BOOK REVIEW

STUDIES IN CANADIAN FAMILY LAW: Edited by Mendes da Costa, Butterworth's 1972. 2—vol; $79.50.

The questions posed by the practitioner of family law, and by the students concerned with this discipline, are complex, and too often unanswered. Because we air our domestic difficulties upon a stage charged high with emotion, the law itself appears sometimes to play a hushed role. And at other times, the effect of our law seems harsh.

Enthusiasm would therefore greet any work which might serve as a guide to that arena we know as Family Law. We look now to see whether we have such a guide in Mendes da Costa's *Studies In Canadian Family Law,* and whether enthusiasm is justified here.

It is unfortunate that one of the first things noticed about this two-volume work is its price listing. However, we must, since few students could contemplate the expenditure of $79.50 for even the most valuable reference work, and since most practitioners purchase a publication only after critical consideration.

Moving beyond this feature, we find not a true text-book, but a collection of writings by various scholars each specially knowledgeable in a particular facet of Family Law. As a whole, the work attempts to scan the elements, procedures and problems that are family law, and to probe more deeply into certain particular conflicts.

Most of the subjects expected in a work of this sort are discussed, though not in a usual order, and some with undue repetition. Divorce is looked at several times, often repetitiously, when one comprehensive look at this institution, coupled concrete proposals for reform would have been more effective and useful. A lenghty article by the editor, Mendes da Costa, reviews the history of our existing divorce laws, delves into the grounds requisite for a decree, and the bars to relief. Well-researched and extensively documented, the article neatly summarizes the prevailing views and requirements of our divorce courts, and some of the problems inherent in a system which insists on labelling one party to the divorce proceeding as "guilty". In a separate chapter, Mewett looks to the degrees of evidence and proof required for Divorce, and we have a repetitive look at grounds. Maintenance and alimony are also reviewed independently, by McDougall, who looks too briefly at the concept of alimony, and adequately, though unnecessarily, at maintenance orders. The problem involved in enforcing such orders, particularly with 'reciprocating' states are properly discussed separately (by Swan), but the question remains why three overlapping presentations were necessary. It would have entailed serious editing but well worthwhile to have combined these efforts to net one, detailed, comprehensive and exploring look at the law and problems of divorce. In result, we would have had a more accessible reference tool; it is far better to have one exhaustive reference than several independent reviews of the same subject, each reaching the same conclusion after citing the same authorities.

In spite of this problem, the law of divorce is carefully looked at, in

sufficient detail to reward the researcher with sufficient information and authority to prepare a proper case, well aware of opposing arguments.

There is, of course, more to Family Law than the disolution of a marriage, and so the concern of this work extends beyond the divorce hearing. The issues of custody and access for instance, are frequently raised apart from any question of divorce. Robinson leaves us with a helpful picture of the guidelines the Courts will follow in awarding custody of a child to one parent or another, or to a third party. He looks as well to the Court's propensity to deviate from these rules, always based upon the grand theory we have espoused, that the ultimate "welfare and happiness of the child" ought best be the paramount consideration in any decision regarding who should have custody of that child.

The problems and concerns involved in such decisions arise in many divorces, but are also frequently considered by the Family Court—that special facility we have created to deal with special, immediate, often soluble problems of the family. A look at the caselist for any Family Court reveals the importance of this body, and attendances before such a Court reveal the immense problems encountered there. A dearth of competent personnel along with the intense emotional sufferings of the parties who seek the assistance of a Family Court make this corner of the arena confused, confusing, and sometimes of questionable effect. Provincial Judge Allard looks to the jurisdiction of such a court, its composition, its purposes, its actual role, and importantly, its problems. Because the effects of a family court vary from Judge to Judge, and sometimes from day to day, it becomes a huge task to draw a clear picture of this facility as it exists in all Canada. A general overview is presented then, with indications given of the important, but often frustrated role this Court must play.

Since many Family Court Judges sit also to hear matters concerning Juveniles, a look at the Juvenile division of Provincial Courts would have been welcome, and may have aided in further understanding of the Family Court process. Too little is said in this work about the problems of the Juvenile, although he is an important member of the family unit, whose encounter with the law can have devastating effects on the entire family.

Space *is* devoted to the adopted child, however, by Margaret Hughes who reviews the process of adoption, paying careful attention to the special problems and conflicts of interest raised by this special child.

It is refreshing to note concern paid to certain victims of society who the legal profession ignore—the children we brand "illegitimate", the children we "neglect", and the persons we force to look to "welfare" in order to survive. Foote examines the laws that condemn a child as "illegitimate" and effectively haunt him throughout his life. The examination ends too abruptly though; we could have benefitted from criticism of such a system, and a closer look at the New Zealand statutes which would obliterate this scab on our system of "Justice".

Similarly, the look at welfare legislation looks too much at the laws as they appear on our statute books. We cannot ignore the unexplained discrepancy between what is permitted by law, what changes in that law are authorized by internal, "secret" regulations, and the actual behaviour and results under such programs.

The look at the neglected child is technical perhaps in accord with our demands. After all, *we* do not neglect our child; only *other* people would do anything so dreadful. Fraser calls for the legal profession to pay much more concern to this problem; we must hope that such concern will be immediate.

Other areas of family law with a compelling need for reform are also discussed. In a detailed look at property rights for instance, Cullity calls for immediate change; such need is underscored by recent judicial decisions which cling to antiquated ideals.

The family law practitioner will deal sometimes with nullity, sometimes with the laws of another Jurisdiction, and of course must be concerned with the element of *res judicata*. This work looks to all of these factors, resulting in a general overview of many of the problems encountered in the practice.

The arena of family law is crowded, however, and countless persons seek the aid and support of a law which must provide such aid. Many complex questions must be asked in offering this support, and many changes must be sought and obtained. This study by Mendes da Costa answers some of these questions, and calls for some needed reform. The work leaves many questions unanswered, however, and much reform unmentioned.

Mendes da Costa's *Studies In Canadian Family Law* is a helpful, though expensive, guide and a small tool in the understanding and development of family law. We must, however, contain much of our enthusiasm.

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