

Thursday, November 12, 1992

Changes to Grounds for Divorce Proposed

The Law Reform Commission has recommended various changes to the present law on grounds for divorce, proposing to shorten the periods for separation and to ease the present restriction on divorce within three years of marriage.

Under the present law, parties may only divorce if they can establish one of five facts.

These are adultery, unreasonable behaviour, desertion for two years, two years' separation where both parties consent to divorce *and* five years' separation where there is no consent.

The Commission has suggested that the present fault-based facts of adultery and unreasonable behaviour be retained.

In relation to the separation facts, the Commission has proposed that the period required for separation be reduced from two years to one year where both parties consent to divorce, and from five years to two years where there is no consent.

The recommendation to reduce the period of separation where there is no consent from five years to two years means that the fact of desertion for two years will no longer be relevant and can be abolished.

The Commission also advocates that in cases where both parties consent to the divorce, they should have the right to make their application to the court jointly, rather than one of them being obliged, as now, to take proceedings against the other.

A further move to promote conciliation between parties involved in the divorce process is the Commission's recommendation for the introduction of an additional procedure to establish irretrievable breakdown of marriage.

Under this new procedure, parties would be able to divorce by mutual consent after giving one year's joint notice to the court.

The parties would not be under any obligation to separate during this period of notice, but would be obliged at the end of it to confirm to the court that it is still their joint intention to proceed to divorce.

In addition to the grounds for divorce, the Commission has also looked at the existing time restriction on parties seeking to divorce early in marriage.

At present, unless an exceptional case can be made out, parties may not petition for divorce unless they have been married for at least three years.

The Commission has recommended that the three-year restriction be reduced to one year, while the existing grounds for establishing exceptional circumstances be retained.

The Law Reform Commission began examining the law on divorce in 1990.

A public consultation exercise conducted by the Commission early this year revealed strong support within the community for the changes proposed.