill C-22 reflects a profound ambivalence and refusal to establish the point at which the rights of parents as individuals should be counterweighted or give way to their responsibilities toward their children's well-being and rights, even though the *Divorce Act* has been amended to introduce a new approach to parenting arrangements based on "parental responsibilities". Bill C-22, however, does not clearly and unequivocally emphasize parental responsibilities rather than parental rights. As a result, neither the parents nor the child's rights are fully protected under current laws, leaving the door open to many injustices and abuses. In the same way that two neighbours might contest each other's claims over a tract of land for which there are no clear frontiers, children become objects embroiled in custody and access battles between parents focusing on their needs (which they take for rights) instead of on the needs of their children and their obligations towards them. Such a system benefits no one, least of all children, with the notable exception of those components of society who have a vested interest in maintaining the status quo.

For the Organization of the Protection of Children's Rights (OPCR), current divorce and custody and access proceedings as well as the amendments put forward in Bill-C22 are not only inconsistent with the provisions of the CRC but also fail to take into account the considerable empirical evidence on the effects of divorce and their implications in terms of what measures or policies will be effective in ensuring the respect of the best interests of the child. In particular, legislators need to recognize that legal remedies/legislation can only do so much to assist families in this transition. Families would be better served with a range of services made available to them, i.e. prevention, education, supportive counselling post separation/divorce, mediation, access assistance and when needed, legal assistance. Separation and divorce is essentially a social/emotional issue. Overfocusing on legislation, especially if it is punitive, misses the mark, as we shall see.

CHILDREN AND DIVORCE

An increasing number of Canadian children are experiencing their parent's separation and divorce and do so at an earlier age.

In 2000, there were 71,144 divorces in Canada, up a marginal 0.3% from 1999, and up 3.0% from 1998. As a result, some 37,000 children were the subjects of custody orders (Statistics Canada, 2002). This does not include the even greater number of children whose parents are putting an end to their common-law relationship under provincial Family Law rather than the *Divorce Act*, especially in view of the fact that non-married couples have a significantly higher tendency to separate. For example, among children born in 1983-84, 63 percent had experienced the dissolution of their parents' common-law relationship compared to a 14 percent rate of separation for those whose parents had married (Marcil-Gratton and Le Bourdais, 1999).

Based on information gathered from the National Longitudinal Survey of Children and Youth (1994-95 and 1996-97) and other demographic studies, the Department of Justice Canada estimated that 20 percent of children aged 11 and younger were born into a single-parent family or had experienced their parents' separation or divorce. By 2001, as well, approximately 30 percent of children aged 12 to 19 had experienced life in a single-parent family. Based on Statistics Canada population estimates for 2000, these two groups amounted to almost two million children (Department of Justice Canada, 2002). Twenty-five percent of all children born in 1983–84 experienced their parents' separation by age 10, and nearly 23 percent of children born in 1987–88 experienced it by the age of six (Marcil-Gratton and Le Bourdais, 1999).

These numbers underscore the extent to which the proposed reform of the *Divorce Act* will impact on the lives of Canadian children and our society as a whole. The increasing popularity of cohabitation as an alternative to marriage coupled with the increased tendency of parents to separate make it even more imperative that we adapt family laws to the changing conjugal life in Canada and ensure that they truly work in the best of interests of children as main elements of the new divorce strategy.

1. The effects of divorce

Numerous researches, including many commissioned or published by the Department of Justice Canada, have shown the short- and long-term negative consequences of marital dissolution and divorce proceedings on children, on parents, grand-parents and other members of the extended family, as well as on society as a whole.

Effects of divorce on children

Many studies conducted from 1990 reported that children from divorced families scored lower than children from intact families on various outcomes, including academic success, conduct, psychological adjustment, self-concept and social competence following parental separation (Amato, 2000; Juby and Farrington, 2001). These studies showed consistent evidence indicating a significant difference between children from divorced and intact families on various indices of well-being, such as academic success, parent-child relationships and emotional and behavioural adjustment. Children of divorced parents have been found to be less well adjusted than children from continuously intact families (Cited in Bernardini & Jenkins, 2002).

In 1998, Dr. A.-M. Ambert published an extensive review of the research data available on the effects of divorce, which indicated that children whose parents are divorced (and even after they are remarried) are more likely than children whose parents remain together to (e.g., Furstenberg and Kiernan, 2001; Le Blanc, McDuff, and Tremblay, 1995; Sun and Li, 2002):

- Suffer from depression, anxiety, and other emotional disorders;
- Exhibit behavioural problems including hyperactivity, aggressiveness, fighting, and hostility;
- Become young offenders;
- Do less well in school and stay less long in school;
- Run away from home;
- Commit suicide;
- Be subject to parental kidnapping and/or physical harm;
- Have more relationship problems, in part due to their behavioural problems;
- Divorce themselves if they even marry.

