

*Divorce Act*

**Mr. Deputy Speaker:** The question is on Motion No. 18 standing in the name of the Minister of Justice (Mr. Crosbie). Is it the pleasure of the House to adopt the motion?

**Some Hon. Members:** Agreed.

Motion No. 18 (Mr. Crosbie) agreed to.

**Mr. Deputy Speaker:** The next question is on Motion No. 19 standing in the name of the Hon. Member for Burnaby (Mr. Robinson).

**Ms. McDonald:** Mr. Speaker, we would like to withdraw this motion.

**Mr. Deputy Speaker:** Is there unanimous consent that the motion be withdrawn?

**Some Hon. Members:** Agreed.

Motion No. 19 (Mr. Robinson) withdrawn.

**Ms. Lynn McDonald (Broadview-Greenwood)** (for Mr. Robinson) moved:

Motion No. 20

That Bill C-47, be amended in Clause 16 by striking out line 30 at page 13 and substituting the following therefor:

"child and shall not take into consideration the sexual orientation of the parent."

**Mrs. Sheila Finestone (Mount Royal)** moved:

Motion No. 21

That Bill C-47, be amended in Clause 16 by striking out line 30 at page 13 and substituting the following therefor:

"child including;

- (a) the love, affection and emotional ties between the child and,
  - (i) each person making an application under section 16(1),
  - (ii) other members of the child's family who resides with the child; and
  - (iii) persons involved in the care and upbringing of the child.
- (b) the views and preferences of the child, where such views and preferences can reasonably be ascertained;
- (c) the length of time the child has lived in a stable home environment;
- (d) the ability and willingness of each person making an application under section 16(1) to provide the child with guidance and education, the necessities of life and any special needs of the child;
- (e) the permanence and stability of the family unit(s) with which it is proposed that the child will live; and
- (f) any indications of physical and mental abuse on the part of one spouse toward the other spouse, or as between a parent toward the child."

Motion No. 26

That Bill C-47, be amended in Clause 16 by adding immediately after line 44 at page 13 the following:

"(11) In making an order under this section, the sex of the parent or the age and sex of the child(ren) of the marriage are not relevant to a determination of an application made under this section."

**Ms. Lynn McDonald (Broadview-Greenwood):** Mr. Speaker, I would like to address Motion No. 20 which says that the court shall not take into consideration the sexual orientation of the parent in making decisions about custody. It is our position that the welfare of the child should be the criterion on which the court makes these decisions. There should be no arbitrary discrimination including that of sexual orientation. The court

has already developed perfectly adequate criteria by which it can decide which is the more suitable parent for custody. We want to make it very clear that sexual orientation should not be a bar to custody. Certainly there have been cases where this has been argued. However, we think in a country which has made decisions about non-discrimination, where we have very clear criteria which our courts are already working with, that the welfare of the child should be the paramount consideration, that this is perfectly adequate.

**Mrs. Sheila Finestone (Mount Royal):** Mr. Speaker, I would like to address Motion No. 21. Awarding custody to either parent is a matter requiring very serious consideration. There are a number of elements which need to be considered. What I have attempted to do here is to enunciate a series of considerations which the court should take into account as a guide or tool in making its decision. It is not an exclusive list. The Parliamentary Secretary and I, as well as Members of the committee concerned, had an exchange on this particular issue. What I have been saying from the very beginning is that it is very important that the court, counsel and those parents who decide to read the law, understand exactly what the intent is.

I find the argument concerning the "tender years" doctrine, a very important doctrine, to be a mild argument and not enough to remove the other things which I think have to be considered.

I have indicated in my motion that the factors which should be taken into account when making an order for custody are the following: The love, affection and emotional ties between the child and either the father, mother, the grandparents, paternal or maternal, should be considered. Each person making the application for custody has to be examined very closely, their motives, what they can do for the child and what are the best interests of the child. This includes other members of the child's family who reside with the child and persons involved in the care and upbringing of the child.

I have also suggested that the views and preferences of the child, where such views and preferences can reasonably be ascertained, should be considered. That is a fundamental principle. Children in today's society, perhaps even in previous societies, but particularly in this wide open world of communications, know what they think and they should be allowed to express their preference. It should be defined in the law. It should not be based on practise or precedent. It should be clear and easily readable. If we want a humanized approach then we want a law which is readable and comprehensible, not only for counsel but for those upon whose lives it will impact.

The length of time the child has lived in a stable home environment is also a rather key issue. The ability and willingness of each person making an application under this clause to provide the child with guidance and education, the necessities of life and any special needs should be examined and that makes good sense. Parents who sit down with mediators or family counsellors can use this as a check list to further the discussion. The permanence and stability of the family unit with which it is proposed that the child will live is very