

SUBMISSION BY THE ONTARIO COMMITTEE ON THE STATUS OF WOMEN

RESPECTING BILL 140 - An Act to Reform the Law respecting
Property Rights and Support Obligations between Married
Persons and in other Family Relationships

TO THE STANDING COMMITTEE ON THE ADMINISTRATION OF JUSTICE

With full recognition of the difficulty of drafting reform so that law remains meaningful in a rapidly changing society, we commend the Ministry of the Attorney General for putting forth Family Law Reform which recognizes marriage as an economic partnership in which both spouses have mutual rights and responsibilities.

This Submission deals primarily with two main areas in which we feel consideration should be given to amending the Act before it comes into force.

The first area has to do with the fact that financial responsibilities have been clearly set out in Part II, Section 12, where it is specifically stated that under the new legislation a wife would have an obligation to provide support for herself and for her husband, in accordance with need, to the extent that she is capable of doing so. It is not felt that equal emphasis has been given to mutual responsibilities for child care and household management. We have had recent evidence that some members of the Bench retain attitudes of sexual stereotyping and attribute certain characteristics according to gender. It must therefore be clearly established in the law that responsibilities for child care and household management are also the joint and equal legal responsibilities of both spouses.

In this regard, we submit that consideration should be given to retention of the anti-sexual stereotyping clause which is contained in Bill 75, Section 1, subsection 3 (c), which states in part that the husband or wife shall not be disentitled to any right to compensation or other interest flowing from a contribution by reason only of the relationship of husband and wife, or that the acts constituting the contribution are those of a reasonable spouse of that sex in the circumstances.

All of the above would serve to reinforce recognition of the very real contribution made by caring for children and household management. Also emphasized would be the fact that by remaining at home to perform these duties a spouse is foregoing opportunities to make money and obtain property by reason of the division of responsibility in the marriage. The inclusion of these principles in the law is necessary to provide the right to equality and not only a hope that equality will be obtained.

The second area concerns Part II, Section 15, subsection 3 (g) dealing with the Determination of amount of support. We feel very strongly that in order to lessen the bitterness of individual divorces, conduct should not be a factor in determining the amount of support. To include conduct in such a broad and vague manner offends many people's sense of justice.

Due to many factors such as socialization, the lesser earning capacity of women in the labour force and a shortage of viable alternatives in child care, many couples will continue to divide responsibilities in marriage in the traditional way, i.e. with the husband fulfilling the role of breadwinner and the wife as homemaker who manages the household and cares for the children. The majority of those making application for support will therefore continue to be women. If indeed conduct is broader than the concept of matrimonial fault, serious questions arise as to exactly which aspects of conduct will be assessed with respect to

a spouse whose responsibilities in the marriage have been those of child care and home management. Here again there is a danger that traditional attitudes of sexual stereotyping and expectations of appropriate behaviour based on gender are likely to be applied.

In any event, it is questionable whether any satisfactory determination can be arrived at with respect to whether or not one spouse has sole and ultimate responsibility for the conduct under consideration, or whether indeed the actions of both parties have generally contributed to the situation. At what must be considered a crucial time in the lives of the people concerned, a new law should concern itself with providing fair and constructive solutions. Retention of any element of conduct must be viewed as a factor which could possibly prevent reconciliation, encourage divorce and prove an impediment in making decent arrangements for children.

Further, the law governing support should not allow one spouse to have a coercive power over the other. It can only serve to perpetuate the legal tradition that one party must be 'innocent' and the other 'guilty'. The law can and should make it clear that provisions for economic readjustment in the event of marriage breakdown shall not be used as implements for translating the desire to inflict financial punishment upon a spouse who has betrayed the trust that marriage entails into legally enforceable vengeance. It is simplistic to believe that the causes of marriage breakdown can be neatly categorized according to 'guilt' and 'innocence'. The law of divorce has failed in its attempts to do so. Support rights and obligations that include conduct as a factor will merely perpetuate marriage as a legally sanctioned subordination of the personality of one spouse to the economic power of the other.

The purpose of the support obligation should be the economic rehabilitation of the dependent spouse and not the provision of reparations for real or fancied injuries that occurred during the marriage. We respectfully suggest

that the principles set out by the Law Reform Commission of Canada with respect to a right to maintenance which may be created by reasonable needs should be incorporated into this Act. These would be determined from:

- (a) the division of function in the marriage;
- (b) the express or tacit understanding of the spouses that one will maintain the other;
- (c) custodial arrangements made with respect to the children of the marriage;
- (d) the physical or mental disability of either spouse that affects his or her ability to maintain himself or herself; or
- (e) the inability of a spouse to obtain gainful employment.

Also in line with the recommendations of the Law Reform Commission of Canada the amount of maintenance should be determined by:

- (a) the reasonable needs of the spouse with a right to maintenance;
- (b) the reasonable needs of the spouse obliged to pay maintenance;
- (c) the property of each spouse after divorce;
- (d) the ability to pay of the spouse who is obliged to pay maintenance;
- (e) the ability of the spouse with a right to maintenance to contribute to his or her own maintenance; and
- (f) the obligations of each spouse towards the children of the marriage.

If it is found reasonable to impose a support obligation for the rehabilitation of the economically weaker spouse, it is felt equally reasonable to impose an obligation on the latter to do what he or she can to become self-sufficient. If a need is based on lost skills a maintained spouse should have a positive obligation to recover those skills within a reasonable time. If the lack of diligence in the discharge of this obligation is the type of 'conduct' the law aims to assess, it should be clearly spelled out

as an obligation and not stated as broadly and as vaguely as it is in Section 15, subsection 3 (g).

Consideration in support applications must also be given to other factors which were covered by the Ontario Law Reform Commission in Part VI of their recommendations on Support Obligations, page 94 under "Need" dealing with situations where it would be unreasonable due to the age of the spouse and the duration of the marriage to realistically expect that responsibility for his or her own support could be assumed.

We would therefore like to see Section 15, subsection 3 (g) repealed.

SUBMISSION BY THE ONTARIO COMMITTEE ON THE STATUS OF WOMEN

RESPECTING BILL 141 - The Marriage Act, 1976

TO THE STANDING COMMITTEE ON THE ADMINISTRATION OF JUSTICE

We recommend that under Section 5, subsection (2) consideration be given to raising the stipulated age to sixteen years or possibly even eighteen years.

We further recommend that consideration be given to incorporating in the Marriage Act, 1976 the requirement that prior to a licence being issued both parties to an intended marriage be required to attest to the fact that they are aware of their right to make a marriage contract outlining specific rights and obligations during marriage, as well as the law which will govern them as partners in a marriage.

Booklets such as the one on Family Law Reform presently being distributed by the Ministry of the Attorney General should be made available. We echo the sentiments of the Attorney General: 'family law is so fundamental to the lives of all of us' it is not enough simply to legislate, but should be seen as a positive duty on the part of legislators to inform those who will be governed by the laws.