Finally, when they are older, adults whose parents divorced during their childhood and teen years, compared to adults from intact two-parent families, tend to:

- Have had a child out of wedlock more often, particularly during adolescence;
- Have achieved lower educational levels;
- Be more often unemployed and do less well economically;
- Have more marital problems and divorce more (Ambert, 1998).

a. Poverty

There is ample evidence that divorce is usually accompanied by a decrease in a family's economic standing, and that this financial stress accounts for some of the maladjustment observed in children of divorced parents. However, this same evidence indicates that children in divorced families continue to score below children in intact families on various indices of well-being even after family income is accounted for. Thus, although economic disadvantage accounts for some of the variance, it is not the sole explanation for the impact of divorce on children (Bernardini & Jenkins, 2002).

b. Academic Problems

Frederick and Boyd (1998) have shown, on the basis of Statistics Canada data, that 80 to 84% of men and women aged 20-44 who lived with their two parents when they were 15 years old completed high school. This compares with figures ranging from 65 to 73% for those whose parents had divorced, including those whose parents had remarried (Ambert, 1998).

c. Runaway children

In 2002, 66,532 missing children cases were reported in Canada. Out of those, 52,390 (80%) were runaways. Most children run away to escape an intolerable home situation, often characterized by alcohol and drug abuse experienced in the home and with friends. Research findings revealed they may have low self-esteem, feel neglected and unwanted, show signs of emotional and psychological problems, and have difficulty in school with achievement, relationships and interaction with teachers and peers. Most often they do not run for the fun of it. In essence, they run away, return home hoping the situation has changed but most often it has

not, so they run again. Chronic runaways (40% of Canadian cases were chronic and 34% repeat runners) were at greater risk of arrest as juveniles (Dalley, 2002).

d. Absence of non-resident parent

Following parental divorce, children typically have decreased contact with their non-resident parent, usually the father.

Regardless of the custody arrangements that parents reported, data from the National Longitudinal Survey of Children and Youth show that the overwhelming majority of children (81 percent) live only with their mother at the time of separation. Even where there is a court order for shared custody (in about 13 percent of cases), children are still more likely (76 percent) to live with their mothers, while 15 percent lived with their fathers. In only 9 percent of cases is the living arrangement "equally shared" between the parents (Department of Justice Canada, 2002).

The National Longitudinal Survey of Children and Youth data show that close to half of the children visited their fathers on a regular basis; less than a third (30 percent) visited every week; and another sixteen percent visited every two weeks. One-quarter of the children visited their fathers irregularly (once a month, on holidays, or at random). Fifteen percent of children never saw their fathers (although a small number had letter or phone contact with him). Fifty-seven percent of children whose parents had been separated for less than two years at the time of the survey visited their fathers regularly (every week or every two weeks). This percentage drops to thirty-one percent when the parents had been separated five or more years before the survey. Moreover, close to a quarter of children whose parents had been separated at least five years never saw their fathers (Child Support Team, 2000).

One large-scale study in the United States found that in the previous five years, 23 percent of fathers had no contact with their children, while an additional 20 percent had not seen their children during the preceding year (Furstenberg and Nord, 1985). Estimates for Canadian children are only a little lower (Marcil-Gratton and Le Bourdais, 1999) (Cited in Ambert, 1998).

Mother and father custody have somewhat different but equivalent results for children; on average, neither is as good in terms of child outcomes as a stable two-parent situation (Powell and Downey, 1997; cited in Ambert, 1998).

Amato and Gilbreth (1999) suggest that children of divorce have better outcomes when *non-residential fathers* are more than "Sunday daddies" and *behave as parents*--that is, when they provide emotional and practical support, make behavioural demands, place limits on what can be done, and administer consistent discipline (Cited in Ambert, 1998).

e. Diminished Parenting

Divorce creates a series of stressors for parents, particularly for the custodial parents. In turn, these stressors diminish parenting time, skills, expressed affection, and increase parenting instability, harshness, or yet permissiveness. Rates of alcohol abuse go up among divorced men and depression among divorced women as well as a general feeling of being less healthy (Wu and Hart, 2002; cited in Ambert, 1998). After divorce, many parents experience a dramatic downfall in their ability to care for their children, to provide them with a regular routine, to shelter them from stressors and dangers. Faced with their own problems, many divorced parents

too often become their children's pals and abdicate their parental responsibilities. These adolescents then lack guidance and authoritative parenting (Ambert, 1998).

f. Emotional burden

Many divorced parents, both as a result of divorce and poverty, are so burdened emotionally that they become, at least temporarily, depressed while others initiate a desperate search for a new mate that makes them far less available to their children and responsive to their needs. All of these factors bring instability and insecurity to the home life and thereby burden children emotionally (Ambert, 1998).

g. Parental conflict

Of all the things that can affect children, such as troubled relationships with their parents and economic disadvantage, parental conflict before, during and after separation and divorce has the most noticeable impact. Children who grow up surrounded by conflict between their parents are often poor achievers at school and have behavioural and psychological problems and reduced social skills (Department of Justice Canada, 2002).

Parents who continue quarrelling and verbally abusing each other in front of their children after divorce cause immense distress to their offspring**.** Continued parental conflict--especially when the children are caught in the middle--may result in depression, hostility, aggressiveness, and other acting-out activities on the part of children. Moreover, parental conflict presents a dysfunctional role model. Children learn that disagreements can be solved only by fighting. This lesson may carry further negative consequences down the road in their own relationships (Ambert, 1998).

However, divorces that end severe interparental conflict have positive consequences for children; in contrast, low-conflict marriages that end in divorce have a strong negative effect on children, perhaps because, from the children's point of view, they are so unexpected and unwelcome (Booth and Amato, 2001; cited in Ambert, 1998).

The results of a study conducted by Grych and Finchman in 1993 indicated that children subject to custody and access disputes were likely to exhibit symptoms of depression and withdrawal, and to voice somatic complaints. This finding has been replicated by additional related studies, which found that severe marital conflict that focuses on the child is more predictive of child behaviour problems than conflict that is not centred on the child. This suggests that severe interparental conflict, particularly if it is focussed on the child, can have long-term effects on children's well-being even after the parental conflict ceases (Cited in Bernardini and Jenkins, 2002).

In conclusion, compared to other divorce factors associated with child maladjustment (absence of non-resident parent, troubled parent-child relationships and economic disadvantage), the relationship between parental conflict and child maladjustment is consistent and strong (Buehler et al., 1997; Davies and Cummings, 1994; Lengua et al., 2000; cited in Bernardini and Jenkins, 2002).

