

define the extent to which a dissolution of marriage alters the rights and obligations inherent in marriage. Parliament, can, therefore, provide for the continuation of the obligation of the husband to support the wife.

A similar argument can be advanced regarding the maintenance and custody of children. While a marriage exists both parents have joint custody of the children and the husband is under an obligation to provide for their maintenance and education. The termination of the marriage by a divorce interferes with these obligations and Parliament's jurisdiction relative to divorce necessarily includes authority to stipulate to what extent they shall be continued, altered or destroyed.

The Committee's authority for the foregoing is memorandum of Mr. E. A. Driedger, Deputy Minister of Justice. This document is presented here verbatim:

DEPARTMENT OF JUSTICE

Ottawa 4, December 28, 1966.

The Honourable A. W. Roebuck,
The Senate,
Ottawa, Ontario.

Dear Senator Roebuck:

In your letter of October 20 you asked for my views on two additional points as follows:

- (a) whether Parliament has jurisdiction with regard to judicial separation, and
- (b) whether Parliament has jurisdiction with respect to alimony, custody and maintenance and division of property of divorced persons and their families.

I have now given some consideration to these problems and am able to put my views before you. I should like to state at the outset, however, that the views hereinafter expressed are not in any sense to be regarded as the views of the Government or any member thereof. They are merely my own personal opinions which I offer for such assistance as it may be to your Committee.

Before dealing with your questions I think it is important to bear in mind the fundamental nature of marriage and divorce from a legal point of view. A marriage creates a new legal status between the parties thereto. At the moment of marriage new rights and obligations between the parties thereto arise, and at the same time a pre-existing right is extinguished. Thus, there arise the obligation to support and the right to consortium; at the same time, the pre-existing right to marry is lost. These are some of the essential legal characteristics of a marriage; without them, the marriage status would not exist.

A divorce *a vinculo matrimonii* also changes the legal status of the parties; it destroys the legal status created by the marriage and restores the parties to the status they had before the marriage. At the moment the divorce takes place, the rights and obligations inherent in the marriage cease and the parties are thereafter free to re-marry.

Coming now to your first question, you may recall that I did touch upon this when I appeared before your Committee. I said at that time that having regard to the nature of a decree of judicial separation it was reasonable to conclude that Parliament's jurisdiction extended to both divorce *a vinculo matrimonii* and judicial separation. I might now add to that observation that a judicial separation is in reality a divorce without the right to re-marry. The legal status created