Changing Divorce Laws Essay, Research Paper

In 1995, Statistics Canada data shows that 30% of marriages split (McGovern). Since the 1960’s, marriage and divorce have been undergoing profound changes which have altered the meaning of marriage, the chances of its ending in divorce and the circumstances attached to marriage. These changes have made it easier for couples to obtain a divorce due to the changing laws and changing morals of society. The changes include three new grounds needed to prove marital breakdown, such as your spouse committing adultery, your spouse causing mental or physical cruelty or a separation of a year it was previously three years. Divorce also impacts the family as a whole, not only the children but also the two parties involved. The government needs to make changes to the Divorce Act as people more and more are getting divorced as it brings a negative impact to those who wish to marry in the future.

Over the years divorce has been easier to obtain. Divorce was extremely uncommon in Canada until after WWII. Until that time, Canada had one of the lowest divorce rates in the Western World, this is because opinions by social and religious leaders condemned divorce as a threat to the family. The strength of this opinion prevented the easing of Canada’s divorce laws. Consequently, access to divorce in Canada was extremely limited until 1968. Until this time, getting married usually meant forever. Divorce was illegal unless one mate was proven adulterous. When divorce did happen, one party was believed legally innocent, the other party guilty, and that judgment affected the financial settlement. Both partners’ social status was sufficiently hurt – most people tried hard to avoid divorce if they could.

By 1968, however, the sexual “revolution” was in full swing. Couples were rebelling against old sexual restraints, a trend supported by the exaggerations of cash-hungry journalists and movie-makers. Monogamy was out, ‘free love’ thrived, and divorce represented freedom. Enough people wanted divorce by the late 1960’s that the pressure was on to change the law.

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After long and bitter parliamentary debates, the federal Divorce Act was revised. Additional grounds for divorce included desertion, imprisonment, or separation for at least three years plus marital offences of physical and mental cruelty. The new law eliminated the need to appear in court in most cases – often the most personally humiliating experience in the older legal procedure. The law later changed again in 1985, where it eased off yet again, to allow divorces after only a year’s separation. The broad trend in Canada was to make divorce easier. It was accomplished by making it less fault-oriented where most divorce applications to the courts are no longer contested which eliminates the need for a formal court hearing where both parties testify and ask for different things. With “no fault” splits in place, the social stigma of divorce shrank. As more people divorced the stigma weakened further. The cycle continued while the divorce rate soared. In 1951, there had been only one divorce for every 24 marriages, by 1987, one couple divorced every two couples that married (McGovern). In 1993, there were 78 000 divorces across Canada, compared to about 11 000 in 1968 before the new divorce laws came into effect (McGovern).

Reasons for the incredible rise in the divorce rate are not entirely clear, but contributing factors include longer life expectancies, which increases the possibility of differences in the individual of both the wife and husband. The greater labor force participation of women and improved social security, meant that wives are less economically dependant on their husbands than in the past. The lessening of religious and social sanctions against divorce and also the movement towards a more “me”-oriented ethnic which stresses self-actualization over maintenance of the family unit. All of these factors suggest that an increased divorce rate may be an indication that expectations about the quality of marriage have risen and that many people prefer a divorce to an unhappy marriage. For these reasons, the divorce rate is on the increase

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and it is easier for couples to obtain a divorce using the three conditions: separation of a year, adultery, mental or physical cruelty.

The Divorce Act specifies the sole grounds for divorce as marital breakdown, and provides for three basic ways for proving it. First, you and your spouse have to be separated for one year. This is the easiest to prove and the most commonly used ground for divorce. The Act does allow for periods of attempted reconciliation lasting for 90 days or less – these periods do not “reset the clock” on your separation. However, if you live together for 91 days or more and then re-separate, the 12 month cycle starts again. The reason for your separation does not matter; all that matters is that you are in fact separated. You can also be “living separate and apart” while living in the same dwelling, although it is difficult to prove. You must be living entirely different lives – each doing you own cooking, laundry, and home maintenance – and, of course, not sharing the same bed. Second, your spouse has committed adultery. You do not have to name the person with whom your spouse committed adultery unless you are making some immediate claim against that party. You also do not have to find your spouse in bed with the other party, you only need to establish a high probability that adultery occurred – especially if it is not denied by the adulterous spouse. The simplest way to prove adultery is if your spouse is willing to admit it. You cannot invent the adultery simply as a way of obtaining a divorce. The act must have truly occurred and it must not have been condoned by yourself. Third, your spouse has treated you with intolerable mental or physical cruelty. The courts have interpreted cruelty as conduct that would make unbearable if you continued cohabitation. If your spouse causes unnecessary pain to you, either physically or emotionally, you may have grounds, you must be able to show that cruelty was of a “grave and weighty” nature, and not due to minor incompatibilities or outlooks between you and your spouse. The test of cruelty is quite

