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POOR RELATIONS: THE EFFECT OF SECOND FAMILIES ON CHILD SUPPORT

Simon R. Fodden*

With the increasing divorce rate in Canada, the incidence of remarriage has begun to climb. One of the consequences of this establishment of second families is that Courts have been confronted with decisions how, if at all, the newly acquired voluntary support duties of the prime obligor toward his second family affect his subsisting obligations to the first family, and particularly the children of that first family. Regrettably, current jurisprudential wisdom favours the exercise of broad, judicial discretion; at best, the remarriage and its train of new obligations is but a factor to which it is not presently possible to attach any guaranteed weight. †

INTRODUCTION

The law of child support shares a deceptive simplicity with almost every other aspect of family law. Child custody is governed by that brief standard, “best interests of the child”. Spousal maintenance may turn on what is “fit and just”. Even matrimonial property is frequently divided equally, unless to do so would be “inequitable”. The child seeking support brandishes that Marxist aphorism: “From Mum and Dad according to ability; to me according to need.” These simple standards, however, do little more than to flag problems. The most important matter in child support is determination of quantum, but in calculation, the maxim helps not at all. The

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† Alors que le taux des divorces s’élève au Canada, le nombre des remariages a aussi commencé à augmenter. En conséquence, les tribunaux doivent décider si les nouvelles obligations volontairement assumées par le chef de famille doivent affecter le devoir de soutien dû à la première famille. Malheureusement, la jurisprudence favorise à présent l’exercice d’une discrétion judiciaire très étendue: le remariage et ses nouvelles obligations ne représentent qu’un des facteurs considérés et il est impossible d’évaluer avec certitude l’importance que les tribunaux y attacheront. (Trad. H. Barbès)

Courts must retreat behind the shield that both signifies and protects their discretion: Each case must be decided on its own merits.

Total discretion, like any complete freedom, is impossible to bear. This is as true for lawyers who must advise clients and argue before the Courts as it is for the Courts themselves. And there are lawyers and Judges who make appeals to standards of various kinds to justify their proposals and decisions in this discretionary matter. Indeed, that lawyers argue and Courts write reasons for judgment is interesting. Once within the core of discretion, isolated from any other case by the incomparable facts of a given case, there is nothing rational to be said; for rational argument is an appeal to standards, to rules however diffuse. Combinations of the facts and various possible outcomes can be discussed, of course, but as soon as a lawyer says that one outcome is preferable to another for reasons other than that his or her client prefers it, he or she is inviting the Judge to be guided by a norm or standard. As soon as a Judge supports his or her judgment with anything other than a statement that he or she thinks that it is correct, he or she is appealing to a standard. Both lawyers and Judges constantly break the silence of discretion.

This is not entirely surprising. For one thing, to try to persuade another that one is correct is a natural emotional response. Where rational argument is not available, however, one will appeal to emotions. For another thing, complete discretion is impossible and perhaps undesirable in the law. It is impossible because each Judge comes to a case and a set of facts with prejudices, conscious or unconscious. Prejudices are, after all, pre-judgments and operate like rules in this respect. An honest Judge may feel the need to raise and make explicit his or her prejudices. In fact, no one would want discretion exercised by beings from Mars, lacking in Earthly prejudices. One wants decisions to be clustered about one's social norms, not random-seeming. A discretionary act can be overturned by a higher Court on the basis that no reasonable jury or Judge would have come to that conclusion.

This means that there is some value in examining the entrails of discretion, the "indiscretions" of the lawyers and Judges involved in the process. The author says "*some value*" because it is impossible to grasp these indiscretions tightly and to compress them into rules — because, the more firmly one presses, the more likely are their creators to disappear down the escape-hatch labelled "Each case on its merits". The value surely lies in making lawyers and Judges aware of their own appeals to standards and social norms, so that they might reflect on these outside the context of a given case. As well, there may be commonalities in these appeals to standards that suggest that the time is right for rule-making. In this respect, discretion may be like a social furnace in which new common ways of proceeding can emerge into rules through legislative intervention.

