Whose fault is it anyway?

The second highest Court in England (the Court of Appeal) has today refused to allow a wife to obtain a divorce against her husband. The case highlights the fundamental need for reform in this area of the law. Archaic and out of date laws have produced a judgment that many see as unfair.

Mrs Owens has been married to Mr Owens for 39 years. Sadly, their relationship has broken down. Mrs Owens issued divorce proceedings against her husband in May 2015 to terminate their marriage. She listed 27 allegations of his “unreasonable behaviour” in the divorce petition including one that said that she could no longer live with him. Mr Owens took exception to the allegations and decided to take the unusual step of challenging the divorce. The judge considered the allegations and ultimately refused to grant the divorce, describing the examples as “minor altercations of a kind to be expected in a marriage”.

Mrs Owen’s appealed the decision and her case was heard by the Court of Appeal ironically on Valentine’s Day this year. The Court has today dismissed her appeal which means that she must remain married to Mr Owens.

The law as it presently stands in England and Wales does not allow one spouse to unilaterally decide to divorce because they are in an unhappy marriage. Instead, the spouse that wishes to leave the marriage has to allege “unreasonable behaviour” and give examples to the court of such behaviour to show to the Court that the marriage is irretrievably at an end. Alternatively, if they do not wish to apportion “blame” to the other spouse and there is no adultery, then they must wait two years where a divorce can be granted if both spouses consent to it. If both spouses do not consent, then the spouse who wishes to divorce has to be separated for 5 years from their spouse before being entitled to a divorce.

In Mrs. Owen’s case, she will therefore have to wait a further four years before being able to divorce her husband in light of his likely reluctance to consent to a divorce after separation period of two years. She is now aged 66. She will be 70 before she can leave her marriage.

The President of the Family Division, Sir James Munby who handed down the judgement today said that “Parliament has decreed that it is not a ground for divorce that you find yourself in a wretchedly unhappy marriage….such is the law which it is our duty to apply”. Lord Justice Hallet also added “We cannot ignore the clear words of the statute on the basis that we dislike the consequences of applying them. It is for Parliament to decide whether …to introduce “no fault” divorce on demand”

The concept of introducing “no fault” divorce i.e a divorce system without blame is not new. Family law professionals and organisations have been campaigning for the introduction of new law for many years. In 1996 the Government tried to introduce “no fault divorce”
however the legislation was subsequently repealed in 2001.

The National Family Law organisation, Resolution, proposes that the law should be amended so that a divorce can be commenced by one or both of the parties filing a statement of marital breakdown (without fault or separation being alleged). Following this there should be a waiting period of six months to give a couple time to think about whether they are making the right decision. The divorce should then be made final at the end of the six months if either or both parties file a declaration confirming their view that the marriage is permanently at an end. It is also proposed that the waiting period would be reduced by any time prior to the filing of the statement of marital breakdown during which the couple are living apart (i.e living in separate households even if under the same roof). For example, if they had already been separated for six months there would be no waiting period.

The issue of “no fault” divorce has however never been top priority for Parliament and it is hoped that today’s ruling will take it higher up the political priority ladder. In reality, until new law has been introduced and implemented to deal with the ramifications BREXIT, “no fault” divorce is likely to continue to take a back seat.

In the event that you are thinking of divorcing and require legal advice, please do not hesitate to contact one of our specialists who will be able to assist you. Our contact telephone number is 0203 178 5668 and website address is www.iflg.uk.com [2].

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