

Notes for a Statement by QuebecFamily LawI- The problem

The family is the basic unit of any society. It both reflects and forms a society's basic social and cultural characteristics. As a result, the family is very much a local institution, which therefore requires legal protection suited to its specific needs. Historically, provincial authorities have been concerned with establishing a body of laws which protect, maintain and stabilize family relationships. Therefore it is quite natural that the major areas of jurisdiction concerned with family law which are not provincial should be brought under provincial jurisdiction. That would make it possible for the provinces to legally enact a complete and coherent set of laws in keeping with the real nature of the modern family.

At the present time, however, jurisdiction for family law is divided. Ottawa is responsible for divorce and marriage, while the provinces are responsible for the solemnization of marriage and its civil consequences (marriage contract, property and civil law in general). Furthermore, the provisions of the constitution have led to a dispersal of jurisdiction concerning family law. Five courts have jurisdiction to hear cases involving family law.

II- Quebec's position

Quebec maintains, then, that family law, at present scattered, should be brought together. It is more and more generally believed that it is under the provinces, rather than under Ottawa, that this unification should be made. Quebec has already begun working toward this, by tabling Bill 89 on family law reform.

The federal government and the majority of the provinces have reached an agreement on the transfer of legislative jurisdiction during previous negotiations. These negotiations should not give rise to any special difficulties. The agreement made could be summarized as follows:

1. The provinces will have exclusive jurisdiction over marriage, thus excluding the present federal jurisdiction.
2. Ottawa and the provinces will have concurrent legislative jurisdiction for divorce, though the provinces will have greater weight. One province could, by asserting it, have complete jurisdiction over divorce and exclude federal regulation, while another province which wished to do so could allow the federal government to pass legislation on that matter.
3. The provinces will have exclusive jurisdiction over measures related to divorce (alimony, maintenance, etc.) whereas the federal government could ensure that the rules are standard enough to make it possible to recognize across Canada divorce decisions handed down both in Canada and abroad.
4. A specific provision in the constitution will make it possible for the provinces to appoint judges to a central family court. This measure will permit the provinces to bring together in a single court both the necessary civil and criminal law specialists and professionals in areas affecting the family and youth protection.

Quebec therefore requests that the consensus already practically met on the transfer of jurisdiction over family law (reflected in the attached pages) should be confirmed and extended as quickly as possible. Once the appropriate changes have been made in the constitution, Quebec could implement the family law reform it undertook and conceived as a whole.

The attached paper, with which Quebec agrees, is similar to the one that was presented by our cabinet committee to the First Ministers in February 1979.

WORKING PAPER

FAMILY LAW

(Unofficial translation)

1. Repeal head 26 of section 91 - "Marriage and divorce".
2. Repeal head 12 of section 92 - "The solemnization of of marriage in the Province" and substitute therefor "Marriage in the Province".
3. Add the following section as a provision conferring legislative power:

00. (1) The Legislature of each Province may make laws in relation to divorce in the Province and has exclusive authority to make laws on matters corollary to divorce, particularly in relation to alimony and custody.

(2) The Parliament of Canada may make laws in relation to divorce and has exclusive authority to make laws in relation to the recognition of divorce decrees granted within or outside Canada, and in relation to the jurisdictional basis upon which a court may entertain an application for divorce.

(3) Where the Legislature of a Province enacts a law in respect of any of the matters in which it has concurrent authority with the Parliament of Canada under this section, the Parliament of Canada ceases to have authority in respect of that Province in all concurrent matters under this section while any such law of the Legislature continues in force.

(4) The Legislature of a Province may, in areas in which it has concurrent authority with the Parliament of Canada, state that it assumes this authority alone, in which case the laws of the Parliament of Canada cease to have authority in that Province as long as the statement continues in force.

00.1 Notwithstanding section 96, the Legislature of a Province may confer or authorize the Lieutenant Governor to confer, concurrently or exclusively, upon any court or division of a court or all or any judges of any court, the judges of which are appointed by the Governor General or the Lieutenant Governor of the Province, the jurisdiction of a judge of a superior court of the province in any matters involving family law.

4. Add the following section in the transitional provisions:

XX. Unless there is a contrary provision in this Act, all laws related to marriage and divorce which are in force in Canada or in a province immediately before this Act takes effect, remain in force until they are repealed, altered or replaced by the Parliament or the Legislature as appropriate, in accordance with the authority of the Parliament or the Legislature under this Act.¹

Note¹

The constitution will have to be almost complete before a final version of this transitional provision can be formulated.