

HOUSE OF COMMONS

Monday, September 18, 1995

The House met at 11 a.m.

Prayers

PRIVATE MEMBERS' BUSINESS

[*Translation*]

RECOGNITION OF SAME SEX SPOUSES

The House resumed from June 1 consideration of the motion.

The Acting Speaker (Mr. Kilger): I would like to point out to the House that there are 42 minutes remaining in the debate on Motion M-264.

[*English*]

There are 42 minutes remaining in debate on Private Members' Business Motion No. 264. When M-264 was last before the House the hon. member for Jonquière had three minutes remaining for debate.

Resuming debate.

Mrs. Jean Payne (St. John's West, Lib.): Mr. Speaker, the hon. member has moved that the government should take the measures necessary for legal recognition of same sex spouses.

By "legal recognition of same sex spouses" I am unclear whether he means same sex partners should be able to register, as I understand they can do on Denmark, or that benefits currently given to married and common law spouses should be extended to same sex partners.

Neither option is viable to my mind given the current state of the law. Perhaps it would have been a better motion had it been made in a provincial legislature rather than here in the House of Commons.

The federal government has very limited jurisdiction in the area of legal recognition of personal relationships. The constitution divides jurisdiction in the area of family law between the provincial legislatures and the federal Parliament. The jurisdiction for marriage is divided, with the provinces being responsible for the solemnization of marriage.

Until fairly recently historical common law spouses were not recognized by our law. The term is a misnomer in any event as common law spouses do not actually exist in common law or judge made law. They actually are created by statute law; not one statute at that but by a large number of statutes at both federal and provincial levels. In other words, unless a particular statute specifically provides that a reference to spouse will include common law relationships they are not included for the purpose of the benefit in issue.

The major statute laws that recognize common law spouses are the provincial family law statutes. These statutes create the major legal obligations imposed on common law spouses should the relationship break down. They deal with the division of property, support obligations between former spouses and any children, and yet even here the provincial law is not consistent across the country. Common law spouses are subject to different legal obligations under different provincial family law statutes across the provinces. They are not even recognized in two provinces including Quebec, the province of residence of the hon. member proposing this measure.

• (1105)

Common law marriage is a quite different concept from that of common law spouses. Common law marriage existed only in the early settlement days of Canada when a minister or a priest was often difficult to find. Although there is some speculation that the concept may still exist in common law in Canada, it would apply only in opposite sex context. Therefore if the provincial family law is the main source of legal obligations between spouses, then it would seem more appropriate that any legal recognition of same sex partners would come first under provincial family law. As I understand it, this was primarily the way in which common law relationships first gained legal recognition.

As a result of several high profile cases before the Supreme Court of Canada, the courts recognized through the doctrines of unjust enrichment and constructive trust the contribution of a woman who had lived for a long period of time with a man as married, even though they had not married.

Legislative changes followed thereafter, starting primarily with family law and then slowly with provincial family law and then slowly moving into the benefits field. This legal recogni-