

*Family Allowances Act, 1973*

tween the Chair and the Hon. Member who is speaking. The Hon. Member for Vancouver East.

**Mr. Waddell:** Thank you, Mr. Speaker. I would ask my friends in the Liberal Party to conduct their conversation behind the scene.

There are a number of matters that the Government should take into account with respect to the legal argument. It should read *The Uniform Law Conference of Canada on Vital Statistics*. It should read *The Canadian Encyclopedia Digest of Ontario* with respect to Vital Statistics, Title 146 as well as Title 57 on Life and Death. The evidence section of that specifically shows that the usual practice in our law is that the provincial court must declare someone dead. It is a serious procedure and the person asking for that declaration of death has a burden of proof to show that the person has been missing and has not made any contact with anyone else.

The old common law required a period of seven years to expire before someone could be declared dead. However, someone could be declared dead sooner if the proper evidence were presented. This required a preponderance of evidence, not evidence beyond a reasonable doubt as in a criminal case.

This Bill essentially gives the Minister divine power to declare a missing child dead as a procedural matter, according to my friend from York East. I believe that this is an emotional matter for the parents of missing children. If the Minister of National Health and Welfare can declare a child dead according to an administrative act, it may mean that the police will stop looking for that child. Rather than being an administrative procedure, it could be an emotional blow to parents whose children have been declared dead by the federal Government.

It appears, from a review of the evidence from the committee, that this provision was slipped into this Bill dealing with the deindexation of family benefits. One group, namely Child Find Quebec, was able to express its concern only in a minimal way. Our critic in this area, the Hon. Member for Vancouver East (Ms. Mitchell) tells me that other groups who are interested in this problem never had an opportunity to respond to this question.

I caution the House that when the Minister says that this is a procedural matter, it means that the federal bureaucracy wants to proceed quickly without perhaps considering the human cost and constitutional consequences.

Let me draw to the attention of the Minister the Uniform Presumption of Death Act which was drawn up by the Uniform Law Conference of Canada in 1976. That Act includes a section dealing with the making of an application by originating a notice of motion and states that the court must be satisfied that a person is missing and appears to be dead.

I understand that the bureaucracy is interested in having a fast procedure. For instance, it could very easily cut off the child allowances for those children who died in the Air India crash. I can understand the bureaucratic urge to be able to cut off easily the allowances of other missing children. On the other hand, we must consider the effect of this on the parents. The Hon. Member for Ottawa-Vanier (Mr. Gauthier) talked

about the use of the family allowance by parents to pay for the costs of searches, telephone calls and so on.

I suggest that the Government could delay this and make the proper applications to a provincial court, as has been the tradition in our law.

Let me cite the Quebec Civil Code. Article 70 of the Quebec Civil Code states:

• (1230)

[Translation]

Any death which has occurred in the Province of Quebec may be judicially declared in cases where, in the opinion of the court—

[English]

In the opinion of the court.

[Translation]

—it may be held to be certain and it is impossible to draw an act of burial.

The same applies when the death has occurred outside the Province of Quebec or when it is impossible to establish the place where it occurred, if the deceased had his domicile in the Province of Quebec.

[English]

Clause 71 goes on to talk about fixing a date of death taking into account the presumptions drawn from the circumstances, and so on. That is the law of Quebec. The traditional law in Canada is that the provincial courts declare death.

It is not good enough to say, "Well, the provincial law is talking about a death certificate". That is getting out of the matter on a technicality. I do not think that will hold up in court if it is constitutionally challenged. I know the Department has said: "Well, we have been doing this in the Canada Pension Plan". We have the right to declare ages and so on, which normally one would think would be provincial law. I say that is apples and oranges. One might argue that that has never been challenged.

Has the Minister consulted the provinces? I note from debates in committee that the Member for Vancouver East, considering that this is a possible constitutional question and considering it changes fundamentally the law of Canada, asked whether there had been any consultations with the provinces. At page 15:24 of the committee hearing for November 21, 1985, Mr. Fortier said:

I think I can answer some of your general concern here. I was just consulting with my legal advisor, who tells me that there has been no consultation with provincial authorities. They feel that they are fully within their authority to legislate in this matter and there is no need to consult at this level.

I think that is irresponsible. If you are walking into a provincial domain, which is so set in Canadian law, both in Quebec civil law and English common law, you should at least consult with the provinces.

I refer to the Standing Joint Committee of the Senate and of the House of Commons on Regulations and Other Statutory Instruments, on which I have the privilege to serve, which has a check-list of things to scrutinize when studying regulations. I know this is not a regulation but a Bill, nevertheless I think it is worth looking at.