

Divorce Acts

a very long time because of the non payment of maintenance orders.

[Translation]

The three bills now before the House fully meet the objections which the New Democratic Party had raised when the previous government had introduced its Divorce Bill. On second reading, we had opposed the principle of the bill, for this so-called reform was not likely to improve in any way the lot of the great many women and children who depend for their support on maintenance payments. It is a well known fact that court-ordered maintenance payments are only partly made, if made at all. The result of this is that, following a divorce, the spouse on the labour market, generally the husband, benefits from an increase in his disposable income, while the spouse who has custody of the children, the wife most of the time, finds herself in a distressing predicament.

This bill will go a long way toward providing adequate income to these women and children who depend for their support on delinquent husbands and fathers. First of all, the criteria for determining maintenance payments are more just than those in the preceding legislation. As a matter of fact, that Liberal legislation could have made these women's situation even worse by insisting on maintenance payments with fixed terms and the economic independence of the divorced wife.

This bill is more realistic. It reflects the fact that economic independence for some divorced women is impossible. In some divorce cases, there are some women who have never been on the labour market, or have not been for 30, 40 or even 50 years.

In such cases, it would be unfair to compel the divorced woman to accept any job to become financially independent. Economic conditions are difficult. A 60-year old woman without experience on the labour market can earn her living but is it fair that such a woman should suffer a substantial reduction in her standard of living? Fortunately, the criteria proposed in the bill are more reasonable; they are as follows:

Firstly, the maintenance order should recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown; secondly, it should apportion between the spouses any financial consequences arising from the care of dependant children; thirdly, it should relieve any economic hardship of the spouses arising from the breakdown of the marriage; and fourthly, it should in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

● (1740)

[English]

Let me note that there are real difficulties in establishing economic independence and real equality after the break-up of a marriage. Even if there is a fifty-fifty split of assets—provinces are moving toward this procedure, although it is not perfect yet—and even if some support money is granted to the spouse who has been in the home looking after the children, there will still be difficulties. What seems to be equality may

not in fact be equality in practice because the partner who has stayed in the home has missed the opportunity to develop skills that are marketable. The partner who has been in the labour market during those peak years of job training and experience-gathering has human capital and the opportunity to invest. That person will have far more opportunity to gain a good livelihood after the marriage break-up. I suspect that even with better laws, women will be seriously disadvantaged. While we hope that they will be above the poverty line, they will still not be on an equal footing with their husbands because they have lost all those years of skills training which can be sold in the market-place in career development.

A serious gap in this legislation concerns the fact that pensions, even those under federal jurisdiction, are not mentioned in the legislation. ed1988;-1 While most private and employment related pensions come under provincial jurisdiction, there are some pensions under federal jurisdiction. Therefore, this unfairness with regard to pensions and the dependent spouse should be remedied. There should be automatic pension splitting for the Canada Pension Plan, with no need for application. We know that most female spouses do not make that application, nor should there be a deadline for it. There should be automatic splitting for all pensions under federal jurisdiction, especially since homemakers do not qualify for the Canada Pension Plan in their own name. Women are badly treated with respect to pensions.

The wife must negotiate pension splitting as part of the marriage settlement, which means that she may have to give up something else during that negotiation. The splitting should be automatic, unless the court finds a good reason not to do so. The federal Government could set a standard by automatically splitting all pensions under its jurisdiction. I hope that recommendations for such amendments will be made in the committee.

There has been some improvement in the legislation with respect to grounds of divorce, compared with the current laws. The New Democratic Party supports the principle of marriage breakdown being the sole ground for divorce because we believe that this is the way to have the fairest settlement, to decrease the adversarial nature of the proceedings and to prevent conduct from beginning a matter for maintenance decisions. However, the new Bill before us today would have both marriage breakdown in effect by separation of fault grounds of divorce either by adultery or cruelty. I have some concerns about the wording of the cruelty section. It states, "if one spouse has treated the other spouse with physical or mental cruelty of such a kind as to render intolerable the continued cohabitation of the spouses". This raises a question of how much cruelty must there be? How many beatings must there be before the situation is rendered intolerable?

Mr. Thacker: The same as the last law.

Ms. McDonald: The last law is very unsatisfactory in that respect. We certainly heard of cases where the spouse has gone