

THE NEW DIVORCE LAW

A Commentary on the Divorce Act, 1985

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Preface

This book is intended to provide an introductory, but not elementary, guide to the Divorce Act, 1985, which came into force in Canada on June 1, 1986. The new Act replaces the former (and only previous) federal divorce legislation, which had been in effect since July 2, 1968.

In addition, the book outlines the companion enforcement legislation entitled the Family Orders Enforcement Assistance Act, which received Royal Assent, concurrently with the new Divorce Act, on February 13, 1986, but which has not yet been proclaimed in force. The full importance of this additional Act will not emerge until the conclusion of a number of Federal-Provincial Government agreements facilitating its operation.

The Divorce Act of 1968 made a profound change in Canadian family law and after almost eighteen years in force was ripe for overhaul. Although some critics might wish that the reforms legislated by the Divorce Act, 1985 had been more radical, there can be no doubt that the legislation's substantive and procedural changes in, and additions to, the previous law aim at making Canadian divorce law both more humane and effective.

The book is not intended to replace existing practitioner works such as Davies' *Family Law in Canada* or the looseleaf services edited by Payne/Bégin and MacDonald/Ferrier.

While both authors have legal backgrounds, they have endeavoured to include historical and social science references to assist researchers and practitioners in a variety of professions. Thus, the book may have appeal to not only law students and lawyers, but also to those studying and practising in the disciplines of social work, sociology and psychology, and even those lay readers who wish to delve into the area of divorce law at some depth. Chapters 1 to 3, which deal with the history and social context of divorce, and the philosophy of the new Act, as well as Chapter 4 on parenting and Chapter 10 on mediation, may be of particular interest to persons not schooled in the law.

The idea for this book originated with Bill C-10, which was introduced into Parliament in January, 1984 by a previous federal govern-

ment administration with the intention of amending the Divorce Act. That Bill died on the House of Commons Order Paper when Parliament was dissolved and a federal election called in July, 1984. Writing began after the new federal administration sponsored Bill C-47, An Act Respecting Divorce and Corollary Relief and the related enforcement legislation, in May, 1985.

It is a tribute to Geralyn Christmas, Ken Mathies and their colleagues at Carswell that this book has finally reached publication, despite a fire at Dalhousie University which destroyed some of the original manuscript and much of the Law Library, and notwithstanding myriad amendments which emerged during passage of Bill C-47 through Parliament, rendering uncertain, until lately, the precise form the resulting statute titled the Divorce Act, 1985 would ultimately take.

The authors are obliged to our secretaries, namely Lynn Richards, Marilee Matheson, Helen M. Kavanagh, Collette Ferrie and Denise Manuel, who typed the manuscript, often in difficult circumstances and against the clock.

The authors acknowledge with gratitude the work of our research assistants Gillian Allen and Glenda C. Best, and the advice of Suzanne Starnes of the Nova Scotia Bar who read part of this book in manuscript form.

Finally, Professor Bissett-Johnson is indebted for the support of his wife, Winifred, in the course of his authorship of this book and trusts she will never have reason to consult it. Day, Q.C., whose marital status precludes the aspiration of his co-author, is obliged for the constant encouragement of his parents, Clarence and Chorine Day.

The book's shortcomings are, of course, the authors' responsibility.

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