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Rescinding the Vow: Divorce in Alberta and Prairie Canada, 1905-1930

by

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ABSTRACT

The object of this thesis is to analyze, through a number of letters and actions before the courts, the state of divorce in Alberta and other prairie provinces at the onset of the twentieth century. From 1905-1919, Albertans had few alternatives in resolving marital discord because divorce was a federal jurisdiction, elected officials were slow to act, and divorce could only be obtained by a act of Parliament. Given the costs, duration, and lack of a willing Member of Parliament to put forward such a bill, there was little legal recourse for prairie petitioners in unhappy unions. Yet documentation abounds on legal separations, cases of abandonment, and issues of separation in the Law Reports, indicating some "legal" attempts at ending these troubled marriages.

The precedent-setting case in Alberta, *Board v. Board* in 1919, altered the issue dramatically as the justices resolved that the substantive right to divorce existed under the English *Divorce and Matrimonial Causes Act of 1857*. The resulting statistical rise of divorce in the prairie provinces after 1919 was significant. Equally important, and unresearched in the legal-historical literature, are the grounds which became developed for

accepting and rejecting petitions for divorce before the courts.

This thesis will evaluate the law of divorce as written in statute, its unique social impact on the period, and the effect it had on the course of late Victorian reform and gender relations in Alberta and the prairie provinces. Other themes to be included are those of child custody, property rights, the enfranchisement of women, and the impact of World War I. In the end, this thesis will provide a succinct socio-legal study of divorce in this unique period of Western Canadian history.

DEDICATION

To Dr. Louis Knafla, (my mentor in the art of procrastination), without whom I would never had the assurance to believe I was capable of this feat and so much more...

To my mother Donna, who always had enough faith in me for both of us...

To my brother Ryan, my chief (but very more appreciated) critic...

To my best friend Paula, my sanity throughout these years at University...

And most of all,

To Stephen, who taught me more than ever could have been acquired from a textbook....

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Rescinding the Vow:

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Prologue:

At the turn of the century, many women on the western frontier of Canada experienced a demanding and lonely life that was harsh and without reprieve. Young brides, although not ignorant of the marriage rite as a means of economic survival, revelled in a greatly anticipated role of wife and mother. Yet, split from family relations and long-time friends, few understood the expectations that family life in Alberta would bring. Along with the duties of domesticity and child rearing, husbands expected their marriage partners to be shareholders in the stake of the harvest and home.[1] However, this term, *partners*, is where the futility of female life remained, prairie or not. Women were expected to "haul a double load"[2], but were given far from equal rights in the various spheres of their tumultuous existence. As one farm wife concluded, "My husband takes off pretty good crops every year, but he will never give me anything in the fall, or any other time...and I have worked so hard to earn the farm. It is not fair."[3] From the bedroom to the courtroom, women were denied anything but a cursory regard.

Enfranchisement, equal homesteading privileges, and mothers' pension rights were but a few areas where women were denied a balanced standing to their male counterparts.

Perhaps this is no where more evident than in the legal realm of divorce. The United Farm Women of Manitoba voiced widespread dissatisfaction in contending that "There is no argument which is not an insult to Canadian womanhood and Canadian manhood against equality in divorce laws."[4] Given that the British North America Act of 1867 gave jurisdiction to the federal government over divorce,[5] nothing less than a private Act of Parliament bill could release any couple from the bonds of their unhappy matrimony.[6] Annulments, legal separations and "informal" divorces were quite common as people struggled to deal with problems the Dominion of Canada either could not resolve (given the contentious moral and religious dilemmas posed), or chose to ignore.[7] As well, matters of child custody,[8] alimony, dower, and those procedures concerning divorce actions (provincial concerns) were equally failing women quite consistently.

Chapter I hopes to identify and explore the dilemma of divorce in the early-twentieth century, probing the issue in the hopes of a greater understanding of its history as it directly affects the ever-neglected majority, women. Arguments

concerning the morality of the sacredness of the marriage union hindered the effective use of legal means as a way to rectify troubled unions. With the signing of the British North American Act into law, Parliament had several confounding issues to deal with, least of all being divorce legislation. While not allowing the provinces jurisdiction, for the first fifty years after Confederation, Canadians, and especially female Canadians, were without an effective means of dealing with marital woe.

The situation within the North-West Territories and Alberta from the post-Confederation period until the end of the First World War is examined in Chapter II. Although it was proven that the Alberta courts had access to grant divorces to the province's populace, the justices were leery to act. Ever conscious of Imperial precedent, the Alberta courts were wont to follow tradition, which at this time meant reinforcing the patriarchal ideal of the family.

In Chapter III, there is an examination of the prairie farmer where marital satisfaction not only had emotional ramifications, but also financial ones. In struggling with the existence that prairie settlement demanded (with short dry summers and long, harsh winters), farmers understood the commodity that was wife. Wives filled the roles of partner, homemaker, mother, as well as worker-companion in the fields or

barns. The letters to government ministries are, at times, replete with genuine sadness over a lost spouse, but often they are merely rants at the impossibility of effectively maintaining a homestead without the support of a wife.

It was not until the Great War that a new mentality arose which allowed for the consideration of divorce as a logical, not immoral, obligation in some cases. Letters to Parliament, in Chapter IV, show the marital strains that the horrors of war brought to the soldiers that served valiantly in the trenches of continental Europe. Be it infidelity, incapacity or merely growing apart, soldiers, their wives, lawyers, the military establishment, and special-interest groups began to demand some mechanism for solving these unsettling cases of wedded unhappiness.

Many times the letters to the Justice Department indicate a frustration over the costs of a proposed action of divorce. In Chapter V, letters from prairie women abound with this concern. Apprehension in these petitions settle on desertion, non-support, and a necessity to re-marry to ensure the financial stability of women who could not readily acquire property nor support themselves in an economy that shunned women in the workplace. Given the relatively small female population per capita in this region of Canada, the numbers of letters received

from prairie women was astounding. Whether it was sheer economic necessity, or merely something in the water, there was some symptom that made these women prone to articulate their demands for divorce in a manner wholly unmatched in the rest of the nation.

Chapter VI details the permutations of divorce law within the Alberta courts as a result of the precedent-setting case of *Board v. Board.* Although these changes allowed cases to be heard at provincial court, many times court decisions by the learned justices merely reinforced the patriarchal ideal rather than allowing equitable access for both genders to divorce. Through a series of cases from the law reports, the decade after the Great War indicates both moments of triumph for those who desired divorce reform, and equal amounts of disappointment as judicial tradition, rather than judicial innovation, was the perceived norm. The thesis ends with an overview of the period under examination, and insists that there is a need for more study to be done on this dynamic period in Alberta's legal history.

Chapter I-Divorce and Modicum Moves in Legislation, 1867-1918

The British North American [BNA] Act, which defined the respective areas of administration of the federal and provincial governments, gave jurisdiction over matrimonial legislation to the Dominion Parliament in 1867.[9] The Act met a provincial demand—it held that the laws that were in force at the time of Confederation would stand. Therefore, given progressive legislation, a divorce was still possible for inhabitants of Nova Scotia, Prince Edward Island and New Brunswick. However, for the rest of the nineteenth century, all other Canadian residents could only end their marriage by a private Act of Parliament, where a Member of Parliament would have to sponsor the bill after its hearing before the Senate Committee on Divorce.[10] As in England, Canadian statutory divorces were quite rare (sixty-nine between 1867 and 1900, or two a year[11]), and this figure was widely cited as evidence of the happiness of Canadian families.[12] The low rates of divorce were due in large part to the relatively limited access for most couples given the costs,[13] the unwelcome publicity of such an action, and the lack of a willing member to submit the petition. Those very reasons made it virtually impossible for the "delicate gender" to appeal to Parliament, for assuredly most women would not have access or financial means to the requirements of a divorce request. As a

pre-eminent historian of Canadian women, Veronica Strong-Boag wrote:

> ...solutions for women facing bad marriages were far from obvious. Not only did they face social opprobrium for their "failure" as wives, but when divorced or deserted they had little hope of getting a fair share of their husbands' estate or any reasonable support for the children of the marriage. Even their right to a delinquent father could not be taken for granted.[14]

In her defence, Canada's reluctance to legislate on divorce[15] as readily as other British territories or former colonies (a foremost example, the United States[16]) in the nineteenth century arose from several conflicting considerations. Initially, there were inconsistencies in the matter of jurisdiction, in that the authority to pass marriage and divorce legislation was vested in the federal Parliament (under section 91 [26]), whereas the solemnisation of marriage ([1] see note) and the operation of the divorce courts[17] themselves was to be a provincial responsibility according to the BNA Act (section 92 [12].)[18] As well, the provinces had, apparently under section 92 [13] of the BNA Act, control over such matters as

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[1] Section 92 [12] was a true oddity of the BNA Act for the solemnisation of marriage had different prescribed formalities for what was considered a valid marriage under each province. In Quebec, where annulment and judicial separation was far more common in this period under investigation, the pre-existing Canon Law was extremely detailed and inflexible as to provisions upon entering into married union. As a result, there was a greater potential for the role of annulment as a means of ridding one's self from a cheerless marriage. The North-West Territories made it very easy for persons to get married, prescribing few restrictions of formalities, and thus limiting the role of annulment. As a result, this study will not include a discussion of this particular element as a means of dissolving the marital bond.

child custody, maintenance, alimony in non-divorce separations, as well as virtually total control over the question of matrimonial property. In the first few decades after Confederation, the Dominion Parliament was generally dormant on the topic of divorce despite several bills (almost all presented by private members) being introduced into the House of Commons.[19] The provinces, on the other hand, only went so far on the subject as to pass their own individual marriage acts. Plus, section 129 in the BNA Act, in an effort to provide legal continuity throughout the new country, insisted that in the various fields of the Dominion Parliament's jurisdiction, provincial law would remain until superseded. That allowed for the divorce courts of Nova Scotia and New Brunswick to continue to function unhindered. But no other province from this point could amend or abolish on its own any divorce statute.

There was also an apprehension by Parliament to allow the provinces to act. The Dominion Parliament believed that legislation across Canada would not be uniform if divorce laws were passed piecemeal, on a province-by-province basis according to the wishes and terms set down by each one. As an example, divorce provisions differed between New Brunswick and Nova Scotia when they entered Confederation.[20] More to the point, perhaps, there was the example of the United States, where

divorce laws ranged from the non-existent to the very liberal. Canada had no wish to emulate the American pattern, especially with the risk of a quandary regarding the recognition of divorce decrees among the various provinces. They were given a taste of these problems when they had to deal with Canadians who, for lack of divorce at home, had their marriages dissolved in the United States and then wished to remarry in Canada.[21]

Finally, according to Roderick Phillips,

> There was one particular obstacle to the enactment of uniform divorce provisions across Canada: the province of Quebec, with its predominantly French Catholic population,[22] more resistant to secularising legislation such as divorce than other parts of Canada.[23]

Notwithstanding that heady argument, there were, most likely, more pressing concerns of the Dominion Parliament, ones which transcend this initial, yet important, concept reviewed by Phillips. For one, Confederation had not fully satisfied any of the participants, and, consequently, there continued to be a "power struggle" between the provinces and Ottawa. Divorce was but one area of fractious argument. Ottawa had to prove her predominance, in some cases to the detriment of progress. Moreover, according to some feminist historians, there was a belief that any grand pronouncements concerning divorce would encourage the masses to flee their marriages, encouraging problems of child custody, alimony, and multiple marriages.[24] In

a puritanical period such as this, where the niceties of Canadian society had to be maintained, such liberalism was unheard of. Lastly, the problems of 1867, while in some cases seemingly overwhelming,[25] were obviously not what plagued the cause of divorce. Federal legislation would not surface until 1968, a full century later, indicating that the Dominion continued to be disquieted about the topic of divorce long after "resolving"[26] the dilemmas brought about by the BNA Act.

According to Annalee Golz, for almost sixty years, 1870-1930,

> ...the *natural* rights of man and woman (which beforehand were equal,) [upon] entering the married state, the woman surrenders most of them; in the possession of civil rights before, they merge in her husband: in the eye of the law she may be said to cease to exist. Equal before marriage, she becomes legally an inferior. The man surrenders no legal rights-the woman loses nearly all.[27]

In addition to those limits imposed on women in the early decades of the twentieth century, Canadian jurists emphasised continually that wives should be more submissive and subservient, and defended the rights of husbands to correct their wives physically. Although more liberal judges were prepared to admit that the law should intervene when violence was extreme, they argued that a wife had to tolerate "the necessity of bearing some indignities, and even some violence, before [the Court would] sanction her leaving her husband's

roof."[28] For the most part, however, Canadian judges were reluctant to face the need to intervene in what they saw as private matters, despite the physical and emotional consequences to the wife that this policy might entail. Couple that belief with the Marian ideology[29] pervasive throughout Victorian Canada at that time, and in general,

> the law and its enforcement seemed to be saying that men needed some freedom; women should be content with their lot in the home, no matter what their circumstances. For them, no transgressions were permitted.[30]

Perhaps the best example of these arcane beliefs are presented in this passage written by a commentator in the Upper Canada Law Journal:

> Where a husband wrongfully turns away his wife...[or] personally ill-treat[s] his wife, and [is] guilty of cruelty towards her, so that from reasonable apprehension of further personal violence, she is obliged to quit his roof, he is responsible for necessaries.... Where a wife is guilty of adultery, and either elopes from her husband or is expelled from his roof on that account, or even when, being compelled by his cruelty to leave him, she is afterwards guilty of this offence...he is not liable even for the bare necessities of life supplied to her after her adultery and during their separation.[31]

Given the moral climate, one rich with religious sentimentalities, adultery was indeed the most deviant behaviour the "model" Canadian woman could have been charged with. The extramarital activities of husbands, although generally frowned upon, had a tendency to be overlooked by society as a whole. Wives, however, were neither to leave the confines of the

domicile, nor engage in any behaviour that could be viewed as a dalliance outside the marital relationship. The patriarchal framework of Edwardian society demanded that a woman maintain her place, especially within the constraints of the traditional ideal of the family unit. Women were neither welcome in the workplace, nor in the election box. Furthermore, the place that warranted her utmost attention—the home—was not to be spoiled by the free spirits of a woman who may no longer desire the fancies of her husband. In conclusion, the violation of a woman's defined role merited the husband putting her asunder without need for further cause, in direct contrast to the outcome had the opposite been true. In the end, early twentieth century Canadian women were expected to meet the ideal of feminine behaviour, **particularly** as it related to the roles of wife and mother.

Chapter II-Similar yet Different: Divorce in the North-West Territories and Alberta, 1867-1918

Despite that gloomy foreshadowing, upon her designation as a province in 1905, divorce in Alberta would indeed prove *legally* more readily obtainable than in the central and eastern provinces, with the exception of Nova Scotia and New Brunswick who had legislated on divorce before joining Confederation. The reason for this disparity between the Canadian provinces was due to the differing reception dates of English law into the various regions in Canada. The Northwest Territories, of which Alberta, Saskatchewan and greater Manitoba would later evolve, inherited English law on July 15, 1870. Therefore, any laws applicable in England at this time were also in force in the western territories thereafter. The eastern and central provinces had inherited much earlier English (or French) law. Therefore, when England introduced divorce through the British Parliament's *Divorce and Matrimonial Causes Act of 1857*, it had no discernible effect on legislation in those provinces. Alberta, however, like the other prairie provinces, had her divorce law from the imperial period.

Despite this judicial advantage, *the Divorce and Matrimonial Causes Act of 1857* would prove, like in various other instances in a patriarchal-driven legal system,

disadvantageous for a great number of Albertans—primarily women. Section 28 provided for a reasonable chance of a divorce on the petition of the husband if his wife had committed adultery at some time during the marriage.[32] For the wife, however, to obtain dissolution of the marriage, it was necessary to prove that…

> her husband had been guilty of incestuous adultery, or bigamy with rape, or of sodomy, or bestiality, or of adultery coupled with such cruelty as without adultery would have entitled her to a divorce *a mensa et thoro*, or of adultery coupled with desertion without reasonable excuse for two years or upward.[33]

Terry Chapman provided stunning evidence of the futility ever present in this statute for females.

> On February 14, 1916, a Member of Parliament told the House of an encounter he had recently experienced with a young woman in her mid-twenties who had come to him seeking help. The woman knew that Ottawa had the power to grant divorces and she told him that she needed and wanted one. He then asked her why. She responded with the following statement: "My husband kicked and pounded me so hard I had to leave him three times." Although Northup (the Member of Parliament) appeared sympathetic, he told the woman "that it is very improper conduct and I am satisfied that I can obtain relief for you from injury of that kind, but it will not be by divorce, because these are not grounds on which divorces are granted in Canada."[34]

Lastly, women who attempted to sue for divorce after repeated beatings were chastised for failing to leave after the first beating-they were held to have condoned their husbands' actions.[35] Alternatively, wives who did leave after only one or

two beatings were chastised for being insufficiently patient with their husbands.[36] Either way, this issue was a divisive double-edged sword for women, proving there was virtually no way for the "gentler" sex to prevail.

Apart from the British Act, the federal government could pass special statutes of divorce in individual cases to those who applied from the provinces of Ontario, Manitoba and the Northwest Territories. However, between 1867 and 1900, only sixty-nine divorces were granted. In the 1901 census reported in the Canada Year Book of 1905, there were nineteen persons considered divorced out of a total population of 158,940 in the Northwest Territories.[37] Additionally, as far as can be ascertained from the limited historical data available to the historian, it appears that only four divorces were granted in the Territories [Alberta and Saskatchewan] in the 1900-1905 period. Since there would only be only sixteen reported decisions on divorce from 1905-1919 in Alberta, it seems a reasonable hypothesis that until significant legal reform occurred in Alberta, there was little opportunity for divorce from Confederation to the granting of provincial status to Alberta in 1905.

Overall, Albertans would continue to demand alterations in divorce law that would permit the shedding of an unhappy union.

However, it would not be until the years of 1918-1919 that disillusioned, married Albertans would be able to see their calls for change addressed; not by Parliament, who had failed them thus far, but by a court of law in their own province.

Chapter III-Divorce Amongst the Populace-Canadian Farmers and their Letters to the Department of Justice, 1905-1920

For both women and men, marriage was an institution that fundamentally established their relative power and status.

> A married man had a continuing legal obligation to support his wife, and she had a continuing claim on his assets and estate. Divorce was a vital means of defining and settling these claims and obligations and allowing men to acquire unrestricted control over their property. In short, because property considerations were at the heart of the law of marriage and divorce, a fundamental issue of social class [and gender] was inherent in divorce. Divorce served the material interests of those who had material interests to protect [men]; the more assets a man had, the more potentially important was divorce.[38]

In the case of the Canadian farmer, and most especially the prairie settler, this question of financial security in marriage was one that troubled them significantly when divorce became the only resolution for an unhappy union.

It is not an overestimation to maintain that a successful homestead demanded the efforts of a determined [married] couple. The men had certain responsibilities in the maintenance of the farm, land, crops and livestock. Women were expected to participate in the activities of cleaning the household, planting gardens, tending various smaller feed on the farm, and, of course, the procreation and development of a large family. When such a situation became tumultuous-when women deserted the

farms because of dissatisfaction or loneliness, and when men realised the value of this lost support to the homestead-farmers, in particular, the Department of Justice was besieged with petitions of how to remedy the predicament. It was obvious to most of these farmers that another shareholder in the future of his homestead (another wife) would be necessary to maintain the responsibilities of the domestic sphere if his success was to be achieved and maintained economically, socially, and as a father to his offspring.[39] A prime example of this attitude is prevalent in the letter of one Arthur Murrell of Pense, Saskatchewan.

Murrell wrote of his wife's desertion in his letter to the Department, dated December 20, 1907. The Murrells were married in England in 1890. They immigrated to Canada in the spring of 1907, and by October of 1907 Mrs. Murrell fled the marriage with another man, Jack Hay. She did write her husband on October 29, 1907, asking to be taken back. He replied in the affirmative, but with the condition that she return to Regina "forthwith." Her response came on November 8, 1907. In that letter she explained the need to dispose of the household items that the illicit couple had obtained, and added that it would take some time to arrange travel arrangements from Fort William, Saskatchewan, where she was living. Mr. Murrell explained that

it was at this point that he would have nothing further to do with his wife. He desired information on how to obtain a divorce, and also wished to know how to recover the silver (a wedding present from his relations) that his wife had in her possession. He even suggested that the illicit pair be arrested if the silver was not returned. The Department, in a singularly unique response, went to great lengths to explain the divorce legislation as it existed in this country to the British expatriate. In the end, however, much the same advice was given to him as his fellow homesteaders-that he should contact a solicitor for the necessary information. The one issue that the officer from the Department, A. B. Aylesworth, did comment on was the question of property rights concerning the silver. It was his opinion that the property was vested in both, and to proceed with a criminal action would be fruitless.

In a letter originally addressed to the Minister of the Department of Agriculture on March 22, 1913, Robert Smith of Manor, Saskatchewan, complained of his wife's desertion in August 1907. After eleven years of marriage, Mrs. Smith left him for Walter Reid, stripping the house of all its contents save her husband's desk. She moved from Oxbow with this man, travelled to South Dakota,[40] received a divorce, and then re-married. Mr. Robert Smith was very discouraged of the events

that had passed and desired to know how to receive an annulment:

> I can not find any trace of her or her whereabouts and as this is a strain on my mind[,] if thair [sic] are [sic] any chance of nulling the marriage[,] as I can not find any trace of her[-]it is this disgrace I wish to clear my self [sic] of by her action and I can not feel comfortable in the eyes of the public and can not get a divorce as she has commited [sic] her self [sic] with a[n]other man if the statement is true as I can not prove if the letter had any truth in it.[41]

His primary worry was not over his deserted wife, but his reputation in the community in which he lived. There is no comment about re-marriage nor of any children produced of the marriage. Therefore, it is quite remarkable that societal mores so affected this gentleman as to write the government to remedy this scandalous situation. The government, as typical of the period, gave Robert Smith the standard response, advising him to contact a solicitor.

Robert Carrington of Vonda, Saskatchewan, wrote to the Department of Justice on September 1, 1913, detailing, like many of his fellow farmers' letters, his wife's desertion and adultery with another man. The Carringtons were married in August 1901 in London, England. They moved to Carman, Manitoba, in September of that year and lived, according to Mr. Carrington, "quite happily" until 1907. In 1907, Mrs. Carrington left for parts unknown with a railway man who had

been boarding in their house. The Oddfellows of Carman, and the Brotherhood of Railway Trainmen, all looked in vain for the pair. Despite the presence of two daughters from the marriage, Mrs. Carrington never did return and the girls were sent to England for their education and further care. After 1910, Mr. Carrington travelled to Saskatchewan when he complained of his situation in the following:

> I am a respectable hard[-]working man, baker by trade + the way things are with me at present are not very bright or encouraging, especially as I have not got the comfort of my dear ones + what makes matters worse, I am not deserving this misfortune as no man could treat a wife better than I did mine + my many friends in Carman will bear this out + no doubt you will understand my position, especially if you have children of your own....[42]

After this emotional expression, Mr. Carrington goes to great lengths to explain his attempts at reconciling his desire for a divorce with his visits to various solicitors to begin the legal proceedings. His biggest grievance was over the cost, which, he was told, would be from $1200 to $1500 to complete the action. At this point, he hoped that the Minister of the Department, C. H. Doherty, would see to redressing his situation without incurring the costs of the divorce. In reply, the Department replied that there was a solicitor in Ottawa who could see to the matter, but that the Minister could do little on his behalf.[43]

In a letter that is unusual merely because it is of some

length (not a trait of most of the letters of the farmers), Mr. B. Switzer of Court, Saskatchewan, detailed his appeal for assistance from the Department. Three years before the writing of this letter, Switzer moved to the province insisting that he was unable to make a comfortable living in his previous domicile in New York. After various occupations, he took up a homestead and sent for his wife. She refused to move, and according to Switzer, proceeded to lead an "immoral" existence. He sent for four of his six children to move to Canada, and with the maintenance provided his wife,

> ...it takes a large expense to keep the children at different boarding houses etc. [and at] the same time to maintain myself, [sic] a life of a batchler.[sic][44]

Switzer now wished to re-marry and settle down with his children on the farm. However, he was worried that his wife would lay a charge of bigamy if he proceeded to do as he and his intended spouse wished. His only recourse was to find out the steps that he would have to take to obtain a divorce from this "immoral woman," but it would have to be "at the least expense[,] as all the money [he] had [his] farm was eating up."[45] He also included in a postscript,

> On account that I have not any money is the reason I cannot go to the U.S.A. to apply for a divorce in the proper manner.[46]

As was practice, despite Switzer's appeal for sympathy, the

Department sent him their formulaic response.[47]

A Moose Jaw, Saskatchewan man (F.J. Ledger) had been married for quite some time despite the fact that his wife deserted him after only two months of marriage to be with another man in Rochester, New York. He chased her and brought her back to Canada, where, she ran away once again. Now, nine years later, he wanted to be finally rid of her so he may re-marry and asked the Minister of Justice for assistance in doing so. Not surprisingly, he was offered the standard response from the governmental office in his letter of May 25, 1916.[48]

Mr. H. R. Forbes, of McDonald Hills, Saskatchewan, repeated an oft-told tale of marital discord amongst the prairie farming community. His wife left him eight years ago; it was his desire to marry again. He details his lifestyle in this opinionated excerpt:

> I am of the opinion that the Divorce Laws of Canada are only for the wealthy, and that some court should be constituted in place of the present costly procedure. Take for instance my case, for eight years I have lived alone, done my own cooking, washing, etc., except at threshing time, I would get a woman in for cooking, and all because I could not afford to pay $1,500.[49]

As expected, Forbes received much the same response as his fellow farmer petitioners.

Mr. R. Knox of Edson, Alberta, addressed himself to the Minister of Justice where he explained his wife's infidelity and

their irreconcilable differences. He desired a divorce, queries on why they are so expensive (given his status as a working man [CPR]) and also made some comments on the perceived abuses of the law in the United States.[50] He felt that the outrage toward the laxity in divorce requirements in the United States was totally unfounded, and were there not the expense and travel required he too would travel south to end his unhappy marriage.