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subjective, and may vary considerably by circumstance and the parties involved. Under these three conditions a divorce can be achieved.

Divorce has a big impact on the family including the children and the two parties involved. First, evidence continues to mount showing that divorces often seriously damage children. Families facing divorce or separation have to be able to recognize the problem. There are stresses associated with divorce and separation such as less time with children, loss of family and friends, relocation, endless uncertainty, and unsolved parental issues. Parents can unwittingly pass stress on to the child by fighting in front of them, yelling, making child choose between them, putting child in the middle of conflicts, or belittling the other parent. In Canada, more than 10 000 children were affected by divorce in 1994 (Gallagher). At least 60% of children will feel rejected by at least one parent and about 60% of second marriages end in divorce because families are unable to blend (Gallagher). Children are more harmed by continuing parental conflict than they are by divorce.

Second, women are also affected by a divorce or separation. Statistics Canada reports that 64% of divorced men remarry compared to only 52% of divorced women (McGovern). The chances of a second marriage lasting are far worse than a first marriage – an estimated 60% of second marriages end up on the rocks (McGovern). For most women separation or divorce results in drastic reductions in income and a decline in living standards. Regardless of who calls the marriage off, women are almost always far worse financially in divorce. Two-thirds of the women who receive alimony are lone mothers whose annual alimony income averages $4 900 or 14% of their total income of $33 500. Their ex-husbands pay out an average 9% of their total income of $55 400 (McGovern). A study conducted in 1988 for the Department of Justice found that after divorce, a woman’s average income was between 64% and 69% of men’s income

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(Eichler). Since in the majority of cases the children reside after divorce with the woman, the per capita income of the female post divorce household tends to be much smaller than that of the male post divorce household.

Third, fathers’ rights groups have held cross country hearings on how to change Canada’s 30 year old Divorce Act in 1998. In an article written by Ronda MacCharles in the Toronto Star, stated that Parliament heard submissions that non-custodial parents – often men – are unfairly denied access to their children after a divorce. The report makes 48 recommendations that suggest not only legal changes, but also a cultural shift on how adults must share the impact of divorce on children. Some of the recommendations include the elimination in law of the words ‘custody and access’ and the replacement of those notions with the concept of ‘shared parenting’ which it defines as shared decision-making about schools, residence and medical treatment. The terms ‘custody and access’ promote an adversial approach and emphasize parental labels such as custodial and non-custodial parent or primary care-giver as well as the notion of parental rights that stress ‘ownership’ instead of parental responsibilities. Other recommendations included to encourage all parents to develop a ‘parenting plan’ before separation that would outline how arguments would be settled. The committee would also like the courts not to favor one parent over another on the basis of gender when making their decision. If these proposals are implemented, they would represent one of the biggest overhauls to the 30 year old law since Canada adopted the notion of no fault divorce in 1985. In a following up article, the government accepted the committee’s suggestion for a co-coordinated nationwide approach to parents who fail to respect parenting orders and will also agree with the committee on recognizing the role of grandparents and other extended family members as significant in the child’s life. These

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changes are needed today as they provide for a new parenting system that is surely needed in today’s society.

There are a number of things society can do to make it harder to split, such as making tougher laws. The fallout from divorce is enough reason to rewrite the law to make it harder to break up. However, a change in law rarely leads to a change in society. The way to promote justice in this area is through property distribution and enforcement of child support. Others believe that divorce law is trending toward spousal lawsuits against former partners for marital misconduct. For example, in June 1993 a woman was allowed to sue her husband for concealing his bisexuality from her. With the new basis to obtain divorces, children are being corrupted and couples are corrupting themselves. Society needs to make a change in Canada’s divorce laws and realize that divorce is hurting the society as a whole.

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