

March 3, 1999

The Hon. Anne McLellan, P.C. M.P.
Minister of Justice and Attorney General of Canada
284 Wellington Street
Ottawa, Ontario
K1A 0H8

Dear Minister,

Re: Report of Special Joint Parliamentary Committee on Child Custody and Access

I am writing to you in my capacity as Chair of the National Family Law Section of the Canadian Bar Association. The Section is comprised of senior family law practitioners from across Canada. We understand that you and your officials are in the process of reviewing and responding to the above-noted Report and therefore wish to advise you of our general concerns. We hope, of course, to provide more detailed input into the development of any initiatives which may arise as a result of the Report.

The Section had the opportunity to present written and oral submissions to the Joint Committee. Many of these submissions were adopted in the Committee's Report. For your ease of reference, we are enclosing a copy of our written submission to the Committee.

Having reviewed the Report, we reiterate our position that the need for significant legislative reform has not been demonstrated. Rather, the problems which arise in the child custody and access system are a product largely of a lack of sufficient resources to help families deal with the consequences of separation. Whatever the superficial attraction may be of some of the Committee's proposals, substantially changing the legislative regime will not change the underlying reasons why profound conflict sometimes arises between divorcing spouses.

Consistent with this position, we recommended to the Committee that the government dedicate resources to a wide range of services to divert divorcing spouses from the litigation process when dealing with custody and access. Further, we recommended that the government fund parental education programs for divorcing spouses to understand better the effects of divorce on children, to minimize conflict and to help those spouses place the needs of their children first. We also recommended the expansion of unified family courts which allow for a more family-centred and multi-disciplinary approach to these questions.

We suggest that the loudest voices in favour of significant legislative change do not represent the majority of families facing divorce. In our experience as senior family lawyers, highly conflictual divorces comprise a small percentage of our practices. Further, problems such as persistent denial of access or false allegations of abuse -- both of which absorbed a significant portion of the Committee's and the media's time -- very seldom arise. Indeed, our experience is that non-exercise of access rights is a more prevalent problem than denial of access. As the Committee itself recognized, the evidence before it was anecdotal and necessarily slanted in the direction of extreme cases. We believe that legislating in response to extreme cases is inappropriate.

We therefore urge the government to take a moderate approach and not to radically reform the legislation without significant study and consultation. Adopting a new regime may cause serious disruptions and not solve the problems in the custody and access system. As the Committee notes and as we noted in our submission, jurisdictions which have radically altered their legislation have not met with much success.

In our submission to the Committee, we recommended minor changes to the *Divorce Act* which would improve the resolution of custody and access disputes. For instance, we recommended that the *Divorce Act* direct judges to consider a list of factors in assessing the best interests of the child. Many provincial statutes already do this. In addition, we recommended that the legislation set out a list of parental responsibilities which all parents would be required to discharge, unless otherwise ordered by a court. We also recommended that a custodial parent who wishes to relocate give 90-days notice of that intention, unless there are unforeseen circumstances.

Our Section does not wish to minimize the frustration and anguish which some have experienced with the custody and access system. Divorce is a difficult experience for most couples and sometimes gives rise to inappropriate reactions on the part of both custodial and access parents. At the same time, no amount of legislative change will create a perfect system in which there are always satisfactory outcomes to these disputes.

We are currently in the process of consulting with our membership and hope to provide more detailed information for you and your officials to consider in determining what, if any, legislative or policy initiatives should arise from this report. We look forward to further consultations with your officials in this respect.

Yours truly

Ronald J. Profit
Chair, National Family Law Section