

important as well. Any indications of physical and mental abuse on the part of one spouse toward the other spouse, or by a parent toward the child, would of course have an influence on the decision made. We have a serious concern about family violence in our society. It is a well known fact that, although officially one in ten women are battered, the unofficial statistics indicate that it is closer to one out of every five. Therefore, point (f) would be of key importance in the consideration.

● (1700)

I strongly recommend that the motion be considered as a guide to the court, although not exhaustive, indicative of a checklist for fathers, mothers, and grandparents.

**Mr. Speyer:** Mr. Speaker, I will be very brief. I want to point out to Members of the House that traditionally, as incorporated in this legislation and through judicial decisions, there is only one factor that really determines custody, and that is the best interests of the child, taking into consideration the means, needs, conditions, and other circumstances.

I would like to make a comment with respect to an amendment proposed by the Member for Burnaby (Mr. Robinson) in committee, but withdrawn today. It is now incorporated in Motion No. 26 moved by the Member for Mount Royal (Mrs. Finestone). It is that the age of a child not be considered in the awarding of custody. It seems to me that in the best interests of a child its age and relationship with its mother are very important factors. It may not be the determining factor, but is an important factor in a given set of circumstances.

The Member for Mount Royal and I disagree in that I do not want a checklist, to use her words, in drafting legislation. I want to follow the principle that the courts will do what is in the best interests of the child. I believe in the courts, and I believe in an appellate system when the courts are wrong. I do not want to have a whole list of things enumerated. I do want to give the courts the latitude to examine a given set of circumstances and make a determination. If they are wrong, God knows we have enough appellate courts to reverse them.

**Ms. McDonald:** Mr. Speaker, I would like to correct the misimpression that the Member for Burnaby (Mr. Robinson) had proposed a motion which involved the age of the child. That is not the case. That is the motion of the Hon. Member for Mount Royal (Mrs. Finestone).

**Mr. Deputy Speaker:** Order, please. I regret to interrupt the Hon. Member for Broadview-Greenwood (Ms. McDonald) who, I believe, has already spoken. Is there unanimous consent to allow the Member to speak again?

**Some Hon. Members:** Agreed.

**Ms. McDonald:** Mr. Speaker, I rise on a point of order. I have spoken only on Motion No. 20. I spoke very briefly and I would like to make a few very brief remarks on Motions Nos. 21 and 26.

**Mr. Deputy Speaker:** The Member is correct in what she has said. However, the Speaker has said that these motions

### *Divorce Act*

have been grouped for debate. In any event, the House has given unanimous consent for the Member to speak. The Member may speak.

**Ms. McDonald:** Thank you, Mr. Speaker. I will be very brief indeed.

I do want to point out one difficulty with Motion No. 21. I think that most of the points raised by the Hon. Member are perfectly reasonable, whether one believes in a checklist or not. However, point (d) refers to the ability and willingness of each person to provide the child with guidance and education. This also includes the necessities of life and any special needs of the child.

This has, in fact, been used in court cases to argue against custody being given to women because the economic circumstances of women are so much less favourable than those of men. There are instances in which it has been argued by the husband that his financial advantages would be such that the child should be given to him for purposes of custody. We think it would be very wrong that the ability of a husband to earn more money than a wife, as a result of all kinds of discrimination, should be a criterion in making these decisions.

Similarly, one worries about the reference in Motion No. 26 to the sex of the parent. I think that the welfare of the child is perfectly clear as it is, and we do not want an additional qualification. Adding the sex of the parent seems to imply that the courts have been making mistakes about this and need to be given additional guidance. I do not think that is the case.

**Mrs. Finestone:** Mr. Speaker, I rise on a point of order. Section 15 of our Charter of Rights and Freedoms with regard to equality indicates that one may not discriminate on the basis of sex. That is the reason it is in there.

**Mr. Speaker:** Order. I think the Hon. Member is using a point of order to try to speak again on the Bill. Members may speak only once on a matter.

**Ms. Copps:** Mr. Speaker, I rise on a different point of order. I think the Chamber agreed to hear the Member for Broadview-Greenwood (Ms. McDonald) a second time because of the grouping of the amendments and the confusion about which amendments were being discussed. I believe that the Member for Mount Royal (Mrs. Finestone), whose amendment is being attacked, did not have a chance to address that in her comments. Perhaps, with the unanimous consent of the House, we could allow the Member for Mount Royal to address the grouped amendments with particular attention to the amendment which she did not have a chance to address in her initial remarks.

**Mr. Speaker:** I take it the Hon. Member for Hamilton East (Ms. Copps) is suggesting that she wishes that the House consider whether it wants to hear the Hon. Member for Mount Royal (Mrs. Finestone) by unanimous consent a second time. Does the House wish to do so?

**Some Hon. Members:** Agreed.