

PART III

GROUNDS FOR DIVORCE

INTRODUCTION

Marriage is the institution at the root of our society; the family is the fundamental unit of our social organization. Canada is part of the tradition of western civilization, which has always recognized marriage as monogamous and for life. Through marriage, two human beings are enabled to find mutual support and comfort and ensure for themselves a richer and fuller life. Ideally marriage provides love and affection, economic benefit and security, and the environment in which future generations are born and reared. Society is vitally concerned in the preservation of marriage, for by fostering the institution of marriage it is preserving itself. It is not only in the interests of society, however, that marriage should be monogamous and life-long, but also in that of the parties themselves and the children. A stable family environment not only benefits society as a whole, but is essential for the well-being and happiness of the individual.

Nevertheless, human beings are not creatures of perfection and it must be recognized that some marriages will not last for life. In almost all societies divorce has been recognized in some form. When marriage fails, no service is rendered to either society or the parties themselves by preserving the empty legal shell of a relationship that no longer exists as a fact. Divorce, therefore, cannot be eliminated from society. Marriages have failed in the past and today the rapid pace of social change and the increasing complexities of life subject the institution of marriage to greater stress than ever before.

Canadian divorce law was established over a century ago, when ideas of marriage and divorce and the nature of society were very different from those prevailing today. The existing system of divorce law has long since served its purpose and is in need of reform. The witnesses before your Committee and the briefs it has received, have all urged that reform be undertaken. There has hardly been a voice raised anywhere to defend the status quo. Before your Committee undertakes a discussion of the deficiencies of the present law and its suggested remedies for them, it is essential that it make clear the climate in which it has been working and the assumptions which it has made.

Marriage is not an ordinary contractual relationship. Few people have considered it as such in the past, and your Committee believes few in Canada take that view today. Marriage is not only a contract with which society is vitally concerned, but one which has to most Canadians a deep religious significance as well. When society was fairly homogeneous in its religious beliefs and when the state was content to leave matrimonial affairs to the Spiritual Authorities or to accept their lead, those religious beliefs were written into the law of the land. Today, however, the situation is different. We live in a pluralistic society. People