1: THE RISING INCIDENCE OF REMARRIAGE AFTER DIVORCE

One aspect of the law of child support that has received a fair bit of attention in the jurisprudence is the problem of second families and their influence on quantum. The formation of second families seems to be increasing in Canada. The divorce statistics suggest as much.¹ The correspondence between marriage breakdown and divorce is, of course, not perfect, but it would seem to be the case since the passage of the federal *Divorce Act*² of 1968 that the divorce rate reflects the rate of marriage breakdown. Since the focus is on second families, that is, families in which one parent has been divorced, the cumulative effect of the divorce rate is important. Once divorced, a person remains thereafter a divorced person. If one makes the conservative (if uncharitable) assumption that a person only lives ten years after a divorce, it is not unreasonable to estimate that there are now just under one million people in Canada who can claim that status. That is perilously close to one in every thirteen adults.³ By contrast, demographers have calculated that in 1971 there were only 154,000 divorced people in Canada,⁴ or something like one in every seventy adults.

These divorced people are remarrying. In 1966, 4.6% of all bridegrooms and 4.3% of all brides had been once divorced. In 1974, the numbers had risen to 10.7% and 9.6% respectively.⁵ This means that well over 11% of all marriages form second families.⁶ These figures do not take into account informal unions, which local observation suggests are increasing in number. It was not possible to discover how many second families involve children, but it is known that 60% of divorces involve dependent children and that percentage, too, seems on the increase.⁷ That does not take into account

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1. The number of divorce decrees has continued to rise every year since 1970. (There was an initial burst of petitions when the *Divorce Act*, *infra* fn. 2, came into force in 1968, causing a slight drop for 1970.) This rise has kept well ahead of population growth, as the divorce rate per 100,000 population reveals; 1968: 54; 1969: 124; 1970: 139; 1971: 137; 1972: 48; 1973: 166; 1974: 200; 1975: 222. See *Canada Year Book 1978-79*, (Ottawa: Ministry of Industry, Trade & Commerce, 1978), at 167.
 2. S.C. 1967-68, c. 24; now R.S.C. 1970, c. D-8.
 3. In 1976, there were just over 9,000,000 children in Canada. If one accepts a total population of 22,000,000 at that time, it would have left 11,000,000 adults. Figures are based on Bulletins 4.2 (Families by Size) and 4.4 (Families by Number of Children) in the *1976 Census of Canada: Vol. 4 — Families* (Ottawa: Ministry of Industry, Trade & Commerce, 1978).
 4. John F. Peters: "Divorce in Canada — A Demographic Profile" (1976), 7 J. Comp. Fam. Studies 335 at 345.
 5. Sylvia T. Wargon: *Canadian Households and Families* (Ottawa: Statistics Canada, 1979), at 89.
 6. It would be unreasonable to expect that divorced brides marry only divorced bridegrooms. The extent to which this does happen, however, is unknown.
 7. Peters, *supra* fn. 4, at 340.

those children born into second families. To conclude, second family formation is already at a significant rate and that rate appears to be increasing. Children are heavily caught up in this rise of serial monogamy.

2: THE EFFECT OF REMARRIAGE ON EXISTING SUPPORT OBLIGATIONS

In attempting to assess the law's response to this phenomenon, the author examined some twenty two reported Canadian cases that, with one exception, were decided within the last ten years.⁸ The author's principal concern was: in considering child support, to what extent and how do Courts take into account members' joining the family after breakup. The issue arises in these cases in a variety of ways. It may be that the arrival of a new member is merely anticipated by the Courts, as when, for example, an award to support for a wife with custody is made contingent on her not living with another man as husband and wife.⁹ It may be that the father or mother is already living with another person at the time that child support is first dealt with.¹⁰ Typically, it arises by way of application to vary an order in light of changed circumstances.

With perhaps one exception, all of the cases reviewed say that the arrival of a new family member *may* be a factor to be taken into account in any calculation or adjustment of quantum. Put in another way, there is no rule

