

endanger the life and limb of the marital victim, or to be so grossly insulting and intolerable that the person complaining could not reasonably be expected to cohabit with a spouse guilty of such conduct. These, of course, are general terms and would not be really helpful in the trying of cases.

Cruelty has never been satisfactorily defined. For one reason, because public opinion as to what constitutes cruelty is continually changing and differs considerably from place to place and among different individuals and classes of individuals. One English judge is quoted as saying that, while it is impossible to define cruelty, there is no difficulty in recognizing it when one sees it.

Fortunately, your Committee does not believe it necessary to attempt a definition of cruelty. Some witnesses have expressed concern lest the introduction of cruelty as a ground would open wide the door to numerous abuses and hence they have urged careful definition. However, in Canada, we have a bench of judges upon whom we may rely and moreover, there has been built up over the years a body of jurisprudence which all Canadian judges would be expected to follow and would follow.

In the first place, there are all the numerous decisions in those provinces which grant divorce *a mensa et thoro*, or judicial separation. Courts in the province of Nova Scotia have been granting dissolutions of marriage on the ground of cruelty for many years. While such adjudications have not been very numerous, they yet form a body of useful precedents, and they illustrate the common sense which we may expect from Canadian judges. Furthermore, the provinces of Alberta and Saskatchewan have enacted a statutory definition of cruelty for purposes of alimony and judicial separation. This definition includes conduct which creates a danger to life, limb or health and conduct which, in the opinion of the court, is grossly insulting or intolerable, or of such a nature that the petitioner could not be reasonably expected to live with a partner who indulges in such conduct.

In addition to this Canadian experience, there is the vast jurisprudence built up in the English courts since the passing of the *Matrimonial Causes Act* over a hundred years ago. A study of the leading cases as decided in the British courts shows a continuous growth in human understanding and an ability of the bench to change with the growth of that universal understanding which we recognize as public opinion.

Your Committee is of the opinion that cruelty should be made a ground for the dissolution of marriage, and that its administration be left to the good sense of Canadian judges, guided as they are, by the experience gained already in our own courts and those of the United Kingdom.

4. Desertion

Marriage involves more than mutual love and respect, more than that the partners refrain from committing adultery and acts of cruelty against each other. The family is the basic unit in our social organization. Such a unit provides for the husband and wife the companionship most human beings seem to require in life as well as allowing the true fulfilment of their sexual desires. Normally in such a relationship the husband is expected to bear the economic burden, to maintain and provide for his wife and family, while the wife in return cares for the home, the husband and the children. This association is a vital part of any marriage and if one partner withdraws from it a basic part of the marriage is destroyed.