These findings are consistent with the results of a recent study that found similar rates of delinquency in boys from intact and divorced high conflict families (Juby and Farrington, 2001),

which suggests that parental conflict is a risk factor for child maladjustment in both divorced and intact families (Cited in Bernardini and Jenkins, 2002).

The association between parental conflict and child maladjustment is unequivocal. High degrees of anger-based parental conflict, both before and after parents separate, are harmful to children. In fact, some research suggests that children from intact high conflict families exhibit lower levels of well-being than children from divorced families. Therefore, anger-based interparental conflict is a strong predictor, and risk factor, of child maladjustment *regardless* of the family type in which the child is living, whether intact, divorced or stepfamily (Bernardini and Jenkins, 2002).

Economic effects of divorce
Nearly one third of all marriages ending in divorce were "average to very good" marriages for both spouses, and another third were good to very good marriages for one of the spouses--in the latter case, generally for the one who does not want to divorce. For society as a whole, the dissolution of average to very good marriages and cohabitations is a costly proposition. It is so in terms of consequent problems for children, including juvenile delinquency, welfare costs for those single-parent families that fall into poverty, health costs, as well as a loss of productivity on the part of the affected adults and older children (Ambert, 1998).

a. Crime
Data from the Canadian Tax Foundation indicate that in 1994 crime consumed more of our financial resources than the government of Canada committed to old age pensions ($15.8 billion), the Child Tax Benefit ($5 billion), the Canada Assistance Plan ($7.4 billion), and child care ($5.5 billion) combined, and twice as much as was spent to support unemployed people through the Unemployment Insurance program ($18.1 billion) (National Crime Prevention Council, 1996).

The estimated cost of detaining a young offender is at least $100,000 per year, which is more than double the cost of supporting one person through four years of a university education (National Crime Prevention Council, 1996).

b. Dropping out of school
In Canada, the Conference Board estimated the social costs of dropping out of high school (including both market and non-market factors) and found that “Canada will lose more than $4 billion in present-value terms over the working lifetimes of the nearly 137,000 youths who dropped out of high school instead of graduating with the class of 1989” (Lafleur, 1992; cited in Human Resources Development Canada, 2000).

2. Policy implications

These findings were supported by the extensive review of empirical research related to the impact of parental separation on the well-being of children that was conducted by Silvia C. Bernardini and Jennifer M. Jenkins from the Department of Human Development and Applied Psychology of the Ontario Institute for Studies in Education of the University of Toronto and presented to the Family, Children and Youth Section of the Department of Justice Canada in 2002.

This report not only examined the factors related to divorce that put children at risk of maladjustment but also those that protect them from negative consequences, thereby providing significant insights as to the type of programs and policies that would be beneficial to children who are at risk of showing more problems in the face of divorce.

First, Bernardini and Jenkins (2002) point out that children experiencing parental divorce are more likely than others to be exposed to multiple serious risks and that, furthermore, one of the important findings from research on children's exposure to stressful events is that risk factors can potentiate one another: when several risk factors occur, their effects are cumulative. In other words, risks combine to multiply detrimental effects in children.

Implications:
Policies or programs geared to reducing the occurrence of even one risk are likely to be beneficial because they reduce the potency or negative impact of other risks on child adjustment.

Two studies that have examined protective factors in divorced families have found that warmth in the mother-child relationship and a temperament trait, positive emotionality, are important in buffering children from the stress of divorce. Factors such as the quality of the mother-child relationship were found to be associated with children's adjustment in both low and high conflict homes. Even if children were not experiencing parental divorce, their adjustment was better if they got along well with their mothers. The father-child relationship showed the same pattern of effect. Close relationship with an adult outside the family (usually a grandparent) was also associated with better adjustment among children in high conflict homes, but made little difference to adjustment among children in low conflict homes. Even though a consistent and significant association has not been established between paternal visitation frequency and child well-being, other dimensions of father involvement however, such as payment of child support, authoritative parenting and feelings of closeness, can and do have positive effects on children's adjustment following divorce.

Implications:
A first implication is that there are naturally occurring factors in children's lives which protect them, and that it may be possible to increase such factors through parental health education programs. A second is that knowing which children are likely to show more problems in the face of divorce (those who exhibit less positive emotionality) helps to target available services to those in need.

Research has consistently documented a significant association between the father's payment of child support and positive child outcomes following parental divorce (Amato and Gilbreth, 1999).

Implications:
Safeguarding the custodial parents' income would be likely to decrease parental stress, thus positively affecting the parent-child relationship.

Anger-based parental conflict has been shown to be a consistent predictor of child well-being.

Implications:
Policies and programs that decrease children's exposure to such conflict are likely to be beneficial. For example, preventative programs might take the form of public health or school-based education programs targeted to young adults. Any program that helps young adults

towards better problem-solving skills in their relationships, even before they have children, might help decrease children's exposure to subsequent parental conflict. In addition, helping parents who are undergoing a divorce, as well as the professionals working with them, to understand how conflict exposure affects children might also help to reduce children's conflict exposure.

It is important to note that most, if not all programs and policies determined to be conducive to the best interests and well-being of children are of a non-judiciary nature, focusing on the need for education and prevention before divorce proceedings are even filed or considered. In 1998, a Special Joint Committee on Child Custody and Access conducted a twelve-month study to examine the issues relating to custody and access arrangements after separation and divorce with a special emphasis on the "needs and best interests" of children. The committee held public hearings throughout the country, at the cost of millions of dollars, and reached a consensus in its report entitled *For the sake of the children* on the need to create a culture that prevents conflict rather than promotes it, emphasizing non-adversarial dispute resolution mechanisms and parenting education as means to improve outcomes for children (Pearson & Gallaway, 1998).

