

cient to establish the breakdown of marriage and should be introduced as a ground for divorce with the safeguards discussed above.

#### RECOMMENDATION

Your Committee recommends that Marriage Breakdown as evidenced by at least three years of separation immediately preceding the institution of proceedings in which the parties have not cohabited and in which there appears no reasonable expectation of a resumption of cohabitation within a reasonable period of time, be made a ground for divorce, provided that:

- (1) the Court may adjourn the proceedings for such time as it deems desirable should there seem to it to be reasonable possibility of a reconciliation;
- (2) due provision has been made for the future maintenance of the wife, and under special circumstances of the husband, and for the custody, access, maintenance, care and education of the children as may be necessary; and
- (3) the Court may refuse the decree if it considers in its discretion any public interest may be adversely affected or that such a decree would be unduly harsh to the respondent or the dependent children.

#### ALIMONY AND RIGHTS ANCILLARY TO DIVORCE

Alimony for the wife, maintenance for the children and their custody and the division of marital property are all matters ancillary to divorce and are thus within the jurisdiction of Parliament. For this your Committee has the authority of the then Deputy Minister of Justice, Mr. E. A. Driedger, as follows:

"... jurisdiction to make laws in relation to divorce is in essence jurisdiction to make laws for the lateration of the legal status created by the marriage; the jurisdiction therefore extends to the abolition of the rights and obligations created by the marriage and the restoration of pre-existing rights. As I have already indicated, I think it must follow that these rights and obligations can be terminated in whole or in part.

"It is the husband's duty to maintain the wife. If the marriage is dissolved, that obligation normally ceases because the relationship of husband and wife no longer exists. For the reasons I have indicated, I think that Parliament is competent to define the extent to which a dissolution of marriage alters the rights and obligations inherent in the marriage and therefore could provide for a continuation of the obligation to support. . . .

"The same reasoning would apply to maintenance and custody of children. During marriage the husband is under a duty to maintain and provide for the education of the children of the marriage, and the husband and wife have joint custody. These are rights and obligations that arise out of the marriage relationship. A divorce, which terminates the marriage relationship, obviously interferes with these rights and obligations, and in my opinion Parliament's jurisdiction in relation to divorce would include jurisdiction to prescribe the extent to which these rights and obligations are to be abrogated or continued. . . .

"The Division of property between divorced persons (apart from the question of support or maintenance), as well as such matters as marriage settlements, dower, homestead rights, the right of married women to own property and sue in their own names, etc., may well stand on a different