● (1110)

The circumstances in which this amendment would be necessary would, hopefully, not occur too frequently. Nevertheless, it is an important amendment. The Lesser decision on this point left open the question of whether or not a child in circumstances such as this could apply independently for variation of the support order. To make the illustration clear, what we are talking about in terms of this amendment is a child who is, perhaps, disabled, and is 24 or 25 years of age, unable to look after himself or herself and is living with a parent who has been divorced. In this illustration, the parent dies. The question which must be resolved is: What is the status of the child with respect to bringing an application for support or for variation of the support order? As members of the Justice Committee will recall, this point was raised by a lawyer from Toronto, Linda Silver-Dranoff. The purpose of the amendment is to make very clear the status of that child to seek an application for variation in the courts even though the parent with whom the child had been residing may have died.

It was suggested in committee by counsel to the committee that, in fact, the Bill would not change the *status quo*. In other words, that standing would be granted to the estate of the custodial parent to continue a support application which was already in progress. The decision in the Lesser case left open the question as to whether or not the application could be made independently, as opposed to just continued by the estate, if the application had been originally made.

As I have said, the purpose of the amendment is to make clear that children, such as those who are disabled, as well as other children, are entitled to apply in their own right for variation of support orders. If, in fact, it is the intention of the Government that this Bill should be interpreted in such a way as to ensure that that would be the case, I hope that the Parliamentary Secretary will make the intention clear.

Mrs. Sheila Finestone (Mount Royal): Mr. Speaker, I support the motion of my colleague, the Hon. Member for Burnaby (Mr. Robinson). Notwithstanding Section 10, which indicates that a solution to the matter might be found therein, I think Hon. Members would agree that there is some lack of clarity as to what will happen to young people between the ages of 16 and 17 who are not protected by this Bill, and also to those who are disabled or, as suggested by the Hon. Member for Burnaby, those who make a separate application for variation in respect of a court order. The Lesser case brought this matter to the attention of the committee and we had lengthy discussions with respect to it. The case involved a youth aged 23 whose custodial parent had died and who required a variation order. It is a good thing that the matter went before the court in order that a decision could be made which would allow for support by the non-custodial parent.

I think it makes not only good, sensible public policy but it is humane that if the non-custodial parent can pay for support of his or her child of the marriage prior to the death of his or her spouse then, instead of becoming wards of the state, the non-custodial parent should continue to pay maintenance. I think there has to be some serious consideration given to this matter. I hope the Parliamentary Secretary will indicate to us that the Government will give the broadest possible interpretation to this measure so that we are not faced with children becoming wards of the state merely based on their ages when a parent is lost or the child is disabled.

Mr. Chris Speyer (Parliamentary Secretary to Minister of Justice): Mr. Speaker, although I understand the sentiments behind the amendment, we are unable to agree with it for a number of practical reasons. First, the Divorce Act deals with people who are attempting to dissolve a marriage. That is the essence of divorce. When it comes to children, some questions which arise are the following. At what age might a child make this application? What if a child wanted to come under the custody of another parent and that other parent did not want to assume the responsibility, then who will pay for the legal representations of the child? In our view, such a scheme would not be very practical. It would bring the child right into the midst of conflicting parents. I do not believe it is a real problem. As the Hon. Member for Burnaby (Mr. Robinson) accurately states, I believe the Department of Justice lawyers at the time of the hearings gave adequate answers with respect to the remedy for which a child in those circumstances could apply.

Mr. Speaker: Is the House ready for the question?

Some Hon. Members: Question.

Mr. Speaker: The question is on Motion No. 29 standing in the name of the Hon. Member for Burnaby. Is it the pleasure of the House to adopt the motion?

Some Hon. Members: Yes.

Some Hon. Members: No.

Mr. Speaker: All those in favour please say yea.

Some Hon. Members: Yea.

Mr. Speaker: All those opposed please say nay.

Some Hon. Members: Nay.

Mr. Speaker: In my opinion, the nays have it.

Some Hon. Members: On division.

Motion No. 29 (Mr. Robinson) negatived.

Mr. Svend J. Robinson (Burnaby) moved:

Motion No. 30

That Bill C-47, be amended in Clause 17 by striking out lines 17 to 28 at page 14 and substituting the following therefor:

"(4) Before the court makes a variation order in respect of a support order the court shall satisfy itself

(*a*) that there has been a change in the condition, means, needs or other circumstances of either former spouse or of any child of the marriage for whom support is or was sought occurring since the making of the support order or the last variation order made in respect of that order as the case may be, or