Our organization’s recommendations, ensuing from the numerous research projects and international conferences we have conducted on the situation of the family in Canada and in other parts of the world since 1984, call for similar measures.

OPCR'S RECOMMENDATIONS

1. Putting into place family mediation services that are free, mandatory and non-judicial for all couples experiencing marital difficulties or going through divorce proceedings. Such services should also be available for grandparents and other family members in crisis;

2. The creation of a system of family reconciliation that would be available at all times for couples and families in crisis;

3. The elimination of terms that create friction between the parties. For instance, replace the expressions "legal custody" by "parental responsibilities", "support orders" by "financial responsibilities of parents" and "parenting orders" by "parenting responsibilities". We are pleased to see this recommendation, which we put forward as early as in 1984, in the current version of Bill C-22;

4. The creation of a court specializing in family matters where judges have an extensive background in family law as well as in psychosocial matters;

5. The creation of an office of formal complaints;

6. The creation of courses at the elementary and secondary level in order to educate and sensitize students about parental responsibilities. The goal being to ensure that the next generation may adequately understand and assume its role as parents.

FAMILY MEDIATION

The Organization of the Protection of Children's Rights (OPCR) has, since its inception in 1983, fervently called for the introduction of a free, mandatory and non-judiciary system of family mediation.

Family mediation is a conflict resolution procedure that benefits every person involved and represents the most effective way to settle conflicts and disputes between individuals who must remain in continuous and extended contact to ensure the well-being of their children, except in very specific cases where violence or abuse are proven to be present.

More importantly, family mediation focuses on and provides an effective means of preventing and reducing the strongest risk factor associated with child maladjustment: continued parental conflict before, during and after divorce/separation - whereas the legal system exacerbates the form of parental conflict that is the most damaging to children, namely that which focuses on the children.

Unlike a Superior Court Hearing, the family mediation process does not encourage or even allow spouses to list their grievances of each other. The purpose of mediation, which is far from being an adversarial process, is to reduce tension and frustration, establish an understanding of issues between spouses, and empower families to resolve these issues and to devise a mutually-agreed upon parenting plan that meets the best interests and needs of their children as well as that of all members of the extended family. The development of such a parenting plan is a crucial end-result of family mediation: it signals a change of attitude and behaviour on the part each parent and places the emphasis on the shared responsibilities of parents for all activities and problems affecting their children, including recreational activities, doctor's appointments, parent-teacher meetings, etc.

A couple experiencing a crisis obviously needs help, advice and support. It is imperative that parents are made aware of the impact of separation/divorce on children and are provided with the services they need to adequately understand and fulfill their responsibilities towards their children following separation. Family mediation affords families this opportunity.

a) Benefits of mediation

Family mediation offers many benefits. It promotes the peaceful resolution of conflicts. The principal strength of mediation lies in the fact that the parties to the conflict participate directly in the settlement process to reach a suitable agreement. As a consequence, they do not have the unpleasant feeling of having to submit to a judgment rendered by a third person, which increases the likelihood of the agreement lasting longer. Furthermore, the agreement reached is not perceived as being in the interests of any one individual but rather of all those involved. Parties are not left with the impression they have lost something. While family mediation does not result in gains for a particular spouse, it does not result in losses for the other either. Hence the sense of satisfaction felt by those who undergo mediation. By not promoting confrontation, the mediator can help parents focus on the well-being of the children involved and not lose sight of this crucial element throughout the process leading to an agreement. And the spirit of cooperation brought about by successful mediation produces benefits later on when it is time to revise the terms of the agreement following a change in the parties' situation.

A mediation pioneer, Mr. Justin Lévesque, a mediator and professor of the School of Social Work at the University of Montreal, has described the benefits of the mediation process in his articles. We summarize them below. According to Mr. Lévesque, family mediation:

- Is an alternative to the interminable quarrels that can result from a break-up;
- Goes beyond conflict and terminates the marital relationship with dignity;
- Permits dialogue that fosters better communication between former spouses;
- Permits more flexibility than the court as regards the terms of an agreement (ex. shared custody on a monthly rather than weekly basis);
- Is more economical;
- Takes less time;
- Does not seek a guilty party;
- Involves fathers to a greater degree;
- Encourages greater compliance with agreements than in the case of court judgments;
- Promotes more regular payment of support;
- Enables the parties to learn conflict resolution skills that can be used in other areas of life (educational aspect of mediation);
- Promotes greater acceptance of the conclusions of divorce;
- Enables parents to remain parents.

According to Carmichael (1999), the advantages of family mediation can be grouped in at least five areas:

Mediation promotes cooperation and compromise
Family mediation offers the advantage of addressing separation in a much more therapeutic way. It contributes to produce positive outcomes by helping families learn to work together and develop skills to resolve future disputes. Mediation promotes cooperation and compromise, which leads to greater compliance because the outcomes are directed by the parties. The long-term effects are less re-litigation and less stress for all family members.

Mediation resolves both legal and emotional issues
Mediation provides a flexible process that can address both of these areas. Litigation is focused on and limited to only addressing legal issues. The rules of procedure are clear and the courts do not have time to analyse the parties' emotions, aggressiveness or frustrations. Clients often tell their lawyers that they would like the court to be made aware of certain facts that from the point of view of jurisprudence are considered immaterial as evidence. Family mediation definitely offers more latitude in this respect and, even more importantly, provides an opportunity to tackle outstanding emotional conflicts which, when they are not resolved, cause the spouses and children to experience long-term negative consequences, as we have seen.

