

*Divorce Acts*

recognized and maintenance of the dependent spouse is provided for.

Although the Government introduced fault as a ground for divorce, it specifically detached the issue of fault from the issue of maintenance. I am worried that that detachment, which is formally provided for in the Act, will not work and that because the Government brought fault into the Act, it will find its way into the maintenance issue. I will explain how I think that will happen, regrettably, in a moment when I come to urging the Government to withdraw the face-saving component it added on the question of fault.

We are also glad that custody is addressed. When we get to committee, we will want the Government to consider the issue of custody because more than it should, custody has developed in divorce situations to be custody of one parent or the other. The time has come to recognize that joint custody is a viable basic concept and that divorce itself should not be a ground, as often as it is, for the judge confronting the issue of which parent should have primary custody and what the rights of the other should be. Joint custody works very well in some jurisdictions in the United States. Having been dry run in the United States, we think it needs to be brought more than it is into the Canadian context. When that feature of this package of legislation is addressed, we will want to express our views about it.

In a final area, I want to indicate that the Government went further than the former Government in the area of enforcement of maintenance orders. We are happy about that, but we do not think the Government has gone far enough. In our legislation in the last Parliament, we talked about going to the provinces and speaking with them about enforcement. The new Government considers itself to be in a very different position in relation to the provinces. The new Government feels that it has a very good relationship with each province. I am prepared to concede that it has a better relationship with a lot of the provinces than did the former Government. If the Government has that good relationship, why is it not using it to try to get a better system of maintenance than the one proposed? It talks about an exchange of information and about entering into agreements with provinces. I would like to see more.

Given its claims about good co-operative relations with provinces, it should have put more on the table now. We will be asking the Government in committee to put more on the table, to protect dependent spouses and dependent children, and to ensure that the wealthier spouse is in a position to make the payments. We would like to see more machinery and more recourse contained in this legislation to assist dependent children in getting what is their due. The Minister made a good sounding speech about it. He recognizes the cost to other taxpayers when dependent spouses and children are unable to collect from more independent spouses the payments ordered by the court, but I would like to see more machinery to give effect to that.

I mentioned that the Government was faced with a dilemma because it wanted to produce all these good things. I have outlined them and the reasons we support the Bill. However,

government Members could not have simply reintroduced the Liberal Bill because they had criticized it when they were in Opposition. Thus they introduced the concept that, notwithstanding a general no fault philosophy, fault—that is, cruelty or adultery—would be a continuing ground for divorce without having to wait for one year. I do not suppose we are in a position as one small opposition Party to prevent the Government from introducing the concept of fault, but we will try to convince it that it is wrong in the general framework of the legislation we have discussed and of the good things included in the legislation, borrowed, as I said, from the former Liberal Government, to add on this little frill about fault.

I will refer to the information which the Government put forth. It claims to want the divorce process to be less adversarial while increasing chances for the reconciliation of the spouses or, where this is not possible, providing a more humane and fairer resolution of the consequences of divorce. Mr. Speaker, you can see the problem. If fault and cruelty are grounds for an early divorce, there will be a tendency in some situations, if not by both spouses then by one or the other, to want to use those grounds to obtain an early divorce without waiting for the year. If those are available grounds, I submit that even if the legislation indicates that fault should not go to maintenance, there will be a negotiation which takes account of the possibility of early divorces between spouses. In many cases one will put pressure on the other to go the fault route in order to obtain an earlier divorce at the price of some concessions on maintenance. I think that is wrong and that fault should be taken out for that reason alone.

There is another reason as well—the custody issue. I see nothing in the Bill which unties custody from the fault issue. What I am worried about—and I will want the Minister to deal with it—is how we will assure that custody is decided on proper grounds and that custody is not side-tracked into the cause of an early divorce where fault becomes one of the grounds. I do not want either of the spouses or the court to be directed, because of this little face-saving fault issue, into taking fault into consideration unduly in the awarding of custody. I am worried that the Bill, the way the Minister presented it, will lead to custody being affected inordinately by considerations, which may not even be very serious considerations of fault, designed by the couple to allow for an earlier divorce.

Also I think that the addition of fault will tend to work against the reconciliation machinery provided in the divorce Bill, and that we will see couples avoiding the reconciliation route which is in the law because the Government has found it necessary to provide for a divorce by way of adultery or cruelty on a quicker basis.

The Minister was very uncomfortable with the issue of fault. We could see that from the speech he delivered in the House yesterday. I wondered how he would resolve the dilemma of favouring the no fault divorce yet including a provision for a divorce by way of established fault. When I listened to him, looking for the way he would resolve the dilemma, I found that