

Divorce Act

● (1750)

I see this amendment as an additional means of ensuring that those fathers who want to maintain ongoing contact with their children and who want to ensure that access is a reality have to appear before the court in order to facilitate that process. I note that the amendment refers to care and control. Of course, the concept of care and control is one which is not found elsewhere in this legislation, since Your Honour has ruled out the amendment which made reference to it. So the concept of care and control, as opposed to custody, as I understand it, is one which is found only in this proposed amendment.

We agree with the thrust of the amendment. We are certainly sympathetic to the concerns of those fathers who genuinely feel that they have been denied the right to play a full role in the upbringing of their children. A number of other amendments which were adopted by the committee go some distance in meeting their concerns. Certainly, a number of the proposals which they made, in particular the proposal for a presumption of joint custody, were rejected by the Committee.

To the extent that this particular amendment facilitates access and contact between fathers and their children, we support the amendment.

Mr. John Nunziata (York South-Weston): Mr. Speaker, I too rise in support of Motion No. 28. The intent of this motion is to confer greater rights to non-custodial parents. As the Hon. Member for Mount Royal (Mrs. Finestone) has pointed out, at the committee level we heard from a great many interest groups on the question of custody and access. Perhaps the group which was most moving was a group representing single, non-custodial fathers. We were told with considerable sincerity, integrity and honesty by non-custodial fathers that they are being short-changed in light of the present legislation. I submit that if this particular piece of legislation passes they will continue to be short-changed with respect to custody and access. Because of the statute law which exists, and because of the jurisprudence which has developed around that statute law, non-custodial parents are shut out from the care and upbringing of a child. That is unfair and inequitable.

The individuals who came forward on this particular subject convinced us that it was time to insert into the legislation a presumption of co-parenting. That topic met with considerable discussion and debate in our caucus and at the committee stage. There was no unanimity achieved with respect to the subject of the presumption of co-parenting.

In your wisdom, Mr. Speaker, you have ruled that our motion with respect to co-parenting is out of order. I do not intend to challenge Your Honour's ruling. However, as a result of that ruling Your Honour has allowed debate on Motion No. 28, which only goes part way with respect to the question of co-parenting. It is my belief that it is in the best interests of a child—any child—to have the love, affection and input of both parents. That is just not happening under the present legislation.

Under the present legislation one parent is given *de facto* custody of a child and the other parent, generally speaking, the father, is given access once every weekend, or once every second weekend, for a couple of hours. In my view, that is not in the best interests of a child or children of a marriage or, for that matter, for children born of a commonlaw relationship. Of course, we are not dealing with commonlaw relationships here; we are dealing with the children of a marriage.

It is in the best interests of a child to have both parents participate in the upbringing of that particular child. When I speak of participation I am not talking about the non-custodial parent simply having access once a week or once every two weeks. What I am suggesting is that the non-custodial parent should, in the best interests of the child, have some say in the upbringing of that child. He or she should have some say in the religious upbringing of the child and some input as to the type and quality of education the child should receive.

I suggest that if non-custodial parents were given more input in the upbringing of a child, more court awards with respect to support for children would be honoured. I say this because we were told that there are a great many non-custodial parents, generally speaking fathers, who have been ordered by the courts to pay support for their child or children. They have said: "Why should I pay support for a child who I cannot be involved with in terms of their upbringing? Why should I have to pay support simply to see my child or children once every two weeks for an hour on a Sunday afternoon?" So fathers have decided to disobey court orders. We were told by fathers' organizations that if fathers are given more say then they might start honouring their court orders for maintenance and support of children. I use the example of non-custodial fathers; but it could apply equally to non-custodial mothers as well. Generally speaking, however, in our society we are dealing with non-custodial fathers.

I was convinced, as were a number of other members of my caucus—not all, but a significant number—that we should support a move toward a presumption of co-parenting in the legislation. When one speaks of a presumption of co-parenting it does not mean that a child is with one parent for one week and another for the next. We are not speaking of *de facto* physical custody of a child. When we speak of the presumption of co-parenting what we are saying is that a court—I believe Your Honour is motioning that my time has almost elapsed.

Mr. Speaker: I am more worried about the question of relevancy, since the Hon. Member seems to be speaking at great length about a concept which interests him but which is not the concept of the amendment.

Mr. Nunziata: We were denied by the Government—

Mr. Speaker: Order, please. I think the Hon. Member might bring himself to the question of relevancy.

Mr. Nunziata: Motion No. 28 states:

Where one person is granted sole care and control the child(ren) of the marriage under this section and manifests an unwillingness to comply in whole or in substantial part with the terms of an order respecting maximum contact