Mediation responds to children's best interests
Mediation encourages parents to reach agreements that meet the needs of their children. The process is flexible enough that the mediator can meet with the children, when necessary.

Mediation saves time and money
There is evidence to support family mediation is less costly than litigation and leads to a quicker resolution of disputes. According to the family mediation pilot project submitted by Ellis

Research Associates of Ontario (1994), total per-hour court costs including the judge, clerk and court reporters is $466.29, whereas the total cost for mediation is $96.30, including the secretary's time. According to the Cabinet brief submitted by the Hon. Gilles Rémillard (Minister of Justice), Marc-Yvan Côté (Minister of Health) and Violette Trépanier (Minister Responsible for the Family) on January 31st, 1992, ten percent of cases heard by the Superior Court are family cases, but the Court allocates 86 per cent of its total hearing time to these cases (Rémillard, 1992). Family mediation would relieve the courts of these cases, while building longer-lasting agreements and reducing the number of applications for amendments to the initial agreement.

Mediation empowers families

Reaching their own agreement increases the parties' personal autonomy and reduces state intervention. Parties are free to control the process, raise issues they consider important and discuss the facts they believe are relevant, rather than those picked by the court. This is unrestricted by court rules or legal precedents, which narrow the options for a solution. Parties are more likely to comply and report a greater sense of user satisfaction than parties going through the court system (Carmichael, 1999).

Owing to these advantages, mediation services are geared to help parents resolve disputes about their children, to encourage them to formalize their custody and access arrangements and to promote children's interaction with both parents. Evidence also points at its effectiveness in addressing the problem of enforcing access orders as well as compliance with support orders.

A national study conducted by the Department of Justice Canada under the Child Support Initiative on reasons people pay or do not pay child support found that people who pay share the following characteristics:

- They pay immediately after separation, rather than waiting for a formal agreement on custody and access;
- They consistently spend significant time with children after the separation;
- They are actively involved in the leisure activities of the children, as well as in decisions about care, such as decisions about schooling, medical and dental issues, and discipline;
- And they offer a "real second home" (as viewed by both the payer and the recipient) for the children, even without a formal shared custody arrangement (Department of Justice Canada, 2002).

Measures that reinforce or promote the development of these characteristics, such as mediation, would therefore be expected to increase the child support payment rate.

In its 1988 report, the Department of Justice Canada stated that agreed-upon support payment amounts are 12 to 20 per cent higher as a result of mediation and that furthermore the support payment rate is greater among people who have undergone mediation than among other couples (Richardson, 1998).

According to respondents to the National Longitudinal Survey of Children and Youth, children covered by a private agreement between the parents are more likely to receive regular support payments than are children whose parents have arrangements under a court order. Two-thirds of children under private agreements benefited from regular support payments compared to 43

percent of children whose parents had a court-ordered agreement. Moreover, cases in which there have been no payments in the last six months are much more common among parents who have a court order than among those with a private agreement (30 percent versus 14 percent) (Child Support Team, 2000; Department of Justice Canada, 2002).

The regularity of payments appears strongly related to the likelihood of fathers maintaining frequent contact with their children. The impact of this relationship remains important even after taking into account the type of custody and child support arrangements, the type of union, the level of tension between parents, and the time elapsed since separation (Child Support Team, 2000; Department of Justice Canada, 2002).

b) The notion of obligation

We have seen that mediation, by opposition to litigation, offers many benefits especially in terms of: decreasing the level of conflict between parents; making parents aware of their responsibilities and of the importance of maintaining a parental relation with their children; and enabling parties to reach a consensual agreement that meets their needs and that of their children. However, for mediation to be effective, certain conditions must be met:

1. All parties considering divorce or separation should be provided with sufficient information on the process and benefits of mediation to consider it as a legitimate and viable alternative to litigation. This is not the case currently. Parents tend to underestimate the effects of divorce on their children (Richardson, 1988) and to initiate court proceedings without being aware of the consequences for their children and future family interactions;
2. Legislation should provide parents with strong and unequivocal incentives to at least try out mediation, including but not limited to free sessions and the obligation to attend an information session on mediation. The sticking point for the opponents of mediation appears to be the term "mandatory". These people are apparently opposed to the idea of compromising the spouses' free choice as to whether they will rely on mediation to resolve their situation. We believe this choice is not violated by mandatory mediation. On the contrary, it will become a more informed choice because the spouses will have an alternative, a choice to manage their conflict themselves. Others even add that mediation should not be mandatory since 80 per cent of cases involving corollary relief (custody, access, support and the division of property) are settled before trial. We feel that this statement disregards the actual situation that spouses experience after the settlement. Although it is true that 80 per cent of cases are settled out of court, it is also true that many of those agreements are not complied with by the parties. The proof of this resides in the fact that the Quebec National Assembly has had to legislate to ensure that alimony is paid (Act Facilitating the Payment of Alimony);
3. Mediation is an alternative to litigation rather than a prerequisite or preparatory stage to litigation. Mediation focuses on peaceful conflict resolution and cannot be expected to function properly within the framework of a system that promotes conflict. As a matter of fact, mediation is more effective when applied before parties are exposed to the adversarial system. From the moment the parties have consulted a lawyer to prepare for divorce proceedings, their perception of the system is one of confrontation. The parties have had to prepare for proceedings in which it often appears to be necessary to present their respective versions of the facts, with each party trying to gain the upper hand. They feel they have no

other choice but to fight for what they want. Consequently, if the first mandatory step is to consult a mediator and then to seek legal information from a legal expert, the outcome will definitely be different;

4. Mediation takes time. Sufficient time should be allocated for mediation sessions to allow the mediator to address most if not all significant aspects of the break-up. 12 hours of mediation represent a minimum;
5. Mediation requires highly qualified and trained mediators.

