

Payne's Commentaries

on the

Divorce Act,

1985



86128
~~D(9)52.5~~
D(9)57.115.1
P346

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Divorce Act, 1985

by

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De Boo

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ISBN 0-88820-225-3

Richard De Boo Publishers
A Division of International Thomson Limited
81 Curlew Drive
Don Mills, Ontario M3A 3P7

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ACKNOWLEDGEMENTS

The author wishes to acknowledge the contributions of his research assistant, Margaret Lefevre, B.A., LL.B., who worked assiduously during the summer of 1985 in preparing detailed notes on the first reading of Bill C-47. He also extends his sincerest gratitude to Barry Garnet and Norman MacInnes of Richard De Boo Publishers for their unstinting support in the preparation and editing of this text.

Special thanks are due to Mona Carkner and Louise Carriere for their typing of the various drafts and the final manuscript under extreme pressures of time.

By consent, the author dedicates this text to his wife, Marilyn, for keeping him humble and in the fondest hope that she will never take advantage of it or him.

Julien D. Payne, Q.C., LL.D.

PREFACE

Once Parliament has spoken, social control over the law passes to lawyers and the courts who are responsible for administering it. Notions of justice, fairness or reasonableness, though not totally abstract, lend themselves to differing perceptions even if agreement can be reached respecting the so-called objective facts of the particular case. Like beauty, they lie in the eyes of the beholder. Indeed, the facts of a case, in reality, include the attitudes and perspectives of the decision-maker.

Many pitfalls face an author seeking to analyze new legislation. There is no substitute for the benefit of hindsight. Furthermore, omniscience has never been defined as a prerogative of authors, lawyers, or judges. Whether the opinions of the author are shared by his readership is not of fundamental importance, if his opinions serve as a launching pad for analysis and reflection.

Where practicable, the author seeks to buttress his opinions by reference to previous case law. As any experienced family law practitioner will attest, however, previous decisions are readily distinguishable where the governing statute confers a wide judicial discretion, such as that conferred in matters pertaining to spousal and child support and to custody or access arising by way of corollary relief under the *Divorce Act, 1985*.

Subject to the aforementioned caveats, the following commentaries may offer some useful insight into the prospective operation of Canada's new divorce law.

This book constitutes a companion volume to *Payne's Divorce and Family Law Digest* (formerly entitled *Payne's Digest on Divorce in Canada*), a looseleaf service of Richard De Boo Publishers, Don Mills, Ontario. Unlike the *Digest*, this text does not purport to examine judicial decisions in detail. It is intended to provide an overall commentary on the relevant sections of the *Divorce Act, 1985*. Where appropriate, it cites opinions from various papers previously published in the *Digest*.

The format of the *Digest* is also followed in this text. Accordingly, the sections of the *Divorce Act, 1985* are presented in their numerical sequence under designated subheadings.

An overview of the *Divorce Act, 1985* is available to the reader who examines the Table of Contents. The book opens with a brief introduction to the changes introduced by the *Divorce Act, 1985*. A concordance chart comparing the *Divorce Act, 1985* with its predecessor, the *Divorce Act, R.S.C. 1970, c. D-8* appears at the conclusion of the commentary.

The final section of the book includes the text of the *Divorce Act, 1985* and of the *Family Orders and Agreements Enforcement Assistance Act*. These

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statutes are reproduced in both the English and French languages. The *Family Orders and Agreements Enforcement Assistance Act* is designed to promote a more effective system of enforcement with respect to support orders or agreements and custody and access orders that are contravened by a spouse or former spouse. This Act provides for the release of information from designated federal information banks that will assist in locating missing spouses or parents who are in breach of court orders for support, custody or access. It also complements the *Garnishment, Attachment and Pension Diversion Act*, S.C. 1980-81-82-83, c. 100, as amended by S.C. 1980-81-82-83, c. 171 and S.C. 1984, c. 40, section 31, by providing for the garnishment of designated federal moneys to satisfy support orders or agreements that are in default.

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December 18, 1985.

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