

*Superannuation*

because she and her second husband cannot afford to survive without her receiving this veteran's pension.

Will the Minister review her case and assure her that the Department will not claim the payments that she received which unknown to herself were considered "illegal"? I find this such a difficult case to deal with that I think it deserves compassion.

**Mr. Merrithew:** I am not sure whether I completely understand the point made, Mr. Chairman. I understand the widow married and is now going to divorce and I suspect to continue living common law.

**Mrs. Stewart:** I don't know.

**Mr. Merrithew:** Nobody knows. Uniquely in veterans' pensions if the second marriage failed there was always a provision whereby the surviving spouse could reapply for the survivor's benefits, so she will be covered at any rate. If I can have more details I will be glad to give a very specific answer.

**Mrs. Stewart:** Mr. Chairman, I thank the Minister. I will forward information to him about this case and hope that he will deal with it compassionately.

[Translation]

Clauses 32 and 33 agreed to.

[English]

On Clause 34—*Resumption of allowances to spouses*

**Mr. Whittaker:** Mr. Chairman, I have a couple of questions perhaps dealing with the matter of retroactivity of these clauses.

As I noted in my speech there was no provision for retroactivity or retroactive payments to those who have remarried up until now and have had to forgo their payments under the survivor pension benefits. Is the Government planning to deal with the question of retroactivity? If so, when is it planning to deal with it?

Will the Government be filing a statement of defence in the action to which I have referred, that of *Nona Horswill vs. Her Majesty the Queen in Right of Canada*, dealing specifically with Clause 8(d) with reference to the retroactivity? Has the Government calculated the cost of such a retroactivity of payment provision in looking at this and making a decision?

**Mr. Crosby:** Mr. Chairman, let me begin to answer the Member by saying that with respect to the cases now before the courts, I think the Government's position is

that it would be inappropriate to make any comment at all that would have any effect whatever on those cases. I realize the Member is concerned about the eventual outcome of them, but it is not something with which we can deal.

I want to point out to the Hon. Member first of all that in the past cases where remarriage benefits were reinstated there were no retroactive payments. That would be under the Judges Act and the Canada Pension Plan legislation. I would have to say that there has almost been a precedent established that retroactive payments are not made. Governments are always looking at cases, but the apparent view is that retroactive payments are not appropriate in these situations, both for cost reasons and just simply in terms of the balance of rights.

I want to take the opportunity to mention, because the Hon. Member mentioned the retroactive aspect, that there are cases where payment has been made to a recipient requiring repayment of the basic method of recovering, that is, a minimum of 10 per cent of the monthly pension. In cases where that imposed a hardship, a further reduction of 5 per cent would be considered. I want that to be on record.

**Mr. Whittaker:** Mr. Chairman, first, I am afraid I cannot accept the answer with respect to the court case. I have not asked for comment on the court case. What I have asked specifically, I believe as a lawyer, can be answered.

Does the Government intend to file a statement of defence? I do not think that jeopardizes the court case or any part of it and, if the Government does, when?

Second, with reference to the problem that was mentioned and with which he has just dealt, it seems to me that there are discretionary abilities within Departments to forgive in the case of hardship. I know of some personally. I dealt with four clients in the past that have been forgiven based on hardship. Perhaps the Minister might have a look at that.

**Mr. Crosby:** Mr. Chairman, I think the Minister of Veterans Affairs may want to deal with the hardship aspect. I understand that a statement has been filed in the case to which the Member refers.

All I can do is repeat myself and say that is not really part of our consideration. I think the Member should know that there will be other opportunities to raise the problems with respect to that case. I am not attempting to cut the Member off at all. I am just saying that I do not