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Bill C-78, A Chapter in Canada's Evolving Divorce Laws

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INTRODUCTION

Canada's family law develops against a constantly shifting cultural and social backdrop. Parliament's engagement with the laws impacting separating and divorcing parties represents our governments' responsiveness to those shifting contexts. Changes to the laws are often slow and controversial in light of the fact that it can be difficult to cohesively capture the diverse range of voices that all contribute to the discourse surrounding reform. Accordingly, government-proposed amendments often serve as an opportunity to reflect on current attitudes towards divorce in Canada.

Any proposed change to the *Divorce Act* warrants careful review from the bar. They have the potential to make significant and lasting impacts on our profession. However, there is more than one way to examine those changes. While a practical analysis is necessary, reviewing proposed changes from different theoretical perspectives can yield different insights that may similarly inform changes to our practice.

The introduction of Bill C-78 opens the door for the first serious amendments to the *Divorce Act* since 1985. As with the changes the preceded it, the new Bill captures the changing attitudes and perspectives of divorce in Canada. This paper starts with a brief historical overview of the evolution of divorce laws in Canada and then identifies several trends that emerge over time. These trends are then applied to Bill C-78 to see how closely the proposed changes stick to those trends. I conclude, at the end, that Bill C-78 continues the Canadian tradition of updating divorce laws to make them more consistent with social attitudes.

HISTORICAL CONTEXT

Introduced as a petition for divorce before the legislature of Upper Canada in 1839, the first divorce in Canada was passed, after a long struggle, in 1841. The petition was made by a well-connected and wealthy individual, John Stuart. After Stuart's divorce, rules of procedure were put into place for those wanting to pursue a divorce, but few divorces were granted. There were 20 other petitions for divorce following Stuart's divorce but before Confederation and only 5 of those bills passed.¹

The *British North America Act*² (the *BNA Act*) created the nation of Canada and states:

Except as otherwise provided by this Act, all Laws in force in Canada, Nova Scotia, or New Brunswick at the Union, and all Courts of Civil and Criminal Jurisdiction... existing therein at the Union, shall continue... as if the Union had not been made;

¹ Index to Canadian Parliamentary Divorces 1826 – 1946 (accessed September 5, 2018) <<http://www.cangenealogy.com/armstrong/divintro.htm>>

² *The Constitution Act, 1867* (UK), 30 & 31 Victoria, c 3