A letter from Dennis Cagle of Battle Bend, Alberta, illustrated a not uncommon story of the problems of desertion between married persons on the prairies. Cagle and his wife were married on June 17, 1907, in the state of Michigan. Lured to the province of Alberta by the promise of good wages, he wrote:

> when we arived [sic] at Edmonton I could scarcely find employment, at last I had to work for $25.00 per mo.-now I had to support a wife out of this.[51]

Cagle then illustrated his wife's discouragement with life on the farm (where he had procured his employment), her quick departure to the city after two weeks of marriage, and her activities as a "bad girl" in the "red light district."[52] While she was only twenty miles away from her husband, she did not wish to visit him, but did write him once a week. After a few months in Edmonton, Cagle states that she departed to Fernie,

British Columbia, but still maintained communications with him until, as he wrote, "the Fernie fire in September of 1908."[53] He continued to write, but had all of his letters returned unopened—"my people have given her up for dead long ago."

> It seems quite unnatural of her to have stoped [sic] writing so soon with out a quarl [sic] at all as I was allways [sic] sending her money when she wanted any [sic] which was quit [sic] often as she would spend it freely. I have had all the police hunt for her[,] they failed to find her. I had the church look for her[,] they failed. [T]hen I wrote to her sister[,] who has since died[,] but she had not heard from her for a long time.[54]

Nine years passed since these attempts at her recovery, and now Cagle wished to re-marry. While he believed she was dead, he sought a legal separation so that he may take another wife. The Department of Justice advised him, in a brief and methodic statement, that they cannot advise him on this matter and that he should contact a solicitor. However, the Department did include the rejoinder, that if his wife is indeed dead he need not seek the permission to re-marry; but if she is alive, he should not, in any way, consider re-marriage. It is worthy to note that the Department did not make reference to the oft-used legal presumption of death after seven years of desertion. The inference may be made that the Edwardian sanctity of marriage and family made such assertions from this governmental department impossible given its weighty moral implications.

Mr. J. W. Raine of Perdue, Saskatchewan, requested a copy

of the statutes concerning man and wife in his letter. In a note filled with disjointed hyperbole, he wrote:

> I had a miserable life with her being of a farming nature with a desire to rise by the sweat of my brow; written many a time to her[,] never answered them for between seven and eight years; last one returned. Am I free to take to another as soon as I see one[?] I am over fifty years of age and have batched for years[.] I do want assistance now [that I] have prospered well.[55]

Mr. Raine was issued the formulaic response from the Department urging him to consult an attorney.[56]

Mr. Anamie Malarchuk of Wahstao, Alberta, wrote to the Minister that his wife "became" insane more than three years ago, and that there was little hope of her recovery. There is an obvious note of strain pervading this brief and articulate letter to the Department. He wrote:

> I am a farmer; I have three children-the eldest is nine years of age; it is hard, very hard to keep husbandry and to take care of the children without the help of a woman. I put a simple question: "Can I marry?"[57]

Malarchuk ends his note with an apology to the Minister for troubling him with the matter, concluding that, "I am a poor man and can not spend money on the lawyers."[58] In a very brief response, the Assistant Deputy Minister, W. Stuart Edwards, stated that he did not know of any provision of the law that would allow him to re-marry because of his wife's insanity.[59]

These letters all have their similarities.[60] Farmers expressed concern over wife desertion, adultery, maintenance

requirements, and the awesome responsibility of the upkeep of a family and homestead with no female partner. In some, there is a breadth of emotion, desires to regain what was lost, to pursue that wife who could not stand the harshness of prairie settlement and remain married. In most, farmers realised the futility of their unhappy unions and wished for an affordable divorce to correct their condition. Be it a resolution on the custody of the children, a desire to re-marry for love or sheer necessity, or the definition of property rights and maintenance payments, farmers sought a legal panacea to their marriage woes.

Although the Department of Justice was largely ineffectual in resolving such desires to divorce, there was, in all actuality, little the Minister could do given the legislation. Moreover, it is important to recognise that even a few decades ago, in the latter years of the nineteenth century, Canadians, especially in remote locales like the prairie settlements, simply married, and re-married as they chose. Informal separations, bigamous relationships, or simply remaining in unhappy marriages was not uncommon before the First World War.[61] Therefore, the inundation of petitions to the government on the issue of divorce was a novel and pertinent breakthrough at this point in Canadian legal history. Unhappily wed Canadians now sought recourse through legitimate means and slowly, through

this thirty-year period, they would demand a statutory mechanism to be rid of an estranged spouse.

Chapter IV-Divorce Amongst the Populace: Canadian Soldiers and their Letters to the Department of Justice/Department of Militia and Defence, 1915-1925

As foretold by the attempts in changing divorce legislation, and letters of the farmers to the Department of Justice, the early twentieth century revealed some significant changes in Canadian divorce behaviour. Most striking, according to James G. Snell, is the pivotal importance of the First World War. During World War I,

> The demographics of divorce began to change and the number of divorces--though still quite low throughout the period--began to rise around 1917, and continued to rise through the next two decades. It was in the later stages of the war that important challenges and changes to the existing legal regime were initiated.[62]

The First World War had revealed problems that were all too common for a large portion of the Canadian population. By the time it the armistice was signed in November 1918, the nation had undergone innumerable and weighty transformations in its ethnic, economic, and class relations.

> ...while international peace returned relatively swiftly, domestic peace did not. The conflicts evident during the war continued, and were particularly apparent in class animosity and distrust. Soldiers came home from overseas slowly because the government wanted to avoid rapid demobilisation in an atmosphere of economic and social uncertainty. Labour unrest increased, culminating in the Winnipeg General Strike of May 1919. A new era in politics

> seemed imminent with the electoral success of the United Farmers in Ontario in 1919, which (along with other signs) suggested the disintegration of the old-line parties and a realignment of political forces in Canada.[63]

In addition, personal tensions amongst married couples that accompanied physical separation and economic distress during the war were both obvious and commonplace.[64] Many wives and children were left in serious trouble; soldiers had deserted, committed adultery, or entered bigamous marriages, and the reverse was likewise true of the wives they left behind while they fought for their Dominion.

According to Roderick Phillips, there were four main factors that appeared to be the main reasons for the weakening of marriages during World War I. First, many marriages were contracted during the war after the couple had known each other for only a short time, certainly for a shorter time than the couple would normally (in peacetime) have waited before marrying.[65] Despite the obvious conclusion that many of these new war brides could just as easily become war widows, many young adults quickly entered marriages in the period before the young soldiers left for Europe. Phillips concludes that "the link between increased war marriages and the post-war divorce rate is an assumption that many men and women married ill advisedly and that their inherently fragile unions could not withstand the hardships of separation imposed by the war."[66]

Phillips writes that the second contributing factor to the increasing numbers of crippled marriages in the post-war period is that the enforced separation of husband and wives during the war weakened not only recent marriages, but also those of comparatively long standing.[67] The couples no longer were able to grow together, or to face the challenges of married life as a united pair, but rather to face the challenges of this turbulent age as separated individuals. Women were expected to tend the home [and farm], and many, in addition to this challenging role, entered the workforce to adjust for their husbands' smaller income during the war. It is quite possible from these circumstances that many women gained a entirely new sense of independence—one that may have altered their opinions of their soon-to-be-returned husbands.

The husbands who left for the arena of military conflict also had a dramatic and differing experience than that of their wives who stayed home in an unscathed Canada. Europe, and in particular France, where many Canadians fought in incidents such as the Ypres battle and the capture of Vimy Ridge, was ravaged by destructive new forms of artillery as well as vicious gas and chemical onslaughts. Most memorable were the squalid conditions associated with trench warfare. Vermin, gangrene and influenza ran rampant in the system of tunnels that criss-crossed France.

These elements, common to all who would survive "the war to end all wars," were entirely foreign to even the seasoned commissioned soldier. The traumas of World War I, documented in an excellent social history by Desmond Morton entitled When Your Number's Up, were simply unfathomable to those who had not shared those same memories of these war years. When the returned soldiers came home,

> ...1919 was the year of disillusionment. For tens of thousands the Armistice had resorted a prize that they might otherwise have lost-their lives. Now, as with all prizes, the problem arose of how to use it. Men came home with wounds to minds and bodies, and some with drug and alcohol addictions, to say nothing of the minor vices of swearing, gambling and athlete's foot. They found broken marriages, children who had forgotten them, and families who had already heard more than enough about the war.[68]

The war and its aftermath left many couples with very little in common. Perhaps for some their only refuge was in obtaining an official decree indicating what they already knew—that each individual had grown apart and their marriage was over.[69]

A third factor was the increased prevalence of wartime adultery. Quite simply, physical detachment (especially given the stresses of war on both men and women as well as the fragility of many new unions), gave separated couples the opportunities and perhaps the motivation-loneliness and the deprivation of sexual activity-to seek out extramarital relationships.[70] In particular, soldiers on active duty were

known to be promiscuous in various ways–there were many casual sexual contacts between troops and local women, as well as prostitutes. Evidence of married soldiers' infidelities was manifest in the sensational wartime increase of the infection (amongst all the troops) which brought much controversy and little sympathy, venereal disease (VD). By the end of the war, the Canadian Expeditionary Force had accumulated 66,346 cases (compared with 45,460 cases of influenza).[71]

> Nearly one in nine Canadians overseas was infected, a rate that even exceeded the Australian record. The epidemic began almost as soon as Canadians disembarked England, and continued until they went home. Idealists insisted that innocent young Canadians had been corrupted by England's army of industrious harlots; the more worldly wise argued that Canadian soldiers had brought their habits and some of their infection from home.[72]

The problem became such a concern for Canadian Army Headquarters that medical officers were commissioned to do periodic inspection of their men's genitalia for indications that any soldier had been concealing symptoms of venereal disease.[73] It is believed that high pay and long absence from their families that fuelled the epidemic amongst the dreary troops. While it is impossible to make any estimations from this information on whether married soldiers were more, less, or equally likely as their unmarried comrades to become sexually active, there is no reason to believe that adultery was not frequent. Indications of venereal disease are the only

quantifiable evidence available to make any conclusions on the pervasiveness of adultery amongst the married men who went to war. But as questionable as it may be as documentation, it does give rise to the belief that married men found it difficult to remain faithful given horrifying conditions and the availability of local French and British women to alleviate their worries if but for only a brief respite.

Married women had the same likelihood of remaining faithful to their fighting men. Although it is probable that most were unswerving in their devotion to their vows while their husbands were away, many were not. In letters to the Minister of Justice, there are various examples of a wife's desertion, her subsequent adultery, and a resultant pregnancy for which her soldier-husband played no part. What is important as far as divorce is concerned, according to Roderick Phillips in his work Untying the Knot, is that a women's adultery was more easily discovered, discussed, and proved than that of her husband who had been away in a foreign land.

> Both, of course, risked betrayal by venereal disease, but women also risked pregnancy. Even without such misfortunes, married women at home lived under the surveillance of neighbours and community. Gossip about their wives must surely have reached the ears of demobilised soldiers, and some neighbours are known to have been thoughtful enough to send men on active service letters detailing their wives' sexual activities.[74] In crude terms, then, a wife's adultery at home was far more likely to be reported than, let us say, her husband's visit

> to a brothel in France or Egypt. Apart from the relative anonymity war can provide, there must have also been a tacit and mutually beneficial agreement that soldiers kept quiet about their comrades' activities of this sort.[75]

The fourth factor to post-war divorce is one which requires even more elaboration. Although it is easy enough to see why stresses and conflicts might have entered marriage as a result of the war, and why many marriages might have broken down, it is quite another question why the spouses were apparently so ready to turn to divorce. There were, after all, alternatives such as living together unhappily, or simply separating informally, and they were in rampant use throughout the prairie provinces. We must, in short, distinguish between marital breakdown and divorce. It could well have been that the end of war and the onset of peace produced a sentiment that one ought to shed or reject the past and look to the future. The question of one's marriage could well have been part and parcel of this sentiment. In its most fundamental terms, many men and women, having survived the trenches and the rigors and privations of the war at home, might have had little desire to participate in a peacetime marriage that meant continued stress or outright conflict. Looked at from this point of view, as part of a desire to start a new life after the war, "divorce can be seen as a process of sloughing off the conflict-ridden past-as a sort

of a marital demobilisation."[76]

In the Canadian post-war reality, Harry Brooker, a veteran living in St. Thomas, Ontario, illuminated this same attitude to the Minister of Justice in a letter dated October 2, 1919.

> Have we fought in vain[?] We were in mud slime and blood fought our way through, shook hands with ourselves to think we go[t] through, but for my part after coming back and finding things in such a condition it took all the morale and spirit out of many of the boys. We cannot seem to get justice at all. I have been to the Magistrate and Crown Attorney but they say from a thousand to fifteen hundred dollars is the cost of a divorce... [He complained that it]... was impossible to bear such costs on a soldier's pay, [and concluded:] 'Now sir do what you can for us. There is in St. Thomas a score of cases of unfaithfulness and it almost seems as though we are deprived of the liberty and justice we went to fight for as we have neither the privilege of a single or married man as the case now stands. Hoping I can get some satisfaction from you.[77]

Therefore, soldiers, perhaps as a result of the traumas realised in this most devastating war, came to believe that they were owed a satisfying relief from a future troubled by a cheerless union.

> A better world was possible, and so too were better marriages; and in the opinion of some no one had a greater right to better marriages than those whose domestic happiness had been irretrievably damaged by military service.[78]

As Desmond Morton concludes,

> For the first time a group of largely poor men approached the Canadian government on the basis of moral entitlement, not sympathy. ...Ex-soldiers remembered the resentment at the barriers of rank and the unearned privileges of the officer class, [during their war experience, and thus believed that the exclusion of their class from divorce was

much the same.][79]

From this insight, we will now look at but a few of the hundreds of petitions to the Dominion government from the disenchanted returned soldiers of prairie Canada.[80]

Mr. J. S. Coyne of Saskatoon, Saskatchewan, wrote a note on June 11, 1917, addressed to the Department of the Attorney General in Ottawa. In that correspondence, Coyne indicates that he would like to know the necessary steps a returned soldier (his regiment number 114016, a member of the Fort Garry Horse) should make in obtaining a divorce. He pressed on in his query, giving a great deal of personal particulars as to why he needed this information,

> On returning home from overseas I found that my wife had been living a part of the time while I was away with one Thompson[,] a farmer whose wife is in an asylum and some few months after I came back she left her home and has been living ever since with Thompson on his farm some few miles from here.[81]

In what would become the standard response for all soldier-applicants to the Department of Justice, Coyne was informed that:

> ...it is not the duty of the Minister of Justice to advise in such case, that divorce can only be obtained by action of Parliament, and it would be necessary that the proceedings should be carried out in the prescribed manner, as to which I think you should consult a solicitor in whom you have confidence.[82]

If 1918 was the very beginnings of the storm brewing about

divorce concerning returned soldiers, (see indexed cases of non-prairie province requests for divorce as well[83]), 1919 was entirely the year of deluge. There are more than 40 petitions to the Canadian government from throughout the Dominion inquiring to the particulars of divorce procedure. If these messages are only a portion of the population indicating their desire to re-marry in the form of communications with the Department of Justice and/or Militia and Defence, it was indeed a year of changing attitudes with demobilisation sending many men home to unhappy unions.

Trooper T. C. Buckpitt, Regimental Number 645696, of the 1st C.A.V.C. stationed in Le Harve, France, writes a lengthy letter detailing the "depraved" dalliances of his wife. In this message of January 29, 1919, he insists that he has not heard from his wife since September of 1917. She had written him a letter saying she was going to the hospital for an operation and, due to the lack of response from his spouse, he assumed that she had died as a result of the surgery. A friend of hers confirmed this story, and J. S. Foran, Secretary of the Catholic Aid Society of Vancouver, British Columbia, informed him that their baby girl had been placed in their charge. Giving her up for dead, Mr. Buckpitt instructed the Society to give custody to his father until his return. But, to his chagrined surprise,

his wife was not dead as feared. Rather, as he communicated, "she has been leading a very immoral life and had wilfully neglected my child."[84] He now wished to obtain a severance from his wife and was dutifully informed that the British Columbia courts could aid him in due process if he presented his case before that provincial bench.[85]

The Director of Records, Department of Militia and Defence received a communication from Alexander Johnston residing in Kenogami, Quebec, in April of 1919. The letter of the 17th of that month included a newspaper clipping from *The Star* that persuaded Johnston to write to the Minister and is presented here in full:

> FACILITATE DIVORCE FOR RETURNED MEN
> (Special to the Star from our own Correspondent.)
> Ottawa, Feb. 4. —Returned soldiers whose women have proved faithless in their absence are to be facilitated in seeking that relief which the law allows them by way of divorce. Among the principal items of cost in divorce proceedings is a $200 fee which has to be paid to the Clerk of the Senate. In the case of returned soldiers it is proposed to remit this along with certain other incidentals. There is promise of a number of such cases.[86]

Therefore, the "special provisions" mentioned by these men in letters to the government were not mere gossip of hopeful veterans. Rather, there is at least evidence that it was widely reported to Canadians vis-à-vis their own newspapers.

Ex-serviceman Johnston, Regimental Number 684004, sums up his marital situation for the Minister: "On my arrival in

Canada i found my wife gone + my children had been given out and also find that during my absence my wife has Proven faithless."[87] He has written to the Department in the hopes of receiving information as to a quick divorce and in securing the allowances as presented in the citation from the daily. The letter was transferred to R. J. Orde who advised him that this particular Ministry could not assist him. However, he did include the following:

> Rule No. 140 of the Standing Rules and Orders of the Divorce Committee of the Senate contains a marginal note in which it is stated that if the Committee is satisfied that the petitioner has no means, he may be allowed to proceed without any fees, or if he has paid the same, they can be remitted him.[88]

As will be illustrated later in this commentary, previously (in letters of 1918) Orde had shown he was not sure of legal procedure in the realm of marital discord. It seems that, at least by this point in 1919, he had made himself aware of the ramifications of his role as legal advisor to the ever-increasing requests made from these veterans of the First World War.[89]

Other applicants include Mr. A. Magnieux of Storthoaks, Saskatchewan, who drafted his story of his wife's "mauvaise conduite" during his absence at the front. It is largely an oft-repeated tale, however it is the reply that is far more interesting to note. E. L. Newcombe, the Deputy Minister of

Justice, gives evidence of an inability to understand the franchophiles he intends to serve. His answer is in English, and he insists that "in the Province of Quebec the only authority empowered to grant divorces is the High Court of Parliament." However, Magnieux is from Saskatchewan, never once does he mention a Quebec domicile in his petition, and moreover, he was not advised that it was now in the jurisdiction of the Saskatchewan courts to reflect upon his suit.[90]

The accounts of marital woe, however, only seem to worsen as the year wore on. (Several central Canadian accounts are included in the endnotes for this period as well.[91]) Frances Knox of Cymric, Saskatchewan, has taken it upon herself to illustrate the scandalous behaviour of her daughter-in-law during her eldest son's, John Robert Junior, valiant service in the Canadian Expeditionary Force. She believed that when the facts were known about this "dog-like person" her son was married to, the Dominion Government would agree than John Robert "should easily obtain a divorce."[92]

Her son was Secretary Treasurer of the Valley Centre School when he met Helena Mary Wilcot, a young girl (twenty-two years old) out to visit with her aunt and uncle whose farm adjoined the educational institution. It was not long before Knox proposed marriage and, through persistent prodding, she

accepted. He hurried the wedding fearing he would lose her, and they were married at the Wilcot farm by a Wesleyan pastor. Shortly after the rush to the altar, he was enlightened with the true and sordid past of his blushing bride. The first piece of information he received was that it appeared that she already had been a mother at the age of seventeen. The second, and more damning fragment of the story that he was about to uncover was that Helena was pregnant again, and "her own father [was] the sinner" in question.[93] Frances Knox was probably quite relieved to learn that the Saskatchewan courts had jurisdiction, and that the nullity of the marriage bond was more easily attained at this point for the returned soldier.[94] Needless to say, if one was to judge the changing attitudes and increased candour towards the once-believed "immoral" legislation of divorce, these letters prove that 1919 was indeed the pivotal turning point. Canadians now, with the stroke of their pens, were demanding that the Dominion Government act to ensure those liberties that were fought for in "the war to end all wars" be available to all, regardless of financial status.[95]

The requests for divorce do start to lessen from this juncture. One of the five found for the year 1920 is also that, in a rare instance, of a Prairie petitioner. Private H. A. Pankhurst, Regimental Number 872074, of the 107th Battalion,

wanted the "particulars" of getting a divorce in his case. He was originally married in the States "to a lady German"[96] and came to Canada in 1914. Pankhurst enlisted in the Canadian Army in 1916. While he was away at the front, his wife "went back to the States and was living with a German and still lives with him[;] has had one child by him that I know of." Desiring custody of their son, who is in her possession, he did not believe given his meagre funds, that after fighting for his country he should have to pay for a divorce from the country he just fought for. Despite this opinion, he was only offered the curt standard reply from the office of the Justice Department.[97]

In 1921, there appear to be about the same number of applicants to the Minister of Justice who are Great War veterans as in 1920. Nevertheless, their stories are just as heartfelt, and full of patriotic zeal, as those that appeared right after demobilisation.[98]

Mr. W. Kanel of Kuroki, Saskatchewan, wrote of a singularly uncommon lament concerning his marriage to his wife in his letter to the Department of Militia and Defence on May 25, 1922. He claimed that since he knew his intended spouse only three to four months before his wedding, that there was no notice on his service records that he was married, and that his wife neither received his money nor separation money from the government, in

actuality *he never was married.* Private W. Kanel, No. 622127 began his time in the Canadian Expeditionary Force in October of 1915, served with the 44th Battalion for four and a half years, was sent to the French front three times and was wounded twice. At present writing, he had been receiving disability claims from the Canadian government for the past two years, but those payments were almost at an end. During that period, his wife never wrote to him during his service overseas, and shortly thereafter deserted him to return to England in 1915. Therefore, seven years less a month had passed since his union with his estranged wife, and it was Kanel's intention to re-marry. He continued:

> [I] need a wife more than ever now...if only I could get a clearance from the department or government to tell me just the best way to explain myself for a license as I have as sumed [sic] myself here as a widower.[99]

He asserted that given his sad emotional state as a bachelor, his inability to get a marriage license on what he believed was a fictitious wedlock, and the fact that he would no longer be receiving any more assistance from the government, he had only one solution—a new wife. R. J. Orde, the Lieutenant Colonel, Judge Advocate-General, was of little assistance to the distraught Kuroki native. Orde replied that the Department of Militia and Defence could not give advice on this matter as it was out of its jurisdiction. As well, Kanel was given the same

suggestion as countless others—"you [should] place your case in the hands of some reputable lawyer, who will be able to advise you fully as to the means which you should take to enable you to marry again."[100] However, the remedy that he sought would not be easily attained, and he could not behave simply as if he was "like never married",[101] as he stated in the beginning of his letter.[102]

In addition to the self-addressed letters to the Department of Justice, the sentiments and desires of the soldiers (for increased access to divorce) were expressed in sundry queries from solicitors, activists, and officers of the Canadian Expeditionary Force. W. B. Waters of Calgary, Alberta, a practising lawyer, wrote on March 12, 1918, on behalf of his client whose wife was unfaithful. He inquired into "a movement [that] was [a]foot looking to cheapening and simplification of Divorce procedure with regard to soldiers[103] who could establish good cause for divorce owing to the conduct of their wives while their husbands were serving at the front."[104] His client, a Lieutenant in the 21st Reserve Battalion stationed in England, had been at the front for nearly two years. His wife, however, gave birth to a baby girl at Banff in November of 1917. It was his wish to be divorced as soon as possible, especially with the possibility of being killed in action. He also asserted that

his union was invalid due to his estranged wife's previous marriage to a Mr. David Walker of Dundee, Scotland. Lastly, he believed that all four of his children, who were minors, should be placed in his custody. The solicitor concluded his note by asking for any information in regard to the alteration of the law on this subject, whether it be through an order-in-council or parliamentary procedure. In response, the Deputy Minister of Justice relayed the information that there were no new changes in the law, nor in its practice (although he made the unqualified inference that the fees may have been reduced.)[105]

In addition to the letters from the legal profession, senior members of the military establishment were likewise vocal about their dissatisfaction with regards to divorce legislation.[106] What was most disturbing about the responses from the Department of Militia and Defence to the elite members of their own armed forces was uncertainty in regards to the changes, if any, that had been to the law in regards to soldiers' divorces. W. R. Creighton, Major and Private Secretary, in forwarding one petition in particular (from a Colonel Adams [full citation in notes]) to R. J. Orde, Captain, for the Judge-Advocate General, wrote:

> There was some discussion some time ago regarding the cost of divorce proceedings, but it seems to me it is a matter entirely for the Secretary of State and the Department of Justice. Perhaps, however, you will be able to say just

> what steps, if any, have been taken, and let Colonel Adams know.[107]

On the 17th of January, Orde answered Colonel Adams' letter. Unfortunately, given his position, he was no clearer on the subject than Creighton when he advised Adams in his response:

> The question of the case of divorce proceedings was under some discussion some time ago, but, exactly what resulted from it I am not able to say. I would suggest, however, that you communicate with the Department of Justice and the Clerk of the Senate, who would no doubt be able to give you the necessary information. I understand, also, that this matter was taken up by the Ontario Government, and, no doubt the Provincial Secretary would be able to advise you exactly what was done.[108]

It seems odd that Orde, the one person in the military establishment with some knowledge of legal process, is so befuddled on this topic, given the fact that letters such as these crossed his desk continuously in this 1917-20 period. His main role of counselling soldiers as to the points of law in divorce requests should make him eminently knowledgeable of alterations in the parliamentary and judicial spheres. However, it is apparent that he, like many other civil servants, did little to remedy the issue satisfactorily in the eyes of the claimants he intended to administer.[109]

One last pressure group to be heard on the topic of ending marriage in the post-war reality was the senior members of veterans' associations and patriotic leagues. Helen Reid,

Convenor of Auxiliary in the organisation, the Canadian Patriotic Fund, wrote to General Mewburn, the Minister of the Department of Militia and Defence on the subject of divorce in a letter of December 6, 1918. She indicated that she knew at least "fifteen to twenty men" who desire divorce not only on account of the "unfaithfulness of their wives, but also due to the laxity"[110] with which these particular women conducted their households. She continued…

> It seems to me, quite apart from the extraordinary arrangements involving the Senate Committee, in such cases, and the different regulations in different provinces, that the time has come, if not for the standardization of the divorce laws, at least for making no discrimination between the rich and the poor when the grounds for divorce are valid.[111]

Reid concluded her lengthy petition to the General with her insistence that "It would be highly disastrous to make divorce easy in Canada." However, it was her contention that "grounds for divorce are just as serious among the middle-class and the poor as they are with the better off."[112]

Her letter[113] was referred from General Mewburn's desk to that of the acting Minister of Justice, the Honourable Arthur Meighen. In the memo from the Minister of the Department of Militia and Defence, Mewburn indicates that Miss Helen Reid, of Montreal, Quebec "has done exceedingly good work in connection with the Patriotic Fund," and that her note "asks that steps be

taken to grant some assistance to returned soldiers with the respect to the costs of divorce proceedings."[114] There is no official response offered in the archives to Reid. However, at the top of the letter to Meighen is an interesting scrawl which reads: "Mr. Newcombe: (Deputy Minister of Justice,) Mr. Meighen is inclined to think something will have to be done!"[115] Yet, nothing was done. Despite the persistence of a number of individuals, high-ranking officers included, the members of Parliament were willing to do very little to alter the course for divorce. Soldier or not, there were only three stipulations to the beginnings of legal action in this realm—a solicitor to do the bidding, a Senate willing to hear the case, and one thing in short supply in the soldier's pocket, money.