It is for these reasons that we recommend that mediation be mandatory, free and non-judiciary.

On September 1st, 1997, the Government of Quebec enacted Bill 65, requiring all couples with children to attend a mandatory information session explaining family mediation before the parties are heard in court. In this way, when a couple, whether they are married or not, is in conflict over child custody and support, family assets or any other property right resulting from the marriage or the support of one of the parties, the couple must attend an information session before appearing in court. The second progress report of the Quebec Family Mediation Implementation Follow-up Committee, published in June 2001, documents the results of the program after three years of it being in operation, illustrating how effective the procedure is as well as under what conditions it is effective. We reproduce below the most salient features of this report:

- Since its implementation in 1997 up to December 2000, mediation achieved an average success rate of 73.6% (this rate is calculated by adding up the number of cases that resulted in either a partial or full agreement). The success rate of mediation has shown a steady yearly increase, going from 69.2% in 1997 to 73.9% in 2000. The rate of success was higher when mediation occurred before legal proceedings (76.5% versus 72%) and 71% of cases ended with a full agreement when mediation took place before separation or divorce actions are filed. Conversely, when couples filed separation or divorce actions before entering mediation, no agreement was reached in 29.8% of cases compared to 18.2% for couples who underwent mediation before initiating legal actions.

- 95.6% of couples had been informed through a lawyer that they could be exempted from the mandatory mediation information session by way of a declaration of serious motive, while most did not seem to know of the existence of mediation or were often misinformed about the process.

- The most frequent motives raised by participants to withdraw from mediation were, in order, the cost of additional sessions beyond the six sessions offered free of charge as part of Bill 65 and the low income situation of parties, supporting the notion that free mediation sessions constitute a powerful incentive for couples with children to make use of mediation.

- Some judges mentioned that cases involving couples who benefited from mediation take less court time, illustrating the procedure's effectiveness in reducing conflicts over child custody and support and visitation rights.

- When comparing data on custody situations resulting from mediation and court orders, it is apparent that children have more access to both of their parents when the latter have gone through family mediation.

- 53% of the program's mediators indicated that on average 58% of the couples who wanted only to obtain information on mediation during the mandatory information session went on to participate in at least one mediation session.

In view of these results, it is obvious that the obligation to attend an information session on mediation and the offer of free mediation sessions for couples with children are key incentives in furthering the implementation and development of family mediation as an alternative to litigation. Without this obligation, it would be difficult to operate the much-needed changes in attitude and behaviour regarding the consequences of divorce and separation. As a matter of fact, the Department of Justice Canada, in its 1988 report, recognized that a number of couples who had been required to enter mediation would never have considered that option if they had not been induced to it (Richardson, 1998).

Children have no choice but to live with the rupture of their parents. At the very least, mandatory mediation provides them with a greater chance that their parents will reach an agreement that meets their needs and respects their right to have regular contact with both parents. Furthermore, while no evidence exists to suggest that there might be negative effects in requiring the parties to attend at least one mediation session, there is ample evidence to the effect that a court action, in addition to promoting confrontation, could kill any remaining healthy components of the relationship between parents. Which is certainly not in the best interests of anyone, least of all the children.

Knowing perfectly well that angry human beings do not necessarily make the right decisions instinctively, we think it is essential that couples be guided through the separation process so that they can subsequently make an informed choice as to the type of settlement they wish to reach. Even if it is only out of basic consideration for this reality and out of respect for human kind, family mediation should be made mandatory.

Despite the fact that there are many proven substantial advantages to the mediation of family related matters, Bill C-22 merely places an onus on a legal advisor to advise the client of mediation services known to the lawyer (i.e. section 9(2) of the *Divorce Act* and Clause 7 of the Bill). This raises the possibility that a lawyer who prefers litigation to mediation may elect to make a marginal effort to be informed about mediation services rendering any intended positive obligation under this section trivial. The results presented in the second progress report of the Quebec Family Mediation Implementation Follow-up Committee have shown that this is a legitimate concern.

We therefore recommend that the legislation be more specific to ensure that the parties at least explore the viability of mediation in a meaningful way. Information on mediation should be provided as soon as possible, within days or a week at maximum, to prevent hardening of positions and escalation of conflict between the two parties. Early intervention is the key. The goal of the mediation process in this early stage should be to sensitize and provide parents with the information and tools they need to develop an effective parental plan before entering litigation and as a means to avoid litigation.

Another concern is that although the court can make an order pertaining to alternative dispute resolution, the issuance of such an order is conditional on the consent of both parents. In our point of view, the legislation should give the court discretion to impose at least six one-hour and a quarter mediation sessions where it is evident that a party has no substantial reason to reject mediation. Mediation was proven to increase amounts and compliance with parenting orders, which ultimately benefit the children.

Training for Mediators

The legal system is by nature an adversarial system. Based on their academic and professional training, lawyers try to obtain maximum concessions for their clients. Except for those who practise mediation, lawyers are trained to negotiate, not to mediate. There is a fundamental difference between the two methods of reaching an agreement.

A mediator makes the parents aware that they must consider their children's best interests and needs. The mediator should preferably be a psychologist or a social worker. His or her understanding of human nature, awareness of family dynamics and perception of psychological reactions make that person the most qualified to intervene in these situations.

The mediator's role is to inform parents of the harmful consequences of divorce for their children and to make them aware that their relationship with their children continues even if the couple is no longer together. Specialized family mediators realize that they must keep their knowledge in the field up to date. Thorough training would enable mediators to understand all the subtleties that can arise during the mediation process.

