# Separation agreements upheld family law seminar is told

Recent changes in legislation governing separation and divorce, including the increased tendency of divorce courts to uphold the terms of legal separation agreements, were the prime topic of discussion at a legal seminar on family law staged last Wednesday in Georgelown.

Sponsored by the Halton Hills Legal Aid clinic and the Toronto Community Family Law-clinic, the seminar featured panelist-lawyers Mike Heller, Gord Chapman and Jo-Ann McMillan, all of whom are in practice legally.

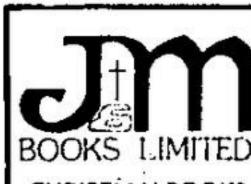
About 25 interested residents were on hand at Knox Presbyterian Church hall to hear the panelists state the facts and lend advice on the advantages of separation agreements, problems associated with the division of property and ongoing support payments and the custody of children.

LEGALLY-BINDING Legally-binding separation agreements, Mr. Heller explained, are Canada's answer to the "judidical separation" commonly granted by U.S. courts. While separation in this country is still very much a matter of personal choice and requires no court approval in most cases, he said, it is advisable to consult a lawyer to have a separation agreement drafted.

If such an agreement is then co-signed by both husband and wife. Mr. Heller said, the terms of the separation · including child and spouse support, access to children, assumption of debts and the division of property - can be legally estab- , wasting your time." lished and adherence adherence to those terms by both parties can be enforced. The document has much the same function as the "decree nisi" issued by divorce courts if and when the couple decides to dissolve their marriage.

Mr. Heller described the separation agreement as a worthwhile alternative to divorce, which necessitates lengthy, complicated and often painful court confrontations with the spouse and still does not guarantee a satisfactory resolution of the issues at

Entering into a separation agreement, however, eliminates the need for any hostility between the marriage partners by having lawyers for each . spouse work out the terms of the agreement on their clients' behalf. It is most important,



CHRISTIAN BOOKS **RECORDS & GIFTS** 41 George St. S., Brampton, Ont. Phone 457-9922

ency on the part of divorce

courts to attach more weight to

separation agreements when

considering the terms of div-

Soon, he said, such agree-

ments will probably be, "quite

PROPERTY DIVISION

... Issues of property division

and possession constitute "the

main thrust" of the Reform

Act, Mr. Chapman added. Re-

cently, divorce courts have

begun requiring both marriage

partners to fully disclose their

personal and shared assets

and outline their means of

This "important change"

Mr. Chapman said, is of

particular benefit to the wife,

who was all too often left "in

the dark" as far as her hus-

'band's assets were concerned

Generally, he explained

assets that are acquired by the

couple during their marriage

and are regarded as being

mutually-owned are "pooled"

for purposes of division. In

some cases, he conceded, such

possessions are hard to define

and, at those times, litigation

may be necessitated, Business

assets acquired by either party

during the marriage are not

subject to division between the

husband and wife, Mr. Chap-

In dividing up a couple's

property, Mr. Chapman said,

the court may vary from the

accepted guidelines in order to

ensure that both parties are

reasonably accommodated.

Among the factors that will be

taken into consideration, he

said, are the extent of assets

owned by both parties, their

respective needs and their

children's needs, the assets

either party brought into their

previously.

man stated.

orce settlements.

though, to be open to compro- ce's Family Law Reform Act mise while the agreement is will witness an increased tend- of the eligibility requirements being drafted, Mr. Heller

REASONABLE DEMANDS "A lot of clients come look-

ing for the moon," he said. "It's one of the duties of your lawyer to make sure the client is reasonable in his demands. because if the agreement doesn't get signed, you're just

Lawyers, Mr. Heller said,

are the "buffers" for the two marriage partners while negotigtions on the agreement, including proposals and counterproposals, are underway. Usually, the lawyers will ask the husband and wife at the outset whether some communication between them is still possible so that some terms of the agreement can be personally and mutually resolved, he

Mr. Heller advised the recipient of a proposed separation agreement to consult a lawyer as well, since the document's true intentions may be hidden by its "legalese." And once the agreement is signed, he warmed, be careful not to breach the contract, or else you will be open to suit.