One last reservoir of information to be tapped regarding the Great War and divorce are those letters from the wives of active and returned military men. These archival materials, like those obtained from the soldiers themselves, contain notes of frustration, fear and, resentment about the lack of redress in the arena of divorce. One letter from March 3, 1918, would highlight many of the same occurrences that would repeat themselves time and again in the letters from soldiers' wives. Mrs. Mamie Williams of Saskatoon, Saskatchewan, wrote: "owing to the nature of the case I simply cannot consult a lawyer in the

city for advice."[116] Perhaps for the Gemeinschaft nature of her community, Mrs. Williams feared the scandal that would arise given her husband's adultery and bastard child born in England. The Williams' had an eight-year old of their own, and she received no support as all of her husband's pay had been re-directed to this new woman and her offspring. Mrs. Williams assured the Department of Justice that she may never live with her husband again due to his infidelity, and he has insisted that she obtain an American divorce, which he will not contest. Asking for advice in this matter, the Deputy Minister showed compassion for Mrs. Williams given these unfortunate circumstances. However, he told her she must apply through a solicitor for Parliament to consider the necessary action.[117] Mrs. M. Sellers of Hartney, Manitoba, describes her husband's most recent actions and her desire to confirm his rumoured activities while he was in active service in "the old country". She had been informed "…that he got married whilst he was there[,] And I would like to find out if possible[.] we have not been living together for years[.] now he is going to get a divorce…."[118] In response, the Adjutant-General of the Canadian Militia informed Mrs. Sellers that he was willing to assist, but he would need to know which city or town her husband's bigamous marriage occurred in.[119]

To conclude this section on the wartime effect on the marital ideal, there are a number of points that must be addressed. For one, there was a prevalence of bigamy during the First World War. It was not regarded as the most desirable form of marital conduct, but both family and community were willing to accept spouses' control over their own marital regimes, ([2] see note) particularly in cases where the remarriage met local standards and conformed to the prevailing familial ideal.[120] As James G. Snell further illustrated,

> That such remarriages were not infrequent is indicated by quite different types of evidence. In one instance during the First World War, for example, a soldier's wife was falsely informed in some unexplained manner that her husband had remarried in England while overseas with the Canadian Expeditionary Force. She believed the story (which suggests the common character of such conduct,) and she promptly remarried much to her first husband's chagrin when he returned. Other wives all too readily believed rumours that their husbands had died, particularly during the war, and they remarried.[121]

Therefore, misinformation should be included amongst the reasons many women either re-married or sought the means to divorce, along with the predominating evidence given above of the

[2] It must be understood that this phenomenon was not a universally accepted ideal. Certainly in the rural centres, there may have been a trend towards accepting such extra-legal behaviour, however in the urban centres, there is little evidence that this was permissible. Why the dichotomy at this time? It must almost assuredly rely upon a number of reasons-the economic necessity of marriage for both men and women in the rural context, the increased prevalence of education as well as strict social mores for urbanites to recognise and simply the habits of some petitioners to resort to state approval for severing of marital relations and others to merely settle their own affairs as it suited them.

"misconduct" on behalf of a number of army wives.
It was also men, however, who tried to make their case to the Dominion Government in hopes of securing a cheap or free divorce. Knowing human nature, perhaps some exaggerated their proof, and maybe some outright lied about their wife's adultery. But very few gave evidence of **their** infidelity that, according to Desmond Morton, was a considerable temptation of the Great War experience for many married men. There is very little corresponding documentation that these women were the way their estranged husbands portrayed them, suggesting that these letters must be read with some scepticism.

In addition, there is a considerable effort to judge the behaviours of one gender as a vice, while in the other, the same traits are overlooked. To elaborate, the freedom many women experienced at this point, be it in the workplace, social circles, or at home alone, was up for critical approval by the media, organisations like the Patriotic Fund, and, most significantly, their husbands away at war. Meanwhile, the unhindered men at the front were encouraged to "blow off steam" and were under no similar social microscope. Therefore, it must be remembered that the "black and white" portrayals of marriage—that is the husband as patriotic, noble and faithful versus the immoral fallen wife—must be read with these stipulations in

mind. There is very little direct evidence that these letters are not one hundred percent valid. However, these notes and correspondence to the Parliamentary Ministries must be duly regarded with some suspicion given the moral patriarchal climate of Edwardian Canada. Society certainly encouraged a double standard in regards to decency in gender relations, and certainly the newspaper citations, the letters from the men, and the governmental response cemented these criterions.

Thus, the "illicit" female behaviour as reported in these various primary documents emanate from a period where women (until 1917) did not vote, they were generally expected to be homemakers, and restricted property ownership was available (but certainly not encouraged) to those who were married. What is said to be "immoral" and "depraved" may merely be a new attitude, a new autonomy from the restrictiveness of the past. Just as the men demanded their freedom after fighting for "King and Country", so too would women demand changes in societal mores in the next generation.

Chapter V-Divorce Amongst the Populace-Prairie Canadian Women and their Letters to the Department of Justice, 1900-1925

While husbands may have led the way in 1918-19, overall it was wives who increasingly took the initiative in divorce. According to James G. Snell,

> For every marriage cohort except one, women made up the majority of petitioners in the sample (see Table included in Appendix). Only in the 1900-9 marriage cohort did men constitute a majority of divorce petitioners. At first women's domination was relatively slight, as wives consistently initiated between 52 and 53 per cent of the divorce petitions. But in the last two marriage cohorts under investigation a significant change occurred, and soon wives outnumbered husbands two to one as petitioners.[122]

With the changes brought about by wartime, many women used divorce as a device to control their marital circumstances. In a series of letters detailing desertion, non-support, and a wish to confirm the custody of their children, many female petitioners to the Department of Justice highlight similar feelings in letters of 1918 and 1919. Not that there were not female concerns about divorce prior to World War I. Indeed, as early as 1909, there were written appeals from women to the government to remedy the problem of divorce, both on a microsociological level (that is within their own homes), and also on a macrosociological one (for all Canadians.)

A Calgary, Alberta woman, Mrs. Frances M. Healy of 1033

Maggie Street, wrote in 1909 concerning her difficult relations in marriage. Her husband had left for a few days holiday on September 18, 1907, to the British Columbia coast. However, he was never to return to his wife and children, and had not supported them financially since this day of desertion. As it turns out, Mr. Healy took a young girl from Airdrie, Alberta, with him. The two had been pointed out in various locales on the West Coast from Seattle to Los Angeles. Frances Healy only had proof of his philanderous behaviour when a relative of the Airdrie girl reported to her that his niece was lying on her sickbed, due to a difficult labour that produced a son. The father, of course, was C. F. Healy. This deserted wife was now seeking to rid herself of this "annoyance", as she wanted no risk of losing custody of her children to this wicked man. She inquired as to the "lowest sum necessary for the Divorce fees, as my means are limited."[123] It was her eventual desire to re-marry and remain in Calgary. The Department of Justice was thoroughly unoriginal with its reply to this woman. It merely offered the same response it maintained to all petitioners (as detailed in the farmers/soldiers letters) to its office in the pre-World War I period. [124]

Mrs. Kalayna Fidirchuk of Arbakka, Manitoba was a deserted wife of Austrian origin who wrote to the Justice Department in

February of 1910. Her husband was living with a new wife and their children at this point. When the couple first married in 1905, he left for Canada insisting that he would work, make a home and send for her. Three years would pass, and save for a few dollars in the first year of his emigration, he had not supported her. She continued to work and then decided to come to Canada herself to assist her husband in his quest to establish a life for the pair. She moved to Canada in June of 1909, but had not been able to track her spouse down. She had heard through a member of the Austrian community that her husband had re-married in Ottawa, changed his name and has had three offspring with this woman. Mrs. Fidirchuk complained of her inability to work due to her poor English capability, and she stated that she was a victim of continual starvation despite her young age. She wanted support from this man, or a decree allowing her to re-marry in her new homeland. The Commissioner of the Dominion Police, in a memorandum to the Minister of Justice, confirmed her beliefs about her husband, except that he only had two children, not three. As well, he was living quite comfortably as the owner of a bawdyhouse, and was duly informed of his wife's knowledge of his circumstances. There was the standard answer to Mrs. Kalayna Fidirchuk, along with the belief that she should compel her husband to support her even though

there was nothing the government could do to intervene.[125]

Another letter arrived from an Edmonton, Alberta woman on March 3, 1910. She writes that while in the hospital for over a year, (with burnt feet,) her husband kept company with another woman. They had been living in Montreal at the time, and Mr. M. Charles confessed to his wife of his adulterous behaviour. They (meaning Mr. and Mrs. Charles, their daughter and Mrs. Charles' parents) moved to Edmonton a year after this incidence (which she chose to overlook,) however he deserted the family one-week later. Due to a lack of work, Mr. Charles went back east. He insisted that he would provide for his wife and their daughter with the monies he could earn with his trade in the more populous provinces of Ontario and Quebec. Save the limited amounts that trickled back for the first year, her husband sent no more, refused to see his family and the mother and daughter (now fourteen) were forced to secure employment. Before they settled in Edmonton, they had stayed in Montana for a year and a half. It was now Mrs. Charles wish to go down to this state and secure a divorce—but she queried—"Was this legal?" The Department of Justice responded that it was not their place to intervene in this matter however A. B. Aylesworth commented in his reply that:

> The question whether a divorce granted in the United States would be recognised in Canada is one of considerable

> difficulty and depending upon the special circumstances of each particular case. I think, on the facts that you state, that there would be great question whether the Courts of the United States would have any jurisdiction over your husband such as would give them authority to grant a divorce against him, but upon all these points the only thing I can say to you is that you should take the advice of some legal practitioner in whom you have confidence.[126]

Mrs. Florence Fraser, another resident of Calgary, wondered, given the details of her case, on whether her marriage to an officer of the Royal Northwest Mounted Police was legal. She was married in Macleod in December of 1910 to a gentleman by the name of A. S. Fraser. They lived quite happily until her husband was called away to duty in London, England to participate in the coronation ceremony of King George V. He deserted shortly after the landing and did not write his wife for about four months. Through his letters he apologised insisting that he no longer wished to be married, that he needed money and he told her that his real name was Fred Jenkins. Due to the fact that he married under an assumed name, Mrs. Fraser queried as to the legality of this union. She had no children, had no support for over a year and therefore she wanted to procure a divorce from this man. Mrs. Fraser was given the predictable reply, however, the Department of Justice added that it "did not think the fact that your husband married you under an assumed name would of itself render the marriage void."[127]

Another piece of correspondence to the Dominion Parliament in the pre-World War I period was that from Mrs. Della E. Earl of Bruce, Alberta. Her husband, W. J. Earl, deserted her over two years before a note written on December 16, 1911. He left her with nothing in the way of finances, and there was the question of the two children left to raise. Returning twice in the time elapsed, he insisted that he no longer loved her. Further enraging Mrs. Earl was the evidence presented at the police court trial of her husband in Edmonton, Alberta. He was charged with being a frequenter of a disorderly house and she believed this was reason enough for the Department of Justice to grant her a quick decree of divorce. Needless to say, this simply did not occur.[128]

Later, Mrs. Earl would write again. So enraged at her situation, Mrs. Earl had begun a complex legal suit against her spouse in the time since her last letter:

> I placed all the facts of my case before a competent solicitor and he advised me that if my husband was located that the Attorney General's department would take up the case and have Earl brought back for trial. The officer commanding the R.N.W.M. Police was notified of the case and when he located Earl in British Columbia he submitted the case to the Attorney General and they refused to take up the case of handle it attal [sic]. I went before a Justice of the Peace and had a warrant issued for his arrest....[129]

Mrs. Earl had seen little response to her desire to be rid of this man the first time. Since 1911, Mr. Earl had gone to

the United States, procured a divorce on the grounds of desertion, and re-married March 10, 1914, in Vancouver, British Columbia. It was her intention to re-marry as well (in two months,) if the proper authorities did not take up her case—"At any rate I am just as free to marry as he is! Fair play is all that I am asking...."[130] She was informed by a member of the office of the Department that the Minister could not interfere in this marital squabble, but that Mr. Earl should be brought up on charges of bigamy by the Attorney General of British Columbia. Although Mrs. Earl expressed her own desire for re-marriage, she was neither apprised of the illegality of that behaviour, nor was she given advice to permissible viable options, save the pat answer, once again, of seeking the advice of a competent solicitor.[131]

One example of a Central Canadian push to divorce is found in the insights of a mother of a "young girl" in the pre-First World War era. In a letter arriving to the Department in October of 1913, Mrs. Cockburn, a Toronto resident, writes of her unfortunate daughter who was foolish enough to marry a "Macedonian". She elaborated:

> The marriage contracted between my daughter Lizzie Cockburn + Nick Johnston[...] she was away from home at the time + it is a Macedonian fellow + she has never lived with him yet for I made her come home + she has lived home + worked ever since + it was found out since that he is diseased + I would like to know if you could have her marriage annulled

> for she knows she has made a big mistake + she would be happier + more contented girl + she is only 21 but she is only taken by everyone for 18 or 19 + if you could possibly have it annulled it would give her a chance in life as it was done in a case of fright more than anything else for when she was 15 I put her in the Alexandra Girls School + she was trained in every thing both domestically + educational she passed the High School Entrance Exam + she is a clever girl but she was off work for some weeks when she left home the school people were after her with the intention of taking her back + some girl of the school told her + she would have been 21 in six months from the + she was afraid of taking to go back for six months + she went + got married all of a sudden but if she had been living home I would have seen that she wouldn't have got married until I was ready for she kept company with a young man for 2 years + 7 months + he is an engineer + in every branch of the I.O.O.F. + as she hasn't lived with this man + she don't recognise him + he don't her + he lives with a bunch of the lowest of greeks + Macedonians + won't part from them + then he will be liable to go back to his own country any day so please do anything you can to give her a chance to do good for she is only a young girl…[132]

There is no mention of Lizzie Cockburn's insistence on divorce—one hopes that this was not merely the case of an overwhelming, racist, and meddlesome mother. Yet, at this point in Canadian history, "the other" was viewed with skepticism, bias and, quite often, outright hostility. Mrs. Cockburn's comments are relatively tame in comparison to other letters from this era that criticize Blacks, Eastern Europeans (like the Ukrainians), and especially, in the next four years to come, the dreaded "Huns" (Germans and Austro-Hungarians.)

With the advent of war, and the prolific technological, political, and societal changes that occurred during this

period, the petitions from women begin to mount. Mrs. Mabel Noble of Moose Jaw, Saskatchewan, staying at the Brunswick Hotel in the center of town, addressed her concerns to Mr. Doherty, Minister of Justice, on July 26, 1917. She had been informally separated from her husband for over eight years. Supporting the family "to the best of [her] ability" from that point, she insisted that her husband "stole the youngest boy [13] to put him to work for his sister and brother-in-law."[133] Her son received no schooling and no clothing in spite of his hard work. Her husband legally pressed for custody of all three children (two boys and a girl), which he achieved two years ago. There were prolonged absences from school, and they were further ignored by their father when he re-married. Mrs. Noble went to court and was able to obtain custody of the two boys since they were still quite tender in age. But her eldest daughter remained embroiled in an unhealthy situation where she received little supervision. The Saskatchewan judge believed that she had suitable grounds for the nullity of marriage, but she did not have the funds to pay the high court dues. No surprise, Mrs. Noble too was given the obligatory response.

In 1918, a deserted prairie wife from Howell, Saskatchewan, spoke for many when she told the Minister about her past problems and her hopes for the future:

> In 1906 I married a man by the name of Michael John O'Neil, believing him to be a good man. after we were married a month he deserted the army, and went too the states, and i went too him but soon found he was a bad man still i lived with him he was arrested for housebreaking but it was decided he was insane from heavy drinking so he was send too the aslum. I got him out afrer six months, and took him too Toronto but he was always getting in too jail I work out and kept myself and him most of the time in 1912 he married wife number 2 but he got out of that after i had talk too the girl...when Mr. O'Neil was release from Kingston pen. he went too Hamilton On the wrote me from their saying that he had join the army and wanted me too come back and live with him...but i had decided never to live with him again. he had threaten my life so many times that I coulden trust him any more that's over 2 years ago now and i haven heard from him since but can get no trace I heard he was married befor he married me but cannot prove it. but i thought if i could find out were he was and get a office too go with me he might own up too it if it were so and if he had been married before that would clear me I saw his name in two different newspapers that he had been killed at the front but their was no address, it might have been another man by the same name. could i marry again bleiveing him too be dead or must I prove his death before i marry again. their are plenty that think it would be all right but i want too be sure. if I can't, I understand that it cost a thousand dollar too get a divorse is that the least one can be got for. I have read in the papers that it is too be made easy for soldiers to divorse their wifes that haven been true while they were away. I feel justified in asking you why not make it easyer for good women of our country that have been deceived in too marrying bad men too get a dovorse from such racals as the one i married prove too be. their are plenty of men in this westren country were canadian women are so scrase, would be happy to get good wifes and give them good homes and make their lifes happy and would also rear families that the country would be proud of in the comeing years.[134]

Needless to say, she received the same response of many of the petitioners of the era—that is they were urged to contact a solicitor if they wished to begin any such action in

Parliament.[135]

Similar to the increased numbers of requests inundating the Dominion government in 1918 from the returned soldiers, so too were those from Canadian women of all regions. In an ill-conceived and poorly written letter, Mrs. Lottie Beever of Moose Jaw, Saskatchewan, tells of her unfortunate circumstances. She married her husband March 9, 1910. Shortly thereafter, he informed her that he had married her under a false name. His previous reputation, under the name of Wilbur Patterson, was not exemplary—he was regularly in trouble when he lived in his former domicile of Thompsonville. The new pseudonym did little for his behaviour, and he was consistently absent from the Beever home in Moose Jaw.

At the onset of her correspondence, Mrs. Beever wrote that her husband had been "busing" her for over four years. One recent Saturday, the first in many, he went to a grain growers' meeting where he allegedly told many of his marital woes. Pursuant to those discussions, he made some dramatic life changes. He sold the farm, sold the stock, and was quite readily handed the funds from these sales. Mrs. Beever continued: "…[he] abused me on sunday[,] left me on Monday [at] 7 oclock in the morning[…] and he did not come back for 7 weeks[.]"[136] In the angry conclusion to her letter, Lottie

Beever stated,

> I ought to have some thing [sic] for the work I have done[.] he was away most of the time running around[.] I had the outdoor work to do[.] surely I cant be left with out anything to live on[.] he just marryed [sic] me to get that place proved up then left me like a dog to starve.[137]

Lottie was left with no financial recourse. She believed it was unlawful that he married under a false name, and desired her freedom with the assistance of the government. Nevertheless, as with many others, she would not find relief for her marital discord with this mechanism.[138]

Another resident of Moose Jaw, Saskatchewan, wrote to the Minister in 1918 detailing her similar circumstances of desertion and non-support. Mrs. R. T. Bennett wrote on October 16, 1918, that her husband left her and her son over six years ago. She made inquiries with the militia forces in the last year, and was informed he had not joined the Canadian Expeditionary Force for service. Likewise, she penned a note to the Chief of Police in his former hometown of Georgetown, Ontario, asking his whereabouts in that vicinity. He too informed her that neither he, nor the Bennett family, knew of his haunts. Mrs. Bennett recently concerned herself with her absent spouse because she was no longer able to work outside the home, and therefore had no way of sustaining herself and her son. She thought there were three ways out of the predicament

and looked to the Dominion government to aid her in choosing the most viable alternative. She believed that she could either force her absent husband to support her, encourage her well-off father to provide for her, or re-marry. The Assistant Deputy Minister addressed a response to Mrs. Bennett on October 22, 1918. As standard practice, he informed her that the function of the Minister was not to advise private persons as to their legal rights. But he did include some personal bias with this statement:

> I may quote, however, for your information, section 307, subsection (a) and (b) of the Criminal Code, as follows:-
> "No one commits bigamy by going through a form of marriage,--
> (a) if he or she in good faith and on reasonable grounds believes his or her husband to be dead; or,
> (b) if his wife or her husband has been continually absent for seven years then last past and he or she is not proven to have known that his wife or her husband was alive at any time during those seven years."[139]

Implicitly or not, the Assistant Deputy Minister was guiding her to re-marriage as a solution. This rejoinder by the Department is worth commenting on for three reasons. For one, oftentimes on issues of re-marriage, no opinion is offered except that of obtaining legal advice through one's community. Second, if a belief is extended to the petitioner, it is undoubtedly to insist that merely because one can not track down the deserted spouse one does not have the right to re-marry.

Lastly, since a government official mandated this direction, be it legal or not, almost assuredly Mrs. Bennett would use this as a valid indication of her ability to seek re-marriage. Given this example, perhaps it was wise that, for the most part, the civil servants of the Department kept their wisdom to themselves throughout this period.[140]

The letters from women do begin to dwindle from this point on. Nevertheless, they still persist in greater numbers than those of their male counterparts. There are some significant recurring elements of the female correspondence to remark upon. Indeed, one of the prominent features of the writings composed by women is that a great number of the petitions originated from a prairie province—be it Manitoba, Saskatchewan or Alberta.[141] What set these women apart in demanding a quick exit from a failed marriage? Perhaps, living in the desolate farming environment that insisted upon a partnership of man and wife, many women came to realise their worth in the prairie economy. Moreover, with the lopsided ratio of men to women in these regions, many women understood their worth as valuable commodities in the stake of harvest and home. Another reason may have been that there was a determination to challenge societal mores in an atmosphere not shrouded by the staunch Victorian ideology that was endemic in the Eastern and Central

provinces. Perhaps women in other regions of Canada believed that the current legislation was satisfactory meeting their needs regarding divorce, (although, at this time, the literature on the subject does not tend to perceive the situation as such.) Lastly, and probably most relevant, these women needed to re-marry to secure their very fiscal existence. It was still "a man's world," where property ownership by a woman was relatively unheard of, and living as an unwed woman caused great scandal, especially in smaller communities of the sort that dotted the Prairies.

The National Archives documentation gives evidence that, for one reason or another, prairie women were far quicker to challenge accepted conventions concerning the immorality of divorce. Certainly, for most women of the age, it would take the dramatic societal upheaval of the Great War to move more "ladies" to write, to challenge, and to demand alterations from the Dominion Government on this topic.

Another point for discussion is the persistence of desertion in these letters to the Dominion Ministries. Women were simply willing to remain married to an absent partner. When they do make the demand for divorce, it is only after several years have passed and when there is at last an opportunity for re-marriage. In addition, many women were

inclined to rely on their own employment, or assistance from other family members, to support their broken families. Desertion and non-support, for the most part, have gone hand-in-hand in these letters. Therefore, women resorted to their own ways and means of sustaining themselves and their children. In an economy that only during the war sanctioned female employment, this trend of women in the workforce, consistently alluded to both before and after the 1914-18 period, was remarkable. Attitudes must have realised that there was a necessity for women to provide for their families. However, this period's charitable outlook did not correspond to the active enforcement or legislation of demanding child and spousal support from reluctant husbands. Women were here too, the unfortunate recipients of innate institutional social inequities.

As well, despite the liberal change in atmosphere in the post-war period (earlier addressed in this chapter when discussing the returning soldiers' petitions to the Department of Justice), many women pleaded for help for one sole reason. Their primary motivation in writing was that they wished to re-establish their reputation in the community, rather than be in the scandalous position of deserted wife or bigamous partner. There was still the perception (at least from their own

writings) that these women were not meeting society's standards on the notion of family. However, it is important to realise that, as James G. Snell writes,

> The cry for divorce or remarriage on the individual level was in most cases not a rejection of marriage in general, but rather a rejection of an individual marriage [on the part of most women.][142]

Appeals to the Department confirm this. It is important to remember that most women were not seeking to challenge societal mores on the idea of the Canadian family. Rather, most women were looking to making their own position better, to ascertain some notion of financial stability and, most importantly, to achieve their own happiness.

Thus, in only four to five years the mores of a nation, indeed in most of the Western world, had been turned on its head. In a *Calgary Herald* editorial with no by-line, one writer illustrated this dramatic shift in social consciousness…

> Why should a person be tied for life to a spouse who calculatingly used cruelty to make his or her partner's life miserable? Why should spouses suffering alone because of desertion or non-support be forced to live for years without any hope of remarriage? Such men and women should be able to find relief and deserved freedom.[143]

According to Snell, in the years following 1918 a new version of the familial ideal was being developed. In this depiction of marriage the stress was on ideas of "equality, individualism, reason, and romantic love." Previous (and not

totally abandoned) thought regarding marriages endorsed an emphasis on "hierarchy, morality and the essential integrity of the whole family unit."[144] It was in this atmosphere that Canada came as close as it would until 1968 to its first national divorce law. In 1918 the number of divorces began to rise dramatically (see Appendix 1), paralleling developments in England and elsewhere in the Western world, and the number of applications received in the Canadian Senate made it clear that this trend was continuing. Divorces were becoming more common and easier to obtain, and there was considerable pressure to recognise these circumstances in a general federal statute. The federal cabinet seriously considered such legislation, and rumours circulated in the press and among interested parties that government action was imminent.

