

Divorce Act

Mr. Speaker: The House agrees to hear the Hon. Member for Mount Royal a second time.

Mrs. Finestone: Thank you very much, Mr. Speaker. I will be very brief. I was trying to point out that in my view it is illegal to draft the Bill in this way. I feel that this motion reflects the spirit of the Charter of Rights and Freedoms and it is in the spirit of equality for all to prevent discrimination based on sex. The particular sex of the parent or the child should not be brought into consideration when the court is giving effect to any separation or parenting order. My concern is that the best interests of the child be served. The sex of the parent is not the consideration; it is the child who is the consideration. That was the whole point, Mr. Speaker.

Ms. Sheila Capps (Hamilton East): Mr. Speaker, I, too, would like to take a few moments to speak in defence of the amendment proposed by the Hon. Member for Mount Royal (Mrs. Finestone). Although the Member for Cambridge (Mr. Speyer) claims that these issues are decided by the courts and that the courts should be directed only by their own judgments, I believe that the message which should go out from this House with respect to divorce legislation is that the best interests of the child are, above all, paramount, but at the same time there should not be discrimination on the basis of sex. The Member for Cambridge addressed the age issue implying that if the child were young perhaps the mother-child relationship would be stronger than the father-child relationship, thus giving the potential of custody being awarded to the mother.

I perhaps speak only from anecdotal evidence but, just as in a number of economic questions we women have been discriminated against on a regular basis, in the area of custody the courts have tended, in many cases, to discriminate against men who have made applications in a *bona fide* way. I am sure that many of us often hear stories of great difficulties faced by fathers who are really interested in the best interests of their children and who do not have the opportunity to seek custody because the overwhelming number of court judgments are biased in favour of women. Perhaps socio-economic custom is the reason for that.

However, the intention of this particular amendment, which was discussed at length in the context of our social policy group in the Liberal caucus, was to say that as a Parliament we feel that custody judgments should not be decided on the basis of who earns the best income. At the same time, they should not be decided on the basis of gender.

If we are truly committed to the notion that men and women should share an equal responsibility in parenting and nurturing, that responsibility should transfer itself into rights in a court of law. At the moment I believe that in many instances the court is still ruling in an unfair way, denying the men of our population the right of equal opportunity for shared or complete custody of their children.

The Member for Broadview-Greenwood says that we should let the courts decide. In fact, one reason why we set up a committee on equality to travel across the country was so that

Parliament could decide that in matters of legal jurisdiction we do not want discrimination on the basis of gender. Past court judgments have shown that discrimination still exists on the basis of gender. This is an attempt to address that question. I believe it is a sound amendment in keeping with the Charter.

● (1710)

Rather than forcing parents into lengthy legal battles which are not in the best interest of their children in the long run, why can Parliament not send a direction to the courts saying that in 1986, if we believe in shared parenting and shared responsibility and joy of raising our children, surely that position should translate itself into court judgments.

The message we are sending to the courts is that the current system continues to be discriminatory, and one way to address that problem is by taking the gender out of the decision-making process in the courts. Obviously, many other factors must be considered, but I would argue that many Members have probably seen cases where men have been discriminated against in custody battles in court. Just as I would fight for financial equality for women, it is fair to fight for a movement toward equality for men in the issue of custody.

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

Some Hon. Members: Question.

Mr. Speaker: The first question is on Motion No. 20 standing in the name of the Hon. Member for Burnaby (Mr. Robinson). 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. 20 (Mr. Robinson) negatived.

Mr. Speaker: The next question is on Motion No. 21 standing in the name of the Hon. Member for Mount Royal (Ms. 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 of the motion please say yea.

Some Hon. Members: Yea.