

The Law and Injustice

The Case of BC Family Relations Act

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The Summer, 2019, issue of *Humanist Perspectives* was devoted to the question of injustice by the law. The following essay provides an analysis of a destructive law that caused serious injustice to the very society it was intended to serve.

On November 23, 2011, the BC Legislature gave third and final reading to Bill 16, the new Family Law Act, and it received Royal Assent on November 24. All provisions of the new Family Law came fully into force on March 18, 2013. It replaced the Family Relations Act that was enacted in British Columbia in 1979. The Family Relations Act and similar family laws enacted in other provinces have been unjust to the point of criminality. These laws have caused millions of acrimonious separations and divorces throughout the past decades, prevented vast numbers of people from marrying or living in common-law relationships, broken up marriages, and have led to the suicide or murder of many men and the murder of many more women. As predicted by the farsighted editors of the *Vancouver Sun* at the time, they have led to mercenary love affairs and marriages and have poisoned the relationship between women and men. Far from creating equality, such laws have hardened the class structure of society by preventing many people from living with or marrying someone poorer than themselves.

What person of foresight with a decent home and a good career would want to lose his or her home and half of his or her pension and live in poverty in their old age just because the person happened to love and marry or live in a common-law relationship with a spouse of lesser means for a couple of years?

The new Family Law brings some degree of fairness to family relations. Properties owned by one spouse prior to the relationship will be ex-

cluded from division, even if they are normally used for family benefit during the relationship. Only assets gained during the marriage or common-law relationship are to be equally divided. For example, if the value of the equity of the excluded property (such as the house the couple lives in) increases during the relationship due to renovations or paying off the mortgage, only that *increase in value* has to be divided in the case of divorce or separation.

Regarding pensions and retirement savings plans, the new Family Law states that “all of a member’s benefits are deemed to be allocated to the member (Subsection 111-2),” if an agreement or court order is silent on the matter. But, based on the overall context of the Law, this could be understood by the courts to mean that only those portions of these assets accumulated prior to the relationship are so allocated. It may be decades before the BC Supreme Court rulings will establish jurisprudence clarifying the matter.

I have inserted below an excerpt from the legislative debates on the new Bill.

Major reforms are proposed to the division of family property. The property division regime will include a category of excluded property, such as pre-relationship property and inheritances that will generally not be divisible. Judicial discretion around dividing family property will be reduced so that the law will be more certain and separated spouses will be better able to predict court outcomes.

Statutory property division provisions will now include unmarried couples who qualify as spouses under the new act, meaning those who have lived together for two years in a marriage-like relationship. (The Honorable Shirley Bond, Attorney General, *The Hansard*, November 17, 2011)

Under the old Family Relations Act, the judges had broad discretion to alter the prenuptial agreements, but under the new Family Law and a recent ruling by the Supreme Court of Canada under Chief Justice Beverly McLachlin, the judges' discretions have been significantly reduced. The courts have to show, based on certain criteria, that the legally prescribed division of family property or the prenuptial agreement is *clearly* unjust before the courts can revise or set aside either. In fact, prior to the recent Supreme Court of Canada ruling, and given the wide discretion given to the courts by the old Family Relations Act, upholding of the prenuptial agreement was at the whim of the judge, thus making prenuptial agreements practically worthless.

The following scenario illustrates the unjust nature of the Family Relations Act which governed family life in British Columbia from 1979 until March 18, 2013. Suppose you married or began living with a man who had a multi-million dollar home but he came to live with you in your home. Immediately after your marriage or two years after living in a common-law relationship with you, he would be entitled to half the value of your home because, according to the Family Relations Act, your home would have become a "family asset." But you would have no claim to half of his home whatsoever. Furthermore, if you were to use funds from your bank account to pay for the groceries, he would become entitled to half of your funds in that account but you would not have any claims to his funds in other accounts. The same would happen if your car was normally used for transporting home the groceries.

There are vastly expanded sections in the new Law dealing with the care and protection of children. In fact, the well-being of children was the chief aim in the development of the new Family Law.

The spouses may choose to have a prenuptial agreement that would determine what is to be included as family property and what is to be excluded. But under Section 93 of the new Family Law, the courts may set aside or replace parts or all of the agreement if (Subsection 93-3):

- (a) a spouse failed to disclose significant property or debts, or other information relevant to the negotiation of the agreement;
- (b) a spouse took improper advantage of the other spouse's vulnerability, including the other spouse's ignorance, need or distress;
- (c) a spouse did not understand the nature or consequences of the agreement;
- (d) other circumstances that would, under the common law, cause all or part of a contract to be voidable.

It is therefore essential that any prenuptial agreement be signed through lawyers on both sides. •

Appendix

Spousal Estrangement and Homicide

Actual Data Based on Police Reports: 1974-1990*

Total Spousal Homicides in Canada	1,748
Women Killed by Estranged Husband	1,333
Men Killed by Estranged Wife	415
Victims Ratio Women/Men	3.11/1

Statistical Averaging Projections: 1979-2011**

Total Spousal Homicides in Canada	3,496
Women Killed by Estranged Husband	2,666
Men Killed by Estranged Wife	830
Victims Ratio: Women / Men	3.11/1
Average Number of Spousal Homicides per Year:	109.25

*Note: 1974-1990 data is from Margo Wilson and Martin Daly, *Spousal Homicide Risk and Estrangement*, published in the journal *Violence and Victims*, Vol. 8, No.1, 1993.

**The 1979-2011 numbers are projections by the author.

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