

FAMILY LAW IN CANADA, by C. Davies, Carswell, Toronto, 1984, pp. cl and 681.

For a number of years *Power on Divorce* has been a standard work of reference for family law lawyers and professors. The first edition of that book reflected the law as it stood on April 1, 1947. The second edition of the book was prepared by Julian Paine and published in 1964 and a third edition which appeared in two volumes was written by Professor Christine Davies. Professor Davies has now rewritten and updated the two volumes of the third edition of *Power*. The changed name of this new edition reflects the fact that although there are elements of the original work of Kent Power in this book, due to the substantial changes in family law since the first and second edition of *Power* were published, most of the current work can now be attributed to Professor Davies.

The book continues to be an excellent source of information for any practitioner or student of family law. It is clearly written and painstakingly footnoted. While conflicting decisions are presented for the reader, Professor Davies goes beyond simply listing the decisions which have been made on a particular point, and gives guidance to the reader as to what the law likely is in the light of the conflicting decisions, and on occasion what it should be.

It should be emphasized that this is not a book limited to divorce. Well over half the book deals with matrimonial causes other than divorce and there are new chapters in this edition dealing with support legislation that has recently been enacted in Ontario, Prince Edward Island, New Brunswick, the Yukon Territory, British Columbia, Manitoba and Nova Scotia, as well as a new chapter on constitutional questions relating to support.

The difficulty with the book is the fact that the second half of the book deals with the 1968 Divorce Act which will be repealed upon the enactment of the proposed Act Respecting Divorce and Corollary Relief (Bill C-47). There is no doubt that the enactment of that legislation will call for a new and possibly slimmer edition of *Family Law in Canada* once the final form of the legislation is apparent. However, that is not to say that the second part of this book dealing with divorce is of no use.

There are many substantial changes to the laws on divorce proposed in the new legislation, but much has not changed. For example, the new legislation still allows a divorce to be granted on the basis of adultery or cruelty, and so the very substantive chapters in the book dealing with those concepts are still relevant. Some of the bars and defences which existed in the old legislation will be repealed in the new legislation, but the bars and defences that are proposed in the new legislation are basically the same as those which were proposed in Bill C-10, the Liberal Government's attempt to amend the 1968 Divorce Act. There is a chapter in the book on Bill C-10 and a discussion of the differences that would result from the more limited bars and defences under the legislation.

The provisions in Bill C-47 respecting jurisdiction and the recognition of foreign divorces are the same as in the proposed Bill C-10, and the combined reading of the chapter on Bill C-10 plus the chapter on the recognition of foreign divorces at common law will enable the family law

practitioner to have the necessary understanding of how the question of jurisdiction will be dealt with under Bill C-47 and which foreign divorces will be recognized.

There were substantial changes proposed in Bill C-10 as to when maintenance orders would be made and what types of maintenance orders could be made. There is some discussion of this in *Family Law in Canada*. However, there are further changes proposed in the new legislation which will mean that some of the material on maintenance will be dated even after reading the chapter on Bill C-10. It is fair to say, however, that most of the changes in the proposed legislation are similar, if not the same, as those proposed in Bill C-10 and so most, if not all, of the new provisions regarding support will have been discussed in the chapter on Bill C-10. For example, both the new legislation and Bill C-10 contain provisions which would empower a court to order a spouse to secure *and* pay a sum of maintenance. Thus, in the chapter on maintenance, the discussion of the Supreme Court of Canada's decisions in *Nash v. Nash*<sup>1</sup> and *Van Zyderveld v. Van Zyderveld*<sup>2</sup> is no longer relevant. However, the chapter on Bill C-10 discusses this change in the law.

The new Bill C-47 has important changes respecting the granting of custody and access orders, but these changes are substantially the same as were proposed in Bill C-10. This means that some of the discussion in the main part of the book relating to custody orders under the 1968 Divorce Act is irrelevant, but again there is a discussion of these changes in the chapter on Bill C-10. Until we actually see some decisions from our courts to indicate how the legislation may or may not be interpreted, the book could only be more current if, instead of referring to the 1968 Act and the amendments in Bill C-10, it referred to the renumbered sections in Bill C-47.

Finally, it should be pointed out that although applications to vary corollary orders made under the old divorce legislation will now be governed by the new divorce legislation (again the changes in variation applications are similar to those proposed in Bill C-10), the proposed legislation provides that any proceedings commenced under the Divorce Act before the day on which the Act Respecting Divorce and Corollary Relief comes in to force shall be dealt with and disposed of in accordance with the Divorce Act, even though that Act will be repealed by the new legislation.

In conclusion, although we may look forward to a new *Family Law in Canada* from Professor Davies in, say, 1990 which discusses the new divorce legislation and the cases interpreting it, the 1984 edition of *Family Law in Canada* is an excellent source on the subject and deserves a place in the library of any practitioner, student, or professor who wishes to have a current, well-researched book on family law in Canada in his or her library.

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1. (1974) 47 D.L.R. (3d) 558 (S.C.C.).

2. (1976) 23 R.F.L. 200 (F.C.).