

your Committee is of the opinion that the public in general holds that in the case of the major matrimonial offences, such as adultery, cruelty and desertion, the innocent and offended party is entitled to an immediate divorce.

1. *Adultery*

It would be difficult to dispense with the matrimonial offence theory completely. Most people regard marriage as an institution which provides certain specific rights and duties for the spouses in respect of each other. There is a commitment to mutual love, support and assistance; and it provides the social basis for the engendering and raising of children. Marriage is a normal, indeed natural institution in our society and most people partake. The basic pledge in the marriage bond is that the parties will keep exclusively one to the other. Moreover, this is a monogamous society in which we live. A husband can have but one wife and a wife but one husband. Should either a husband or wife depart from the standard of marital fidelity, the other should have the right to a divorce and immediately so, if he or she so wishes. If one partner to a marriage dishonours its basic obligations, the other should have the right to be free of the legal ties. On the other hand, a spouse who is willing to forgive and forget, does not appear in the divorce courts.

Adultery strikes at the root of the institution of marriage and in consequence has from time immemorial, been recognized as a valid ground for divorce in those societies which accept divorce at all. Its retention as such has not been seriously questioned. Even the advocates of marriage breakdown as the sole ground for divorce, the United Church for example, admit that evidence of adultery creates a special case meriting special treatment.

The English Royal Commission on Divorce sitting between 1951 and 1955, did consider changes in the law of adultery. It was suggested that a single act of adultery should not be enough for the granting of a divorce but that there should be proof of either an adulterous association or repeated acts of adultery. These views have not found favour in the testimony of any witnesses before your Committee. Nor does your Committee look favourably upon them either. One act of adultery is sufficient to destroy a marriage. If the marriage is a sufficiently stable one, a single act of adultery may not lead to divorce, if the offended spouse is willing to forgive and forget. But if the offended spouse is determined that the infidelity of the other partner has terminated the marital relationship, then it should be possible for him or her to dissolve the legal bond.

Accordingly, your Committee is of the opinion that the marital offence of adultery should be retained as a ground for the dissolution of marriage on the petition of the offended spouse, subject of course to the usual defences. There is obviously no need for a statutory definition of adultery. It was not defined in the Imperial Statute of 1857, nor has it been defined in any of the Canadian provinces whose law is based upon that statute, nor was it defined in the pre-Confederation law of any of the other provinces. What adultery is in law has been made plain in the decided cases and no difficulty has been experienced in the courts, not even when the law was amended for the abolition of the double standard.

2. *Rape, Sodomy and Bestiality*

At present rape, sodomy and bestiality are recognized as grounds for divorce only at the suit of the wife and in those provinces whose divorce law is based