The invidious double standards of the divorce laws, however, would not be righted until 1925. It was only then that the *Marriage and Divorce Act* provided that in any Court having jurisdiction to grant divorce *a vinculo matrimonii,* a wife might petition for divorce on the grounds of her husband's adultery *simpliciter.*[145] Originally introduced as a bill in 1924 by Joseph Shaw, the Independent Labour member for Calgary West, its aim was simple: to place wives and husbands on an equal footing in establishing the grounds for divorce. It was not meant to

liberalise divorce proceedings, but rather to achieve sexual equality for those grounds needed to pursue a divorce. Vehemently debated and dismissed, Shaw re-introduced the bill in 1925, where arguments focused on either the evils of divorce or the weaknesses of the present means of obtaining a divorce, and not on sexual equality. Finally, the bill was made into law by a vote of 112 to 61 (the Progressives and Conservatives favoured the reform,) with a noticeable amount of members absent from Parliament when the bill was enacted.[146]

This change led to an increase in the proportion of all divorces granted at the petition of the wife from an average of about seven-percent during the period from 1922-1925, to an annual average of about sixty-percent during the 1960s.[147] Yet, the progress made for females because of the legislation of 1925 did not translate equitably when it came to access to divorce. For the most part, women still did not merit the legal liberties bestowed on their male counterparts. As Robert Pike illustrates,

> ...whereas a husband had always been able to sue for divorce in the province in which he happens to be domiciled, the law of domicile which existed prior to 1930 obliged a wife whose husband had deserted her and moved to another province to petition for divorce in the province to which he had moved. This law of domicile was based on the common law doctrine that the husband and wife were one person (and that person, the cynic might add, was the husband) ensured that substantial numbers of deserted wives, and especially those with limited financial means,

> were forced to remain married to a permanently absent spouse.[148]

Additionally, a clause in the Marriage and Divorce Act of 1925 singled out wives negatively. Condonation or collusion disallowed any women's petition for divorce, and the "clean hands concept" (the petitioner could be considered guilty of marital misconduct) was restated to apply to wives only.[149]

The years at the end of the First World War were traumatic in many elements of Canadian life. Not simply were these changes limited to the economy—one that diversified and included women on a grand scale for the first time ever. Nor was the alteration in society coming politically, with anger over wartime policies like conscription, rationing, and dissatisfaction with demobilisation. Apparently, the strain of the wartime environment and changing individual expectations resulted in a new demand for release from unhappy marriages. That demand was heard at the political level in some respects, but even more vehemently in the provincial courts.

These years also changed the outlook of Canadian women regarding their place in society. They began the fight for equality upon realisation of their success in many societal roles denied to them under normal circumstances. First, spurred on by economic need as well as patriotic fervour, thousands of women entered the paid workforce, filling jobs vacated by

enlisted men. Furthermore, they participated actively in recruiting leagues, the Patriotic Fund, and organisations such as the YWCA to give aid and comfort to soldiers far from home. And, most importantly, according to Gerald Friesen,

> War fever brought to Western Canada, as to many parts of the world, intensified campaigns on behalf of female suffrage...and the visible, publicly acknowledged wartime work of women encouraged many reformers to press their more comprehensive demands.[150]

Combined with the growing sense of a right to equality, this "war fever" enabled established suffragette groups to attract new members, both female and male. Roger Gibbins notes that:

> the years of the First World War in particular saw the fusion of the Social Gospel movement, (which sought to transform Protestant Christianity into a social religion centred upon man's plight on earth,) with political movements ranging from the suffragettes and the prohibitionists to the proponents of agrarian radicalism.[151]

The unification of social and political movements provided a much greater basis of support to a given movement then it could muster based solely on its own ideals. Each movement was no longer truly separate from the others. Rather, a common agenda was adopted to gain the widest possible support for the most important goals. Groups would not sacrifice basic tenets of their movements, but strategic allegiances were necessitated by the context of change in the province during the Great War years. Thus, organisations like the Woman's Christian Temperance Union, the United Farm Women of Alberta, and the Women's

Canadian Club jointly pursued demands for equal rights,[152] overlooking the disparity of their platforms.

> The strategy sessions and public meetings introduced people of similar views-especially women-and thus were an instrument in the establishment of reform solidarity. Their goal was an united society, they responded where sacrifice was sometimes necessary and where the will of the majority prevailed.[153]

What did the women of Alberta want in these years? The larger issues included access to higher education, the professions, and public office. Closer to home, prairie women sought equal rights in property law,[154] especially that which they jointly homesteaded with their husbands.[155] By attacking the larger issues with a concerted campaign for suffragism, women sought to link their causes—the demand for property rights, respectability as citizens of the province, and the desire for female emancipation—to achieve large, seemingly unattainable goals.

By the end of the First World War, Canadian women had organised around a remarkable number of social, political, cultural and economic issues. However, what had this brought them legally? Save the major success of winning the vote in May of 1918, Canadian women reformers did not see all of their wishes come to fruition. Rather, 1919 saw inflation rise and female employment drop drastically, a turbulent transition from the gender's earlier successes of the war years. As well, once

the men returned to the homefront the women returned *home*. This return to pre-war conditions may explain the belief that the women's movement in Canada disappeared after the achievement of suffrage. Yet, that idea, until recently unchallenged, does not equate to the reality of divorce in the province in the post-war years. In fact, as will now be established with an analysis of a series of cases ranging from 1919 to 1930, the jurists of the Alberta Supreme Court issued landmark judgements on the issue of divorce which stand in sharp comparison to their federal and provincial counterparts.

Chapter V-A Long-Needed Change:

Alberta Justices and Divorce, 1918-1930

One case, unprecedented in the legal history of Alberta, was the landmark case of *Board v. Board* in 1918-1919. According to James G. Snell,

> The *Walker*[156] and *Board* cases were products of the wartime environment which had placed new strains on individual families and on society at large. The First World War was a cathartic experience for English-speaking Canadians. Many were persuaded that Canadian society would be purged by the 'war to end all wars'; a better life was possible in the future. One response at the individual level was to demand release from a failed marriage. The cases of Catherine Walker and William Board challenged the procedural status quo regarding dissolution of marriage.[157]

The plaintiff, William Board, pressing his claim based on his wife's adultery, argued that the law of England respecting the right to divorce was in force in Alberta. Consequently, the Supreme Court of Alberta had jurisdiction to enforce it. *Board v. Board* was quickly referred to the Appellate Division of the Alberta Supreme Court by Justice William Legh Walsh on a motion to quash the petition of divorce due to what he perceived was a lack of jurisdiction. In this case, heard on June 26, 1918, the presiding judges, sitting en banc, were Chief Justice Horace Harvey (who presented the one dissenting opinion[158]) and Justices James Hyndman, Nicholas Du Bois Dominic Beck, Charles Allan Stuart and William Charles Simmons.

The general consensus of the Court, headed by Justice Stuart in the affirmative, was that it did indeed hold the substantive right to grant divorce under the English *Divorce and Matrimonial Causes Act of 1857* which became part of the law of Alberta under the Northwest Territories Act (sec. 11, ch. 50, 1886) and the Alberta Act of 1905 (sec. 3). Therefore, as long as it was part of Alberta law, the Supreme Court must have the jurisdiction to administer it.[159] Justice Stuart argued that just because no one before this had attempted to assert the proposition that a law of divorce existed in the Northwest Territories, or in any of the provinces carved out of the vast region, it had no bearing upon the question at hand. (He reasoned that the vagueness of the divorce law in Alberta probably deterred many litigants from incurring the risk and expense of putting the matter to test of a long series of appeals in the Courts before this.) Additionally, Justice Stuart believed that no ordinary law nor Court—for certainly the passing of a private Act of Parliament was not ordinary in any respect—existed for Albertans to ascertain their substantive right to divorce which existed in the 1870 reception of English law.

According to four out of five Justices of the Court, simply hearing the prayers and petitions for statutes on divorce from

the populace of Alberta was not enough for the Dominion Parliament. They believed that a specific English court (the Court of Divorce and Matrimonial Causes established in 1857) had existed to hear divorce petitions by 1870. Just because the Courts in Alberta did not replicate those of the Imperial homeland, did not mean that the Courts could not hear divorce petitions. Instead, Stuart wrote for his brethren that according to Section 14 of the Act of 1857 (that which defined the scope of the jurisdiction conferred), the Court

> may and shall hear pleas in all manner of actions, causes and suits, as well as criminal as civil, real, personal and mixed...[as that which may] be done in Her Majesty's Court of Queen's Bench, Common Bench...Court of Exchequer, Court of Chancery or the Court of Probate in England.[160]

Moreover, Stuart wrote that a husband and wife have a continuously existing right to certain conduct by the other. The common law did not give a remedy for the infringement of that right against the guilty spouse though it did against the third party, the accomplice, or the paramour. Thus, he believed it was in the best interests of those plaintiffs (who sued their spouses based on infidelity) to have as equal rights to justice as they would in dealing with a guilty third party. He concluded his opinion by dismissing the petition of Mrs. Board, the defendant, without costs, and allowing the case to be addressed in the Alberta Court.

The remaining Justices of the Court confirmed the lengthy opinion given by Stuart with minute additions of their own on several points of law. But one Justice included a detailed description of his religion and its effects on his capacity as an Alberta Justice to entertain divorce petitions. Justice Beck, a confirmed Catholic for more than thirty years at the time of this case, included several paragraphs on his belief that he would be in no way be acting with a "bad or uneasy" conscience by ruling on divorce cases. He stated that he was responding to:

> Observations of various persons occasioned by the raising of the question of the jurisdiction of the Courts of the provinces of Manitoba, Saskatchewan and Alberta…have made it clear to me that the opinion commonly prevails that, being a Catholic, I cannot with a good conscience take part in any divorce proceedings arising in this Court.[161]

His belief on the issue was that if a Catholic marriage is not valid and binding by canon law (i.e. if one breaks the commandment against adultery), and if the partners promise not to re-marry during the lives of both of them, the civil law is warranted to secure the applicant's rights in regards to custody of children born during the marriage and property held between the two partners in question. The divorce would not necessarily be viewed as favourably as would be the nullity of a marriage by the Church. But Beck remarked:

> ...sitting as a judge in a Court established by the

> authority of the State to administer the laws of the State,
> my duty is to find the true facts and to declare the **civil law** [emphasis added] applicable to those facts [and] I am in no way, for instance, responsible for the law of the state, which [is] in contradiction to the law of the Church....[162]

Therefore, Beck was resolved to continue to act in his role as a Justice of the Supreme Court because he felt he had made the distinctions clear between civil and canon law, as well as what was every good and faithful Catholic's responsibilities respecting both facets of law.

The case was later sent to the Privy Council on appeal and upheld on May 15, 1919. As Viscount Haldane stated:

> The right to divorce had, before the setting up of a Supreme and Superior Court of record in Alberta, been introduced into the substantive law of the province. Their Lordships are of the opinion that, in the absence of any explicit and valid legislative declaration that the Court was not to exercise jurisdiction in divorce, that Court was bound to entertain and to give to proceedings for making that right operative.[163]

The Lordships also commented on the fact that the province had not enacted tribunals to intrude on the exclusive jurisdiction of the Dominion. Instead, it was responding to the dearth of an effective means of recourse.

Board v. Board, as heard in the Appellate Division, was the lengthiest decision to be rendered of any of the divorces covered in the period addressed by this thesis. Unfortunately, one knows little of William Board and his errant wife, for the

Court was far more concerned with establishing jurisdiction than in contemplating the actions of the couple that eventually brought them to divorce. The major newspapers in the province, while impressed with the precedent set in this action, chose not to report on the particulars of the case. It is hard to ascertain why this was the situation in *Board v. Board.* In other cases under examination, both the Law Reports and any newspaper coverage is replete with the intimate details which brought the petition before the court. One can estimate perhaps that Board, as a male claimant, may have had brought pressure to bear to keep any sordid particulars from the public. It is quite possible that the press simply respected a male claimant's right to privacy, (for this was surely not the case in other examples offered earlier in this thesis.) Regardless, while William Board eventually obtained the relief he sought, the absence of the very personal circumstances of this rendering is hard to fathom given the precedent set for the future of divorce reform in Alberta.

What is of crucial importance in this case was that the provincial court claimed jurisdiction, and important local members of the law profession supported the changes forwarded because the decision established a bold stride forward—one that Ottawa continued to avoid.[164] The commonplace conservative

atmosphere of the Court, highlighted by the opinion of Chief Justice Harvey in his dissent, was finally put aside to create a venue for Albertans to free themselves of unhappy marriages which the Dominion Parliament had not yet been able to see done for the majority of citizens of this province. It had, once and for all, established a means of dealing with an increasing number of divorce cases in Alberta,[165] much like that of *C. v. C.* in 1919.

The judgment in the case of *C. v. C.*, held on March 25, 1919, was reserved as the Alberta Supreme Court awaited the decision of the Privy Council upon appeal in *Board v. Board*. In this case, the plaintiff, Mr. C., had made a claim for divorce based on several instances of his wife's adultery. During the trial, Miss Sp. (sister to Mrs. C.) and Mr. S. gave sworn testimony that fit exactly the confession eventually made by the defendant of her activities with a man in Moose Jaw. She was reported to have visited the tent of this man with whom she was keeping company with on at least two occasions, which gave her many opportunities to have committed the offence with which she was charged. Additionally, there were drives taken by the two alone. On one instance, she returned appearing completely dishevelled and claiming that she had quite a good time out with this man. There was scant and inconclusive evidence of other

such activities between Mrs. C. and men in Calgary and Edmonton, but it was the behaviour of Mrs. C. in Moose Jaw that fully convinced Walsh of her unseemly character as a wife in this marriage.

Mrs. C. would be, to the belief of the Court, guilty of adultery in any ordinary action-but divorce, according to Justice William Legh Walsh, was no ordinary action. Therefore, despite the evidence of two witnesses as to her guilt, Walsh was careful not to offer a swift judgment for fear of collusion between man and wife. Justice Walsh believed a divorce action was a kind of action

> in which a wife, separated from her husband, when she has become tired of the marriage tie and when she knows that her husband is anxious to be rid of her might be willing to make some admission of infidelity on her part for the purpose of aiding her husband to free himself in this way, even though the admission were not true.[166]

While the case seemed to have an overwhelming preponderance of evidence to find for the petitioner, Walsh was seemingly unwilling to find for the plaintiff in this trial due to the questions regarding jurisdiction that were being addressed by the Privy Council in *Board v. Board*. In his final opinion, he stated that

> The evidence in this case convinces me that the defendant during her married life and without the connivance or collusion of the plaintiff committed adultery on more than one occasion and with more than one man...I think, however, that until the jurisdiction of this Court to grant a

> divorce is maintained by the Privy Council it would not be proper for me to direct that judgement be entered for the plaintiff.[167]

Therefore, it was not so much the evidence presented, the adultery of Mrs. C., nor the desire of the couple to divorce that was most pertinent to the rendering of a decision in this case. Rather, it was the question of jurisdiction that most plagued Walsh in his ruling. He concluded his opinion in the Western Weekly Reports by stating:

> My direction therefore will be that if the jurisdiction of this Court to grant a divorce is ultimately established by the judgment of the Privy Council judgment will go in favour of the plaintiff for the decree as prayed. If on the other hand the Privy Council should hold that there is no jurisdiction in this Court to grant divorce the action will be dismissed because in that case I would have no power to grant the judgment.[168]

History shows that the Privy Council ultimately did grant jurisdiction to the Alberta Supreme Court, and that Mr. C. and Mrs. C. were legally able to dissolve their unhappy union.

Walsh's decision to reserve judgment indicates not only the omnipotent predominance of both the Privy Council and the case of *Board v. Board*, but also of the recent responsibilities thrust upon the Court, ones that he chose to commandeer with a light touch. Walsh would find for the plaintiff, which was, in all actuality, a clear case of simple adultery. Even a few years later, it would be noticeably easier on the conscience of a judge to quickly render a decision in a case with similar

circumstances. But this does show a Court mindful of a rush to judgment, the fear over collusion in such actions, and most importantly, the message they were imparting to the public on such a contentious moral issue.

B. v. B. was heard in the Supreme Court of Alberta on November 8, 1919, just six months after the Privy Council decision in *Board v. Board*. Only a brief rendering was given, but it aptly portrayed some of the gender inequalities in the justice system at this time. The couple married in Nova Scotia in 1906. They moved to Fernie, British Columbia, in 1910 or 1911. They lived together in Fernie until 1916 when the defendant enlisted and went overseas. He returned in 1917, and was a patient in the military hospital near Calgary. About a month after his return, the plaintiff Mrs. B came to Calgary and lived in an apartment where her husband usually spent Saturday nights with her. On one occasion when he was visiting, she suspected him of having committed adultery with a woman who lived in the same apartment building. He confessed to the charge. She appeared to have condoned the act until he repeated it with the same woman soon thereafter. The only evidence of cruelty on the part of the defendant was the fact that shortly after going to Fernie he came home drunk one night and called her terrible names in front of everyone.[169]

Justice David Lynch Scott heard the case, and soon dismissed the action on his belief that this one act of verbal abuse in Fernie (committed years before) did not constitute cruelty in its legal sense. Although her husband's adultery had been proven, the wife was not entitled to a divorce according to the grounds demanded by the *Divorce and Matrimonial Causes Act of 1857*. Thus, despite the disturbing acts committed of an unrepentant philandering husband, Mrs. B. was not entitled to a divorce according to the law of the land.

To relate this back to the landmark case of *Board v. Board* is both quite simple and quite unsettling at the same time. Although both cases involved simple adultery, the differing outcomes occurred for one sole reason-the difference in gender of those who pressed their claim at Court. William Board was male, and therefore simple adultery was reason enough to be granted a dissolution of his marriage; Mrs. B. as plaintiff was not so entitled because as a woman at this time (1919) she had to prove simple adultery combined with a charge of incest, bigamy with rape, sodomy, bestiality, cruelty, or desertion without reasonable excuse for two years or upward. Since Scott denied the claim of cruelty, Mrs. B. was unable to free herself from her unhappy state in a loveless marriage.

Another case involving adultery was *Moran v. Moran,* decided

on February 13, 1920. Beatrice Margaret Moran was the plaintiff in this action, brought before the Court in early November 1919. She and her husband married on August 14, 1912 in Calgary, and they lived together until October 1917. During that time, they had two children, only one of whom remained alive. Mr. Moran was a motorman on the street railway for four and a half years during their marriage, and the couple maintained a good livelihood.

After five years of a marriage that included abuse and alcoholism on the part of the defendant, Mr. Moran left his wife in October 1917 and provided no support for his family since that time. In December 1918, he became ill with influenza, and his wife was requested to take him in and care for him. She complied, but as her husband became well again, he turned abusive and resumed drinking. Despite this tense environment, the two discussed resuming marital relations, apparently on the prompting of Mr. Moran. In January of 1919, she told him that he could remain with her, and if he conducted himself in a proper manner for three months, she would consent to live as man and wife. The defendant failed to carry out his part of the undertaking, became drunk and violent in her house, and attempted to poison her. He was convicted of the charge before a magistrate on February 25, 1919. Mrs. Moran refused to allow

him to re-enter her home after this incident, but did give him money to support himself from those proceeds she earned managing a boarding house. In addition, there was some evidence before the Court that Mr. Moran had been living in adultery with a prostitute in Vancouver.[170]

Justice William Simmons, at trial court, decided to reserve judgment for three months, despite this undefended action of divorce which included adultery, cruelty and desertion, because he wished to consider whether the actions of Mrs. Moran (when she nursed her husband back to health and gave him the three month ultimatum) amounted to condonation of her husband's prior misconduct: that is, conduct before January 1919, but certainly not after given the poisoning attempt. Simmons decided that condonation required complete forgiveness on the wife's part to restore Mr. Moran to his stature in the marriage before the initial adultery or abuse ever occurred. Since Mrs. Moran did not express any desire to reconcile, and she only took him into her home in an act of graciousness, Simmons believed that she did not condone his behaviour. Therefore, he ruled that the husband's desertion amounted to more than two years and granted the plaintiff her divorce request.

Mr. Moran did not appear in Court. Mrs. Moran was given custody of their child and awarded costs of the action. In the

judge's decision there was no maintenance ordered for either the wife or the child. Mr. Moran did not choose to appeal, most likely since he would have fared no better under the law with another Alberta Justice. Nevertheless, this case was a straightforward one. Mrs. Moran was more fortunate than Mrs. B. in the earlier action cited above because she was able to prove the lecherous actions of her husband, **plus** persuade the Court to believe her charges of cruelty and desertion. Unfortunately for Mrs. Moran, this was too easily done.

McCormack v. McCormack, in June of 1920,[171] illustrates several perplexities of divorce law that would become more common for those seeking redress in the provincial courts. In this case, an English war bride married in February 1917 in England where she lived to her Scottish-born husband. She later joined him in Lethbridge, Alberta, where on demobilisation he had preceded her and had begun working for a railway company. After the armistice had been reached, she journeyed to Alberta to find him cohabiting with a war widow whose husband was killed fighting in France. At that time, he took his bride to live with himself and this widow, the wife thus being placed in the "shocking" position of being "the actual witness of their adulterous intercourse."[172] After a few months the husband, in the company of the widow, deserted his wife and moved to

Montreal.

This case was not about adultery or any perceived cruelty or desertion. Rather, it was a serious debate involving the question of domicile. The Court, sitting *en banc* in the Appellate Division (which included Chief Justice Harvey, and Justices Stuart, Beck, and William Ives) was referred this case on the urging of Justice Walsh. Walsh was concerned that there was inconclusive evidence as to the actual domicile of Mr. McCormack. Since the action was undefended, Walsh asked the Court if they believed he should render a decision or delay until more evidence was offered. According to the evidence of Mrs. McCormack, the defendant Mr. McCormack was born in Glasgow, Scotland, but had lived in Lethbridge for approximately seven years before enlisting at Moose Jaw, Saskatchewan, for the war effort. The Court did not dispute her evidence touching the subject of his domicile, but they did question whether they held jurisdiction to decide this case. (Their prudence was important because the law of domicile regulated the international, especially American, recognition of divorce.)

Justice Ives concurred with Harvey, who offered the primary opinion in this case. His conclusion regarding Mr. McCormack's domicile was that its origin was in Scotland; he had a brother in Fernie, British Columbia, whom he visited quite often; and he

enlisted in Moose Jaw, and was now in Montreal. Harvey believed that it would be safe to infer that he had never established a permanent residence here, nor did he ever intend on making Alberta his fixed address. Therefore, Mrs. McCormack's claim could not be heard by this Court for it had no jurisdiction. He added,

> The fact that by law the domicil of the wife is that of the husband seems to place her somewhat at a disadvantage but inasmuch as the consequences both as respects divorce and many other matters are so much concerned with international law, the subject cannot be dealt with adequately by local legislation and any attempt to give the Court a jurisdiction which would not be recognised in other jurisdictions might do more harm than good.[173]

Beck, Harvey and Ives agreed that more evidence was necessary to ascertain domicile in this case. If it was not provided, Mrs. McCormack's claim would have to be dismissed.

Justice Stuart concurred with his colleagues but was far more sympathetic to the plight of this young war bride. He seriously considered moving beyond artificial determinations of continuing domicile to the recognition of a wife's separate domicile due to the intricacies of this case, and the unfortunate position of Mrs. McCormack. According to Stuart,

> The existing rule of domicile put wives at a disadvantage, surely the American rule of separate domicile was preferable. Since English law admitted the possibility of exceptions to the basic rule, why should not this Court also be privileged to develop the law according to the principles of natural justice and to lay down a rule to fit

> the justice of the case...where the facts present very special circumstance of injury and wrong.[174]

Yet, despite the best of intentions, Stuart agreed with his fellow justices, contending that given "the meagre evidence before us I do not think we should yet venture to assume jurisdiction in the case...."[175] Again, the courts proceeded prudently with their new-found obligations in the realm of divorce.

Board v. Board proved to the law profession that jurisdiction was a slippery road in most divorce cases, especially with cases like that of *McCormack v. McCormack*. It is sad that this case, like others touched on in this paper, was not resolved to better the predicament of Mrs. McCormack. Rather, it followed those strict procedures of jurisdiction and domicile inherited from England coupled with the patriarchal belief of most judges that it was, for the betterment of the larger society, a greater good to maintain this farcical marriage with a husband who had committed adultery and departed Alberta with his mistress. The law reports give no further evidence of this couple-one can only imagine that the young wife travelled home to mother in England and started anew. Nevertheless, it would not be the Supreme Court of Alberta that would find justice for this unfortunate woman.

