parties to it. The violation of any of these provisions by one spouse is a breach of the contract and entitles the other, or wronged, spouse to a dissolution of the marriage. Under this system, it is the right of the wronged or injured partner to sue for divorce on the ground of the transgressions of the other. If the court finds that one spouse committed the offence alleged, the marriage is dissolved. The option to sue rests with the wronged party. If that party chooses not to do so, then the couple remain married, at least, in law if not in fact.

Generally, the spouse who offends cannot terminate the marriage on the basis of his own offence; the criminal, as it were, cannot benefit from his own crime. There are, your Committee believes, great numbers of people in Canada, who share this view. Of course, as times change, so do people's views of marriage and what should be expected of the partners to a marriage in respect to each other. The gradual evolution of the status of women during the last hundred years has modified the idea of marriage current over a century ago when Canada's divorce law was founded in Victorian England. A wife is no longer regarded as her husband's property and is no longer expected to be not only faithful but also obedient and submissive to her husband's commands. The twentieth century sees the marriage partnership somewhat differently and consequently has different views as to what conduct constitutes a matrimonial offence.

The grounds for a dissolution of marriage at present permitted by Canadian divorce law rest exclusively on the idea of fault or offence, namely adultery, and, in Nova Scotia only, adultery or cruelty. The divorce law of most other common law jurisdictions is similarly based upon the notion of matrimonial offence. This is the traditional system for granting divorces in the Canadian and British courts and while, as a concept it is now under attack, its merits, as well as its weaknesses, require careful examination. Because the existing law in Canada is in need of reform and because that law rests upon the doctrine of matrimonial offence, it does not of necessity follow that it is the matrimonial offence concept in itself that is erroneous.

The advantages of the matrimonial offence idea urged by those favouring its retention are numerous. In the first place, it is a definite system generally understood by the public at large. The parties know that if they restrain their conduct within certain bounds they cannot be divorced; if they transgress they can. It has been argued that this provides security for the marital relationship, especially for the wife past middle age who has lost her youthful charm and whose husband has a roving eye.

Other additional factors are relevant too. Because the present system is definite and well understood, the courts have a real issue to determine: was or was not the alleged offence committed. Thus lawyers can advise clients as to their rights with some degree of confidence.

Furthermore, there seems little doubt that the matrimonial offence concept in some form is widely held by the public. Most briefs that your Committee has received advocating reform, have assumed that this would be the basis of any prospective reform. Few groups have called for its actual abolition although almost everyone has asked that the grounds for divorce be broadened.

While some witnesses before your Committee advised the abandonment of divorce on the ground of offence and the adoption of the marriage breakdown theory, whereby the ground would be the separation of the spouses for a specified period with no reasonable prospect of a resumption of cohabitation,