

Family Allowances Act, 1973

alive, the Minister shall forthwith revoke the certificate and cause to be paid any allowance that would have been payable in respect of the child if the certificate had not been issued.

(3) For the purposes of this section, the Minister is not bound by the issuance or revocation of a death certificate by any other authority."

Mr. Alan Redway (York East) moved:

Motion No. 9

That Bill C-70, be amended in Clause 5 by striking out lines 26 to 47 at page 3 and lines 1 to 4 at page 4 and substituting the following therefor:

"Minister may determine the date for the purposes of this Act on which the child's death is presumed to have occurred, and thereupon the child shall be deemed for all purposes of this Act to have died on that date.

(2) If, after having determined such a date, the Minister is satisfied from new information or evidence that the date of death is different from that previously determined, the Minister may determine a different date, in which case the child shall be deemed for all purposes of this Act to have died on that different date.

(3) If, after having determined such a date, the Minister is satisfied from new information or evidence that the child is alive, the Minister shall forthwith cause to be paid any allowance that would have been payable in respect of the child had such determination not been made."

Ms. Margaret Mitchell (Vancouver East): Mr. Speaker, I had hoped that these latter motions would have been spoken to following the debate with respect to the deindexing part of the Bill. As I am sure Your Honour is aware, Motions Nos. 4 to 8 deal with a part of the Bill which was quite complicated and quite difficult when we were in committee. It was difficult for us to understand at first, but we then started to gain more understanding from witnesses, resource people and those with legal expertise. After that we became much more aware of the complexity of these motions.

For example, we were told that Motion No. 4 was a housekeeping motion. Yet, when we looked into it more carefully we saw it is the intention of this clause to tighten up the wording to ensure that the Minister could not use presumption of death certificates, which are allowed in Clause 5, to collect overpayments from parents. When speaking to this particular motion, it is rather important that we talk about the presumption of death. We in committee had a very serious concern about whether or not this should be under the jurisdiction of the Minister. The advice that we received which was different from the advice I know the Minister's own legal experts gave him, was that the whole question of presumption of death was a provincial matter and not a federal matter and that only in very, very rare instances should it be considered under federal legislation and then only with the permission of the provinces.

● (1600)

I would like to refer to some of the documents at which the committee looked and which were put on the record of the committee. The first deals with evidence regarding life and death in Ontario, and this comes from the *Canadian Encyclopedic Digest* (Ont. 3rd). It says there that presumption of death falls under provincial jurisdiction. Another document, Title 146, Vital Statistics, from the *Canadian Encyclopedic Digest* (Ont. 3rd), supports the same position. It indicates that the Vital Statistics Act provides the central statutory framework for the regulation of vital statistics in Ontario and that official records of birth, marriages and deaths have been kept

in Ontario since 1793. Again, this substantiates the fact that the whole question of presumption of death is a provincial and not a federal responsibility.

References in the Quebec Civil Code also prove beyond a doubt that the matter of presumption of death is not a federal matter but a provincial matter under the Constitution. The federal Government is certainly interfering in provincial responsibilities by dealing with this matter.

Another item I would like to bring to the attention of the House is the Uniform Law Conference of Canada recommendation dealing with the Uniform Vital Statistics Act. Section 13 of this Act defines registration of death and indicates that the death of every person who dies in the province shall be registered under this Act. That again, according to the legal authorities that we consulted, shows that the whole question of presumption of death is a provincial and not a federal matter.

I would also refer to the Uniform Presumption of Death Act proceedings from 1976 and this comes from the Uniform Law Conference of Canada. This also recommends that the whole question of presumption of death should carry through as it does under the common law, which stipulates that someone is presumed dead after being missing for seven years unless there is proof to the contrary. It seems therefore that this falls exclusively within provincial jurisdiction unless there is evidence under statutes to the contrary. The federal Minister should not be overruling common law which indicates that a person must be missing for seven years before he or she is presumed dead. Under this Bill, the Minister would intervene and in his own judgment decide when a missing child would be presumed dead. This is in conflict with both the common law customs as well as the documents of provincial Governments to which I have referred. It also presents a conflict of interest for the Minister since, on the one hand, he has the responsibility for paying family allowance payments to parents whose children may be listed as missing, and, on the other hand, of withdrawing that payment if the children should be presumed dead. This Bill will give the Minister the authority to determine at what point a child is presumed dead, a considerable authority to take upon oneself.

I would also like to refer to the standing joint committee of the Senate and the House of Commons which indicated that the issuance of death certificates is the responsibility of a judge and should not be the responsibility of a Minister. It should not be left under administrative discretion but rather should be a judicial process.

In February, 1978, the standing joint committee established criteria which should be used when scrutinizing statutory documents and instruments. Part 6(a) of Section B of the joint committee's document indicates that one criterion should be that we should consider whether or not the Bill makes the rights and liberties of the subject dependent upon administrative discretion rather than on the judicial process. In this case, of course, it will not be a judge who will make the decision but the Minister. As well, considerable discretionary powers are given to the Minister, and I would like to return to that when we deal with some of the other motions that are before us.