

An incentive for women to divorce

Provincial and federal child-support laws are biased against men

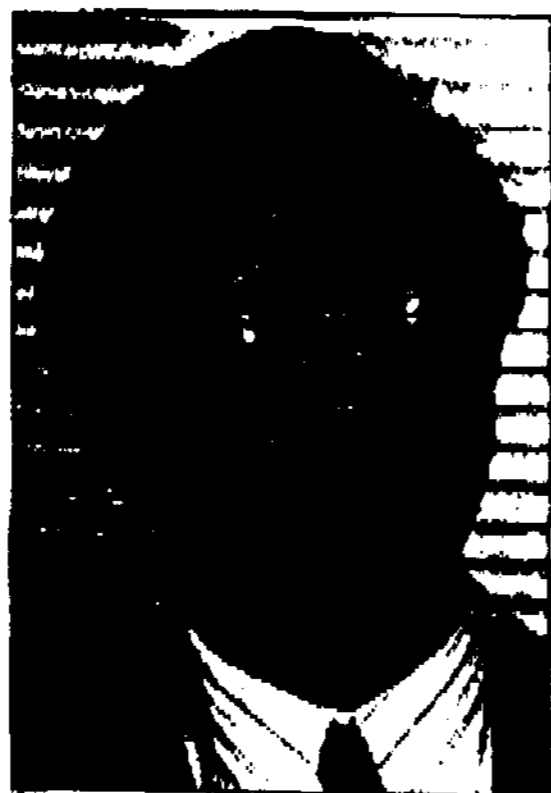
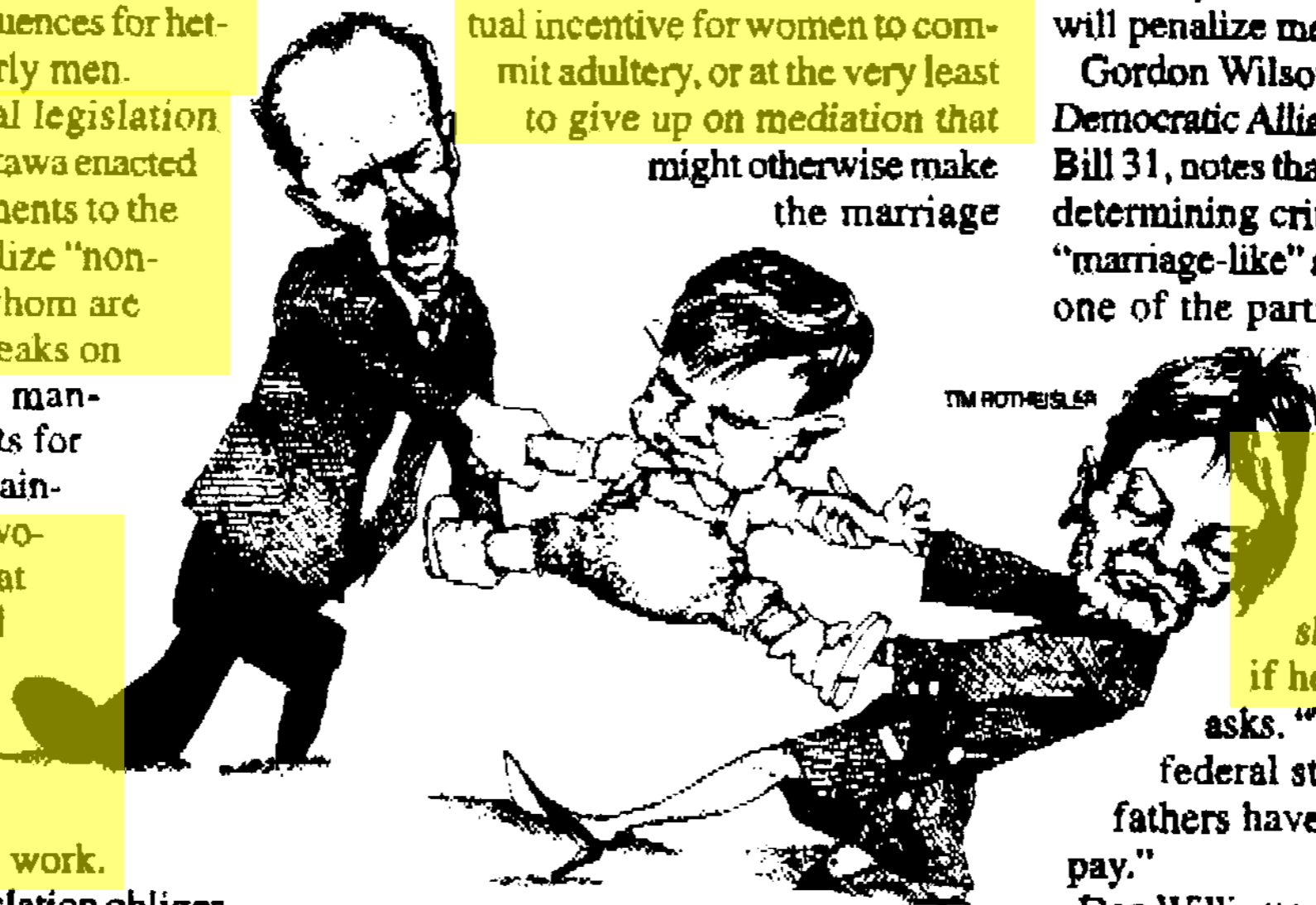
Bill 31, the NDP government's controversial set of amendments to British Columbia's Family Relations Act, received royal assent last week. Most notably, the bill grants homosexuals the same child-custody rights and responsibilities accorded to heterosexual couples and lays a foundation for the full recognition of homosexual marriage. But ignored in the heated debate over same-sex rights are other changes in Bill 31 that could have devastating consequences for heterosexual parents—particularly men.

