

*Divorce Act*

interests of the children of such a marriage, who are indeed the true victims of all tragedies associated with divorce. However, if we are not careful and if we do not exercise extreme caution, we may well create circumstances which make marriage dissolution so easy that no real judgment can be made as to whether or not the marriage has failed and is indeed irreconcilable.

This, Mr. Speaker, is the general reservation I have with the Bill before us and with one specific part of the Bill, its being the proposition which merely requires as a condition of divorce that the husband and wife have lived separate and apart for a period of one year or more that immediately precedes, includes or immediately follows the date of presentation of the petition.

● (1510)

I am sure the intention of this Bill is not that it be used to facilitate divorce on demand, but I question, especially when there are no children involved, whether that will not actually be the result. What requirements exist under the proposed Bill to verify that the couple in question have indeed lived separate and apart for one year? None that I can find. There is no legal requirement—no filing of legal separation papers and no letters of intent registered with the court. Indeed, the conditions that permit cohabitation during 90 days of the year, ostensibly to effect reconciliation, may well serve to obscure the deception being undertaken.

The argument may be made that when there are no children in a marriage and both partners agree to end the marriage, they should be able to obtain a divorce on demand. However, that is not the argument proposed by the Minister and his staff in the documents which accompany the Bill. If they wish to see divorce on demand, they should have the courage and the conviction to state so openly, rather than provide loopholes that permit them to say one thing and do another. It is this inconsistency, this slapdash attitude to this very important subject that affects the social fabric of our lives that I find throughout the Bill that causes me to hold reservations.

I have no objection to shortening the time requirement for divorce to one year. One year seems to be a reasonable time in which to determine whether a marriage has failed completely or whether it can be saved or reconciled in any way. I have no objections to “no-fault” grounds, as long as they are agreed upon by both parties, without coercion. But I cannot agree with the supposition contained in the Bill that in all cases it is preferable to list “no-fault” as the basis for concluding a marriage. This I cannot accept. Surely we are not so naive as to believe that once a divorce has been granted, the scars and injury of every single marriage, no matter how bad or how cruel, will be healed and that the agony and torment of such a marriage should not be taken into consideration when it comes to matters such as maintenance.

We know very well that there are acts committed in the confines and privacy of a marriage which would not be condoned were they committed in public against strangers. These acts would, in many instances, qualify for prosecution under the Criminal Code. The vast majority of such acts are commit-

ted against wives and minors. Surely they have some right, if not to financial compensation for the injuries received, both physical and mental, then at least to the understanding of the courts. Somewhere it should be recorded that such a marriage failed because of the very real, even criminal, fault of one of its partners. We provide financial compensation in Canada today for the victims of criminal injury. Surely we can at least give moral compensation to the injured victim of a divorce.

There is more than the emotional solidarity that a court can get in its assessment of fault in those instances where clearly there is fault. Surely there is a correlation between such fault and awards the court may make for settlement and maintenance. If there is no recognition of fault, how can we pretend that we will ever reach an equitable maintenance settlement? The Bill states that the courts will be obliged to consider the economic advantages and disadvantages of spouses. Where is the clear criterion for the courts to be obliged to consider, for example, the mother who has given up the pursuit of her career to raise children; the wife who has worked to help her husband through university and launch him on his career; the wife who has given up the advancement of her own career pursuits to raise children; and the wife and the mother who has been out of the work-force for some 30 years to 35 years or more and has no means of attaining self-sufficiency?

But age, experience and family obligations are surely not the only disadvantages created by a marriage. The mental anguish and insecurity caused by the behaviour of one or the other of the spouses is no less a valid disadvantage. To say that the court shall not have regard to any misconduct is to negate this very valid disadvantage. In my opinion, the use of the word “misconduct” to cover instances of extreme psychological and physical abuse is an insult unworthy of a Bill which purports to do justice. The concept of maintenance without consideration or regard to such misconduct not only ignores the very real disadvantages such a victim or spouse may have at the time of divorce, it also undermines the grounds he or she—and quite obviously in most cases it will be a she—may have at some time in the future of making application to have such maintenance orders reviewed. Are these victims of divorce, therefore, not to be protected? Do we not have a responsibility when amending any law to take into consideration and take the time to bring forth all the improvements that are required, and not just pay lip service to addressing a need that has been brought about by social change?

Let us remember that an abused spouse, indeed any spouse, may very well make agreements at the time of divorce just to get the process and the marriage over with. In such a case, and under the no-fault agreement, what recourse does a spouse have upon reflection to apply for an adjustment of the divorce settlement? What hope does a spouse in this situation have of obtaining that she or he should have had at the time of the divorce? Such a spouse cannot explain to the reviewing judge that there were circumstances at the time of the divorce—the severe mental anguish, even fear that prevailed—that acted against the spouse’s best interest. The divorce was no-fault.