8. *Auzat v. de Manche* (1971), 6 R.F.L. 119 (Que. Super. Ct);
Baker v. Baker (1975), 25 R.F.L. 238 (Ont. H.C.);
Belof v. Belof (1972), 9 R.F.L. 60 (Sask. Q.B.);
Coe v. Coe (1978), 1 R.F.L. (2d) 173 (Ont. H.C.);
Coghill v. Coghill (1975), 21 R.F.L. 353 (Sask. Q.B.);
Conroy v. Conroy (1977), 1 R.F.L. (2d) 193 (Ont. H.C.);
Davis v. Colter (1973), 12 R.F.L. 84 (Sask. Q.B.);
Epstein v. Epstein (1976), 30 R.F.L. 86 (Ont. H.C.);
Gelgoot v. Gelgoot (1977), 1 R.F.L. (2d) 204 (Ont. H.C.);
Impey v. Impey (1973), 13 R.F.L. 240 (Sask. Q.B.);
Ireland v. Ireland (1969), 70 W.W.R. 1 (Sask. Q.B.);
Jans v. Page (1976), 29 R.F.L. 210, 1 Fam. L. Rev. 136 (Ont. Prov. Ct, Fam. Div.);
Kinghorn v. Kinghorn and Michel (1960), 34 W.W.R. 123, 29 D.L.R. (2d) 168 (Sask. Q.B.);
Kleiner v. Kleiner (1975), 26 R.F.L. 254 (Ont. C.A.);
MacDonald v. Lee (1970), 2 N.S.R. (2d) 301, 2 R.F.L. 360 (N.S. App. Div.);
MacDougall v. MacDougall (1973), 11 R.F.L. 266 (Ont. H.C.);
McKeller v. McKeller (1972), 7 R.F.L. 207 (Ont. C.A.);
Re McKenna and McKenna (1974), 2 O.R. (2d) 571, 43 D.L.R. (3d) 515, 14 R.F.L. 153 (Ont. H.C.);
McQuilkin v. Dawson, [1975] C.A. 849, 62 D.L.R. (3d) 381 (Que. C.A.);
Osborne v. Osborne and Hilton (1974), 14 R.F.L. 149 (Ont. H.C.);
Tobin v. Tobin (1974), 19 R.F.L. 18 (Ont. H.C.);
Turner v. Turner and Seadon (1972), 8 R.F.L. 15 (Man. Q.B.)
9. See, for example, *Gelgoot v. Gelgoot*, *supra* fn. 8.
10. See, for example, *Conroy v. Conroy*, *supra* fn. 8.

governing the matter. There might have been a rule excluding the needs or means of a new family member from the calculation of quantum. If the problem were socially significant, there would probably be a rule, for example, excluding a father's gambling expenses from consideration; on an application to reduce an award, a new-found love for "playing the ponies" would not represent a material change in circumstances.

One case comes close to taking this position. In *MacDougall v. MacDougall*,¹¹ a man sought reduction in the amount of maintenance that he was paying to his former wife. He himself had no children, although his former wife had one and his second wife had two. He built his case about an increase in his former wife's salary. The Ontario High Court denied his application. The fact that he had remarried was not, the Court said, substantially argued by his counsel, but the Court volunteered this statement:¹²

... I do not accept any principle that would permit the former husband to bring about a reduction of his maintenance obligations under an order of this Court by voluntarily increasing his other obligations.

It would be possible to regard this as *obiter*, but a point not substantially argued was at least advanced. There is, nevertheless, a trace of ambiguity in this pronouncement. Was the Court rejecting a rule that would automatically *entitle* a man to a reduction? Or was the Court adopting a rule that prevents his even arguing for a reduction? If it is the former, then there is nothing surprising in this; once something is admitted to be a factor in the discretionary decision about quantum, there is no guarantee that the factor will have any particular degree of effect. In other words, it is only a factor. If it is the latter, however, then the recent authorities are uniformly opposed to this stand.¹³

Historically, there was a consensus for the ruling out of such considerations by the Courts. For example, in 1924, the Supreme Court of British Columbia asserted that an ex-husband's liability to his first family was not to be prejudiced by the "predicament" into which he had gotten himself by contracting a second marriage.¹⁴ That principle was repeated in 1938 by the Trial Division of the Alberta Supreme Court.¹⁵

11. *Supra* fn. 8.

12. *Id.*, at 271, *per* Henry, J.

13. See, for example, *McKeller v. McKeller*, *supra* fn. 8, in which the Ontario Court of Appeal *per* Brooke, J.A., said at 208 that the man's remarriage "is not *always* a reason to require" his first family to accept less; (author's own emphasis added). The clear implication is that it may sometimes be a reason; that is, it is not necessarily "ruled out of Court".

14. *Moody v. Moody* (1924), 34 B.C.R. 49 (B.C.S.C.).

