

their legal status as married persons. They could vary from time to time and from jurisdiction to jurisdiction and a particular rule is not necessary or essential to constitute a marriage.

The provinces of course have jurisdiction over property and civil rights. Since Parliament has exclusive jurisdiction over marriage and divorce, it would seem to be clear that the provinces could not define the status of marriage or divorced persons and therefore could not prescribe the rights and obligations constituting a marriage or the extent to which the rights and obligations created by the marriage shall be abrogated or continued by a divorce. However, generally speaking, their jurisdiction over property and civil rights would include the matters mentioned in the preceding paragraph as well as the welfare of the people of the province. The provinces could therefore make provision for the support of its residents, whether they be single, married, divorced, children or adults. Provincial legislation dealing with property and civil rights, and not being legislation *qua* marriage or divorce, would no doubt be valid. If, however, any particular provincial law should clash with a federal law, then, under the normal rule, the latter would prevail.

I was also asked by the Special Assistant of your Committee to clarify the comment I made when I appeared before the Committee to the effect that at the time that Prince Edward Island was established there was no divorce law because the Divorce and Matrimonial Causes Act of England was not enacted until 1857. What I had in mind, of course, was that the English Divorce and Matrimonial Causes Act did not become the law of Prince Edward Island because the Act was passed after Prince Edward Island established its own legislature in 1773. Between 1773 and the year 1883, when Prince Edward Island enacted its own Divorce Act, the law of Nova Scotia would have applied because Prince Edward Island was originally part of Nova Scotia. However, I believe there was in Prince Edward Island no court with divorce jurisdiction between 1773 and 1883, so that the substantive law of divorce that was carried forward into Prince Edward Island had no practical effect. As I indicated earlier, rules of procedure were not promulgated in Prince Edward Island until 1945 so that between 1883 and 1945 the Prince Edward Island divorce law was not in practice being applied.

I hope that the foregoing clarifies all of the additional points that have been raised. If I can be of any further assistance to your Committee, please let me know and I shall do my best to accommodate you.

Yours truly,

E. A. Driedger,
Deputy Minister.

It may be of significance to note, that in the past, Parliament in the passage of private divorce bills has exercised jurisdiction over these matters. In the Campbell case referred to previously, Parliament prescribed alimony for the wife and laid down how it should be paid. It also determined not only the custody of a child of the marriage but also provided for the child's maintenance. There were five other private divorce Acts, passed in the period between Confederation and the year 1896, which made provision for the custody of the children. (47, Victoria, c. 47; 50-51, Victoria, c. 131; 51, Victoria, c. 110-111; 55-56, Victoria, c. 80).