Torsell v. Torsell came before the Alberta Supreme Court on

appeal on March 11, 1921. In the original and unreported trial, Justice Simmons awarded custody of four infant children and a fixed alimony to Mrs. Torsell, the plaintiff in the claim. In that case, the husband had charged his wife publicly with unsubstantiated charges of adultery, which she in turn believed would be sufficient reason for payments of alimony based on legal cruelty. Simmons concurred with Mrs. Torsell, stating:

> On the ground of the alleged physical violence I do not think that the plaintiff has established any right, but in regard to the charges of unfaithfulness (made by the defendant husband against the plaintiff wife) the defendant admits having made them. * * * I am of opinion that such a charge made by a husband publicly against his wife and unsubstantiated affords her legal ground for the relief which she claims.[176]

Mr. Torsell appealed the decision to the Appellate Division of the Alberta Supreme Court where Chief Justice Harvey and Justices Stuart and Beck sat to hear the petition. Harvey believed that in accordance with the precedent laid out in the English case of *Russell v. Russell*, [1897-A.C. 395, 66 L.J.P.C., 122], (heard in the House of Lords and supported by only a majority of one), legal cruelty could only be defined as actions which cause "danger to life, limb or health, present or future."[177] He ruled that the claim for alimony should be dismissed as well as the claim for custody of the two older children. Both were due, he reasoned, to her inability to properly care for her children, and to his belief that there was

no rationalisation in not granting the husband custody. Harvey reasoned that Mrs. Torsell should be allowed to keep the two youngest children if she desired such because of their tender age and the husband's belief that they were not his offspring. In addition, and almost as an afterthought, Harvey ruled that "As is customary, the defendant (the husband) will bear all costs."[178]

Justice Beck held the one dissenting opinion in this case. Despite previous judicial pronouncements against divorce because of his Catholic upbringing (*Board v. Board,*) Beck believed that *Russell v. Russell* was too constrictive in its definition of legal cruelty, and to use it as precedent was hampering the Court in deciding this particular case of alimony. As well, it is important to note that although Justice Stuart concurred with the Chief Justice, he did so reluctantly:

> I am bound to say that I cannot congratulate upon its wisdom a Legislature which enacted in effect that the right of a woman to a redress of grievous wrongs committed against her by her husband, must depend upon the view of what her rights ought to be, arrived at by Judges in England in the year of grace 1790 and prior thereto.[179]

As with *Board v. Board,* the Court sought the opinion of the English court over any other in establishing precedent. While it was wise to follow the sound and familiar Imperial legal tradition, the Alberta Supreme Court limited itself by disregarding the actions of its fellow provinces and the most

recent trends occurring in the western United States and England after 1897. In Nova Scotia, cruelty was an independent ground for obtaining a divorce. In the rest of Canada, before the *Marriage and Divorce Act of 1925*, cruelty could be grounds for alimony or judicial separation, but not divorce. However, cruelty was not defined as merely "casual cruelty" in Alberta. According to James G. Snell, "the victim must suffer physical illness or mental distress that seriously impaired bodily health or endangered life."[180] Decisions in American and English courts reflected a changing image of the behaviour of marriage partners. But Canadian jurists relied on legal standards that reinforced old social mores and gender roles. Canadian judges hoped for reconciliations in most cases—an understanding agreed upon by the genders of a hierarchy of responsibilities for familial and moral stability in each case. Consequently, their lack of innovation was ruefully apparent against the ideals of more moderate justices such as Stuart and Beck in Alberta, the actions of their North American neighbours, and their legal motherland, England, in correcting unhealthy marriages and establishing a modicum of happiness for couples like the Torsell's.

The case of *Detro v. Detro* in October of 1922 was another action that revealed the complexities of differing jurisdictions

the Alberta Supreme Court was quite often confounded with. In this petition at trial for alimony in a judicial separation, the plaintiff, aged fifty-two, and her husband, aged sixty-two, were married in the state of California in February 1918. They moved to Phoenix immediately after the ceremony, and shortly thereafter domestic differences arose. Although not of a serious nature, the defendant deserted his wife and went to live with a relation in Colorado Springs. While living in the state of Colorado, the defendant contributed to his estranged wife's support by making payments to her from time to time of $40 per month until he ceased to do so in January of 1920. Mrs. Detro began an action for alimony in the county of El Paso, Colorado, in 1919, claiming moneys for her support and maintenance. According to her testimony in this trial, she insisted that the Colorado Court awarded her $100 per month and costs on March 29, 1920. However, the Colorado case was an undefended one since Mr. Detro had moved to Hardisty, Alberta, in the spring of 1918. His wife alleged in trial that no payments had been made under the Colorado court order, and she wished the Alberta court to insist on his compliance with the injunction.[181]

In his October 27, 1922 ruling, Justice Simmons insisted that he had no jurisdiction to enforce an order of a foreign court. He would, however, consider her petition due to *The*

Judicature Act, ch. 3, 1919, sec. 21, which stated:

> the Court shall have jurisdiction to grant alimony to any wife who would be entitled to alimony by the law of England, or to any wife who would be entitled by the law of England to a divorce and to alimony as incident thereto, or to a wife whose husband lives separate from her without any sufficient cause and under circumstances which would entitle her, by the law of England, to a decree of restitution of conjugal rights.[182]

Simmons concluded that the defendant had deserted his wife for more than two years without cause, that Mr. Detro had funds with which to maintain his wife since she herself had no means of income, and therefore that Mrs. Detro was entitled to alimony of $40 per month and costs. Simmons acted within the outlined legal parameters and was still able to obtain some justice for the plaintiff despite his lack of jurisdiction, highlighting his temperate sensitivity while maintaining the conventions of Alberta law.

In reference to *Board v. Board*, the learned judge was indeed able to forward the move towards divorce reform. While many of his contemporaries may have refused to hear the case due to the question of an unrecognisable divorce decree, Simmons allowed the alimony request under the *Judicature Act*, and, additionally (although perhaps inadvertedly), sustained the ability of the wife to establish and maintain her own domicile even though she was still married. Simmons wrote:

In our Court in *Lee v. Lee*, 16 ALR 83, [1920] 3 WWR 530, it

> was held that an action for alimony was not necessarily incident to an action for divorce or judicial separation or to a decree of restitution of conjugal rights. The inference is clear that an action for alimony can be brought alone....[183]

In the facts of the case, Mrs. Detro was abandoned, her husband established a separate domicile, she came to the Alberta Court for relief where her husband resided, and the Court allowed her alimony action knowing full well that her residence was still in Colorado while her husband lived in Hardisty, Alberta. As always, the Court pressed for an eventual reconciliation between the parties since they had not yet divorced. But such optimistic thinking seems naive. Mrs. Detro now had the ability to live on her own, apart from her husband, on the funds with which he provided. Neither party ever stated that they wished to consider a restitution of their married state. Therefore, although no further documents exist on the Detro couple, it seems probable to ascertain that the marriage was effectively over.

In *Payn v. Payn,*[184] the justices were more aggressive in their judicial interpretation than they ever had been in previous cases. The couple in question, an English-born husband and wife, were married on the Island of Jersey in 1900. Mr. Payn, the respondent in this action, moved to Alberta in 1910, settled, and acquired a homestead. He returned to Jersey in

1914, and in the same year the couple moved to Alberta. They lived together as man and wife until April 1920, where by that time they had acquired a Canadian domicile. In 1920, the husband moved to Montana temporarily but decided to return to Alberta a year later. Subsequently, in the same year (1921) he returned to Montana, obtained a divorce in the District Court of the 18th Judicial district of the State of Montana, and remarried on October 15, 1921 in Chinook, Montana. His wife, however, had no ability to re-marry as she desired (since the province of Alberta still considered her a married woman), nor did she have any assets (nor any support since April of 1920) now that her husband had deserted her and fled the country. The Alberta Supreme Court held at trial that although the husband had abandoned his Canadian domicile, the wife's Alberta domicile continued. The Court thus had jurisdiction, and the wronged wife was granted a divorce in this undefended action.

In his judgment, Justice Simmons was suspicious of the motives of the absent husband, claiming "[my] presumption is quite as strong that his intention was to acquire a domicile where the law would enable him to obtain a divorce upon grounds which would not support such a claim in this jurisdiction."[185] Because of his decision, Simmons effectively altered the law of domicile in Alberta, proving that the domicile of the wife does

not have to be that of the husband for the two to merit equal and due process.

Thankfully for Mrs. Payn, this permutation of the law by Simmons would not be appealed by her ex-husband. Neither would it have long-lasting effects on the judgments delivered by the Alberta court. Instead, as shown in the following case, modernisation of the law of domicile was not welcome by everyone in the judicial hierarchy of Alberta, or England, in the 1920s. In the trial case of *Cook v. Cook*, heard February 24, 1923, in the Supreme Court, Justice Walsh sat to decide the undefended petition of divorce forwarded by the plaintiff, Mrs. Cook.

The facts of the case were that Mr. Cook and the plaintiff were married in Ontario on July 16, 1913. Four years later they went to the state of New York. Mrs. Cook came to Calgary in 1918 and established her home where she lived until the time of this divorce petition. Mr. Cook, on the other hand, drifted from one state to another throughout America, came to Calgary for a short while, and eventually left Alberta, supposedly for a logging camp in British Columbia. In his decision, Walsh believed that Mr. Cook was not and never was a resident of Alberta. Walsh contended that Cook's history of movements since he left Ontario gave him the impression that he had not since acquired a permanent residence outside of Ontario, and therefore

Ontario would have to be considered his domicile in law. R. B. Bennett, King's Counsel, argued that it was not necessary for the husband to be domiciled in Alberta to give the Alberta Supreme Court jurisdiction to decide this case. Bennett believed domicile in Canada was sufficient to render a decision. Walsh denied this contention, stating:

> It would be a remarkable thing if the wife of a man not only domiciled but actually living in Ontario with all of his property and all of his interests there and perhaps had never in his life been beyond the borders of that province could obtain a decree of divorce from him in this Court.[186]

The other argument in favour of the jurisdiction of the Alberta Supreme Court to hear this case was the fact that Walsh himself, on November 18, 1921, granted a judicial separation to Mrs. Cook, the action being undefended. Walsh asserted that his previous rendering on a judicial separation was satisfactory because, at that time, Mr. Cook was residing temporarily in the province, and this was all that was needed to confer jurisdiction upon the Alberta court. The plaintiff's attorneys, R. B. Bennett and P. L. Sanford, then argued that the decree for judicial separation so affects the status of the affected parties as to give the wife a domicile of her own different from that of her husband. Since she has elected this as her domicile, the Alberta court had the jurisdiction to decree a dissolution of marriage.

Walsh's response was to follow the precedent set out in the recent Imperial House of Lords case of *Lord Advocate v. Jaffrey* [1921] 1 A.C. 146, 89 L.J.P.C. 209, 124 L.T. 129, 36 T.L.R. 820. In that case, there was no such decree that a separated wife could acquire a domicile of her own, although the facts existed which would have justified one. Although many of the Lords refrained from giving an opinion on this case, and were tentative to make a decision as to domicile, those who did give an opinion (like Viscount Haldane who wrote the opinion in *Board v. Board,*) were obviously against the notion of a differing domicile of man and wife. As Viscount Haldane stated:

> There is no authority for the proposition that under the laws of these is lands husband and wife can have, while they continued married, distinct domiciles.[187]

Lord Shaw concurred when he opined:

> I must not myself be held as assenting to the view that it has ever yet been decided b y law that even a judicial separation properly and formally obtained would operate as a change in the so-called, and, in my opinion, very doubtfully named, *domicilium matrimonii*. I see the greatest difficulty in any invasion of the principle which appears to me to be fundamental-namely, that that unity which the marriage signifies is regulated by one domicile alone, i.e., that of the husband.[188]

Walsh believed that, although of doubtful soundness, the House of Lords was firm on the belief of domicile, and it was not his place to challenge such precedent from the Privy Council. Consequently, Walsh dismissed the petition for he believed the

Alberta Court had no jurisdiction to hear the case.

In *Cook v. Cook and the Attorney-General of Alberta*, heard in October of 1923, the Court sat to hear the appeal of a wife's petition for divorce which was rejected at trial because Mrs. Cook's husband maintained a separate domicile in Ontario. In a judgment of four to one, led by Justice Stuart, the Alberta Supreme court allowed the appeal because it was believed that since she had earlier been granted a judicial separation, it seemed obvious that she should have a separate residence and be entitled to judgment. Stuart believed there would be objections to his ruling, as some insisted that "grave inconvenience and confusion" would result if separate domiciles were allowed. To this he replied:

> My answer to this objection is this: When married women have now, at least in this province, and indeed in most, if not all, of the Canadian provinces, obtained by statute a recognition of their complete equality or indeed, on some points, a superiority in regards to property rights as well as to political rights, why should the existence of the possibility of inconvenience and confusion lead to the retention of the superior or controlling position of the husband in such a matter?[189]

This judicial innovation was limited in the fact that "the principle of a united domicile under the husband continued 'where the ordinary relationship of a husband and wife has not been modified'."[190] But it was important, nevertheless, in modifying the law of domicile. (In this case, there was one

dissenting opinion offered by Justice Alfred Henry Clarke, a relatively new appointment to the Alberta Supreme Court in 1921). Clarke, in his statements to the Court, sided with Walsh with many of the same qualifications that had been offered earlier in the case at trial. He stated:

> ...in my opinion a decree for judicial separation does not enable the wife to obtain a separate domicile. So long as she remains his wife her domicile is and must continue to be that of her husband.[191])

While Stuart recognised the burgeoning women's movement with his decision, the Privy Council effectively quashed this precedent in domicile (which Stuart had expressly guarded for being taken as such) on February 18, 1926. The Attorney General of Alberta, as intervenant, appealed the decision of the Alberta Supreme Court because of what that provincial office believed was "the general importance of the questions" involved. In the unanimous judgment of the Lordships delivered by Lord Merrivale, the Privy Council challenged the decision by the Alberta Court on the question of domicile:

> The contention that a wife judicially separated from her husband is given choice of a new domicil [sic] is contrary to the general principle on which the unity of the domicil [sic] of the married pair depends; divorce *a mensa et thoro* gave no such right; and the statute of 1857 was not framed with that intention and does not effect that purpose.[192]

Therefore, the Privy Council believed that the Alberta Supreme Court had no jurisdiction in this case, even with the recognised

and Court-sanctioned judicial separation. Domicile of the wife was maintained as that in communion with her husband, and that was in the province of Ontario. It was the Ontario Court, **and only** the Ontario Court, which could consider such a petition on behalf of either Mr. or Mrs. Cook.

In addition, the Privy Council quickly disposed with the secondary consideration of domicile as one of a national nature versus that of a provincial one, following up on the argument made by R. B. Bennett in the original trial case of *Cook v. Cook* in 1923. There the Lords decided:

> Unity of law in respect of the matters which depend on domicil does not at present extend to the Dominion. The rights of the respective provinces in this litigation, therefore, cannot be dealt with on the footing that they have a common domicil in Canada, but must be determined upon the footing of the rights of the parties and the remedies available to them under the municipal laws of one or other of the provinces.

Consequently, Mrs. Cook had no right to acquire judgment based on a shared national domicile.

Thus, any desire to alter the law of domicile to be more equitable would not be entertained by the Privy Council at this time. It is ironic that the same men who made the judicial innovation (Viscount Haldane, Lord Shaw et al.) in *Board v. Board* would, only four years later, quash this change in the definition of domicile that, as several justices of the Alberta Supreme Court believed, seemed to follow the logical progression

of divorce reform. Whether it was a fair statement or not, the Privy Council seemed vastly more engrossed with cases of husband and wife; not where it could alter gender roles or persist in regulating society's familial mores, but rather where it had a residual effect on property, especially that which is vested in the husband. In this case in particular, Lord Merrivale gave the impression that the House of Lords had little interest in the general happiness of the parties in this action, nor in challenging judicial norms. Instead, several paragraphs are punctuated with concerns over the division of property between couples and how divorce affected this economic reality. Perhaps the legal history of England demanded that these concerns were at the forefront. But it would have to be another case at another time to establish firmly an equitable precedent on domicile for the women of Alberta.

Increasingly, recorded cases in the law reports would centre on adultery. *Stacey v. Stacey* was tried in March of 1927 under Justice Frank Ford at the Alberta Supreme Court. In this case, the wife was found guilty of adultery which was inferred from witnesses' evidence that her and her present lover, Wendell, were found in several uncompromising positions and had the opportunity to commit sexual intercourse as they were accused. Mrs. Stacey's position was not at all helped when she

neither denied the charges, nor when challenged by her husband when he initially complained of her liaisons she retorted: "You cannot prove any misconduct," and added, "Of course I am guilty, what do you think I am going around with them for?"[193] It is important to note that, from the facts of the case, it appeared that Wendell was not Mrs. Stacey's first indiscreet liaison. Yet, there was no direct evidence of adultery. Nevertheless, Justice Ford found for the husband and awarded him a divorce-a decree *nisi*. Custody of the children was granted to Mr. Stacey and, as commonplace, he was ordered to pay the legal costs of his former wife.

Where *Board v. Board* and *Stacey v. Stacey* are similar is that they are both petitions brought forward by the husband as petitioner based on the charge of adultery against the wife. Where *Stacey v. Stacey* differed was that the entirety of the evidence was based on rumour and innuendo. Wendell was reported to have taken her home from a dance and invited him in when her husband was not home. As well, Wendell was reported to have taken Mrs. Stacey out in his car in which there had been, rather shockingly, beer present. Additionally, there was a time when one witness, Nicholson, introduced the adulterous wife to a niece of his as the "missus" of Wendell. As Ford stated in his judgment:

> There is strong evidence of familiarities of a kind which should not take place, at least between married persons, that is, persons each of whom is married to another than the one with whom the familiarity takes place.[194]

Would the same outcome have occurred if the roles in this case had been reversed? Neither Mrs. Stacey nor Wendell confessed to the charges. In similar circumstances of rumour and innuendo that follows later in the case of *Wright v. Wright*, the Court decided that a judgment of adultery based upon inference was not a fair conclusion to draw. Perhaps this is all mere conjecture. Perhaps Mrs. Stacey was as licentious as they come, or perhaps there was a rush to indict based on a confirmed societal gender role that demanded a woman be virtuous, lady-like and, above all, know her place.

Holmes v. Holmes in March of 1927 gave evidence of the difficulties the Justices in Alberta faced with complicated foreign divorces. In this case, the husband as defendant attempted to prove that his wife was never divorced from her third husband, and therefore their marriage was invalid. Mrs. Holmes' first husband, Talman, was released from the bonds of their matrimony by death, and her second and third husbands supposedly by divorce.

Against her second husband, Warren G. Lane, the plaintiff obtained a decree of divorce in the Circuit Court of the fifth

Judicial District of the state of South Dakota on November 2, 1906, at a time when it appears that Lane was domiciled in the state of Iowa. It was argued by F. W. Moyer and C. A. Coughlin, joint-counsel for the defendant, that the Lane divorce was valid although Lane was never domiciled in the state of South Dakota. It was said that, by the law of his domicile, namely, Iowa, he and the plaintiff would, by reason of the South Dakota divorce, be treated as unmarried persons. Justice Ford did not believe that it was his role to decide the validity of the Lane divorce, especially since he did not begin to know the laws of Iowa. He warned against any of his other brothers in the Court for taking this part of his decision as anything but just an afterthought, and urged them not to use it as precedent in deciding similar cases that involved the question of domicile and divorce in a foreign Courthouse.

However, Justice Frank Ford ruled that since Jesse Lloyd, her third husband, was domiciled in the province of Alberta, while the action that Mrs. Holmes made for divorce was completed in the state of Washington (on April 13, 1913,) the Alberta Court would not recognise the divorce as valid since the Washington Court lacked jurisdiction. As stated above, domicile rested in the husband, and therefore, her only viable way of ending the union was through a divorce in the Alberta Courts

with sufficient cause. Since the proof of a valid marriage to her fourth "husband" Mr. Holmes had failed, Mrs. Holmes' petition for alimony was also dismissed.

By amendments to the initial claim of alimony, Mrs. Holmes attempted to claim payment for rent ($4,800) and her services as housekeeper ($4,490) while Mr. Holmes lived in her home (a fixed duration of that time cannot be ascertained from the law report), and by what she believed was ample compensation for the damage to her health by her husband's cruelty ($1,000).[195] The claim was filed "upon a *quantum-meruit* basis," and for services as housekeeper based on the recent decision in *Sheaser v. Sheaser* in May of 1926. In that case, the Alberta Court awarded the wife damages for her services as housekeeper since her "husband's" previous marriage was never nullified. In this case, Justice Ford easily dismissed the petition by stating:

> I am, of course, bound by this decision [*Sheaser v. Sheaser*] but only to the extent to which it goes, and the present case is, in my opinion, clearly distinguishable. Indeed the one case may be said to the converse of the other. In the *Sheaser* case the defendant therein admitted that he went through a form of marriage with the plaintiff believing he was validly divorced from his first wife. In this case it was a former husband who obtained a decree of divorce from the plaintiff. It is not the case of a married man, representing himself to be a widower or a divorced person, going through a form of marriage with a woman who was in ignorance of the true facts.[196]

Justice Ford insisted that Mrs. Holmes was not ignorant of the invalid divorce from Washington, and therefore was without

judicial recourse. Unlike the forward progression in divorce reform set out in *Board v. Board,* this case clearly identifies two double standards for men and women in the legal system of Alberta at this time. As discussed above, the idea of domicile was held only in the husband (in this case Jesse Lloyd,) which clearly put Mrs. Holmes at a disadvantage. Whether she was fully aware of the validity of her Washington divorce or not,[197] she nevertheless married again on the belief she could, and was left with nothing as a result of the decision in *Holmes v. Holmes*. Furthermore, there appears to be a conviction that Mrs. Holmes was the tainted woman. Unlike the naive and innocent Mrs. Sheaser who won her case, Mrs. Holmes is painted as the "bad" woman--a serial monogamist who could not stay married, nagged Mr. Holmes mercilessly, and was persistent in procuring money by any means possible in this action. Seemingly, for every step towards gender equality in Alberta by the Court, there consistently seemed to be another case, another set of circumstances, or another Supreme Court justice hindering that forward progression of law.

Roberts v. Roberts was heard by Justice Charles Richmond Mitchell at trial in the Supreme Court on April 4, 1927. In this action for divorce, Mr. Roberts as plaintiff alleged that in or about the month of June 1926, the defendant committed

adultery with a man or men unknown to him. Because of her adulterous actions, Mrs. Roberts became pregnant. Mrs. Roberts denied the charges of adultery and counterclaimed for judicial separation, alimony and maintenance and other relief, alleging cruelty and improper treatment generally.

The couple was married on April 10, 1919 in Alberta, where they resided and domiciled until April 18, 1924. Mrs. Roberts was alleged to have had considerable opportunity to have committed adultery with Joe Clarke (as well as other men), with whom she had been most recently been keeping company. She attended dances and picnics in the neighbourhood in which she lived, and made motor trips to various points, including a visit to the town of Hanna, the community in which her lover resided. One witness, Charles Gottschalk, testified that a distraught and sobbing Mrs. Roberts came to the farmhouse where he lived on December 20, 1926. He stated to the Court that the defendant worriedly surmised that "...she never expected to see any of her brothers again; that she was in the family way and could not hide it forever from her people and that she had come up to see Joe."[198] Further evidence from this witness gave testimony which indicated that Joe had promised to do something about helping her out—that he had done nothing and never came near her after discovering the pregnancy.

Hilda Hagen, another witness for the plaintiff, told the Court that Mrs. Roberts tramped across the deep prairie snow from the Gottschalk's to talk to her about her situation. In that conversation the defendant was reported to have said that she was now five months pregnant, that Joe was the father, and that he had promised to take her to the States. (Martin Hagen, husband of Hilda, indicated much the same in his testimony to Justice Mitchell.)

Cohabitation had not occurred between the Roberts since April of 1924, yet it was of little consequence since Mrs. Roberts' never did give birth to the child she claimed was Joe Clarke's. The Court made no attempt to resolve whether she aborted the child or had a miscarriage/stillborn because Mitchell believed it was immaterial to the action at hand. He ruled that the evidence only confirmed her adultery to the Court. In regards to Mrs. Roberts' counterclaim for alimony from her estranged husband, Justice Mitchell dismissed the action, believing that she had not proved that there was any cruelty, hardship or violence committed by the plaintiff. In his opinion he wrote:

> A careful consideration of the evidence on the issue raised by her leads me to the undoubted conclusion that, although it was established that the plaintiff husband was hot-tempered, this was equally true of the defendant. Certainly at times they were not congenial to each other. The acts of cruelty and hardship alleged to have been

> imposed upon the defendant by the plaintiff were, in my opinion, grossly exaggerated and with respect to the evidence tending to show that the defendant was obliged to undertake outside farm work much beyond her strength and endurance, my opinion is that the conditions under which she undoubtedly at times had to live were not more onerous than obtains in many farm homes in this country. It must be remembered that many of the hardships complained of occurred as far back as the winter of 1919-20, when "flu" conditions were bad, the winter a hard one on stock, feed scare and, what was also important, hired help difficult to obtain.[199]

Thus it was Mitchell's belief that Mrs. Roberts was not entitled to maintenance of any type--she had cohabited with her partner as husband and wife during this period of "cruelty" and consequently had condoned his actions. As a result, her desertion was without justification. As was quite common, Mr. Roberts was ordered to pay his wife's Court costs and he was summarily granted a decree *nisi* on his claim of divorce.

The judgment in *Roberts v. Roberts* was appealed in November 1927. In this case, the solicitor for Mrs. Roberts argued that, as set out in *Russell v. Russell*, neither a husband nor a wife is permitted to give evidence of non-intercourse after marriage so as to bastardise a child born in wedlock, and that this rule applies to adultery cases as well. Consequently, her lawyer A. Lannan believed that Justice Mitchell should not have admitted her self-incriminating evidence of adultery (and subsequent pregnancy) in the initial decision although there was no chance of bastardising a child. However, the Justices of the Supreme

Court, following *Holland v. Holland* [1925-P. 101. 94 L.J.P. 64, 133 L.T. 318, 41 T.L.R. 431], felt that this rule of law could not apply, that Mrs. Roberts had indeed committed adultery, and summarily ordered the appeal dismissed. Additionally, as written in the opinion of Justice Beck, the wife was not granted costs, as was the usual course of events in divorce suits, because of her matrimonial offence as she was no longer the wife of Mr. Roberts.[200]

As indicated in the analysis of previous divorce cases, the Alberta court tended to follow Imperial precedent above any other. This case was no different. The Justices were not really in any position to make new law as a result of the evidence given in this particular set of circumstances. However, it is another example of legal conservatism in the Court (heralded by its Chief Justice Horace Harvey especially). In spite of the grand innovation of *Board v. Board* in divorce reform, Roberts v. Roberts was perhaps more indicative of the legal culture in Alberta at this time.

