

RECOMMENDATION

Your Committee recommends:—

(i) A husband or wife domiciled in Canada may institute proceedings praying for the dissolution or annulment of the marriage, and for ancillary relief, in any province with a court having jurisdiction to provide such relief, if the petitioner or the respondent has resided continuously in that province for a period of at least one year immediately preceding the presentation of the petition.

(ii) For this purpose, "Canadian Domicile" is defined as follows:

- (a) a husband has Canadian domicile if he is domiciled, in accordance with the existing rules of private international law, in any province of Canada; and
- (b) a wife has Canadian domicile if she would, if unmarried, be domiciled, in accordance with the existing rules of private international law, in any province of Canada.

BARS TO DIVORCE

1. *Collusion*

Collusion in divorce cases is illegal at common law and is prohibited by statute in the Law of England as it existed on the 15th of July 1870 and the prohibition was thus introduced into certain of the Provinces of Canada. It should be included in any Act of the Parliament of Canada consequent upon this Report, but not so as to discourage or prevent negotiation between the parties or their solicitors or agents with a view to the reconciliation of spouses or the making of *bona fide* and proper arrangements with regard to the custody of and access to children, the maintenance of the wife or division of assets. It is not desirable that the man and wife be kept at arm's length by a rule of law and prevented from doing what is right and honourable under the circumstances or which may lead to reconciliation.

Collusion has not been defined by statute either in England or Canada, and confusion and misunderstanding exists in the public mind and even among solicitors as to what it means and as to what its prohibition actually prohibits. This is not in the public interest and should be corrected.

A dictionary meaning of collusion is "a secret agreement for an unlawful or evil purpose." It is the evil purpose of the agreement that renders it collusive.

"It is very important that the ignorance about what collusion is or may be should be dispelled. . . collusion means a corrupt bargain. . . to bribe the party bringing the petition, or, it may be to suppress a defence or to falsify the facts." (Lord Merriman, Debate in House of Lords, *Hansard*, Vol. 199, col. 133, Power, *On Divorce*, p. 78).

There must be a corrupt agreement or conspiracy to which the petitioner is a party to obtain a divorce by some fraud or deceit practised on the court, to pervert the course of justice or by bribing the respondent or co-respondent to deprive the court of the opportunity of hearing what may be the truth.

RECOMMENDATION

Your Committee recommends that collusion be prohibited in somewhat the following terms:

Collusion shall be a bar to divorce, being a corrupt agreement or conspiracy to which the petitioner or respondent is a party, to effect some illegal, wrongful or improper purpose such as the bribery of a respondent