15. *Edwards v. Edwards*, [1938] 1 W.W.R. 880, [1938] 2 D.L.R. 786n (Alta Tr. Div.).

While that statement from *MacDougall v. MacDougall* may stand alone as a prohibition today, it expressed a view with which a number of recent cases have sympathy. The Courts in these cases have accepted the introduction of a new family member as a possible factor in reducing quantum for the first family, but have made angry noises while doing so.¹⁶ The attitude of the Saskatchewan Court of Queen's Bench in the case of *Kinghorn v. Kinghorn and Michel*¹⁷ is typical of this grudging acceptance. The Court admonished a man who sought a reduction in his support obligations upon his remarriage:¹⁸

The applicant should not be permitted to shun the marital obligations arising out of the first marriage by entering into another marriage, and the mere fact that he saw fit to do so gives him no ground in itself for seeking an order to reduce his liabilities to his first wife and child. He cannot expect his first wife and child to subsidize his second marriage.

But then the Court relented and said:¹⁹

. . . it is a circumstance to be considered . . . and may under some circumstances warrant a reduction.

The Court finally reduced his payments from \$75 to \$60 per month.

This Saskatchewan case is typical in another respect, for it is rife with judicial statements about how the factor of remarriage may operate. These are the "indiscretions" referred to earlier, those statements of principle, direct or indirect, that interfere with pure discretion. For instance, the Saskatchewan Court said that, while remarriage of the father may be a factor, he would not be permitted to "shun" his prior obligations. In a much later case, the same Court repeated that remarriage is a factor but warned that it would not permit the father to "shuck his responsibility . . . by the pleasant expedient of remarrying".²⁰ This talk of "shunning" and "shucking" is of little help, except to caution that attitudes are hostile and that the costs of remarrying may be discounted out of disapproval.

More apparently helpful are statements concerning priority. In *Kinghorn v. Kinghorn and Michel*, the Court maintained that the first family was to receive first consideration. That point was repeated by the Saskatchewan Court of Queen's Bench in a later case.²¹ In a 1978 decision, the Ontario

16. See, for example, *Davis v. Colter*, *Ireland v. Ireland*, *Kinghorn v. Kinghorn and Michel*, *McKeller v. McKeller* and *McQuilkin v. Dawson*, *supra* fn. 8.

17. *Supra* fn. 8.

18. *Id.*, at 125 (W.W.R.), 170 (D.L.R.), *per* Disbery, J.

19. *Id.*, at 126 (W.W.R.), 171 (D.L.R.).

20. *Davis v. Colter*, *supra* fn. 8, at 89, *per* Disbery, J.

21. *Id.*

High Court stated that the father's counsel acknowledged that "the children of the first marriage should normally be given some priority".²² In another Ontario case, the mother's counsel argued that the father's "primary responsibility is to the child of the first marriage".²³ And the Manitoba Court of Queen's Bench simply said, "The question may be one of priority."²⁴

To what extent do statements about priority actually offer any assistance to those who must argue and decide? First, there is confusion about who exactly is to receive priority and second, it is unclear what the subject matter of any priority should be. By way of illustration, it may be instructive to assume the least confusing set of facts.²⁵ Suppose that a former wife has custody of the children whose father has been ordered to pay child support. The father remarries. Both his first and his second wives are working.

Who might get priority over whom? One might choose to give his children priority over him, or over his second wife, or over the second family as a whole. Or, one might choose to give the first family as a whole priority over any member of the second family. And what is the subject matter of the priority? It could be priority in the father's income, or in his income after some deduction for some of his needs, or priority in standard of living.

As soon as one selects any combination of these possibilities, problems develop. Can one begin by saying that the children should be given priority over their father in his income; that is, should they get more of his income than does he? It is worth noting here that, even upon breakup of the original family, children are rarely, if ever, accorded this high priority.²⁶ To this proposal, the father in this example would surely object on the grounds that the mother has an obligation to support them too. This may indeed be a legitimate criticism, for there is not simply a father-child support obligation, but a mother-child one as well. But as soon as this is conceded and this

22. *Coe v. Coe*, *supra* fn. 8, at 176, *per* Osler, J. paraphrasing the submissions of Michael J. Siddons, Esq.

