

*Divorce Law Reform*

with grounds for divorce, the bill can be fairly described as a composite one, recognizing both marital offences and marriage breakdown. In this respect, the conclusions of the joint committee that breakdown could not constitute the sole and comprehensive ground for divorce, have been adopted.

• (8:10 p.m.)

The new marriage breakdown principle contained in this bill, since it is to be administered by the existing courts in accordance with our well established judicial traditions, shies away from the vesting of any broad, undefined and uncontrolled discretion in the courts, in favour of a definition of legal rights by parliament. The result is that, the so-called inquest approach to divorce is rejected in favour of the customary judicial approach by which marriage breakdown will be established by evidence or proof of the existence of specified matrimonial situations.

For these reasons the government considers it desirable to maintain the administration of the divorce laws in the established courts of this country, to be administered pursuant to the rules or principles of law laid down by parliament, rather than invest a broad and uncontrolled administrative discretion in some new courts or tribunals.

Notwithstanding that hon. members will find that the grounds for divorce are being substantially extended by the bill, they will find that the bill is not simply or merely a divorce bill in the traditional sense. It is also a reconciliation bill, in that it imposes stated duties on both the legal profession and the courts in relation to the matter of reconciliation, and these provisions have been included in the hope that as many as possible of the broken marriages that come before the legal profession and the courts can be saved.

The government is fully conscious of the important public interest that exists in our society in relation to the maintenance and continuation of marriage and the family unit, where this is possible. The salvaging of marriages is at least as important as the burying of dead marriages that cannot be salvaged. However, a bill directed to the subject of divorce is not necessarily the most appropriate or only vehicle that can be employed to strengthen and give substance to the marriage estate. The government recognizes that financial assistance and encouragement may well be necessary to develop adequate counselling and other agencies that are necessary to deal with faltering or broken marriages, and it is the intention of the government to

keep this most important matter under continuous review.

The bill also contains provisions dealing with the law of domicile in so far as the existing law on this subject affects the position of married women in our society. An attempt has been made to place the married woman in a position equivalent to that of her husband for the purpose of obtaining a valid decree of divorce both within Canada and abroad.

No comprehensive bill on the subject of divorce would be complete without provisions for alimony, or pension alimentaire as the civil code of Quebec puts it, and for maintenance and the custody, care and upbringing of children. The bill therefore contains provisions dealing with these matters as corollary relief to petitions for divorce. Alimony, maintenance and custody orders made under the provisions of the statute will be enforceable by law throughout the whole of Canada upon being registered in the superior courts of this country.

The bill also contains provisions that will have the effect of abolishing parliamentary divorce, as we now understand it. In this regard we have departed a little bit from the report of the joint committee, but I think it is a step that this parliament is prepared to take. Therefore the Dissolution and Annulment of Marriages Act is to be repealed and divorce jurisdiction in respect of the provinces of Quebec and Newfoundland will be vested, at least temporarily, in a new divorce division of the Exchequer Court of Canada.

I mention that this jurisdiction might be temporary because the bill also contains a provision which will enable the jurisdiction to be transferred from the Exchequer Court to the Superior Court of Quebec and to the Supreme Court of Newfoundland by a proclamation issued by the governor in council on the respective recommendations of the lieutenant governors in council of those provinces. The idea is not to force upon any province a mode of procedure in the courts that it is not prepared to attain, but to suggest that, when these provinces are ready, we are ready, and that in the meantime we take out of parliament this outmoded way of proceeding, whereby divorces for two provinces had to be dealt with by one of the houses of parliament.

Consequential amendments are therefore proposed to the Exchequer Court Act. These amendments will establish a divorce division of that court, with special provision being