

### 1. Arguments for Divorce by Consent

At least two witnesses before your Committee have urged the adoption in Canada of some form of divorce by consent as an addition, though not as a substitute for the present system. These are Mr. J. H. MacDonald and The Baptist Federation of Canada. It is contended that if a couple find that they cannot successfully live together and wish to be rid of their marriage ties, it is impossible to make that marriage a reality and it would be better to allow them to terminate it. No purpose is served by the retention of an empty tie. It is further argued that this would only introduce an element of reality in the divorce picture. At the present time, 90% of divorce cases are uncontested and thus there is a strong element of consent involved in them. To allow divorce by consent would permit a couple to obtain a dissolution of marriage without the need to allege or to actually commit matrimonial offences. Thus all the distasteful features of the present system could be avoided, as could the need to prove offences and to wash a great deal of matrimonial dirty linen in public. Embarrassment and bitterness could be removed thereby from divorce proceedings.

### 2. Objections to Divorce by Consent

There are several objections to the introduction of divorce by consent that your Committee believes to be valid. In the first place, there is an inherent contradiction between the proposition that marriage should be a lifelong union and the one that it can be terminated at will by the parties to it without any need to show cause for such a dissolution. *Putting Asunder* makes this point very strongly:

“(Divorce by consent) subjects marriage absolutely to the joint will of the parties, so making it in essence a private contract. Since it gives the court, as representing the community, no effectual part in divorce, it virtually repudiates the community’s interest in the stability of marriage. Moreover, if the covenant that initiates marriage is to be revocable by mutual consent, its intention cannot meaningfully be called ‘lifelong’ provision for a divorce can be reconciled with a lifelong intention only if divorce is subject to an authority that is independent of the will of the parties.” (p. 34)

It is in society’s interest to maximize the number of stable marriages within the community and there are many people who suspect that the introduction to divorce by consent would seriously undermine this objective. It is significant that most of the briefs presented to your Committee which have advocated a widening of the grounds for divorce in Canada, especially those supporting the introduction of marriage breakdown, have taken pains to stress that their proposals would not lend to divorce by consent and would not thus weaken the institution of marriage.

Since society does have an interest in the preservation of marriages, the marriage contract is not like any other contract. The community should have a greater part to play in the dissolution of marriage than merely overseeing the legal requirements for the dissolution of a private contract. The spouses, and above all the children, have a vital interest in the existence of the marriage tie. They are vitally affected by any change in it. The community has the duty to see that its interests are safeguarded. The interests of the spouses and the children require that society through the courts oversees and sanctions the dissolution of