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Child-centred Family Justice Strategy

Each year, many Canadian children are affected by the separation or divorce of their parents. The negative consequences for children are aggravated if parents become involved in protracted conflict over separation. While governments cannot eliminate such conflict, reforming the family justice system is one way to help children and their parents adjust to a new family situation.

Family justice reform has been an issue of broad public discussion in recent years. The Government of Canada's Child-centred Family Justice Strategy has grown out of extensive work on family justice reform, including research, consultations and ongoing collaborative work with the provinces and territories.

In 1997, a parliamentary committee, the Special Joint Committee on Child Custody and Access, was asked to assess the need for a more child-centred approach to family law policies and practices, and in December 1998, the Committee released its report, *For the Sake of the Children*. The Government of Canada has taken an approach to family justice reform that is consistent with the spirit of the Special Joint Committee's recommendations in that it removes the terms *custody* and *access* from the *Divorce Act* and bases parenting decisions solely on the best interests of the child.

Objectives

The purpose of the strategy is to help parents focus on the needs of their children following separation and divorce. It is composed of three pillars: family justice services, legislative reform and expansion of Unified Family Courts. Taken together, these three pillars of the Strategy will help develop and maintain a child-centred family justice system that:

- minimizes the potentially negative impact of separation and divorce on children;
- provides parents with the tools they need to reach parenting arrangements that are in the child's best interests; and

- ensures that the legal process is less adversarial; only the most difficult cases will go to court.

Services for Families

Some parents need support to make decisions about their children's care. They need tools to help them minimize conflict, co-operate and work out child-focused parenting arrangements. Parent education courses, mediation, and other court-related services are all types of services that can be used to achieve these goals.

While the Government of Canada does not provide services to Canadians directly because this is a provincial/territorial responsibility, it is committed to promoting the development and maintenance of family justice services. The Government of Canada will devote \$63 million in new funding over five years to the provinces and territories for family justice services.

Legislative Reforms

Best Interest Criteria

The 'best interests of the child' has been the core principle of family law in Canada for some time. In this reform strategy, this core principle is reaffirmed and strengthened by adding a list of best interest criteria to the *Divorce Act*. The list will help parents, family justice professionals and judges determine the child's best interests in his or her unique circumstances. The following is a list of criteria that will have to be considered:

- the child's physical, emotional and psychological needs, including the child's need for stability, taking into account the child's age and stage of development;
- the benefit to the child of developing and maintaining meaningful relationships with both spouses and each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse;
- the history of care for the child;
- any family violence, including its impact on:
 - the safety of the child and other family members,
 - the child's general well-being,
 - the ability of the person who engaged in the family violence to care for and meet the needs of the child, and
 - the appropriateness of making an order that would require the spouses to cooperate on issues affecting the child;
- the child's cultural, linguistic, religious and spiritual upbringing and heritage, including aboriginal upbringing or heritage;
- the child's views and preferences to the extent that those

- can be reasonably ascertained;
- any plans proposed for the child's care and upbringing;
- the nature, strength and stability of the relationship between the child and each spouse;
- the nature, strength and stability of the relationship between the child and each sibling, grandparent and any other significant person in the child's life;
- the ability of each person in respect of whom the order would apply to care for and meet the needs of the child;
- the ability of each person in respect of whom the order would apply to communicate and cooperate on issues affecting the child; and
- any court order or criminal conviction that is relevant to the safety or well-being of the child.

Terminology

A large number of Canadians have been critical of the terms *custody* and *access* because in their view:

- the terms encourage too many parents to focus on their rights rather than on their responsibilities and what is best for their children; and
- the terms promote the idea of a "winner" and a "loser" who have fought a custody "battle".

Under the proposed reforms, the terms *custody* and *access* will be eliminated for the purposes of the *Divorce Act*. A new model based on parental responsibilities will be created. Removing the 'win/lose' connotations will contribute to reducing levels of parental conflict and stress. The new approach used in the Act and in legal proceedings will help parents to focus on their most important obligation - making sure their children receive the care they need.

The proposed legislation is based on a parental responsibility model. Its underlying concept is that both parents will be responsible for the well being of their children after separation or divorce. How they carry out their obligations to their children is largely a matter for them to decide, using the best interest criteria as a guide. The parenting arrangements they make will include allocating 1) parenting time — based on a residential schedule that sets out the time that each child spends with each parent and 2) decision-making responsibilities — regarding the children's health, education, religion and so on.

Where a judge is needed to make a decision — for example where parents cannot agree or in high-conflict or family violence cases — the judge will now issue a *parenting order* allocating parental responsibilities.

Unified Family Courts

Family law is an area of divided jurisdiction. The federal government, and the provincial and territorial governments share responsibility for family law matters - including the law itself, the appointment and payment of judges, and the structure and processes of the courts that handle family law cases. For a family undergoing separation or divorce, this division of responsibilities can be confusing. It can also contribute to delays in processing cases and to high legal expenses.

As the name suggests, Unified Family Courts (UFCs) have jurisdiction over all family law matters within one level of court (the provincial superior court) and this structure allows the court to take a holistic approach to each family's situation. This approach eliminates confusion for family members as to which level of court should be dealing with their case. The structure of the UFCs offer other benefits as well, including a variety of services, either attached to the court or based in the community. These support services differ from jurisdiction to jurisdiction, but typically include such programs as parent education sessions, mediation and other court-related services.

Overall, Unified Family Courts improve outcomes for children and their families. They have the following advantages:

- they enable family members to resolve all outstanding legal issues in a single place by combining family law jurisdiction under both federal and provincial law in a single court;
- they provide access to a full array of professional and community support services, thus increasing the ability of family members to obtain the most appropriate support.
- they employ simplified procedures in a user friendly environment;
- they are presided over by specialist judges who are experts in family law; and
- they can speed up the resolution of family matters, and reduce the potential for further conflict.

The Government of Canada is committed to increasing the available pool of Unified Family Court judges by 62 (of which 46 would involve the promotion of provincial court judges who currently hear family law cases pursuant to provincial legislation) at a cost of \$16.1 million annually. Expanding UFCs through provincial court elevations will free up resources previously required for their salaries. Jurisdictions will reinvest these savings on an on-going basis into family justice services in their jurisdiction.

Other Legislative Amendments

In addition to the *Divorce Act* amendments, amendments will be

made to the *Family Orders and Agreements Enforcement Assistance Act* and the *Garnishment, Attachment and Pension Diversion Act* to make the administration of federal support enforcement programs more efficient. For example, the *Family Orders and Agreements Enforcement Assistance Act* will be amended to make it mandatory for a debtor subject to the Act to file a tax return if the Minister of National Revenue asks the debtor to do so. Also, the *Garnishment, Attachment and Pension Diversion Act* will be amended to establish the priority of family support obligations over other judgment debts.

The *Criminal Code* provisions with respect to parental child abduction will also be amended to reflect change in *Divorce Act* terminology.

The Bill also includes several technical amendments to the *Divorce Act* respecting jurisdiction and interprovincial variations of support orders.

For more information, please call (toll-free) 1-888-373-2222.

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