Mr. Heller stated that the agreement could form the basis for the decree nist if the separation is ultimately taken to the divorce stage. If the judge of the divorce court considers any part of the separation agreement unconscionable - that is, unfair to either party - he will generally strike it down, Mr. Heller said.

"A separation agreement provides a measure of certainly and allows people to separate with some sense of dignity," he said.

According to Mr. Heller, recent revisions to the provin-

Area lawyers Jo Ann McMillan, Gord (hapman (centre) divorce, ready to share with about 30 interested residents who and Mike Heller had advice and opinions about all facets of attended last Wednesday's seminar in Georgetown, part of a family law, and particularly the legal aspects of separation and series of discussions presented by the Halton Hills Legal Aid

Ms. McMillan outlined some

which married persons must meet in order to apply for divorce. Among them, she said are residency in Canada for the year previous and in Ontario for ten months prior to the.

TWO CATEGORIES Grounds for divorce fall into two categories, Ms. McMillan explained. Matrimonial offenees such as adultery, cruelty, rape and homosexuality, are termed "fault grounds", while "no-fault grounds" are comprised of such factors as separation stemming from desertion. After three years of separat-

ion, he said, the marriage partner who has been deserted can apply for a no-fault divorce. The partner who does the descriing, however, must wait five years. The exception to rule involves cases in which the spouse's unreasonable behaviour during the marriage forces the other party to desert. In that instance, the offending spouse is "in constructive desertion."

addication on the part of either spouse can be construed in some cases as cruelty and thus grounds for a fault divorce. According to Ms. McMillan,

the divorce process can take

anywhere from two months to

five years to finalize, dependnot children are involved and whether the couple is agreed

If the marriage has produced children, she said, the parents must obtain an official guardian's report through the

provincial government which,

(Herald photo) if conflicts are revealed in the couple's approach to divorce.

settlement, may lead to an investigation. A three-month wait is required between the time the court ssues its decree nist and the final "decree absolute." The period can only be abbreviated when one party wishes to re-marry someone else immediately, but good reasons, of

course, must be presented. There is no objective way of testing allegations of mental or physical cruely, Ms. McMillan advised. Judges are always "very careful" about granting divorces on those grounds. PROVE PARTY

To establish that adultery hás been committed, she add ed, the spouse seeking divorce must prove that the other party had both the "opportunity and the inclination" to do so.

The terms of settlement set out in the court's decree nisi can be aftered after a period of time, Ms. McMillan said, if either party can firmly prove that those terms have become unfair. She pointed out that it is wise to state in the terms the period of time that children must be supported by the Alcoholism or gross drug partner to whom that task is charged. Recently, she explained, case laws has extended the age limit for support of children to age 21, particularly where furthering the child's education is a factor.

The terms of divorce also stipulate the location of residence and lifestlye which the designated custodian of the ing primarily on whether or children has selected. The other party is simply granted access, under conditions also on the terms of their settle- set out in the decree nisi.

Ms. McMillan admitted that women are usually granted custody of children because they generally have spent more time with them. There is a tendency now, however, to

grant custody to the father, a result of recent research that establishes that older children especially adolescent boys, are better placed in their father's

Ms. McMillan cited the findings of a soon-to-be published study on the effects of divorce on children, which determined that the worst effects are fell by children age 10 and over, especially boys, who lose an important role model if their father leaves the marriage.

CITED FINDINGS

The study concludes that regular, but not too frequent, visits by the parents without custody seems to enable the children to do better in school than do more frequent or irregular visits. Monthly, rather than weekly visits are suggested, in order to enhance the child's feelings or of security, trust and consist-

"No visits are better than irregular visits," Ms. McMillan added.