Adultery, compounded with the issue of race, was central in the divorce case of *Wright v. Wright* in January 1928. The trial was held before Justice John Robert Boyle months before on March 1, 1927. The action put forth on Mr. Wright's behest was uncontested, and he was shortly thereafter granted a decree *nisi*

in the Alberta Supreme Court. Upon the application for the final decree of divorce, the King's Proctor intervened and was able to show that for some months prior to the issue of the decree *nisi* Mr. Wright had, at various times, visited the house of one --- Holden, a prostitute in the city of Calgary. Despite a conviction of being an inmate of a disorderly house, Mr. Wright persuaded the Court to believe evidence (which was somewhat corroborated by the police) that he was merely there because his services as a taxi driver were required of those who called there. What seemed more at issue was the character of his soon to be ex-wife, Mrs. Wright. Boyle indicates in his opinion that he believed Mr. Wright was very fond of his wife, that he treated her well, that she was unfaithful to him, and he forgave her on at least two occasions and condoned her offences. The defendant had indeed deserted her husband several times in the duration of their marriage, and had been viewed at the time of this action in the even more scandalous position of being in "open adultery with a Negro." The Supreme Court, with Justice Boyle as its spokesman, stated in a revealing excerpt:

> But even if I were wrong in not drawing the inference [of adultery] it seems to me that the circumstances here are such that the discretion of the Court should be exercised in the plaintiff's favour. The facts as to the conduct of his wife, the defendant in this action, are not in dispute and they are particularly inexcusable on her part and thoroughly disgusting to a sense of decency.[201]

It was important for the Court, in their own words, to maintain sound "public policy" by granting a divorce to the husband, the custody of the Wright child to the husband, and chastising Mrs. Wright for her immoral actions. They were offended by the allegations of her sexual depravity, but probably more aghast at her choice of partners than by the mere act itself.

This case is another example of the Justices acting out their duties in a patriarchal manner in this period, a trait not confined only to the members of the legal system. Not only were the Justices assuring that women remained in the societal mode that these men had grew accustomed to in their upbringing, but they also were ensuring the public that they did not approve of "race-mixing"--especially where it was a white woman with a man of colour. The Court was an accurate, if blemished, representative of the public they were serving. Indeed, those who were privy to its most titillating details in this case would have applauded the outcome.

Chapter VI-Conclusion

The operation of divorce was quite different in 1930 than it had been in 1905, but the laws, as written in statute, had remained the same since Confederation. As Snell writes,

> An important change in the divorce process had been achieved, but it was a limited change: it involved the process rather than the substance of the law.[202]

The Court met demands for change assuredly, but not unabashedly. As evidenced in the cases provided, the courts were ever thoughtful of precedent, jurisdiction, and popular sentiment. The reform of divorce law increased access for all that wished to break the bonds of a futile union. No longer did one have to be rich or male; instead, for a nominal fee, divorce became a liberating experience for many in the province. As well, the Court increasingly saw more women petitioning for divorce, and demanding that maintenance (alimony) was included in a written declaration of the divorce order. Moreover, judges were often finding for the wife in these suits. Given that women rarely even forwarded a petition for fear of retribution only twenty years before, this advance is noteworthy. Lastly, and documented in such cases as *McCormack v. McCormack* and *Payn v. Payn*, women were not restricted to the old Victorian morality that Robert Pike wrote of earlier in this chapter. Rather, the law of domicile was slackened to meet individual circumstances--

most often to the betterment of the females in the action (the exception to this would be the circumstances in *Holmes v. Holmes*.) This evolution, heralded by a more liberal and flexible Court, would make it viable for other areas of legality to tolerate a much-needed reformation.

The impact of the First World War cannot go without mention in this conclusion. The war was pivotal in the recognition of a greater role in society for women. Suffrage, the ability to be an active, albeit secondary, member in the workforce, as well as increased political participation in the post-war period were just some changes brought about by the Great War.

In addition, the 1914-1918 war era was relevant in its ability to shatter past preconceptions about what were entrenched social mores. As highlighted above, the role of women had altered immensely, but what of men? Some general inferences may be made about their wartime and demobilisation experience. Wartime made many men unsure not only of the innovations in horrific technology but also of the very leaders that perpetuated the use of these new elements of war such as the tank, machine gun and chemical warfare. Most commanding officers had been trained in the military splendour of the 19th century and were simply incapable of understanding the difficulties of the everyday foot soldier. Add to this a

reliance upon tradition, protocol and class stratification, (both within and without the C.E.F.,) and most men felt that their war experience socialised them to forgo conventional social conservatism. Therefore, as the war lingered and persisted, as men became disenchanted and all of Canadian society was stretched to the limit to provide munitions, monies, and most importantly, men, to the grand effort of war, soldiers began to voice their demands. These demands for divorce were threefold. First, they held the conviction that social class should not dictate access to divorce. Second, the soldiers articulated that the law itself had to be modified to fulfil the needs of those men who had laid their lives on the line, and lastly, that the happiness that could come with a divorce was their earned right after dealing with four years of atrocities. Demobilisation was crucial to only further perpetuating these changes in mentalities. Men came home slowly and haphazardly to an economy that often could not facilitate them, to a society that could not understand them, and wives who no longer loved them.

Clearly, the First World War was fundamental to the vast shifts in society in this period. During the duration of the war, women were told they could venture into areas never before transversed. With the end of war, they were sent back to the

kitchen from whence they came. At the same time men fought for home and hearth under the Union Jack, in prairie Canada separation, adultery, and the fact that many couples simply grew apart, split their own homes apart. Demobilisation reinforced the idea that there were two societies in Canada—one for the rich and one for the poor. To be rich meant a quick return home, a secure income, and the ability to rid a wife. The regular recruit understood these inequalities and it was due to the monumental transformation in thinking that allowed for these ideas to be disseminated and acted upon.

It is important to recognise that despite the generally positive conclusions made above in this thesis, the author cannot disregard the belief of some historians (most notably, Constance Backhouse when commenting on the nineteenth century, Roderick Phillips in Untying the Knot, and James Snell with his work In the Shadow of the Law) that the courts merely worked to reinforce the ideal of the patriarchal family. It is a substantial argument and resplendent throughout the examples in this thesis. For example, the Dominion Parliament did little to innovate the law of divorce, and the justices garnered few opportunities to alter conditions to relieve many of the inadequacies in the male-dominated legal system (save the nominal advances made regarding domicile.) With a restrictive

legal culture, and a reliance on Imperial precedents (which generally avoided innovation-*Cook v. Cook and the Attorney General of Alberta* as a foremost example), generally Justices in Alberta (with the notable exception of the moderate Charles Stuart) were wary of great change.

Still, this Court was one that welcomed alterations in the legal environment—such cases as *R. v. Cyr* ([1917] 12 ALR 1st 320) saw the Court rule that women could sit as magistrates and set into motion the famous "Persons Case" in the 1920s. In addition, in *Re: Lewis* ([1918] 13 ALR 1st 411) the Court embroiled itself in controversy by arguing that the *War Measures Act* was invalid. Finally, in several cases put before the Court, (two of which are *Credit Foncier Franco-Canadian v. Ross* ([1937] 2 WWR 353) and *I.O.F. v. Leth. North. Irrig. Dist* ([1938] 2 WRR 194,) the justices decided that the present provincial government, the Social Credit was developing legislation that was unconstitutional and *ultra vires* to the BNA Act. Extremely popular and elected in a period where the electorate demanded vast, sweeping changes, the Social Credit government's attempt to control debt, creditor's rights and banking in the province would simply not go unchecked by this activist court.

As a general conclusion, the Court was an interventionist

one in economic and political matters, rather than in social matters such as issues like that of eugenics, racism, and certainly, divorce. This may be linked to the justices themselves—a group of men who were, for the most part, educated in Osgoode Hall in Ontario, prolific in politics and social memberships, and were relatively financially secure investing in the growth of the province in her early beginnings. Or it may merely be that the Court was a reflection of the community it was serving and that mandate meant conservatism in social mores. The prevailing values of the upper middle class remained intact in Canadian culture, and consequently, the ideal of marriage, the family, and defined gender roles would not be something the Court would easily tamper with. Paternalism was resplendent in the minds of the justices at this time. Women were expected to maintain their lady-like composure, and those who did not suffered inevitable consequences (*Wright v. Wright* and *Holmes v. Holmes*.) In the end, there were moments where great precedents shone brilliantly for those who sought gender equality, yet these would be offset by a shrouded, indolent, and very male-dominated legal environment.

Save largely generalised histories on the topic, most notably Roderick Phillips' and James G. Snell's, there is a dearth of published works on this subject. Historians have

tackled divorce only in a piecemeal way and much investigative work needs to be pursued. Here too, this thesis has only superficially treated such subjects as the relative happiness of couples in this era, legal separation, division of property, child custody, alimony and other relevant points of discussion. As well, the question of other alternatives to divorce—such as bigamy and informal separation—were referred to, but due to a limited scope, one area, annulment, was unfortunately not addressed in any substantive means. Other areas for development include a study past one of mere gender to one that incorporates a substantial look into the effect of race and ethnicity upon those seeking a divorce in Canada at this time. Lastly, what did regionalism and/or the differences in urban and rural living have upon those seeking a legal means of dissolving their marriage? Only in combining case law and federal statute; the contrasting examples of divorce and legislation from the United States, England and other provinces; and in examining social commentary in newspapers, the oral chronicles of personal diaries, legal critics, and feminist history will a regional or national history ever be complete.

NOTES

ALR-Alberta Law Reports

DLR-Dominion Law Reports

NAC-National Archives of Canada

WWR-Western Weekly Reports

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1 "Yet, docility and obedience to convention did not always serve well when all hands were needed to set traplines, clear brush, take in lodgers, or wait on customers. In the west, women were once again needed as economically productive people..." in Eliane Leslau Silverman, *The Last Best West: Women on the Alberta Frontier, 1880-1930* (Montreal: Eden Press, 1984) xii.

2 Credit the phrase to Veronica Strong-Boag "Pulling in Double Harness of Hauling a Double Load: Women, Work and Feminism on the Canadian Prairie," *The Prairie West: Historical Readings, Second Edition,* ed. R. Douglas Francis and Howard Palmer (Edmonton: Pica Pica Press, 1992) 416.

3 Ibid., 416.

4 Ibid., 416.

5 Canada was the only major member of the British Empire not to grant their population access to divorce in the late-nineteenth and early-twentieth century.

6 "Petitioners for divorce would have to apply to nothing less than the Divorce Committee of the Canadian Senate, which only **then** could grant the special Act of Parliament" in Nicole Rhodes "The Law of Divorce within Alberta, 1917-1923: The Legal Reality...." (BA Honours Thesis, University of Calgary, 1993) 4.

7 For additional references on the complaints levelled at the federal government, see the Editors comments in *Fortnightly Law Journal* 1, (1932): 245, *Fortnightly Law Journal* 4, (1934): 130, *Fortnightly Law Journal* 8, (1938): 33 and in Bram Thompson "The Law of Divorce in Saskatchewan and Other Western Provinces," in *The Canadian Law Times,* 37 (1917): 687-705.

8 It is important to recognise that, unlike most child custody cases in Canada today, the Courts of that period often found for the father in regards to guardianship.

9 For additional discussion on this topic see J. Murray ›eck "The Canadian Parliament and Divorce," in *The Canadian Journal of Economics and Political Science* 23: 3 (1957): 298-312 and in Bram Thompson "Parliamentary Divorce in Canada," in *The Canadian Law Times*, 39: 5 (1919): 253-263.

10 "This was due to the fact that The Canadian federal government of 1867 adopted the laws of England only up to 1791, which was a time when the policies of the Tory party has led England, and whose legal viewpoint, based on the principle of "rule of law", was inflexible and slow to evolve" in Rhodes, "The Law of Divorce,": 5. This would play as dramatic contrast to the route Alberta would take: "In colonies of settlement the laws of England, both common law and statute law, became the law of the colony...[in Alberta,] provisions were made for the continuing of the existing law...thus the English 1857 Matrimonial Causes Act of 1857, as amended by the federal Parliament, held...," in Christine Davies *Power on Divorce and Other Matrimonial Causes, Volume I: Divorce* (Toronto: The Carswell Company Limited, 3rd ed., 1976), 2.

11 Roderick Phillips, *Untying the Knot: A Short History of Divorce* (Cambridge: Cambridge University Press, 1991), 155. Note: In James G. Snell, *In the Shadow of the Law: Divorce in Canada, 1900-39* (Toronto: University of Toronto Press, 1991,) 9, he argues that the number was slightly higher: "In the thirty-three years before 1900, there were only 213 divorces in all of Canada, an average of just 9 a year. In 1900 there were just 11 divorces throughout the dominion; by 1930 the total had mushroomed to 875." (See Appendix 1) As will become evident, the great increase came towards the end of the First World War. The decade between 1900 and 1910, a period of relatively infrequent formal divorce, is included for contrast with later, more active decades. [1900-1930] encompasses a considerable variation in economic and social conditions.

12 Yet, as Thompson and Seager note, "it was also mute testimony to the restrictiveness of divorce laws and the social strictures that surrounded matrimony as an institution," in John Herd Thompson and Allan Seager, *Canada 1922-1939: Decades of Discord* (Toronto: McClelland and Stewart, 1985), 5.

13 "Divorce was the privilege of the rich; ordinary people simply separated, leaving no statistical trace to be recorded. Much was the same in England; the process was costly and thus was available only to the wealthy," in Peter Ward, *Courtship, Love and Marriage in Nineteenth-Century Canada* (Montreal and Kingston: McGill-Queen's University Press, 1990), 37.

14 Veronica Strong-Boag, "Ever a Crusader: Nellie McClung, First-Wave

Femir.st," in eds. Veronica Strong-Boag and Anita Clair Fellman's Re-thinking Canada: The Promise of Women's History, Second Edition. Toronto: Copp Clark Pitman, 1991, 310.

15 "In the century preceding the enactment of the Divorce Act, Parliament had passed only five acts which were directly concerned with divorce. Two of these Acts dealt with specific provinces only and none of them attempted any wholesale reform of the divorce law," in Davies, 4.

16 The country most concerned with American divorce was Canada, where divorce law lagged behind general Western trends. This fact heightened the distinction between Canada and its southern neighbour and was exploited by Canadians anxious to define a national identity and character distinct from those of the United States. Divorce was frequently cited by Canadian commentators, who contrasted the rarity of divorce in their own country with the excesses in some American states, (...divorce rates were 230 times the numbers in Canada,) in

Phillips, *Untying the Knot*, 155.

17 In 1867 there were no "federal" courts as such. Each province had responsibility for continuing or setting up its own court structure. It seemed to be a political decision, rather than a legal one, for the established divorce courts (in the provinces that had them) or the Superior Courts of each province to hold jurisdiction over the practice of divorce. Therefore, although there is no clear legal reason behind this, the Dominion Parliament chose not to establish a court for the hearing of such pleas.

18 "Thus it was that the Atlantic provinces of Canada were able to maintain their individual Courts even in the absence of a federal divorce law" in Roderick Phillips, *Putting Asunder: A History of Divorce in Western Society* (Cambridge: Cambridge University Press, 1988), 438.

19 Examples of such proposed legislation include:

1.) The March 1901 motion from the Member or Parliament for Kingston, Ontario. He objected to the parliamentary procedure in divorce as class-biased because of the high cost; he called for the universal adoption of divorce courts throughout the Dominion.
2.) John Charlton, the Liberal member for Norfolk North in Ontario, introduced a similar bill that called for the establishment of divorce courts across Canada. Extensive debate followed, where Prime Minister Wilfrid Laurier asserted (once again) his opposition to reform in divorce procedures.
3.) In 1906, an amendment was made to a private member's bill on divorce that would not allow a guilty husband (of adultery) to re-marry during his ex-

wife's lifetime. The amendment failed, but this idea of punishment would re-surface in other reforms to the legislation concerning divorce.

Note: All these proposed bills failed before Parliament in Snell, overview of sections of chapter II.

20 Phillips, *Putting Asunder*. 438.

21 Canadians were said to head in droves for the United States, despite uncertainty whether the divorces they obtained would be recognised in Canada. An apparent influx of Ontario residents into upper New York State divorce Courts was noted at the end of the century, and in 1905 one judge refused a divorce to a Canadian who had taken up residence in Niagara Falls (on the Canadian-US border) a year earlier and who was still doing business in Toronto. The judge commented that 'a noticeable percentage of the divorce cases before this department are brought by Canadians who establish a residence here mainly that they may sue for divorce'," in

Phillips, *Untying the Knot*, 160.

22 Perhaps the best example of the French-Catholic views on divorce, are provided in Rev. M. Ceslas Forest, *Divorce* (Ottawa: The Ottawa Printing Company, 1921). The translator of the work, J. K. Foran, praised Forest for his documentation; yet this work is greatly biased; Forest uses the same statistics of other authors to come to completely different conclusions.

23 Phillips, *Putting Asunder*, 438.

24 This dire prediction seldom happened. Three quarters of Canadian women had entered into matrimony by age thirty-four, and over 90 percent eventually married at some time in their lives. Their marriages rarely ended in divorce...in 1931, there were fewer than eight thousand divorced people in the entire country," in Thompson and Seager, *Decades of Discord*, 152.

25 Read here the push to close the Canadian West, the desire to establish a railway from ocean to ocean and the need to solidify federal-provincial relations.

26 Some would argue that the issue remain unresolved, hence the quotations.

27 Annalee E. Golz, "'If a Man's Wife Does Not Obey Him, What Can He Do?': Marital Breakdown and Wife Abuse in Late-Nineteenth Century and Early-Twentieth Century Ontario," in *Law, Society and the State*, ed. Louis A. Knafla and Susan W. Binnie (Toronto: University of Toronto Press, 1995), 325. For additional relevant commentary on the position of women in marriage, Snell provides elucidates on the subject: "A study of divorce reveals both women's systematic inequality in marriage

and their continuing struggles to alter that situation. At common law it was well established that at marriage the two parties were united into one entity with a single domicile, and that domicile was the husband's. Upon her marriage the wife lost her status as *feme sole*, and her independent rights at law were quite limited," in Snell, 9.

28 Phillips, *Putting Asunder*, 437.

29 The belief that women, be it single or married, should try to epitomise the ideals of the Virgin Mary. Thus, one was expected to be a shining example of purity and goodness, especially in contrast to men, who could not help but engage in 'dalliances' from time to time.

30 Alison Prentice et al. *Canadian Women: A History* (Toronto: Harcourt, Brace and Jovanovich Canada, Inc. , 1988), 147.

31 Golz, 327.

32 Robert Pike, "Legal Access and The Incidence of Divorce in Canada: A Sociohistorical Analysis," in *The Canadian Review of Sociology and Anthropology*: 12, 1975, 124.

33 Davies, 2. See also: Prentice et al., 147.

34 Terry L. Chapman, "Problems In Researching Western Canadian Legal History: Wife Beating in Alberta, 1905-1920," in *Papers Presented at the 1987 Canadian Law in History Conference* (Ottawa: Carleton University Press, June 8-10 1987), 187.

35 The rules of divorce required a spouse to cease cohabitation upon learning of the other's marital (usually adultery, but at times, cruelty was established as well;) otherwise he or she would be charged with condonation of the offence which removed it as a possible charge against the 'guilty' spouse. Women's economic dependence on marriage made cessation of cohabitation difficult, something that was generally ignored by the legal system. The Courts did not often acknowledge the wife's vulnerability, and the rules of law generally reinforced her dependence on her husband, in

Snell, 169.

36 According to Snell,

A conservative legal culture imposed a particular conception of legal cruelty, one which many local jurists were comfortable. Again the Courts were expected to measure the needs of the individual against the needs of the broader community, with special weight being given to the latter. ...For [some judges,] incidents of marital

cruelty and violence were just that-incidents. All it would tak. to solve such problems was good will on both sides. ...In 1916 a case suggested that while some change was occurring, the forces of stability were still strong. On the basis of previous acts of cruelty and a single incident of assault and battery by her husband, for which he was criminally convicted, a wife brought suit for alimony. The trial judge found sufficient evidence to establish cruelty, but unsuccessfully sought to encourage a reconciliation. The decision was reversed on appeal. The appeal Court unanimously held that a single specific incident was not enough to establish cruelty. One appeal justice pointedly disagreed with the trial judge's statement that it was up to the wife to say whether or not she should return to her husband; 'it is her duty to return,' and any failure to do so would not be condoned by the Court or supported by her husband, in

Ibid., 99.

37 *The Canada Year Book 1905*, Second Series, Ottawa, 1906, 11.

38 Snell, 8.

39 In an Ontario case of note, a prime example of the attitude prevalent in this section of the thesis concerning the attitudes of farmers, arises from the letter of Samuel Dowdall of Cosby, Ontario. Mr. Dowdall wrote to the Department on August 16, 1906 concerning his marital status with an entirely original request. A man of fifty, Dowdall writes that he had a homestead that was not performing, forcing him to move to better lands eighty miles west. While he took one cow and a span of horses, he was not able to convince his wife to move. Now that he was comfortably settled, and with no further debts inhibiting his production, Dowdall wrote:

> I am badly handicapped-a rich man can hire a housekeeper but for a poor man to do so would be to create a great deal of scandal in the community and as a farm cannot be conducted without woman's help a man not being able to attend to the numerous small chores on a farm that are woman's duties and as man to man I would ask + beg your consent that I give some deserving woman the protection of my name and home in exchange for a housekeeper and helpful companion.

Needless to say, the Department warned Mr. Dowdall away from such a course of action, and gave him what would come to be the formulaic and oft repeated solution of contacting a solicitor to review his options in NAC, RG 13, #849/06, letter of August 16, 1906.

40 Another petitioner to the Department of Justice, Gottlieb Zink of Edmonton, Alberta in NAC, RG 13, #1474/12, letter of October 23, 1912 seeks relief, complaining of his wife's desertion and subsequent divorce in the United States. In addition, note H. L. Winter of Winnipeg, Manitoba and his details of his wife's desertion, divorce in Seattle, Washington and subsequent re-marriage in Victoria, British Columbia in NAC, RG 13, #1346/14, letter of September 6, 1914. Luke Lindoe of Blairmore, Alberta queries over the validity of his wife's American divorce (Nebraska) as well in NAC, RG 13, #793/16, letter of May 8, 1916. Lastly, see H. M. Ingram of Regina, Saskatchewan

who writes of his wife's desertion and divorce in Fargo, North Dakota in NAC, RG 13, #866/16, letter of May 22, 1916.

41 NAC, RG 13, #458/13, letter of March 22, 1913.

42 NAC, RG 13, #1153/13, letter of September 1, 1913.

43 A few petitions arise from non-prairie petitioners in this year. In an extremely odd letter, Mr. P. Duval of Montreal, Quebec, wished for an affirmation of the legality of his marriage—and with that an order forcing his spouse to return to him in NAC, RG 13, #1861/14, letter of December 15, 1914. In a spectacular case of marital discord that was reported widely in the town of Hamilton, Ontario, Walter D. Simpson queried as to what could be done in his situation—his wife was a drunkard, a philander and had been charged with vagrancy for a scandalous tryst in a barn with a man she barely knew in NAC, RG 13, #348/15, letter of February 19, 1915.

44 NAC, RG 13, #876/16, letter of May 20, 1916.

45 Ibid.

46 Ibid.

47 W. E. Small of Cane, Ontario, penned a detailed letter for the Minister dated May 29, 1916. In his petition for the annulment of his marriage, Small described a situation of bigamous relations that almost reached absurd proportions in NAC, RG 13, #903/16, letter of May 29, 1916.

48 NAC, RG 13, #897/16, letter of May 25, 1916.

49 NAC, RG 13, #1451/16, letter of September 25, 1916.

50 NAC, RG 13, #1518/16, letter of October 5, 1916.

51 NAC, RG 13, #1414/17, letter of August 13, 1917.

52 Ibid.

52 Ibid.

54 Ibid.

55 NAC, RG 13, #1965/18, letter of September 3, 1918.

56 Peter Tomchenco of Bellevue, Ontario, gave another tale of desertion epidemic in the farming community. He claimed to be writing for advice on how to relieve him of the "sore straits" he was in concerning the actions of an adulterous and deserted wife in NAC, RG 13, #1042/19, letter of April 4, 1919.

57 NAC, RG 13, #2858/19, letter of November 23, 1919.

58 Ibid.

59 In contrast to this petition for divorce, written to the government based on the spouse's illness in this letter, see NAC, RG 13, #945/12, letter of June 13, 1912. In this long, detailed and meandering note, Mr. Thos C. Payne, living in A Ward, Protestant Hospital in Ottawa, Ontario wants advice regarding his ill treatment by his wife. It includes his charges of Mrs. Payne's cavorting with another man, her subsequent desertion and her charges of abuse against him-which he says are totally unfounded given his sickly condition-and his hopes for a divorce even though he does not have the appropriate funds.

60 For additional evidence of wife desertion (coupled with adultery) cases of the period, see the letter from Monsieur Fernand Griffon of Inverness Mines, Nova Scotia. He wrote to the government attesting to the actions of his wife, her desertion, and his desire for a divorce in light of her adultery in NAC, RG 13, #1671/14, letter of November 3, 1914. Also see Robert Mills of Burlington, Ontario, who in NAC, RG 13, #564/17, letter of April 1, 1917, wished to be freed from his wife who has deserted him. He wants to re-marry primarily because he has infant sons who need a new mother. One has to wonder what is his ultimate motivation in obtaining a new wife, especially when he complains of being away from work.... John Davey of Bowmanville, Ontario wants some information on how to prevent his wife from living with one Hoffman (she had been for over two years.) He wanted her to return to him, instead she was sentenced to two months imprisonment for her actions in NAC, RG 13, #1110/17, letter of June 27, 1917. In a sloppy and, sometimes incoherent letter, George J. Curry of Saint John, New Brunswick desires advice on how to deal with his faithless wife in NAC, RG 13, #1507/19, letter of June 4, 1919. One gentleman writes a very disjointed letter, full of emotion, from Charlottetown, Prince Edward Island in NAC, RG 13, #2765/19, letter of November 11, 1919. In this rambling and ill-written text, Douglass A. Smith details his marriage of ten years, his wife's "craziness and violent temper", his noble means at keeping the couple financially stable, and the denouement of their marriage. In a very brief note to the government Edward J. Kelly

of Oconto, Ontario desires to know how to procure a divorce given the fact that his wife ran away with another man to Buffalo, New York in NAC, RG 13, #2815/19, letter of November 24, 1919.

