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Chair

Mr. Michael Levitt

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• (1550)

[English]

The Chair (Mr. Michael Levitt (York Centre, Lib.)): I'm calling to order this meeting of the Standing Committee on Foreign Affairs and International Development.

I want to thank members for making themselves available this afternoon, on what we consider a very pressing issue. We're going to be dealing with the clause-by-clause consideration, pursuant to the order of reference on Monday, September 10, 2018, of Bill S-240, an act to amend the Criminal Code and the Immigration and Refugee Protection Act (trafficking in human organs).

With that, we're going to move to clause-by-clause consideration.

(Clause 1 agreed to)

(On clause 2)

The Chair: MP Wrzesnewskyj, I believe we have several items to discuss here. Please proceed.

Mr. Borys Wrzesnewskyj (Etobicoke Centre, Lib.): That's correct. These are minor changes. The purpose of the changes in three places is to ensure that substitute decision-makers—guardians—do not unwittingly end up criminalized. It's just a small refinement to the wording.

More specifically, the first change would be to amend clause 2 by replacing line 3 on page 2 with the following:

person from whom it was removed or a person lawfully authorized to consent on behalf of the person from whom it was removed did not give in-

The second place where the same change occurs is in replacing line 8 on page 2 with the following:

knowing that the person from whom it was removed or a person lawfully authorized to consent on behalf of the person from whom it was removed

The third change replaces lines 12 to 15 on page 2 with the following:

does anything in connection with the removal of an organ from the body of another person on behalf of, at the direction of or in association with the person who removes the organ, knowing that the person from whom it was removed or a person lawfully authorized to consent on behalf of the person from whom it was removed did not give informed consent

The Chair: Is there any debate?

Mr. Genuis.

Mr. Garnett Genuis (Sherwood Park—Fort Saskatchewan, CPC): Sorry, Mr. Chair, I'm seeing this amendment for the first time,

which is fair enough. I know we're all working through this. I'm reading the online version, which doesn't have the line numbers, so it was a bit difficult for me to follow what Mr. Wrzesnewskyj was reading out. Maybe, just to be clear, for my—

The Chair: Do you want to just do that? You don't have to read the full text, but just where the line numbers are.

Mr. Borys Wrzesnewskyj: Perhaps it would be easier if we had extra copies with the lines numbered.

Mr. Garnett Genuis: Yes. Are there copies of the bill that have the line numbers in? As I said, the online version doesn't have them.

Mr. Borys Wrzesnewskyj: It would help facilitate with the amendments as we go forward.

The Chair: No, I don't believe we have that.

A voice: We have it manually, yes.

Mr. Garnett Genuis: We're all friends today—at least in this room, so I hear.

Mr. Borys Wrzesnewskyj: Would you like me to repeat it?

Mr. Garnett Genuis: We're on line 3, so this is—

Mr. Borys Wrzesnewskyj: The first place where the phraseology is inserted is in line 3 on page 2, and the wording that's inserted after —

The Chair: He has the wording. I don't think you have to worry about that.

Mr. Borys Wrzesnewskyj: Okay.

Mr. Garnett Genuis: In this pencilled version I was given, the lines that are crossed out are the lines that are crossed out in the....

The Chair: It's line 8 on page 2, and then lines 12 to 15 on page 2.

Mr. Borys Wrzesnewskyj: The intent is to, as I mentioned earlier, make sure we don't inadvertently criminalize guardians or substitute decision-makers, people who are legally substitute decision-makers.

Mr. Garnett Genuis: Thank you, Mr. Wrzesnewskyj, for assisting with the clarification of that.

I have no problem with the substance of this amendment.

As a general point, of course, we know that by amending this legislation it means that it has to go back through the Senate. I just want to say on the record that I appreciate the commitment of everyone and every party that we've been discussing this with to move forward. We are moving forward as a committee, it seems, with amendments, based on the will of the majority, based on the expectation and the assurance that every effort will be made in the House, in the Senate, to make sure this gets done.

I think we understand the importance of doing that. I sure hope that there isn't any funny business that happens afterwards. I would not ever think the people we've been working with across the way would countenance that, but there are many moving parts in the legislative process, so we are moving forward in good faith on an expectation that all of the assurances we've been given by people in the Senate and in the House are for real. I and others will be extremely upset if that doesn't pan out. That means hopefully moving forward with unanimous consent to expedite a third reading and co-operation in the Senate. I'm hopeful we can do that.

On that basis, let's make these amendments, if they can work, and I sure hope they do.

● (1555)

The Chair: Thank you, MP Genuis.

MP Alleslev, please.

Ms. Leona Alleslev (Aurora—Oak Ridges—Richmond Hill, CPC): Without contradicting my honourable colleague, I would like to hear from the opposition that the amendments are so significant in structural change, that they're so important, that we need to make these amendments. Ultimately, I feel that there's a potential for the perfect being the enemy of the good.

There's clarification and stuff like that, and we all like to be wordsmiths, but can we argue fully and completely that the substance of this proposed bill cannot go forward, absolutely and unequivocally, because the amendments we need to do here today are so materially significant that we just can't get there from here despite all the work that has already gone into it?

The Chair: MP Wrzesnewskyj, please.

