

Divorce Act

himself get a divorce within one year. The only way in which the women can get a half decent financial settlement now is, if the husband boots her out, that he has to wait at least five years before he can remarry. That has been a powerful instrument in the hands of the wife and her solicitor in order to obtain a settlement which is fair to the woman and takes into account the effort and years she has put into the marriage and the family. To just change it holus-bolus affects that, and without other changes in the Bill that itself will not be satisfactory.

On the other hand, there is sometimes a need for a provision where a divorce can be obtained quickly. A wife, sometimes because she had been totally on her own, most often as the result of the man having ignored her over a number of years, becomes involved with another person and becomes pregnant. I suppose I had ten or fifteen cases of this over ten years. The wife would come in, pregnant by another man, and she needed a divorce quickly so that the child would be legitimate. Most often we were able to do this by going before a judge who would grant the divorce. Under this legislation, that woman would be forced to wait a year before she could remarry and the child would be born illegitimate, to be legitimized at some later time. We should have a way of handling this because, wherever possible, we want to have children born within the contract of marriage.

Another area where the law needs to be changed, and I am amazed that it was not in this Bill, is that of endorsing maintenance and custody orders. In over 85 per cent of divorces, custody is given to the mother. In my own Province of Alberta, the last statistics I saw indicate that one third of the maintenance orders were fully paid, one third were only partially paid and one third were not paid at all. Yet if this Bill becomes law, husbands could move to another province where they could apply to have the maintenance varied downward, and often they would succeed. The wife would be in Alberta, her husband would be either behind in his payments or not paying at all, so how will she be able to afford to go to another province just to get the order varied? What if she lives in Alberta and her husband lives in Newfoundland? It is not right, Mr. Speaker, and we cannot let that Bill go through as it is.

It was my intention to speak about the many lobbying groups who have presented their views. I have over 90 letters, several from churches and many from non-religious groups. Some act on behalf of men, some on behalf of women. We have had some good briefs on this subject, and I think that if we put our minds to it, when the legislation gets to committee we could improve it substantially.

The Acting Speaker (Mr. Herbert): There follows a ten-minute period for questions and comments.

Mr. Nickerson: Mr. Speaker, the Hon. Member said that, in his experience as legal counsel, the couples who sought his advice had gone past the point of reconciliation. I notice that the Bill goes into some detail on reconciliation and counselling. I wonder if, in the opinion of the Hon. Member, it is a waste of

time to incorporate all that in the Bill and whether it could best be dropped, because all it is is a recommendation to the lawyer dealing with these cases.

Mr. Thacker: I feel strongly about that, Mr. Speaker, because I think it is superfluous. It is designed so that we politicians can stand up and say we are trying to do everything we can to save marriages. But it did not work in the 1968 legislation and it is not going to work in the 1984 legislation. It has to be done at the local level. First, it has to be done in the individual family involved, where they make a commitment to try to make the marriage work. Then there are church groups, and also we have social counselling agencies available who make it known throughout the community that they will assist people in this area. But to try to make it mandatory—and again I speak only from my personal experience—will not work because by the time they get to that point it is usually over. You have to get to them much, much earlier. If we are going to make anything mandatory, let us make it at another stage, when people are young and perhaps could benefit more from understanding the realities of marriage and living with other people and the economic problems, rather than when they are 35 or 50 and think they need a divorce.

Mr. Hudecki: Mr. Speaker, I would like to ask the Hon. Member whether he has a very definite protocol to follow in attempting to bring about reconciliation. It has been my experience that with many lawyers it is simply a very factual meeting with the couple concerned at which they go through the usual procedure.

I am also in sympathy with him concerning his thoughts about considering practically all divorces to be no-fault. A delegation of women came to me and said that they feel that if such divorces go through and the children remain with the mother, as they usually do—and she is most often the innocent party—they will, in time, acquire a suspicious attitude toward that innocent person. They will begin to feel that he or she must have contributed to the divorce and, as they get older, they will become concerned about the support they really got from the innocent person. Who really should make the judgment as to whether or not it is a no-fault divorce, or whether one is the innocent party and the other one is the guilty party?

Mr. Thacker: Mr. Speaker, I think that question should be left to the parties themselves. Parliament should pass legislation which will give them the power to decide. We could have a no-fault provision where the couple could agree. But we could also have a provision covering fault, so that a wife, if a satisfactory settlement cannot be negotiated, can proceed under those provisions. She will have the right, then, to go before the judge and give her evidence as to what happened throughout the marriage that led to its decline. It very seldom saves the marriage, but at least, if she feels she is innocent, the courts can make that ruling. I think that does have an effect on the court's order for maintenance, custody and a property settlement. Let us put in the mechanism where it can go either way and leave it to the individuals rather than lawyers or some government agency to make that decision on their behalf.