61 For the best evidence on this topic, see Snell, *In the Shadow of the Law: Divorce in Canada, 1900-1939*. Throughout the work he offers evidence of bigamy through both primary and secondary analysis, but Chapter IX "Divorce Outside the System" is perhaps the most valuable for understanding why it was especially necessary in the prairie provinces.

62 Snell, 11.

63 Ibid., 144.

64 Ibid., 42.

65 Phillips, *Untying the Knot*, 187.

66 Ibid., 187.

67 Ibid., 188.

68 Desmond Morton, *When Your Number's Up: The Canadian Soldier in the First World War* (Toronto: Random House of Canada, 1993), 269.

69 Morton details more of the fraught over the prolonged separation of couples in the following lines:

> Anxiety about families back home in Canada could prey on a soldier's mind. A battered photograph and a few creased letters in a soldier's haversack were a poor excuse for family life. A soldier wondered if his baby would recognise him when he returned, and, perhaps spurred by his own guilty conscience, worried about whether his wife had remained faithful. At home, wives raged a lonely struggle to keep children under control without a husband's heavy hand, in

Ibid., 236.

70 Phillips, *Untying the Knot*, 188.

71 Morton, 200.

72 Ibid., 200.

73 Ibid., 108.

74 For an interesting example of this see NAC, RG 13, #4^2/21, letter of August 30, 1918. In this letter, the soldier in question, Private Jack Schaffer, writes that his sister-in-law has informed in a note that his wife, Nellie Schaffer of Mowbray, North Dakota, was having an affair with her husband for over eleven months.

75 Phillips, *Untying the Knot*, 189.

76 Ibid., 190.

77 NAC, RG 13, #2146/19, letter of October 2, 1919.

78 Snell, 146.

79 Morton, 265.

80 The first evidence of a torrent of letters that would surge through both the Departments of Justice and of Militia and Defence comes from Private J. B. Andrews of Toronto, Ontario. His letter of April 19, 1915 indicated that he was an invalid as a result of his fighting on the French front. He was trying in earnest to return to action, but in the meanwhile desired a divorce from his wife who led "a double life," where she had been arrested for running a disorderly house, living out of wedlock with another, and spent all of his savings in NAC, RG 13, #749/15, letter of April 19, 1915.

81 NAC, RG 13, #1009/17, letter of June 11, 1917.

82 Ibid.

83 In a curious letter, a London, Ontario, couple (Mr. And Mrs. Bryanton) inquired as to their ability to dissolve their unhappy union in correspondence addressed to the Prime Minister himself, Robert Borden in NAC, RG 54-21-1-133, letter of August 30, 1918. What makes this individual letter unique from all the others covered in this research is the fact that the couple wrote and addressed their inclination for divorce together. Every petition, save this one, emanates from only one member of the marriage where they complain of their situation solely. There is never any indication that the want of divorce is shared, nor is there any viewpoint given from the other partner—and this is what makes this joint authorship significant in the face of the sources presented. Private Pierre Aubin, Regimental Number 889276, who served in the 22nd Battalion of the C.E.F., writes to the Board of Pension Commissioners for Canada depicting the inhospitable marriage he was dealing with in

his hometown of Matane County, Quebec in NAC, RG 13, #1881/18, letter of August 13, 1918. A resident of Courtland, Ontario, one Ernest Campbell, a former soldier, Regimental Number 675324 of the 168th Battalion repeated in his letter the unfortunate circumstances which many of his compatriots could have identified with. He delineated in his query regarding divorce his wife's unfaithfulness during his time at the front in France in NAC, RG 13, #2343/18, letter of November 8, 1918. Private W. Langley of the 4th Canadian Reserve Battalion, stationed in Surrey, England, addressing himself to the Department of Militia and Defence, complained of his unfortunate situation regarding his wife, living in London, Ontario. He illustrated that after four years of being married, "my wife, by running around with other men caused me to be very unhappy, then as a real man would do, I done. I left her, and have had nothing to do with her in any way's since," in NAC, RG 13, #2343/18, letter of November 10, 1918. In a quaint and largely garbled note to the Department of Justice, Mr. Harry Holmer of Sault Ste. Marie, Ontario, told of a marriage that was fraught with adultery, a bastard child and persistent mistrust between the parties. What sets this communication apart from many of those in which these soldiers accuse their spouse of adultery is that this man has indicated that he too was not without fault in NAC, RG 13, #2343/18, letter of December 11, 1918. Mr. Holmer was almost assuredly not alone in his adulterous conduct during the horrific events that occurred during this traumatic 1914-18 period. However, he was the only individual who admitted his similar faults in the collapse of his marriage. One suspects that his activities were far more commonplace than most soldiers-pressed to make their claim as virtuous as possible in the hopes of a free divorce-actually give evidence of in their letters to the various government departments. For similar experiences expressed by a young soldier see letter of Private Ralph Eagleton of Perry, New York. He served in the 20th Canadian Battalion, No. 58083, and during that time was informed of his wife Minnie's bigamy and was asked if his assignment to her was to be stopped. Responding in the affirmative, he now wished to know what powers the government had in granting divorces in cases like these in NAC, RG 13, #2146/19, letter of November 12, 1919.

84 NAC, RG 13, #176/19, letter of January 29, 1919. From the same year see, NAC, RG 13, #1881/18, letter of September 3, 1918. In this communication, Sergeant A.J. Boydell, Regimental Number 65104, Number 2 Company, Canadian Forestry Corps, serving in the British Expeditionary Force in France wrote that about December 1914, shortly after enlisting for service, his wife took out a divorce against him. E.V. Sipler of Toronto, Ontario wrote to the Minister of Justice (echoing the query of many) where he wondered if there were any special provisions for returned soldiers' vis-à-vis divorce in NAC, RG 13, #1881/18, letter of October 29, 1918. In one last instance of evidence from the year 1918, E. L. Gassick of Port Arthur, Ontario writes to the Department of Justice concerning his estranged wife's adultery and desertion in

NAC, RG 1?, #2343/18 or #1881/18?, letter of December 11, 1918.

85 See also a non-prairie case of a twenty-nine year old man, born in Lisle, Ontario, who wrote to the Minister regarding his marriage of ten years that had produced four girls, ages nine, five, seven and two respectively. Private Stanley Cherry, Regimental Number 648159, 5th Battalion of the Canadian Railway Troops, penned details of his wife's desertion and subsequent "improper relations" with an Austrian in August of 1917 in NAC, RG 13, #176/19, letter of March 6, 1919. For letters from the same month of 1918, see NAC, RG 13, ?#/19, letter of March 9, 1919. Mr. Lyle George Johnson, Regimental Number 136069, of the 123rd Canadian Pioneers, and presently residing in Cheshire, England wrote the Minister detailing his grievances with his adulterous wife. In a rare instance, there is a letter from an ex-serviceman from the Prairies. A Calgary native, Andrew Carlyle McArthur, late of the R.F.C., made a simple query for divorce. One assumes he does not know of the innovations in the Alberta courts jurisdiction in NAC, RG 13, #176/19, letter of March 17, 1919. In a simple query, W. E. Errett, a returned soldier who was now a manager at The Courier Printing Company in Englehart, Ontario, wished to know what distinctive arrangements for divorce have been made for returned soldiers in NAC, RG 13, #176/19, letter of March 18, 1919. Speaking in the third person for the most part of his letter of March 21, 1919, Bernard Rosoman, of Gridinrod, British Columbia, detailed his irreconcilable differences with his wife of fifteen years in his correspondence in NAC, RG 13, #176/19, letter of March 21, 1919. Mr. W. Langley of Port Huron, Michigan, United States wrote to the Department obliging the Minister to "relieve him of his troubles" (an adulterous wife) and find him "some happiness" in NAC, RG 13, #176/19, letter of March 26, 1919.

86 NAC, RG 54-21-1-133, Letter of April 17, 1919.

87 Ibid.

88 Ibid.

89 April requests include NAC, RG 13, #909/19, letter of April 18, 1919 from the Reverend J. Strachan, Pastor at the First Baptist Church in Collingwood, Ontario. He writes of behalf of one of his parishioners, a returned soldier whose domicile is in British Columbia, but at present is residing in Ontario. His wife, having committed an unnamed offence (one assumes it was adultery,) abandoned her domicile in British Columbia and neither lives there nor Ontario. The Reverend wishes to know the particulars involved, including cost, and requires confirmation on whether it would be easier to pursue the case in the courts of British Columbia or through Parliament.

The Deputy Minister of Justice wrote the typical answer to this query, but he also included a copy of a bill that was now before this session of Parliament. He suggested that it would not be advisable for the returned soldier to begin any action until it was seen if the bill did indeed become law…one hopes that he did not wait too long for the federal law to come about. Monsieur Urbain Virgile of Montreal, Quebec wrote to the appropriate authorities at the Department of Justice concerning his wife's desertion in NAC, RG 13, #909/19, letter of April 22, 1919. In a brief and poorly articulated note, Mr. Chas Rowbottom of Nanaimo, British Columbia wrote to inquire about a divorce from his deserted wife in NAC, RG 45-21-1-133, letter of April 27, 1919. The Department of Soldiers' Civil Re-Establishment, Invalid Soldiers Commission, received documentation from J. Furnandiz, Regimental Number 503906, on April 29, 1919. The concise petition merely requested information as to the costs and procedures of divorce from his wife who was domiciled in Walkerville, Ontario in NAC, RG 13, #909/19, letter of April 29, 1919. To conclude this month is the letter from Monsieur D. Nolle from Dollard, Saskatchewan. This returned soldier served in the French army for fifteen months. In that time, "sa femme en flagrant delit l'adultere," and, to his surprise, continued to press for soldiers' allowance despite her dishonourable activity. He now wished to inquire as to his rights concerning his wife, his children and his property as well as the easiest way to pursue a final divorce decree. He was informed he would have to proceed as anyone else would in the country of Canada, but never informed what that was exactly in NAC, RG 13, #?/19, letter of April 29, 1919.

90 NAC, RG 13, #2146/19, letter of September 12, 1919.

91 A Montreal, Quebec native wrote to the Department of Justice indicating his belief that the government had a responsibility to the patriotic returned soldiers on the subject of divorce in NAC, RG 13, #909/19, letter of May 16, 1919. In the month of May 1919, there are a few requests, though they are quite long in prose. Following in chronological order, the first is from Mr. Wm. Esson of Hamilton, Ontario, written on May 5, 1919. He wrote the tightly scripted note on behalf of William McRae, a man who served from 1915-1918 whose wife was unfaithful during that time in NAC, RG 13, #909/19, letter of May 5, 1919. He also believed that all returned soldiers were due a law that facilitated easy, cost-free divorce. Driver Frank Cox, Regimental Number 341593, of the 70th Artillery Battery of Toronto, a relatively raw recruit who enlisted March 12, 1918 wrote to the Department of Militia and Defence revealing the particulars of a common complaint, his wife's adultery in NAC, RG 54-21-1-133, letter of May 18, 1919. (Note: In the Archives, Frank Cox, residing in Montreal, Quebec at this point, wrote back to thank the Department for the advice. He also wished to know when the Senate would be seating again for hearings on divorce bills. He was told

they are sitting right now, but that it was doubtful his case could be addressed that quickly in NAC, RG 54-21-133, letter of May 27, 1919. He wrote again on December 6, 1919, professing the same information as if he had never addressed the any of the Ministries before. Writing to the Defence Department once more, he reiterated his story, however he achieved the same results in NAC, RG 54-21-1-133, letter of December 6, 1919.) Victor St. Michael of Sault Ste. Marie, Ontario wrote "applying for a divorce" being a returned soldier. He was married to his wife on March 4, 1916, served three years in the Canadian Expeditionary Force, returned to find his wife had led "a terrible life", and had deserted the home in NAC, RG 13, #909/19, letter of June 25, 1919. The letters from June include Vancouver, British Columbia, native William Cooper's petition of June 18, 1919. His writing incorporated his description of his 2 ½ years of service in the Royal Engineers, his belief that the government did very little to help establish him as a returned soldier in civilian life and the fact that "it would take [him] a lifetime to pay the enormous amount demanded by some lawyers," in a divorce action in NAC, RG 13, #909/19, letter of June 18, 1919. In a statement unique in the fact that it did not contain any accusations of adultery or desertion, just plain and simple irreconcilable differences, is the communication received from Robert McLaren, Regimental Number 302690, on June 26, 1919 in NAC, RG 13, #909/19, letter of June 26, 1919. Another submittal comes from the province of New Brunswick. Mr. Henry Milbury of Saint John wrote on the 26th of June that he wants a divorce and that his wife is willing to proceed with the legal separation in NAC, RG 13, #909/19, letter of June 26, 1919. The last one arising from this month comes from Mr. Thomas W. Shovlin of Hamilton, Ontario on June 29, 1919. In his letter sent to the Director of Records in the Department of Militia and Defence, Shovlin is of the understanding that the "government is giving returned men a cheap Divorce Law—if this is write Sir where will I appily?" As was the norm in these cases, Shovlin was informed of the legal process he would have to deal with in NAC, RG 54-21-1-133, letter of June 29, 1919. Another Ontario man wrote an extensive and lurid tale of his plight with an unfaithful wife. Corporal J. Copperwaite of Stratford, Ontario, Regimental Number 602178, joined the 34th Battalion in January of 1915. He served in the C.E.F. for 3 ½ years before he was returned home in May of 1918. During his time in the active service he heard repeated tales of his wife's "bad behaviour" in NAC, RC 13, #909/19, letter of July 11, 1919. July petitions include a number of queries to the Department of the Militia and Defence as well as the Justice Minister. Frank McConnell, Regimental Number 763831, served in the 122nd Forestry Battalion. A resident of Hamilton, Ontario, McConnell wrote that he has begun his case but has found no satisfaction, despite ample grounds in NAC, RG 54-21-1-133, letter of July 21, 1919. A Brantford, Ontario, veteran complained of his wife's desertion of him, his home and their children in NAC, RG 54-21-1-133, letter of July 25, 1919. George C. Tallman, Regimental Number 851012, of Niagara Falls, Ontario, had written earlier

while on duty in France but received no reply. His wife chose to re-marry while he was away and he now wished to know of his recourse (and financial obligation to her) in NAC, RG 13, #?/19, letter of July 31, 1919. Other letters from that summer consist of Private W. G. Robbins, Regimental Number 55022, of Hamilton, Ontario. His wife "kept company" with another man for 2 ½ years (who was himself married) while he was away at war with the 19th Battalion in both France and Belgium in NAC, RG 54-21-1-133, letter of August 15, 1919. The last petition arises from Revelstoke, British Columbia and was mailed to the Dominion Government in care of Prime Minister Robert Borden. Mr. D. Osborne wanted a divorce due to his wife's insanity in NAC, RG 13, #2146/19, letter of August 18, 1918. The last petition from that summer arises from Andrew Franklin Smith, a former officer in units of the 133rd Battalion, the 123rd Pioneers and the Canadian Engineers. Smith addressed the Justice Minister to tell him of the divorce his wife was in the process of obtaining in Detroit, Michigan in NAC, RG 13, #909/19, letter of August 19, 1919. Another illicit tale of a wife's tryst (with a "coloured man") comes from A. E. Hawkins of Verdun, Quebec. This man was advised by the board of pensioners to put his case before the Judge Advocate-General of the Department of Militia and Defence. His correspondence arrived in Ottawa on in NAC, RG 54-21-1-133, letter of September 13, 1919. F. S. Haines of Montreal, Quebec, made simple inquiries as to the nature of soldiers divorce in NAC, RG 13, #2146/19, letter of September 16, 1919. Sergeant A. Hayson's narrative of his wife's infidelity was so harrowing he insisted it forced him to move clear out of his former hometown of London, Ontario to avoid the disgrace of the idle chatter in NAC, RG 13, #2146/19, letter of September 23, 1919. October requests find one from deserted Private A. J. Hopkins of the 4th Battalion, residence in Waubanschene, Ontario. He wanted to get re-married within the parameters of law and asked the government to make this possible in NAC, RG 13, #2146/19, letter of October 18, 1919. Ex-corporal John Schaffer, Junior, Regimental Number 1013392, had wrote to the Department of Justice before to get advice on his philandering wife. It was now his intention to get a decree of divorce but would he have to return from Seattle, Washington to do so? Was there any advantages to his veteran status in NAC, RG 13, #2146/19, letter of October 26, 1919.

92 NAC, RG 13, #2146/19, letter of November 29, 1919.

93 Ibid.

94 It is also important to note that W. Stuart Edwards of the Department of Justice, although careful to say that it was not his place to advise in personal business, believed that given such shameful circumstances the marriage was better ended in the form of an annulment.

95 To round out this year's correspondence are two requests from November and December. C. Brooks, a resident of St. Thomas, Ontario proves himself to be current on the legislation of divorce as well as the deficiencies of parliamentary procedure in pushing through the alterations in the law in NAC, RG 13, #?/19, letter of November 28, 1919. The December note reads as many of the others from these returned men-adultery coupled with desertion from Mr. W. J. Weaver, who lives in the town of Alymer, Ontario, in NAC, RG 13, #2146/19, letter of December 7, 1919.

96 NAC, RG 13, #?/19, letter of January 7, 1920.

97 All others from the year 1920 follow. In a letter sent to the Attorney General, Mr. Peter B. Daughton, Regimental Number 2476, 4th Battalion of West Toronto, Ontario wanted a free divorce from the woman he wed, since during his service to his country, she re-married and had two kids by another in NAC, RG 13, #61/20, letter of January 4, 1920. The Department of Militia and Defence received a typical query (regarding the belief that there was a law that allowed quick divorce between Canadian men and English girls,) from Sergeant F. H. C. Bartlett, Regimental Number 49126 from Detroit, Michigan in NAC, RG 54-21-1-133, letter of January 22, 1920, informed him of the contrary. In the concise message from Mr. T. Cruvelle of Belleduc, Alberta, a soldier awarded with the four cross merit star for military gallantry, he queries about the costs of soldiers divorce in NAC, RG 13, #61/20, letter of April 24, 1920. Lastly, is the sorry letter of Mr. P. T. Marks of Montreal, Quebec. He received permission to marry an English girl from his Commanding Officer in March of 1918, was in May discharged from the C.E.F. for being medically unfit, and now his wife refused to leave her homeland in NAC, RG 13, #61/20, letter of August 3, 1920.

98 Harry C. Aker, Regimental Number 733317, a member of the 25th Battalion, evoked but another example of the adultery rife through the wartime experience, both for those at home and those abroad in NAC, RG 13, #61/20, letter of February 1, 1921. Frank Ottley of Simcoe, Ontario, had evidence taken straight from the Police Court in his district to confirm his wife's illicit behaviour during his absence in NAC, RG 13, #61/20, letter of February 28, 1921. Mr. Charles E. Curries of Lorne, New Brunswick, shows the side not often seen in these correspondences with the Dominion. It turns out that the woman he married after he disembarked from serving in the C.E.F. at Halifax was already married, deserting her former husband over a year prior. She was wont to dally between both of these men, and therefore it was Curries' intention to re-marry another in NAC, RG 13, #462/21, letter of March 1, 1921. In a message forwarded to the Minister of Justice vis-à-vis the Attorney General's office, Robert McNutt desired to know whether it is easier to proceed through the New Brunswick courts or Parliament concerning his "very deserving case" of soldiers divorce in NAC,

RG 13, #462/21, letter of July 7, 1921. There is evidence of two responses from the government to Mr. Arthur Savage of Saskatoon, Saskatchewan and Mr. F. J. Richards of Waldeck, Saskatchewan. Unfortunately, there are no corresponding letters, however one assumes from the contents of the retorts, they were not unlike the others studied herein in NAC, RG 13, #462/21, letter of September 19, 1921 and letter of October 20, 1921. One last supplication is from a returned soldier of the 13th and 17th Batteries of the C.F.A., Regimental Number 83393, A. C. Harvey of Brantford, Ontario whose wife was infatuated with another city man, eventually deserted him and sold all their possessions, (for which she sent him a cheque for his half,) in NAC, RG 13, #462/21, letter of October 26, 1921.

99 NAC, RG 54-21-1-133, letter of May 25, 1922.

100 Ibid.

101 Ibid.

102 From the same year see NAC, RG 54-21-1-133, letter of November 20, 1922 where J. W. Carter of Humberstone, Ontario, indicated that he and his spouse have been separated since his return from overseas in 1919 and now he desired his freedom. In 1923, there is only one soldiers' petition obtained from the National Archives. On May 9, 1923, Mr. Jas B. Leggette, wrote to the Department of Militia from his hometown of Owen Sound, Ontario where he said that he wished to make inquiries on whether he is entitled to a divorce based on the fact that his wife left his bed and board on April 12, 1923 in NAC, RG 54-21-1-133, letter of May 9, 1923.

103 Other such queries, although largely generic in prose include NAC, RG 13, #598 in #2343/18, letter of May 2, 1918. The law firm of Meredith and Meredith of London, Ontario, merely desire to know if the costs have been altered in regards to the bill, the costs of advertising the divorce, et cetera in NAC, RG 13, #598/18, letter of June 11, 1918. Additionally, George Mitchell of Cobalt, Ontario deliberates on the alteration of the law in NAC, RG 13, #1881/18, letter of June 15, 1918. A. J. Hunter, a lawyer in the Toronto firm of Hunter and Hunter, wrote to the Militia Department on August 28, 1918 concerning divorce procedures and illustrated the demand for divorce reform in NAC, RG 13, #1881/18, letter of September 6, 1918. Captain H. C. Walker, working in the Department of Militia and Defence in Toronto, wrote to E. L. Newcombe, the Deputy Minister of the Department of Justice, wondering about remission of fees in returned soldiers divorce cases in NAC, RG 13, #1881/18, letter of September 26, 1918. Gunner H. G. Clarke has made the same requests in NAC, RG 13, #2343/18, letter of November 2, 1918. H. W. Taylor, a barrister in the Toronto

organisation of Henderson and McGuire, wrote on the 20th of November 1918 to the Department of Militia and Defence where he asserted that he had reason to believe that an order-in-council had been passed "by which soldiers who marry English Girls during the war, and have reasons for dissatisfaction, are able to obtain a divorce without an act of Parliament," in NAC, RG 54-21-1-133, letter of November 20, 1918. A barrister in the firm of Gray and Gray of Toronto, Ontario asks the same question in NAC, RG 13, #2343/18, letter of November 21, 1918. The men of Elliot, David and Mailhiot of Montreal, Quebec wonder if there has been any allowances made for returned soldiers in NAC, RG 13, #1881/18, letter of December 4, 1918. W. Victor M. Shaver, an attorney from Hamilton, Ontario intelligently put the question of altering divorce legislation for the financially burdened in RG 13, #176/19, letter of January 23, 1919. Harold N. Farmer, MA, writes from Acton, Ontario querying on the "cheapening" of divorce law in NAC, RG 54-21-1-133, letter of February 3, 1919. W. L. Wickett, BA, writes to the Department of Justice based on his client's belief, John Newall Earley of St. Thomas, Ontario that there was specific legislation for returned soldiers on the subject of divorce in NAC, RG 13, #61/20, letter of January 8, 1920. Likewise, Malcolm Huffman, a barrister from Ridgetown, Ontario speculates (on behalf of his client) if the costs have been reduced for veterans in RG 13, #61/20, letter of December 18, 1920. The Cornwall, Ontario firm of MacLennan and Cline have a client by the name of James Rouatt who wants to be rid of his English wife who has "turned out very badly," and he is short of funds to begin the action. Was there any consideration for Rouatt as a veteran? in NAC, RG 13, #?461-471/21, letter of December 29, 1922.

104 NAC, RG 13, #598 in #2343/18, letter of March 12, 1918.

105 Another example of a barrister petition comes from Simcoe, Ontario. Addressing himself to the Prime Minister of the period, Robert Borden, T. J. Agar, illustrated the case of his client, one Sapper W. Hammond, a private in the Eighth Canadian Engineers Battalion where he stated that despite his wife's obvious adultery, (she gave birth to a child during his service,) it was impossible for the man to secure the funds for a divorce in NAC, RG 13, #? in #2343/18, letter of September 10, 1918.

106 Some of these senior members include Lieutenant-Colonel H. S. Wilson, Commanding Officer, No. 2 District Depot of Toronto, Ontario who wrote to the Honourable C. J. Doherty, Minister of Justice pondering about the rumoured changes in divorce legislation for returned privates in NAC, RG 13, #598/18, letter of May 8, 1918. Another such correspondence comes from Lieutenant-Colonel J. A. MacDonald of Toronto, Ontario. In his note to the Department, he stated that there was an enduring belief that returned militiamen are able to obtain a divorce in some manner that reduces the cost to approximately fifty dollars in NAC, RG 13, #1569/18, letter of

July 6, 1918. Lieutenant-Colonel M. K. Adams, a retired officer of the 155th Battalion, wrote to the Secretary of State in January of 1919, telling the tale of an unfortunate gentleman who wanted a divorce in NAC, RG 54-21-1-133, letter of January 9, 1918.

107 Ibid.

108 Ibid.

109 Monsieur R. Meysonnier of Radville, Saskatchewan, a French reservist in convalescence since his war injury advocates legislation granting all soldiers divorces for those whose wives have been unfaithful in NAC, RG 13, #1115/17, letter of June 25, 1917. Another letter from an army officer requesting information emanates from W. A. Munro, (who wrote on behalf of another soldier-in-arms,) in his letter received to the Department of Militia and Defence in NAC, RG 54-21-1-133, letter of January 24, 1923.

