

Divorce Law Reform

Where he has adopted marriage breakdown I think it will be effective. The bill deals with marriage breakdown because of imprisonment of one's spouse, because of alcoholism or narcotic abuse, because one party to the marriage has disappeared for three years or has failed to consummate the marriage. In this regard there was an exchange in the house last night between the hon. member for Okanagan-Revelstoke (Mr. Johnston) and the minister, but this is nothing new. Much of what the minister has included in the bill is not new; it can be found at pages 160 and 161 of the draft bill of the divorce committee. We dealt with that and came up with a pretty reasonable formula.

Although I would give the minister marks for improving on that formula somewhat, he has not done so in one particular instance, the case of marriage breakdown where the parties are not living together. A period of three years was suggested if the parties have voluntarily separated, but five years if one spouse deserts the other. Many of us in the committee considered that in cases of marriage breakdown a voluntary separation for a period of three years was a pretty civilized way of ending the marriage. I think that prescribing three years as a trial period, to enable the parties to live together again to see whether the marriage could be repaired, made sense.

• (9:30 p.m.)

The minister has retained this but has taken the desertion of the petitioner and made the applicable period not less than five years. In other words a man and woman may agree, in a civilized manner, that they are not getting along and that they will separate for three years. At the end of that time they have the remedy of divorce. On the other hand, a man may decide that he cannot live with a woman, or a woman may decide that she cannot live with her husband, and march out. There is no civilized breaking of that marriage; there is no civilized separation of that couple; there is a brutal withdrawal by one of the parties. The civilized person waits three years for his divorce, but the person who is brutalized by desertion has to wait for five years. There is no justice in that, and I hope that this matter will be cured when the bill comes before the committee. I hope that hon. members agree with me that the spouse who is brutally deserted should have greater relief than is presently provided by the bill.

[Mr. McCleave.]

The committee report dealt with this matter, not from the aspect of marriage breakdown but as a ground by itself. In simple language, on page 59 of the report of the special joint committee we find this:

—has deserted the petitioner without cause for a period of at least three years immediately preceding the presentation of the petition;—

The period, if one takes the worst instance, which is desertion, should be not five years but three years. The largest class of persons needing relief in Canada are those who are deserted. Their number alone is at least 60,000, a formidable number. That number is at least equal to seven times the number of cases which are heard each year in the divorce courts of Canada.

The minister said that the ground of homosexuality has been added—

Mr. Trudeau: Before the hon. member leaves the question of desertion, I want to make sure that I understand his criticism. The three year period applies to the deserted party. The deserted party need not wait for more than three years. The deserter must wait for five years. It is the offended party, if we may use that concept, who must wait for three years.

Mr. McCleave: I thank the minister for his explanation. He mentioned this matter to me outside the house. I have read this bill carefully and I presume that clause 4(1)(e) is the one that is applicable. I think the minister ought to clarify that wording when we get in committee. As the bill is worded now we find, on reading subparagraph (e), that—

—the spouses have been living separate and apart
(i) for any reason other than that described in subparagraph (ii), for a period of not less than three years, or
(ii) by reason of the desertion of the petitioner, for a period of not less than five years,...

The wording must be made more clear in committee. It must be shown more clearly than the deserter has the right to launch a petition after five years. From my reading of the clause I take the meaning to be that the one who is voluntarily living away from the other party is covered by (i) and the deserted petitioner is covered by (ii). I am sure that this matter may be cleared up when we come to the committee stage of the bill.

Mr. Trudeau: My intention is similar to the hon. member's. If we need to clarify the language, I shall look at the wording. I am not sure that the language is wrong, but I am sure that my intention is the same as the hon. member's.