The seminar was the last of three meetings organized by the Halton Hills Legal Aid Clinic, Additional information and advice is available at the clinic's Acton and Georgetown

"Ten years ago that was very rare," she said, "but now it's not at all rare.

COMPREHENSIVE PLAN Ms. McMillan advised those , who are contemplating divorce to prepare a comprehensive plan for the upbringing of their children for presentation to the court. Included in the plan must be the stated wishes of both parents and children, the children's age and sex, the parents' mental and physical fitness, the parents willingness and ability to support the children and their general "morality." .

She pointed out that the court with not necessarily frown upon one of the parties maintaining a single relationship outside of the marriage, since the security of having two parent-figures is more beneficial to the children in the court's view,

"The important factor in the court's decision is preserving the status quo," Ms. McMillan said, noting that solid relationships begun outside the marriage during a separation will likely appeal to the court more than a single parent situation when awarding custody.

Problems stemming from access of one spouse to the children in the custody of the other confront about 50 per -cent of divorce clients, she estimated. In many cases, the child's efforts to keep his parents or parents happy by reacting to visits or failures to visit accordingly will lead the parents to misinterpret the reactions, she said.

Nevertheless, she said, it is "nearly impossible" to have access to the children by either party cut off, unless a detailed medical assessment of both parents can be obtained. To cut off access, though, would be "a great disservice to the children," she warned.

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Anglican Rev. R. Gallagher B.A.,5, T.B. Sunday, December 3 1st Sunday in Advent 8 a.m. The Eucharist **Family Eucharist** 

> 9.30 & 11 Church School 9.30 & 11 Nursery Provided

Choral Eucharist

#### HALTON HILLS PENTECOSTAL ASSEMBLY

Trafalgar Rd. and No. 7 Highway

Rev. E.J. Friesen 10:00 a.m.

Pastor

Family School 11:00 a.m. Morning Worship

7:00 p.m. Evening Service Annual Christmas Sunday School Concert, Sunday, Dec. 10th., 10 a.m. to 11:30 a.m. Also 7 p.m. Gospel Quartet "The Crystalaires", London

Tuesday 7:30 p.m. Pioneer Girls Prayer & Bible Study Christian Service Brigade

7:30 p.m. Prayer & Bible Study Friday 7:30 . Youth Service

#### GEORGETOWN **ALLIANCE CHURCH**

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Sunday School Worship Service Church of the Lutheran Hour MAPLE AVENUE

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Children's Church

### Lioness Club News

self-supporting.

By MARCELLA NEELY If you haven't seen or heard anything from the Georgetown Lioness Club members its because they are all busily assembling their portion of the annual santa claus parade. "It's a lot of work but we're doing it for the little ones" says chairman, Joan Irwin, Watch for her efforts this Sat, in the

parade. Since Sept, the girls have taken on a foster child, backed a juvenile bockey team and are strongly supporting our Halton Hills "Meals on Wheel" program

Ruth Pollous, from Meals on Wheels, recently visited the chib and explained the entire operation including the many, many volunteer hours behind the scenes. She has been soliciting support from all local service clubs, determined to keep this, much needed, service available. Mrs. Pollous explained how meals brought in keep many elderly people in their own homes in cases where, unable to slup and cook, they would have to go

into nursing homes. Community minded as they are, the girls are still following the progress of Georgelown's own celebral palsey child, Todd Ellis. He is responding well to his therapy program and is able to spend one hour a day in school this year.. "Todd can always count on our support," say the Lionesses.

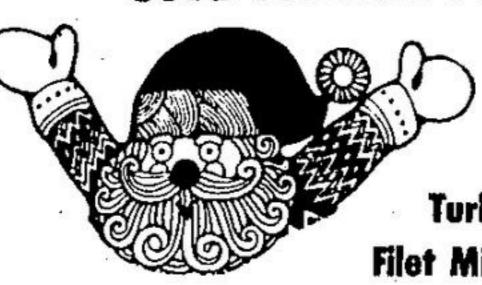
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