23. *Re McKenna and McKenna*, *supra* fn. 8, at 572 (O.R.), 516 (D.L.R.), 154 (R.F.L.), *per* Weatherston, J. paraphrasing the submissions of R.G. Chapman, Esq.

24. *Turner v. Turner and Seadon*, *supra* fn. 8, at 16, *per* Deniset, J.

25. The cases of *Auzat v. de Manche*, *Belof v. Belof* and *Kinghorn v. Kinghorn and Michel*, *supra* fn. 8, had fact situations that approximated this scenario to the extent that there were no other children in the second family. In all these cases, a reduction was allowed by the Court.

But see *MacDougall v. MacDougall* and *McKeller v. McKeller*, *supra* fn. 8, where the men had stronger cases as there were children in the second family and yet no reduction was permitted.

26. See, for example, *Gelgoot v. Gelgoot*, *supra* fn. 8, where the Ontario High Court *per* Morand, J., said at 207:

Awards in circumstances of these kinds covering the wife and children usually vary somewhere between one-third to one-half of the gross income of the respondent husband.

further obligation taken into account, the simple notion of priority is ruined, since the mother's situation must now be considered as well. The difficulty with that, however, is that the mother's contribution to the children is not segregated in the form of a visible Court order and it is impossible for her not to benefit from any moneys intended to benefit her children.

Is it possible, then, to move up one level to compare families and to accord priority in standard of living to the first family? To that, the second wife may object because her income would effectively be used to subsidise a family to which she owes no obligation. This can be appreciated more clearly if the example has an additional fact, namely that the income of the second wife is steadily rising. As it rises, it increases the second family's standard of living. As that standard rises, the husband's offsetting payments must increase to maintain the first family's priority in living standards, until eventually he is diverting all of his salary to the first family. At that point, it is clear that he is failing in his legal obligation to contribute to the support of his current family.

So long as there is a meaning given to all of the legal obligations that may exist, no notion of priority will work in any useful way, simply because rules of priority operate on one plane, and not "in the round". They are able to rank entities, but only along one scale; that is, only those entities that are related by one value. In the two-family problem, there is a cluster of legal obligations to provide support, all pulling in different directions. As soon as one is settled, there is a dislocation in each of the others; to settle them one at a time would involve pretending that the others did not exist. So typically, each is given a nod and then, a global solution superimposed. In the cases examined by the author, the Courts have not been prepared to ignore the other competing obligations and any talk of priority has been either an empty or ritual disapproval of a man who has increased his obligations.

A notion similar to priority was raised in an application for child support before the Ontario High Court.²⁷ The original parents had been divorced and both had remarried. The mother had custody of the only child of the first marriage and the father had three children by his second wife. The Court, in response to a submission by the mother's counsel that the father's primary responsibility was the child of the first union, purported to require the father to treat his children equally:²⁸

All children have an equal claim to support from their father, and the Court, when determining the amount of maintenance to be paid, should permit and require a father to treat all his children fairly and equally.

27. *Re McKenna and McKenna*, *supra* fn. 8.

28. *Id.*, at 573 (O.R.), 517 (D.L.R.), 155 (R.F.L.), *per* Weasterston, J.

When one looks at the arithmetic of the judgment, however, it is impossible to say in what respect the children were treated equally. The first family with three members had a total income of \$27,500 per year (\$1,000 in support from the child's father, \$8,500 earned by the mother and \$18,000 earned by her new husband). The second family of five had to content itself with \$11,000, the remainder of the father's income of \$12,000 per year. Looked at from the point of view of the father's contribution, the result was that his first child received \$1,000 per year; that left him \$11,000 to spend on his other three children, his second wife and himself. How is one to judge the portion attributable to them or enjoyed by them? This is not to say that the decision was wrong — one would need standards for that judgment — merely that there is no discernable equality.²⁹

If there are not effective standards to guide discretion generally, are there certain factors that are given more weight than others in these cases? Not surprisingly, the Courts show a greater willingness to reduce an award when the man's request for reduction is based on an increase in the mother's means rather than an increase in his own needs. That increase in the mother's means usually comes about through her remarriage,³⁰ and the Courts recognise without cavil that this pooling of resources eases her financial situation. Put another way, despite the lack of any legal obligation between the children and the second husband, his resources are seen to flow to them through their mother. But this can be seen to be so only *because* of the legal obligation between the mother and her second husband. The Ontario Court of Appeal said as much in a case in which the mother had married the man with whom she had been living:³¹

While it is true that there may have been similar financial arrangements before and after marriage, nevertheless, with the marriage, some arrangements became obligations.

