

judges, if necessary. They can provide the physical space requirements for the hearing of cases.

The provinces would not be involved in any way, if these cases were referred to the Exchequer Court.

Divorce would not be facilitated in any way in the sense that it would not be any easier to get a divorce.

I like to think that, in my hearings and in those of Mr. Justice Cameron, we make a very strict inquiry into all the facts put forward and watch for any attempt at perjury, and we believe that if these cases were transferred to the Exchequer Court, sitting as such, that court would continue to do the same under the new system. Therefore, I am not aware that Quebec Province would have any serious objection to that. The people in Quebec who object to the present system would still object to the new one, but those who do not object to the present system would have no reason to object to the cases being heard by the Exchequer Court sitting in Ottawa.

At present, these hearings are held by Exchequer Court judges sitting under the divorce rules. The step from there to having the cases heard by an Exchequer Court judge sitting in that capacity is a very minimal one and I doubt if it would cause any objection.

That system would have various advantages. One is that there would be a variety of judges who could hear these cases. It might be necessary to appoint additional judges but they would rotate on it and one person would not be left doing nothing but divorce work for his life, as it might be at present. I personally feel not only that it is not an assignment one would want to continue for life but that it is not good for any judge to hear just one type of case. After three, four or five years, inevitably he will become somewhat stale at it and a fresh approach would be better. I think it is more desirable that there should be three, four, five or six different judges contributing to the jurisprudence on the matter and hearing the cases, than that one or two judges should do nothing else indefinitely.

Secondly, this new proposal would avoid those difficulties that I raised about the delays when Parliament is not in session. If a court could have three or four terms a year, for divorce cases, it would mean that, except for the summer recesses, the judgments could be rendered and the divorce granted or rejected immediately after it was heard.

Thirdly, there would be a proper appeal, in that appeals from the Exchequer Court go to the Supreme Court. Some people have expressed alarm that the Supreme Court might be swamped with work as a result of this. My experience does not indicate that. About 800 cases are heard per year now. Only about 40 of them are contested, the other 760 are uncontested. Of those 40 contested cases, less than half are seriously contested. In the case of half of them the contestation is frivolous or to obtain delay and perhaps retain rights to alimony. In some cases the evidence is so weak that the petitioner's attorneys are unwilling to submit it to a hearing.

That means you get about 20 cases a year where there is serious contestation. Of those 20, 15 or 16 would involve questions of fact only. Only four or five would involve questions of law, and the higher courts will not interfere with the discretion of a lower court, properly exercised, on questions of fact alone. This means you may get down to the point where there might be four or five appeals a year to the Supreme Court from the Exchequer Court decision in divorce cases, and that those would all involve serious points of law which should be decided by higher courts, and then the decisions could be followed by other courts and a real jurisprudence would develop in Canada for our system. I think from that point of view alone it is very desirable.