

HOUSE OF COMMONS

Thursday, January 23, 1986

The House met at 11 a.m.

GOVERNMENT ORDERS

[English]

DIVORCE AND COROLLARY RELIEF ACT

MEASURE TO AMEND

The House resumed from Wednesday, January 22, consideration of Bill C-47, an Act respecting divorce and corollary relief, as reported (with amendments) from the Standing Committee on Justice and Legal Affairs; and Motion No. 28 (Mrs. Finestone) (p. 10064).

Mr. Chris Speyer (Parliamentary Secretary to Minister of Justice): Mr. Speaker, I will be very brief with respect to the submissions that have been made regarding this motion. No one can disagree with the sentiments that are contained within the motion. As I understand it, if there is a demonstration by the custodial spouse of an unwillingness to comply with an order, then the motion provides that there will be some type of court plan with respect to access rights.

As the Hon. Member for Burnaby (Mr. Robinson) pointed out, the Hon. Member for Mount Royal (Mrs. Finestone) anticipated that there would be some amendments dealing with care and control. As Your Honour knows, the Divorce Act deals with custody and access. To date, it does not deal with the notion of care and control. Therefore, from a technical point of view, this amendment would be the only place within the Bill where there would be the new notion of care and control.

More important than that, when there is a question of custody, the issue is which spouse will have custody of the child and under what circumstances. As we indicated yesterday, the sole criterion is the best interests of the child. In that case, one of the factors incorporated into the Bill, one which I think is a very major advance, is that the non-custodial parent should have maximum contact. If one of the spouses is unwilling to give maximum contact, that may be taken into consideration in the awarding of custody.

It seems to me from reading her amendment that the Hon. Member for Mount Royal anticipates that when one party is granted sole care and control of the children of the marriage and manifests an unwillingness to comply in whole or in substantial part with the terms of the order, this Bill can deal with that but that will only occur after the award of custody. In other words, it will not be the focus of the debate at the custody trial. These are circumstances which may or may not

exist after the trial and may provoke an application to review the Order.

Although we totally agree with the sentiments expressed by the amendment that would have the court issue some type of plan if the non-custodial spouse so applies, it will in fact happen that if an application is made as a result of what one spouse believes is a violation of his rights, by provincial laws of evidence some plan will in all likelihood be asserted by the court if the custodial spouse is to remain the custodial spouse. I would like to compliment the Hon. Member on her sentiments. In light of the legislation and for the technical reasons that I have stated, however, I do not think that the amendment is necessary.

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

Some Hon. Members: Question.

Mr. Speaker: The question is on Motion No. 28 standing in the name of the Hon. Member for Mount Royal (Mrs. Finestone). Is it the pleasure of the House to adopt the motion?

Some Hon. Members: Agreed.

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. I declare the motion lost.

Motion No. 28 (Mrs. Finestone) negatived.

Mr. Svend J. Robinson (Burnaby) moved:

Motion No. 29

That Bill C-47, be amended in Clause 17 by striking out line 2 at page 14 and substituting the following therefor:

"may, on application by a former spouse or with leave of the court, by a child of the marriage make an order varying, rescinding or".

He said: Mr. Speaker, the purpose of this amendment is to ensure that in circumstances in which a child of the marriage is receiving support and the child's custodial parent dies, the child will continue to be able to receive that support. Indeed, the child would be able to apply for an order of variation on that.