In the case of fathers' second families, none of the Canadian cases under study indicated how the Courts would treat an informal union as opposed to a legal remarriage. All the cases uncovered by the author dealt with remarriage. But on the basis of the repeated references to their obligations to support their wives, one can speculate that a legal marriage may be a significant factor. Somewhat surprisingly, however, the cases showed no distinction in treatment between children born into the second family and those brought into it by the second wife. Thus, even where they are not his children, the Courts accept that they are in fact an economic burden on the

29. See also *Jans v. Page*, *supra* fn. 8.

30. See *Impey v. Impey*, *Kleiner v. Kleiner*, *MacDonald v. Lee* and *Re McKenna and McKenna*, *supra* fn. 8.

31. *Kleiner v. Kleiner*, *supra* fn. 8, at 254-255, *per* Brooke, J.A.

man. In a recent Ontario case, for instance, a father married a woman with two children and had two further children by her. The Ontario High Court simply summed up by saying:³²

In other words, he has four children and a wife to support in addition to the two children for whose benefit the maintenance order . . . was made.

Another related factor should be pointed out. On applications to reduce maintenance, Courts have paid close attention to the time when the second union began. They have required proof of a change in circumstances, and if the second union was in existence or even in contemplation at the time the original order was made, it may not be regarded as a factor to establish a change in circumstances. The recent Ontario case of *Epstein v. Epstein*³³ was the clearest example of this. There, the decrees *nisi* and absolute were issued on the same day. Eleven days later, the father remarried and twenty days after the issue of the decrees, his new wife gave birth to a child. He applied the following month for a reduction in the order to which he had consented scarcely two months earlier. The Court castigated both him and his counsel and declared:³⁴

It is impossible for me to understand how these developments could be described as "changed circumstances" when they must clearly have been in the contemplation of [the husband] . . .

In another instance, the Quebec Superior Court took into account against a husband the fact that, at the time that the original settlement with his first wife was negotiated, he was already serious about the woman whom he shortly thereafter married.³⁵ And the Ontario High Court dismissed a man's application for maintenance reduction because, when the decree *nisi* was made, he was living with the woman to whom he was now married.³⁶

For these Courts, financial rather than legal relations were important. Presumably, therefore, when the original order was made, they would have taken into account the fact that the husband's ability had been reduced because he was living with (or contemplated living with) another woman. For other Courts, however, it has been the *legal* obligations between the man and the woman with whom he was living that have been significant. In the case of *Kleiner v. Kleiner*,³⁷ the Ontario Court of Appeal said that the fact of remarriage, when "arrangements became obligations", was a

32. *Coe v. Coe*, *supra* fn. 8, at 176, *per* Osler, J.

33. *Supra* fn. 8.

34. *Id.*, at 87, *per* Maloney, J.

35. *Auzat v. de Manche*, *supra* fn. 8.

36. *Baker v. Baker*, *supra* fn. 8. See also *Coghill v. Coghill*, *supra* fn. 8.

37. *Supra* fn. 8.

change in circumstances, even though the actual financial arrangements before and after marriage were similar.

There is, thus, an ambiguity about the significance of legal remarriage. If, for example, an original application for support were to be brought before a Court that followed the view taken in *Kleiner v. Kleiner*, the Court might disregard an informal second union as involving merely "arrangements" and not "obligations". If that informal union subsequently became a legal marriage and if the man were unfortunate enough to have his request for variation scheduled before a Court of a persuasion similar to that in *Epstein v. Epstein*, then that Court would find no change in circumstances. To avoid this injustice, either the financial arrangements or the legal obligations must be considered as significant, but not both.

One final factor is the existence of a third family. In two of the cases under study involving a man's remarriage to a woman with children, the woman's former husband had been ordered to support those children.³⁸ In neither case was he paying and in neither did the Courts press the matter. In other cases, where it might have been raised, the Court did not discuss this third-family connection.³⁹ Yet, it takes no stretch of the imagination to turn the question of child support into a four-family problem; all that is needed is the breakdown of the marriage of two divorced people with children. But to cope in any useful way with the logistics of a three-family problem, let alone a four-family problem, would seem beyond the resources of the party-based adversarial system. The multiplicity of obligations and the permutations of possible solutions would dictate either a simpler system of decision making or, as now happens, a relaxation of some obligations.