PREVENTION AND RECONCILIATION SYSTEM FOR COUPLES AND FAMILIES IN DIFFICULTY

In our approach to establishing mechanisms that would be more responsive to the parties' needs, it is important to offer a reconciliation system to couples that are hesitating between working on their marital relationship or instituting divorce proceedings.

The family must be recognized as a fundamental collective value. We must continue our efforts to ensure a certain stability for families and, in particular, provide parents with the necessary support and tools to uphold their responsibilities toward their children both before, during and after separation.

The Conseil de la famille published a guide for public and private stakeholders entitled "PENSER ET AGIR FAMILLE" [Family Thinking and Acting] (notice no. 89.2). It was thought that there was a need for a well-established family policy. The idea conveyed was an excellent one, as expressed at page 12 of their document: " *A small effort when prevention is still possible will avoid major intervention in a crisis*". The family assistance information sector must be expanded.

ABANDONING ADVERSARIAL TERMINOLOGY

The use of certain words necessarily creates winners and losers. Replacing those terms with others that are more motivating for parents is not complicated.

For example, we propose that "legal custody" be replaced by "parental responsibilities" and "alimony" by "family support". These are only examples based on our line of thinking, which would help substitute a social perspective for the adversarial approach. We have even received comments from a few parents to the effect that the use of the term "single-parent" was not appropriate. The dictionary definition of single-parent states, "where there is only one parent", even though the child still has two parents after separation.

While seemingly minor, these terms are highly charged in that they perpetuate a culture of conflict and contribute to disrupt family unity.

Bill C-22 does introduce changes in the terminology used in *Divorce Act*, replacing terms such as "custody" and "access" with gentler, less adversarial language.

However, in Washington, the U.K. and Australia, where significant changes were made to the terminology of custody and access, the available research does indicate that the legislation has not yet had positive benefits in terms of reducing litigation and conflict between parents (Putting Children First, 2002). Which should not surprise anyone, since it is generally recognized that legislative change without service enhancement or reform may have limited or no impact on the way families and children deal with family breakdown and reconstruction. The need for services and family sensitive dispute resolution mechanisms to support families in dealing with separation issues in the best way for the children has been a dominant theme of the custody reform discussion (Putting Children First, 2002).

SPECIALIZED FAMILY COURT

The Organization for the Protection of Children's Rights recommends that a specialized Court be established and presided by Superior Court Justices. The specialized Court would have full and exclusive authority to hear all family law cases.

Specialized Court judges would be thoroughly trained in the legal and psychosocial aspects of family issues. Since they would hear only family law cases, they would have the opportunity to develop expertise in this field of law. Family conflict resolution is extremely important and very difficult and deserves the special attention of judges who are dedicated and committed to it. It is not uncommon for a Superior Court Judge, in the performance of his/her duties, to hear cases involving Corporate Law, Labour Law, Contractual Liability and so on. His/Her experience may therefore be highly varied and he/she may not have had the opportunity to develop an extensive knowledge of family law. A judge who hears only family law cases would be in a position to develop that kind of expertise.

In addition to family law experience, Specialized Court judges must be sensitive to children's rights and needs. They should be trained in psychology, mediation, child development, and interpersonal relations. Among other things, we must promote extensive psychosocial training so that judges are able to assess the impact of their decisions.

By combining psychosocial knowledge with their legal expertise, judges would be in a better position to act as moderators as well as to detect false statements and limit abuses of the system.

Various approaches may be used with regard to the Specialized Court. Judges may begin by asking the parties why mediation failed. In this way, they would immediately ascertain the parties' weaknesses and integrate the positive aspects of mediation into the legal system. There would thus be a certain follow-up to our mediation process. Since this would be a Specialized Court, decisions could and should be rendered sooner.

It currently takes from one to two years on average to settle contested divorces, excluding all the related petitions. Our purpose in proposing a Specialized Court is to offset all these negative effects.

Unified family courts

The Government of Canada has committed 16.1 Million $ to the expansion of unified family courts across the country (62 new judges with special expertise in family law and in psychosocial difficulties facing families during and after separation). The objective of unified family courts is to provide a single forum to hear all or most family matters either as a stand alone court or as a division of an existing court, simplified rules and procedures, judges who specialize in family law and a wide range of strategies and services for dispute resolution such as early intervention programs, parenting education, make-up time policies, family and child counselling and mediation.

While this objective is laudable, there are some major concerns that cast serious doubts on how effective these courts will be in reducing the potential for further conflict and facilitate timely, long-term resolution of family disputes. First, non-judicial dispute resolution mechanisms such as family mediation and parenting education are considered as support services to the court

whereas they should be viewed as psychosocial services designed to help spouses resolve their conflicts *before* divorce proceedings are even instituted. In effect, these services are integrated and subordinated to a legal framework, which, as we have seen, does not sufficiently recognize the concept of joint parenting and the importance of maintaining relationships between children and their parents and extended family members, thereby severely limiting the effectiveness of said services. From the moment the parties have consulted a lawyer to prepare for divorce proceedings or petitioned the court, it is already too late: the opportunity to defuse or reduce the parental conflict that is so harmful to children is lost. Second, judges should not only be required to develop an expertise in family law, but also receive extensive and on-going training on the social, psychological and emotional impact of divorce and alternative dispute resolution mechanisms as a necessary service improvement. Otherwise, how can they be expected to promote the use of these non-judiciary mechanisms?

FORMAL COMPLAINTS OFFICE

In the same line of thinking and to be as realistic as possible, we believe it would be more appropriate to have a Formal Complaints Office in situations where support (alimony) is not paid or visitation rights are not respected. A Formal Complaints Office would help address these situations.