110 NAC, RG 13, #598/18, letter of December 6, 1918.

111 Ibid.

112 Ibid.

113 There are several other correspondences from organisations, particularly veterans' groups that indicate that Helen Reid was not alone in her convictions. James Hutcheson, Secretary for the Great War Veterans' Association (Ontario Local Branch,) writes from Brantford, Ontario concerning the case of Mr. Massingale in NAC, RG 13, #598/18 or #1881/18, letter of August 21, 1918. F. W. Law, Secretary for the Great War Veterans' Association out of Winnipeg, Manitoba, went even further with his recommendations to the Minister of Justice, encouraging the government to opt for free divorces for returned men in NAC, RG 13, #2343/18, letter of December 28, 1918. M.H. McLachlin, Secretary-Treasurer of the Soldiers' Aid Commission of St. Thomas, Ontario pens a sundry query to the Department of Justice concerning modifications to the law (concerning the grounds for divorce,) and/or pending legislation on the topic in NAC, RG 13, #2343/18, letter of January 1, 1918. The Department of Social Service and Evangelism of the Methodist Church in Toronto, Ontario decided to voice its concerns as well in NAC, RG 13, #176/19, letter of February 20, 1919. The Secretary of the Comrades of the Great War, (Vancouver chapter,) P. Fortune wished to know if the government was providing returned soldiers with financial assistance in which to pursue divorce from unfaithful wives in his correspondence with the Department of

Militia and Defence in RG 54-21-1-133, letter of March 17, 1919. Lastly, the Board of Pension Commissioners for Canada also acted as consul to a number of veterans on the question of marital union, (in this case, Dominick Commando of Jocko Station, at the T. & N.O. Railway in Ontario) in NAC, RG 13, #2146/19, letter of November 14, 1919.

114 NAC, RG 13, #98/18, letter of December 6, 1918.

115 Ibid.

116 NAC, RG 13, #553/18, letter of March 3, 1918.

117 Another such letter comes from Mattawa, Ontario from Mrs. Albert Desormeau who inquired if she was guilty of bigamy since her husband was reported drowned (by his brother) in a note to her in NAC, RG 13, #1679/18, letter of July 16, 1918. Mrs. Annie O'Connor of Howell, Saskatchewan writes with much the same worries in mind. She and her spouse, Michael James O'Connor, married in 1906. In a marriage filled with the troubling events of her husband's adultery, bigamy, insanity, desertion, and continued illegal actions, she read in two different papers that he was killed in action and she now wished to re-marry in NAC, RG 13, #625/18, letter of March 14, 1918. The last offering from this year comes from another Saskatchewan native, Mrs. F. Cooper. Her beau at the time, Ormond Wiex, enlisted in the 205th Tiger Battalion in Hamilton, Ontario and two years into his service deserted the army. They married, (he under an alias,) they travelled to MacTier, Ontario, he forced her to get an abortion two months into the marriage and finally he was found by the authorities and arrested for desertion of the army in NAC, RG 13, #2340/18, letter of October 28, 1918.

118 NAC, RG 54-21-1-133, letter of May 20, 1919.

119 Other non-western cases from soldiers' wives include Mrs. Edward Johnson of Sharbot Lake, Ontario, who penned a note on August 18, 1919 to Military Headquarters in Ottawa explaining her belief that she should be freed of her union with one Private Edward Johnson of the 146th Battalion. She cited desertion, non-support and her husband's drinking problems as reason enough in NAC, RG 54-21-1-133, letter of August 18, 1919. Mrs. North W. Ilett of Brantford, Ontario, took the liberty of writing to the Department of Militia and Defence to ask their advice regarding her soldier husband who had treated her cruelly, not provided any financial support and had since left her in NAC, RG 54-21-1-133, letter of November 4, 1919. See also for the year of 1919, a letter from Mrs. A. B. Forden of Markham, Ontario who insisted that her husband robbed her of over two thousand dollars she had in savings before the marriage, contacted syphilis through an affair with another woman and never supported

her throughout their union in NAC, RG 13, #909/19, letter of May 4, 1919. Also included in this given year is a correspondence from Mrs. Eva Murray of Toronto, Ontario whom has found her returned soldier husband to be quarrelsome since his return, and to be keeping company with other women in NAC, RG 13, #909/19, letter of July ?, 1919. Two letters arrive to the Department of Militia and Defence from the United States where distraught women plead their circumstances to the Minister. Mrs. Amy B. Forden of North Troy, Vermont wants a divorce from her cheating, imprisoned (forgery) husband, W. J. Forden of Arthur, Ontario in RG 54-21-1-133, letter of August 24, 1919. Another letter is from an English woman, residing in Buffalo, New York who is married to a Canadian soldier. Married in England in February 1919, she now cites irreconcilable differences as a reason for a divorce in RG 54-21-1-133, letter of December 10, 1919. Mrs. Harold Kjolhede of Toronto, Ontario, detailed her troublesome marriage to a Dane she married in 1917 whom had deserted the C.E.F. twice and was arrested for forging papers in NAC, RG #61/20, letter of January 5, 1920. A Quebec woman objected to her husband's adultery in a letter dated May 10, 1920. Mrs. Margaret Leith stated that her husband Evan, while he was over in England for three years, lived with another woman and she gave birth to his son in NAC, RG 13, #61/20. An ex-serviceman's wife, one Mrs. Alfred Hone of Montreal, Quebec, detailed her sorrow as a result of the demise to her marriage in a letter to the Department of Militia and Defence. She had committed adultery, bore a daughter and her husband left her in NAC, RG 54-21-1-133, letter of May 13, 1922. Mrs. Edna Thoman of Prince Rupert, British Columbia, also penned a note to the Minister in 1922. She was married in February of 1918 in Buxton Derbyshire, England to a Canadian soldier—a man who turned out to be a compulsive gambler and blamed his shell shock for his scandalous behaviour, (even though he never made it to the front.) Still, she was told that mere desertion and falsehood were not grounds enough to sue for divorce in this country in NAC, RG 54-21-1-133, letter of January 26, 1922. Based on the irreconcilable differences between herself and her husband of German-American descent, Mrs. John Chicoski wanted a divorce and custody of her three children ranging in age from five years to fourteen months in NAC, RG 54-21-1-133, letter of February 23, 1923. Lennox and Choppin, a law firm emanating from Newmarket, Ontario, inquired on the subject of divorce acting for the wife of one Arthur Thomas Lloyd, Regimental Number 413183, who enlisted for overseas service with the 21st Battalion. He had since deserted her and the law firm inquired as to financial relief for her divorce in RG 13, #179/19, letter of January 21, 1919. A Toronto attorney, G. W. P. Hood in RG 54-1-21-133, letter of June 17, 1921, wrote detailing the circumstances of his deserted client Mrs. Carrie Johnston. Other such petitions include the simple request for information on "devorse" from Mrs. J. L. McQuaid of Baysville, Ontario in RG 54-21-1-133, letter of September 29, 1920. Having two children to provide for, and no maintenance payments from her deserted husband, Mrs. Minnie Quinn of Gorrie, Ontario writes to the Minister of Militia

requesting help in RG 54-21-1-133, letter of June 23, 1921. Mrs. Dora Calvert of Norwich, Ontario writes that her husband, Jack Calvert got her in trouble before the war, they quickly married and he left for service shortly thereafter. In the eyes of the law, they have been married ten years but at present he is living in Brantford, Ontario and illegally married with two children in NAC, RG 54-21-1-133, letter of June 22, 1923. In the last registered letter of its kind to be found in the Department's files pertaining to divorce and the First World War is a letter from Claire M. Renning of St. Catherines, Ontario. Her husband has not communicated with her since June 28, 1916 when he left, claiming he was to have the marriage annulled in RG 54-21-1-133, letter of June 11, 1937.

120 Snell, 236.

121 Ibid., 236.

122 Ibid., 236.

123 NAC, RG 13, #1200/1909, letter of August 14, 1909.

124 In the pre-war period there is a great deal of evidence that women wanted to be freed from their marital noose. Mrs. A. Mercier of Montreal, Quebec, complains that after two months of marriage, her husband left her to be with another woman in Quebec City—all parties involved are Catholic in NAC, RG 13, #620/09, letter of April 14, 1909.

125 NAC, RG 13, #237/10, letter of February 1, 1910.

126 NAC, RG 13, #412/10, letter of March 3, 1910.

127 NAC, RG 13, #914/12, letter of June 3, 1912. A simple query arises from Mrs. Olive Rice of Andrew, Alberta. The only twist to the standard petition for information is that she wants information as to her economic rights as a wife, (especially after the dissolution) and whether she may sue her estranged spouse for damages or not in NAC, RG 13, #995/12, letter of June 21, 1912.

128 NAC, RG 13, #1524/12, letter of November 4, 1912.

129 NAC, RG 13, #1314/14, letter of September 2, 1914. Other sundry requests for divorce information at the behest of women in this period include Mrs. L. A. Baker of Woodstock, Ontario, in NAC, RG 13, #1413/14, letter of September 21, 1914.

130 Ibid.

131 A peculiar application from central Canada was delivered to the Department from Mrs. Albert Smith. She wrote on April 24, 1915, that she was married "some twelve years ago" to a young man in London, Ontario who happened to be a Gypsy with a "very bad reputation," who often "got into trouble with the police." After eleven years of non-support, and his prolonged absences, Mrs. Smith desired a divorce in NAC, RG 13, #806/15, letter of April 24, 1915. Other such cases of 1915 urban/Central Canadian petitions to the government include Mrs. Eva Murray of Perth, Ontario who complained of her husband's abuse and non-support in NAC, RG 13, #273/15, letter of February 7, 1915. Mrs. Arthur Sims, a woman from Peterborough, Ontario wanted her marriage to be dissolved after two years of desertion and five years of non-support of herself and her four children in NAC, RG 13, #798/15, letter of April 13, 1915. Another letter from this year is from Mrs. A. Pedersen of Victoria, British Columbia. She wrote of her husband's absence for over seven years, the fact that he was constantly drunk, gambled and Mrs. Pedersen was forced to provide for the household in NAC, RG 13, #762/15, letter of April 14, 1915. Another such request comes from Mrs. Chas Alexander of Hillier, Ontario where she objected to her husband's non-support of her and her children after two years of desertion in NAC, RG 13, #810/15, letter of April 27, 1915.

132 NAC, RG 13, #1322/13, letter of October 14, 1913. See also: A curious petition arises from Mrs. J. H. Fotheringham in which she is concerned about the costs for her "stop-and-start" divorce action in NAC, RG 13, #1219/13, letter of September 24, 1913.

133 NAC, #1271/17, letter of July 26, 1917.

134 NAC, RG 13, #625/18, letter of March 14, 1918.

135 Another letter in much the same vein is from Norah MacDonald of Windsor, Ontario. She wishes to know if she may re-marry because her husband has been sentenced to life imprisonment for wrecking a train on the Michigan Central Railroad in NAC, RG 13, #227/20, letter of January 22, 1920. See too, Mrs. Frank MacDonald of Kingsville, Ontario who wrote the Minister concerning her similar request for divorce (or separation) on the basis of her husband's imprisonment for life in the Kingston penitentiary in NAC, RG 13, #1610/18, letter of July 11, 1918.

136 NAC, RG 13, #1575/18, letter of June 1, 1918. From the same summer see, Mrs. Lucy E. Anderson of McCreary, Manitoba letter where she writes that the

Department of Justice must pursue, and arrest her husband for unlawfully deserting her in NAC, RG 13, #1549, letter of June 29, 1918.

137 Ibid.

138 Mrs. G. S. Nicholls, a woman from Hamilton, Ontario, wondered about the legality of her marriage since she married at 14, believed her husband to be a drunk and philanderer, and desired to be re-married since she is in bad health and cannot work in NAC, RG 13, #1550/18, letter of July 3, 1918. Mrs. Lizzie Quinn, a native of Kitchener, Ontario, complained of her husband's desertion four years earlier and his non-support since in NAC, RG 13, #1966/18, letter of September 3, 1918. Another correspondence in the year 1918 is sent via two notes to the Department, from Mrs. Annia Breiding of Kuroki, Saskatchewan. In these notes, she offered evidence of her husband's absence and the fact that he would rather support the fancies of other women, than do anything to prevent "a poor woman starved to dead [sic] with her child," in NAC, RG 13, #2101/18, letters of September 19 and 25, 1918.

139 NAC, RG 13, #2289/18, letter of October 16, 1918.

140 Letters from central and eastern Canada continued to arrive during the year of rampant demobilisation, 1919. A resident of Kitchener, Ontario, Mrs. Edna Thoman details her troubled marriage—one filled with her husband's drunkenness, non-support, and threats against her life in NAC, RG 54-21-1-133, letter of January 26, 1919. Mrs. Elsie Colpitts of Saint John, New Brunswick, wrote to the Department of Justice, on March 31, 1919 where she indicates she would like to re-marry without a formal divorce given her husband's desertion of eight years in NAC, RG 13, #934/19, letter of March 31, 1919. Mrs. Norman McLean of Southampton, Ontario detailed in a well-written and eloquent letter her wishes that her deserted husband be forced to support her. At the time of her letter, he worked in Sarnia, Ontario and therefore had the ability, but not the enforced order, to support her and their five small children in NAC, RG 13, #982/19, letter of April 2, 1919. In a letter of similar circumstances (desertion of eight years, no knowledge of whereabouts, and a desire to re-marry) see NAC, RG 13, #1734/19, letter of July 2, 1919. Madame Rosie St. Pierre of Montreal, Quebec indicated that her husband had deserted her over eight years ago, left her with their two children, and despite her best attempts was not able to work to support herself given her predicament in NAC, RG 13, #1734/19, letter of July 2, 1919. Mrs. G. D. Snelgrove of Colborne, Ontario wrote to the Department of Justice concerning her husband's American divorce after eleven years of desertion and non-support enquiring as to her options as a result of that litigation in NAC, RG 13, #2617/19, letter of October 19, 1919. A related case (desertion of ten years and a

presumption of death) where the right to re-marry was requested was by Mrs. E. Boyce of London, Ontario, in NAC, RG 13, #36/20, letter of January 3, 1920. Included in these petitions is a very incoherent letter from Mrs. John Jordan of Woodstock, Ontario where she complained of her husband's desertion of six years, his lack of support and her reliance on her mother for her finances in NAC, RG 13, #2643/19, letter of October 22, 1919. Mrs. Florence Scott of Victoria, British Columbia, had taken it upon herself to write the government of behalf of her sister, an English girl, who in 1912 married a man of Dutch origin. The couple in question never resided happily together; there was no physical abuse or violence, just mere incompatibility of temper. Rather than pursuing a court divorce in the state of Washington as many citizens of British Columbia did, and unable to secure the funds for a private Act of divorce through Parliament, Mrs. Scott alleged that accessible divorce legislation was well past due in NAC, RG 13, #2833/19, letter of November 21, 1919. One last letter from 1919 was from a Toronto woman, Mrs. Amy Kimball. She stated that she foolishly married a Russian Jew and had to support herself throughout her marriage ever since she found out of her husband's criminal behaviour-pickpocketing in NAC, RG 13, #2895/19, letter of December 2, 1919. Mrs. Enie W. Sherwood of Sault Ste. Marie, Ontario protested the fact that her husband had not supported her in a very detailed and personal letter in NAC, RG 13, #1201/20, letter of April 6, 1920.

141 Letters from prairie provinces drop dramatically after 1918-1919, due to the changing provincial legislation, and not a decrease in the demand for recourse.

142 Snell, 236.

143 *Calgary Herald*, editorial of July 12, 1919.

144 Snell, 39.

145 Chapman, "Wife Beating in Alberta, 1905-1920," 187.

146 Much of the information in this paragraph is explained quite well in Snell, 61.

147 Pike, "Legal Access," 125.

148 Ibid., 125.

149 Snell, 61.

150 "Female suffrage, in actuality, was also meant to combat the influence of the 'ethnic' vote as the province became more diversified in the twentieth-century. Since women would undoubtedly vote like their husbands, it was generally hoped that the predominance of the white Euro-centric view would continue on" in Gerald Friesen, *The Canadian Prairies: A History* (Toronto: University of Toronto Press, 1987), 351.

151 Roger Gibbins, *Prairie Politics and Society: Regionalism in Decline* (Toronto: Butterworth and Company Limited, 1980), 26.

152 Overlapping memberships in women's societies were quite frequent as well.

153 Friesen, 352.

154 As Alison Prentice writes,

> ...women in the prairie provinces were still largely excluded from homesteading rights and, unprotected by dower laws, had no control over the disposal or use of family property. In addition, women had no legal guarantee of inheritance. The first success came in 1910, partially through the efforts of writer and reformer Emily Murphy: Alberta legislators passed the Married Women's Relief Act, entitling a widow to receive through the Courts something of her husband's estate if he had not adequately provided for her. Between 1910 and 1919, all three prairie provinces passed legislation guaranteeing wives' inheritance rights and restricting a husband's ability to sell or mortgage property without his wife's consent.
>
> The law governing homesteading was a harder nut to crack. The homestead act provided that all men, but only widows and women with dependants under the age of twenty-one, had the right to homestead, entitling them, when they met specific conditions, to free legal title to lands. The movement for reform to allow wives and unmarried women homestead rights began as sporadic, uncoordinated protests in a number of communities. ...Although some western men supported the extension of homesteading rights to unmarried women and wives, the campaign for this reform encountered strong, highly organised and politically influential opposition...[which would] continue unresolved until the 1930s..., in

Prentice et al., *Canadian Women*, 199.

155 Admirable discussion of this issue has been put forth by the pre-eminent legal historian Wilbur F. Bowker, "Homestead Law in the Four Western Provinces," "Reform of the Law of Dower in Alberta," and "Our Earliest 'Homestead' of 'Dower' Act," in *A Consolidation of Fifty Years of Legal Writings, 1938-1988*, ed. Marjorie Bowker (Edmonton: University of Alberta Press, 1989).

156 *Walker v. Walker* (1917), [Manitoba] 35 DLR 207.

157 Snell, 55.

158 His reasons for denying the petition were threefold:

a. A previous decision in British Columbia [*Watts v. Watts*] was not recognised by the Privy Council on the same question concerning jurisdiction in 1908.

b. The Dominion Parliament had not taken any legislative action to make a reckoning on divorce since its inception in 1867 and his judicial career shows that he was never a proponent of justices making new law.

c. Lastly, the conventions establishing the Territorial courts in 1870 made little mention of a Court of Matrimonial Causes and Divorce (despite its existence in Great Britain,) and he therefore it did not exist in the Alberta jurisdiction.

159 *Board v. Board* (1918), 8 ALR 362.

160 *Board v. Board* (1918), 2 WWR 640.

161 Ibid., 662.

162 Ibid., 662.

163 *Board v. Board*, [Privy Council] (1919), 2 WWR 945.

164 This step would surely have pleased Bram Thompson who writes in 1917,

Under one pretext or other we have no divorce law in operation in Canada; and the country is without a remedy for one of the most direful evils that infect social and family life. The denial of a law does not extinguish a vice, and where an evil exists it is the supreme function of a legislature to provide a remedy for it. The evil which the divorce law is designed to ameliorate exists in Canada, but Parliament has not only shirked and evaded its obligation, but it has resorted to schemes and subterfuges which are deplorable and reprehensible…, in

Thompson , "Law of Divorce in Saskatchewan," 701.

165 "From 1906-1918, there were 22 'recorded' divorces, ignoring formal separations. Starting in 1919, there would be 36 petitions in that year alone. [Statistics for 1919-1940 indicate a total of 3580]" in Snell, 10.

166 *C. v. C.* (1919), 1 WWR 982.

167 Ibid., 982.

168 Ibid., 984.

169 *B. v. B.* (1919), 3 WWR 894.

170 *Moran v. Moran* (1920), 1 WWR 612.

171 *McCormack v. McCormack* (1920), 15 ALR 490.

172 *McCormack v. McCormack* (1920), 2 WWR 719.

173 Ibid., 717.

174 *McCormack v. McCormack,* ALR 495.

175 Ibid., 495.

176 *Torsell v. Torsell* (1921), 16 ALR 204.

177 Ibid., 202.

178 Ibid., 203.

179 Ibid., 203.

180 Snell, 97.

181 *Detro v. Detro* (1922), 3 WWR 690.

182 Ibid., 693.

183 Ibid., 694.

184 *Payn v. Payn* (1924), 3 WWR 111.

185 Ibid., 112.

186 *Cook v. Cook* (1923), 1 WWR 929.

187 Ibid., 931.

188 Ibid., 931.

189 *Cook v. Cook and Attorney-General for Alberta* (1923), 19 ALR 769.

190 Snell, 80.

191 *Cook v. Cook and the Attorney-General for Alberta* (1923), 19 ALR 785.

192 *Cook v. Cook and Attorney-General for Alberta,* [Privy Council] (1926), 1 WWR 742.

193 *Stacey v. Stacey* (1927), 1 WWR 821.

194 Ibid., 823.

195 *Holmes v. Holmes* (1927), 2 WWR 255.

196 Ibid., 255.

197 Despite the position taken in this particular paragraph on the character of Mrs. Holmes, (that of the victim,) she obviously made her way down to the United States for a period of time between her third and fourth marriages to procure a divorce. Was this relentless movement of Mrs. Holmes merely because she had relations in the state of Washington, liked the scenery or was prone to a nomadic existence? It is hard to ascribe judgment from the limited facts offered by the law reporter in this case, but it may not be too grandiose a statement to make that many people, especially women who had sufficient funds as Mrs. Holmes obviously had, travelled to border towns such as those found in the states of Montana, Washington, and even Nevada, to rid themselves of an unwanted partner.

198 *Roberts v. Roberts* (1927), 1 WWR 994.

199 Ibid., 999.

200 *Roberts v. Roberts* (1927), 23 ALR 287.

201 *Wright v. Wright* (1928), 1 WWR 385.

202 Snell, 56.

APPENDIX 2

[illegible]	1867-1879	1880-1889	1890-1899	1900-1909	1910-1919	1920-1929	1930-1939
N	15	72	305	745	1523	1228	349
Male	33.3	47.2	47.9	51.8	47.5	34.5	32.7
Female	66.7	52.8	52.1	48.2	52.5	65.5	67.3

Reprinted from James G. Snell, In the Shadow of the Law: Divorce in Canada, 1900-1939. Toronto: University of Toronto Press, 1991, p. 146.

APPENDIX 3

Calgary Herald
June 27, 1918
Page one

DIVORCE MAY BE OBTAINED IN ALBERTA

Appellate Division of Suprem
Court Renders Important
Judgment

CHIEF JUSTICE IS
ONLY ONE DISSENTIN

Case Was Referred to Appea
Bench by Judge
Walsh

The appellate division, Chief Jus tice Harvey dissenting, has held th the Alberta Supreme Court is com petent to hear and try actions f divorce.

The case of Board vs. Board w referred without hearing by M Justice Walsh to the appellate div sion and separate judgment ha been handed down by the ch justice who dissents from the fin ings of the other three, and Justic Stuart, Beck and Hyndman.

The majority finding amounts this, that the law of England force in the territories prior to J 15, 1870, is still binding, and th therefore our higher courts competent to hear and determ divorce suits.

Wm. Short, K.C., and H. C. M donald acted for the plaintiff; A bott and McLaughlin for the defe

Edmonton Journal
June 27, 1918
Page one

Right to Grant Divorce In Courts of Alberta Rules Appellate Division

With Five Judges Sitting on the Hearing, Dissenting One Is Chief Justice Harvey—Case of Edmonton Couple Brings Important Ruling

With one dissenting vote the appeal ourt of Alberta sitting in Edmonton as decided that the courts of the prov- nce have the power to grant divorce, according to the judgment handed down this morning in Calgary where most of he members of the appellate division are now engaged. Concurring in the ruli- are Justices Stuart, Beck, Sim- nd Hyndman. Chief Justice Har- his judgment dissents.

The appeal was made in the case of Board vs. Board in which H. C. McDon- ald appeared for the applicant. The matter came before Mr. Justice Walsh by way of motion by the respondent to quash the petition on the ground of want of jurisdiction. Mr. Justice Walsh referred the matter to the court of ap- peal sitting here, where the jurisdiction of the courts was maintained by William Short, K.C., and H. C. McDonald. Frank Ford, K.C., represented the attorney general's department against the juris- diction of the provincial courts.

By a remarkable coincidence the pe- tition filed by Mr. McDonald in Edmon- ton was practically contemporaneous with the similar petitions filed in Mani- toba and Saskatchewan. In both these provinces judgments favorable to the jurisdiction have been handed down.

APPENDIX 1

Table of Divorce by Process and by Province, 1900-1930

Year	PEI	NS	NB	QUE	ONT	MAN	SASK	NWT	ALTA	BC	SB [illegible]	SB P	Total
1900	0	1	1	1	2	1		1		4	6	5	11
1901	0	10	0	0	2	0		0		7	17	2	19
1902	0	9	1	0	2	0		0		3	13	2	15
1903	0	8	4	1	2	1		1		4	16	5	21
1904	0	6	2	1	5	0		0		5	13	6	19
1905	0	6	2	3	2	2		2		18	26	9	35
1906	0	5	1	3	10	0	0		1	17	23	14	37
1907	0	8	3	1	3	1	0		0	9	20	5	25
1908	0	5	5	0	8	0	0		0	12	22	8	30
1909	0	8	5	4	8	2	1		1	22	35	16	51
1910	0	13	6	2	14	3	1		0	12	31	20	51
1911	0	10	6	4	13	3	0		2	19	35	22	57
1912	1	4	4	3	9	1	1		2	11	19	16	35
1913	0	0	4	4	20	6	1		4	20	24	36	60
1914	0	10	12	7	18	2	2		4	15	37	33	70
1915	0	13	6	3	10	1	1		3	16	35	18	53
1916	0	14	11	1	18	2	2		1	18	19	24	67
1917	0	8	6	4	10	0	1		2	23	24	17	54
1918	0	24	10	2	10	0	1		2	65	37	15	114
1919	0	36	13	4	46	88	3		36	147	35	55	373
1920	0	45	15	9	89	42	20		112	138	43	98	468
1921	0	41	13	10	91	122	59		89	128	37	106	558
1922	0	35	12	6	96	97	35		129	138	99	97	543
1923	0	22	19	10	102	81	44		88	139	318	113	505
1924	0	42	15	13	113	77	26		118	136	370	129	540
1925	0	30	15	13	119	79	43		101	150	452	132	550
1926	0	19	12	10	111	85	50		154	167	487	121	608
1927	0	29	17	13	181	101	62		148	197	554	194	748
1928	0	28	13	24	213	79	57		173	203	553	237	790
1929	0	30	21	30	207	89	71		147	222	580	237	817
1930	0	19	27	41	204	114	64		151	255	630	245	875

Reprinted from James G. Snell, In the Shadow of the Law: Divorce in Canada, 1900-1939. Toronto: University of Toronto Press, 1991, p. 146.

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