

*Divorce Law Reform*

legislation now governing the provinces in that field could not be amended by the provinces because they have no jurisdiction in that field. So when we are called upon to pass a bill on divorce, which will not deal with judicial separation, that law will give grounds for divorce which will be broader than the grounds for judicial separation existing in several provinces. It will follow that it will be practically an encouragement to people to start divorce proceedings instead of separation proceedings, and I realize that anomaly perfectly. That is the phenomenon which made us include in a first draft of the bill provisions dealing with judicial separation which would have run parallel to the provisions dealing with divorce, and once again because I believe in co-operative federalism and because I believe that in such a field it is important that the central government should have consultations with the provinces, especially with those which already have in their statutes provisions dealing with judicial separation.

In the case of Quebec, this is even more important, because this province is now in the process of reshaping or reviewing its Civil Code and I know that very capable people are precisely working on the chapters concerning marriage, filiation and other related subjects. I think this will eventually lead to consultations between the provinces and the federal government, because of this anomaly: the Civil Code of the province of Quebec, since it was adopted before confederation in 1866, contains clauses and even whole chapters which do not come under provincial jurisdiction and which the province of Quebec itself cannot amend.

For this reason, the federal government, who is aware that the Civil Code is an important monument for French-speaking society, is not only willing, but anxious, to co-operate with the province of Quebec, inasmuch as it is necessary, so that this monument may be amended essentially by the provincial government, but partly also, as I explained a moment ago, by the federal government, so that the essential, special structure of such a monument as the Civil Code is not broken. I think that that is one aspect of the responsibilities of a federal government which, I will say it again, must rule over provinces governed by various judicial systems. Incidentally, I might say, Mr. Speaker, that this is one reason why it is also important for French-speaking people to have civil servants and politicians in Ottawa who can express their point of view. That is about all

I wanted to say about this matter, Mr. Chairman.

• (9:10 p.m.)

[English]

Just before closing, I thought I would touch briefly on one other aspect, that of marriage breakdown. I said a moment ago that we had been very thankful for the co-operation we have received from many of the church groups who have guided us in our ideas about reconciliation in the divorce laws. They have, in their briefs, recommended some provisions with respect to marriage breakdown which we have decided not to follow quite in the way they suggested. I think in fairness, before closing, I should give a word of explanation on this aspect. Very careful consideration has been given to the recommendations of those who advocated the adoption of an unqualified marriage breakdown approach to divorce in this country. If such an approach were adopted it would, in my judgment, entail the creation of special courts with specialized personnel to administer the divorce laws of this country. This is so because I think it is wholly unrealistic to impose upon the existing courts of law, and the judiciary, an inquisitorial approach coupled with what would be, in effect, broad administrative discretion in dealing with the subject matter of divorce.

Courts of law and judicial tribunals are concerned—

—with legal rights and liabilities, which means rights and liabilities conferred or imposed by law; and "law" means statutes or long settled principles. These legal rights and liabilities are treated by a judicial tribunal as pre-existing; such a tribunal professes merely to ascertain and give effect to them; it investigates the facts by hearing "evidence" (as tested by long settled rules), and it investigates the law by consulting precedents.

This quotation is from an article by Mr. D. M. Gordon in the *Law Quarterly Review*, 1934. I should just add by way of contrast that administrative tribunals, when they are defined by law, base their decisions and orders not on legal rights, not on liabilities but on policy and expediency. It is essentially because of this, Mr. Chairman, that we have not introduced the marriage breakdown principle in its most naked form. We have, as hon. members have seen, put the marriage breakdown principle in the law, but we have tried to guide the courts by indicating what the evidence of breakdown should be. If hon. members read the law very carefully, they will see that some of the sections are quite wide.