As well, the new provincial legislation comes just two months after Ottawa enacted Bill C-41, legislating amendments to the federal Divorce Act that penalize "non-custodial" parents, 90% of whom are fathers by eliminating tax breaks on child-support payments and mandating Draconian punishments for individuals who fail to meet maintenance obligations. Family advocacy groups are concerned that taken together, the new federal and provincial laws will make divorce more financially attractive for women while providing them with fewer incentives to make marriages work.

Specifically, the federal legislation obliges judges to set child-support payments in accordance with a standardized formula based solely on the income of the non-custodial parent, regardless of whether the custodial parent needs the money or not. It pays no attention to either the reasons for the divorce—even where the wife committed adultery—or to the mother's possible remarriage and future income. Nor does it encourage the mother to cooperate with her former spouse regarding what have become routinely violated access orders.

Likewise, the legislation ignores the father's future income. If it drops, his support payments remain locked in and cannot be altered even if both parents request it. Should he miss three payments or fall \$3,000 in arrears, money can be appropriated from his public-service pension fund and his passport and aviation or maritime licences can be revoked.

But federal taxation changes are the biggest factor making divorce more attractive to women. Previously, fathers could claim maintenance payments as a tax deduction. Now that right has been revoked and mothers are no longer required to pay tax on child-support income. Karen Slick, a lawyer and commentator based in Ottawa, notes that in the absence of any rules to determine who is at fault in divorces, the new tax rules are a virtual incentive for women to commit adultery, or at the very least to give up on mediation that might otherwise make the marriage



MLA Wilson:
No definition of 'marriage-like.'

workable. "Whenever you pay people not to work there will always be some who will take advantage," she says.

With the B.C. Government's Family Relations Act amendments, which broaden the category of spouse to apply to same-sex couples, the NDP has taken the unprecedented step of extending liability for child support not just to non-custodial parents, but also to "step-parents," vaguely defined as anyone who "contributed to the support and maintenance of the child for at least one year." Kari Simpson, executive director of the Citizens' Research Institute in Langley, says the clause is so vague that if a live-in nanny had children, her employer could conceivably become liable for their support. More commonly, says Mrs. Simpson, a single

mother who married or took a live-in boyfriend could make that "step-father" liable for the support of her children.

Ironically, the legislation could work against women. For example, if a woman was to marry a non-custodial father who had visitation rights, she could become liable for the support of his children as a result of the time she spent looking after them during visits. But given the federal government's new child-support rules, which lock in payment levels regardless of the father's future income, it is likely that the NDP's step-parent clause will penalize men more than women.

Gordon Wilson, leader of the Progressive Democratic Alliance, the only party to oppose Bill 31, notes that the legislation provides no determining criteria for what constitutes a "marriage-like" arrangement in the event that one of the partners disputes such a relationship existed. And, says Mrs. Simpson, like the federal law, B.C.'s legislation doesn't address issues of access or consider a child's need for a father. "Why should a father pay support if he can't see his child?" she asks. "This weds us directly to the federal statute that prescribes what fathers have to pay, not what they can pay."

Don Williams, a Coquitlam father who was jailed for 90 days on June 20 for failing to pay child support, agrees that the system is skewed against men. His 15-year-old daughter Jennifer lived with her mother until 1993, when she fled to live with Mr. Williams instead. She reports that her mother was verbally abusive, had a string of boyfriends, and failed to support her either financially or emotionally. Nonetheless, the courts ruled that Mr. Williams was still liable for the \$7,512 in child support he had not paid his ex-wife prior to 1993. Mr. Williams was bankrupt at the time and now has a successful business, but says such a large pay-out would hurt his ability to provide for Jennifer now, and would be a "windfall" for his ex-wife. He wants the money put in a trust for his daughter instead.

Mr. Williams has established the Fathers' Rights Coalition to protest the province's child support and access legislation and vows to fight until it is amended. "The money is not the problem," he says. "It's the principle. And I won't change on that even if they put me in jail 10 days every month."

—Dave Cunningham