

Senator Roebuck mentioned my legal practice. While it was primarily of a commercial and corporation nature, I did do a certain amount of domestic work, in the course of which I handled a substantial number of legal separations in the Quebec courts, and probably four or five divorces a year through Parliament. Therefore, in some 20 to 25 years I appeared before the divorce committees 100 or 125 times under the old system. Since my appointment as Commissioner I have had an opportunity of dealing with some 2,000 petitions over a period of two and a half years. I am therefore in the position of looking at it from both sides of the picture, that of the practicing lawyer and the litigants, and from the point of view of someone sitting on the bench hearing the evidence.

The situation as to the existing law has been outlined for you by Mr. Hopkins, and he has dealt with the English law regarding possible enlargement of the grounds.

I understand that the terms of reference of this committee are quite wide, so I am going to confine myself to discussing possible new grounds for divorce, but will deal with the procedure generally and what I believe to be suggestions as to how it could be improved, and some of the problems that we encounter and will continue to encounter under whatever system we have. In doing so, I am going to be quite frank and I hope I shall not hurt anybody's sensibilities, because you may not all agree with some of the things I have to say.

In the first place, I believe that if any amendments are to be made so as to enlarge the grounds for divorce, Parliament by virtue of its jurisdiction over marriage and divorce should make such changes applicable throughout Canada, and not to certain provinces only. I think that as long as our Constitution remains unchanged and that power is vested in Parliament, it should be used for the whole of Canada and that the provinces of Quebec and Newfoundland should not be excluded. I think that would be a step backward.

The grounds at present are the same throughout Canada, with the exception of Nova Scotia which has the additional ground of cruelty. I think it is desirable that they should stay the same throughout Canada, whether extended or not, and I think from the practical point of view it is unrealistic to say, "Let Quebec and Newfoundland ask for the extended grounds if they want them."

There is a big difference between taking a positive step and merely riding with the tide. I do not believe any government in Quebec would wish to go on record passing a resolution asking for extended grounds for divorce. On the other hand, if Parliament by virtue of its authority did extend them I would be inclined to the view that there would not be any very serious outcry if this was legislation for all Canada at the same time. But if Parliament legislated for the other eight provinces and asked Quebec to pass a resolution, or some legislative body were asked to do so, to include Quebec in those extended grounds, I am sure that would never take place, at least, in the foreseeable future, and it would be a step in the wrong direction.

I do think that whatever body hears the cases on behalf of the Canadian Parliament, it has to, in the present state of our Constitution, confine itself merely to dissolving or annulling the marriage, as the case may be.

I know there are two schools of thought about whether the question of alimony and custody of the children is not an ancillary right arising out of the law of marriage and divorce. However, I myself belong to the school of thought that holds that it is a matter of property and civil rights, and that to attempt to give any federal court or federal body itself authority to make rulings dealing with custody of the children or alimony would be very offensive to Quebec and to the whole system of Quebec law.

In Quebec you have a system of community of property and alimony depends in part on the value of the community property and the assets the wife