Our concern once again is to intervene quickly so that children are not harmed by any delays. This service must be effective and simple because default often involves lost time, money, working hours and emotional costs to the alimony creditor. The creditor would report to the Formal Complaints Office and a qualified resource person would prepare the complaint. This would be an out-of-court procedure requiring no legal representation.

Second, this official would meet the debtor to determine the cause of delay in payment of the alimony (support) or denial of access. Some of these problems start with a lack of communication, and a Formal Complaints Office would allow to immediately correct the situation.

It is important that this resource person insist on making the debtor aware of the importance of his or her monetary and emotional contribution to the child. A method such as this one would provide follow-up to our mediation procedure and Specialized Court. Should this person realize that the situation of the parties has changed, he or she may even induce the parties to return to mediation to update their agreement.

For alimony (support) that is not paid after this process, a collection system could then be implemented. As the percentage of unpaid alimony would decline enormously as a result of all the measures taken, the cost of the collection system would therefore be lower. However, the most desired effect would be a social one. These procedures may call for greater government involvement, but the result will be less crime, less school dropouts, and less mental and health problems over the long term.

INTEGRATION OF PARENTAL RESPONSIBILITIES INTO THE EDUCATION SYSTEM

In its 1988 report, the Department of Justice Canada stated that parents tend to underestimate the effects of divorce on their children (Richardson, 1988).

Parents' understanding of their responsibilities toward their children and the fact that they belong in their lives both financially and emotionally begins at birth.

It follows the individual's development from childhood to adulthood and is influenced by personal experiences and the models from the individual's environment. Parental responsibilities should therefore be promoted well before separation occurs. A prevention plan could help induce thorough and beneficial changes in perception and attitude in the short and long term.

As part of the plan, a parental responsibilities training program would be introduced for school age children. The program would be adapted to the children's level of development and would progress throughout their primary and secondary education. The program would be made a part of the existing curriculum and would be delivered during courses and discussions related to the family. As a result, the next generation would be in a better position to understand its commitments and assume parenting roles.

The program would provide children with the opportunity to learn about their rights, what being a parent means and the responsibilities it entails, how to distinguish between wants and needs, the basics of peaceful conflict resolution, the impact of separation and divorce, the range of support services available to them and other issues conducive to the development of good parenting skills.

Making the present generation aware of the fact that they must uphold their parental responsibilities following a separation or divorce would have an immediate and lasting impact. By tackling the problem at its source, we would be leading people in the right direction.

This plan would be complemented by the creation of mandatory parent education programs for separated or divorcing parents that would teach them about the impact of separation on children and adults, on ways parents can best help their children through this difficult time, on the benefits for children of contact with both parents, on the legal process and the range of dispute resolution options available both within and outside of the justice system, including mediation and the court process, and on how the child support guidelines work and how to find out more about them.

CONCLUSION

CONSIDERING that it is both a right and in the best interests of children to maintain personal relations and direct contact with both parents on a regular basis;

CONSIDERING that an increasing number of Canadian children are experiencing their parents' separation and divorce and do so at an earlier age;

CONSIDERING that there is consistent evidence indicating a significant difference between children from divorced and intact families on various indices of well-being, such as academic success, parent-child relationships and emotional and behavioural adjustment;

CONSIDERING that, of all the things that can affect children, continued parental conflict before, during and after separation and divorce, particularly if it is focussed on the child, is a strong predictor and risk factor of child maladjustment and can have long-term effects on children's well-being even after the parental conflict ceases;

CONSIDERING that the legal system as it is now exacerbates the form of parental conflict that is the most damaging to children;

CONSIDERING that policies and programs that decrease children's exposure to such conflict are those most likely to be beneficial;

CONSIDERING that all programs and policies determined to be conducive to the best interests and well-being of children are of a non-judiciary nature, focusing on the need for education and prevention before divorce proceedings are even filed or considered;

AND KNOWING THAT mediation has proven itself as a way to help parents resolve disputes about their children, to encourage them to formalize their custody and access arrangements, to promote children's interaction with both parents and to increase amounts and compliance with parenting orders, all of which ultimately benefit the children;

WE URGE THE GOVERNMENT:

- To shift the focus of legislation away from the rights of the mother and/or the father towards the rights of the child and the duties and responsibilities of parents with regard to ensuring the well-being of their children;
- To endorse our recommendations and provide a legal framework as well as the incentives necessary to facilitate the implementation and development of psychosocial services parents need to adequately understand and fulfill their responsibilities towards their children before, during and after separation.

It is only through such a comprehensive overhaul of the outdated assumptions underlying current family laws that the best interests as well as the rights of children will truly be recognized and integrated into the social and legal structure of our society. For the greater good of children, families and society as a whole.

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SUMMARY OF RECOMMENDATIONS

1. Putting into place family mediation services that are free, mandatory and non-judicial for all couples experiencing marital difficulties or going through divorce proceedings. Such services should also be available for grandparents and other family members in crisis;

2. The creation of a system of family reconciliation that would be available at all times for couples and families in crisis;

3. The elimination of terms that create friction between the parties. For instance, replace the expressions "legal custody" by "parental responsibilities", "support orders" by "financial responsibilities of parents" and “parenting orders” by “parenting responsibilities”.

4. The creation of a court specializing in family matters where judges have an extensive background in family law as well as in psychosocial matters;

5. The creation of an office of formal complaints;

6. The creation of courses at the elementary and secondary level in order to educate and sensitize students about parental responsibilities. The goal being to ensure that the next generation may adequately understand and assume its role as parents.