CONCLUSION

At a time when relevant but difficult legal obligations are being ignored, new ones are being legislated into existence. In particular, recent family law reform legislation in several provinces has created support obligations between "spouses" and has provided several means by which one can become a "spouse", only one of which involves a legal marriage.⁴⁰ It is

38. *Davis v. Colter and Turner v. Turner and Seadon*, *supra* fn. 8.

39. See *Coe v. Coe*, *Impey v. Impey*, *Osborne v. Osborne and Hilton* and *Tobin v. Tobin*, *supra* fn. 8.

40. British Columbia: section 1 of the *Family Relations Act*, R.S.B.C. 1979, c. 121;
 Manitoba: section 11 of *The Family Maintenance Act*, 1978, c. 25;
 Newfoundland: section 10A of *The Maintenance Act*, R.S.N. 1970, c. 223, as added by 1973, No. 119;
 Nova Scotia: paragraph 1(1)(d) of the *Wives' and Children's Maintenance Act*, R.S.N.S. 1967, c. 341, as amended by 1970, c. 98; 1970-71, c. 65; and 1977, c. 18;
 Ontario: paragraph 14(b) of *The Family Law Reform Act*, 1978, c. 2.

possible under this legislation for a child to acquire parents obliged to support him or her through means other than biological descent.⁴¹ Children can have more than two parents and an adult more than one spouse. These statutes have offered no method of creating priorities among all these obligors and dependants, and, as has been pointed out, that should not be surprising.

It is important to realise that these new statutory support obligations might be invoked in the context of an application to vary maintenance. To the extent that a Court is prepared to be moved by the existence of a legal obligation, these provincial obligations could become factors.⁴² It would be open to a man to argue, for example, that the new husband of his former wife has treated his children in such a way that this new husband is now obliged to support them. The invocation of this new obligation would not seem to require a direct application for support on behalf of the child.

The author is chary of the ever-widening net of obligations and financial repercussions that the law of child support seems to entail and he is sceptical of the legal system's ability to manage them. Relations are being created in law faster than society can find names for them. That in itself ought to be a sign that the law may be moving too quickly. In an area that is truly discretionary at its core, one has no way of judging the correctness of the Courts' decisions. That is what discretion means. It is difficult enough to grapple with an ordinary two-family problem. Only when it is better known what should be done in such cases ought the net of obligationed be expanded. Canadian Courts and lawyers have only had a decade to consider the two-family problem with any degree of frequency. And so as the cases have revealed, there has as yet been little useful in the escape of "indiscretion" from the uniqueness of each case.

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41. British Columbia: sections 1 and 56 of the *Family Relations Act*, R.S.B.C. 1979, c. 121; Manitoba: paragraph 1(a) and section 12 of *The Family Maintenance Act*, 1978, c. 25; New Brunswick: sections 1 and 2 of the *Deserted Wives and Children Maintenance Act*, R.S.N.B. 1973, c. D-8; Newfoundland: paragraph 2(b) and section 5 of *The Maintenance Act*, R.S.N. 1970, c. 223, as amended by 1971, No. 71; 1973, Nos. 31 and 119; and 1974, No. 8; Northwest Territories: paragraph 2(a) and subsection 3(2) of the *Maintenance Ordinance*, R.O.N.W.T. 1974, c. M-2; Ontario: paragraph 1(a) and section 16 of *The Family Law Reform Act*, 1978, c. 2; Prince Edward Island: paragraph 2(a) and section 17 of the *Family Law Reform Act*, 1978, c. 6; Yukon Territory: subsection 2(1) and section 3 of the *Maintenance Ordinance*, R.O.Y.T. 1971, c. M-2.
42. The author has avoided discussion of any constitutional complications. It is possible that there are families who have been once divorced under the federal *Divorce Act*, *supra* fn. 2, and thereafter subject to the provisions of that Act. Families who had not been divorced yet or who had not been divorced in Canada are still subject to the provincial support laws.