

provide a defence of connivance. However, mere acquiescence in the other spouse's unilateral expression of intention to commit adultery, would not raise either bar to an action under Scots law.

#### IV AUSTRALIAN DIVORCE LAW

Your Committee believes it worthwhile to draw attention to the divorce law of some jurisdictions which have an affinity to Canada either because their law, institutions and society are similar to our own or because they have adopted measures which provide valuable experience upon which the Committee can draw. The situations in Australia and New Zealand are obvious areas of study. As sister Commonwealth nations their legal structure enjoys the same foundation as ours in the English common law and the divorce law of both countries has recently undergone revision and reform.

##### 1. Grounds

The two most distinctive features of the *Australian Matrimonial Causes Act* of 1959 are first, its departure from exclusive reliance on the concept of matrimonial offence and, secondly, its provisions designed to promote reconciliation. The Act provides fourteen grounds for the dissolution of marriage. In three of these grounds there is no element of matrimonial offence whatsoever. These are the grounds of insanity, separation for five years and presumption of death. The other eleven grounds are (i) adultery, (ii) desertion for not less than two years, (iii) habitual cruelty during a period of not less than one year, (iv) wilful and persistent refusal to consummate the marriage, (v) rape, sodomy or bestiality committed since the marriage, (vi) habitual drunkenness or intoxication by drugs for a period of not less than two years, (vii) frequent conviction for crimes and habitually leaving the petitioner without reasonable means of support within a period of five years, (viii) serving a term of imprisonment of not less than three years after conviction of a crime punishable by death or imprisonment for life and still being in prison at the time of the petition, (ix) conviction of attempting to murder or unlawfully kill the petitioner or of committing offences involving the infliction of grievous bodily harm on the petitioner, (x) wilful and habitual failure to pay maintenance under a court order or separation agreement over a two year period, (xi) failure to comply throughout a period of at least one year with an order for the restitution of conjugal rights.

The provisions regarding insanity are not dissimilar to the English Acts: the other party of the marriage must be of unsound mind and unlikely to recover and have been confined to an institution for an aggregate of five years within a continuous six year period preceeding the institution of divorce proceedings.

Most interest, however, is presented by the Separation Ground. Section 28 (m) of the Act provides that a petition for the dissolution of marriage may be based on the ground that:

“the parties to the marriage have separated and have thereafter lived separately and apart for a continuous period of not less than five years immediately preceding the date of the petition and there is no reasonable likelihood of cohabitation being resumed.”

The intention of this section is to provide divorce on the basis that the marriage has irretrievably broken down. The Act provides specifically that the termina-