Mr. Borys Wrzesnewskyj: I'd just like to say I share the same concerns that Mr. Genuis has expressed. When he said "I and others", I include myself in the "others", although once again, and I don't want to belabour this point, I introduced this legislation in its first version 11 years ago. Perhaps more than some realize I have invested a tremendous amount of my efforts and time and political capital to make sure that this moves forward. As we know, this place can be unpredictable at times, but we've done everything that we can to have predictability and to make sure.

This is the fourth time this legislation has come forward. In fact, in this fourth version, Mr. Genuis, as you know, I seconded you. I walked across the aisle and sat next to you in the House to show my support. Ms. Alleslev said "unequivocally". This isn't a place where we can state anything unequivocally but, my goodness, the efforts that have gone on over 11 years to try to get us to this point, I'm confident we can bring this home. I believe that the amendments make that opportunity all the more real to make sure that this does become the law of the land in this horrific industry of trafficking

human organs, and that Canada sets an international example with the legislation.

The Chair: Thank you, Mr. Wrzesnewskyj.

Mr. Abouttaif.

Mr. Ziad Abouttaif (Edmonton Manning, CPC): In respect to Mr. Wrzesnewskyj's point, as I said, I have to believe that your heart is in this bill fully.

Usually when people, especially on the government side, come with amendments, they have a reason to do so. On the government side, there is some uncertainty over this bill, and they're bringing those amendments forward just to make sure that they satisfy some members or maybe the government at large.

In respect to that, I think the assurances that my colleague Mr. Genuis has asked for...I'm sure you've heard them. They're very legit and very sincere in that we need to make sure that we pave the way freely for this bill to make it through without any unfortunate hurts that we would definitely not like to see.

● (1600)

The Chair: Let me take this opportunity to say that I think the comment made around this table from all parties, at every opportunity, is that this is a bill that this committee considers to be important. I think we are all working with the goal of seeing it passed in the House. I appreciate the goodwill that exists around the table and the desire to work using all means to ensure that it receives smooth passage in both places.

With that, if there's no more debate, does the amendment carry?

(Amendment agreed to)

The Chair: Now, we're on to the next amendment.

Mr. Wrzesnewskyj.

Mr. Borys Wrzesnewskyj: This is an amendment to clause 2 as well.

The amendment would delete lines 18 to 23 on page 2. That clause specifically deals with the definition of informed consent. Consent was referenced in all three of the first incarnations of this legislation, but not the definition. I understand this was a later addition.

With proper intent, sometimes people create some additional challenges. In this case, the challenge of leaving it as a reference only to consent is that informed consent is a health law concept, as opposed to a criminal law concept, and people much better versed in law, and especially constitutional law and the breakdowns between provincial and federal jurisdictions, have flagged this. In fact, this is something that was debated and discussed during the debates on assisted dying legislation and the definition of informed consent was specifically excluded at that time from the government's legislation so as not to inadvertently cause jurisdictional problems in that legislation. The same would hold here.

The Chair: Thank you very much.

Mr. Abouttaif.

Mr. Ziad Aboultaif: My question is how this proposed amendment would strengthen the existing bill. I see that in 240.1 (1)(c) the word “reckless” is used regarding whether or not the person gave informed consent. If that's going to change the notion of the original bill...I don't know where this is going to come into play and strengthen the bill itself.

Mr. Borys Wrzesnewskyj: When I drafted the first piece of legislation, it did take a number of months. Many of these things were looked at, and consent is quite clear. It's understood. As I said, in my first two pieces of legislation and the Honourable Irwin Cotler's introduction, that paragraph was not part of it.

I think there was the best of intentions by providing additional wording around it, but unfortunately, just as it would have with the assisted dying legislation, it would have potentially created jurisdictional issues in the legislation. It doesn't necessarily add anything while creating potential jurisdictional issues.

As I said, I'm not a lawyer; it's just because I've spent so much time looking at these various versions of the legislation. If perhaps the parliamentary secretary, who is a lawyer, feels he could provide greater clarity, that would be tremendous, but if my explanation satisfies, then—

• (1605)

The Chair: MP Wrzesnewskyj, I can also point out that we have Nathalie Levman, senior counsel, criminal law policy section, Department of Justice, who might be able to provide some clarification.

Would you like a clarification on it? Would that be helpful?

Mr. Borys Wrzesnewskyj: That's even better.

Ms. Nathalie Levman (Senior Counsel, Criminal Law Policy Section, Policy Sector, Department of Justice): I'm not sure if it's better.

Defining informed consent in the Criminal Code for the purposes of one set of provisions and not defining it for others could also create statutory interpretation problems. That's one thing we want to avoid.

There were numerous reasons informed consent wasn't defined for the purposes of the medical assistance in dying provisions. One of them was that it has clear meaning in provincial and territorial health law. It means the patient has to understand and agree to the nature, risks and consequences of the medical procedure.

My understanding from colleagues who worked on the medical assistance in dying legislation was that the medical community wished the health law definition to apply, and not have a definition in the Criminal Code. Because it has clear meaning in law, I would suggest that it's not necessary to define it. You wouldn't want to define it differently from how health law principles have interpreted it.

The Chair: Thank you very much, Ms. Levman.

MP Genuis, please.

Mr. Garnett Genuis: It's the interesting situation we find ourselves in here, because the arguments about why this doesn't need to be in were arguments that were made originally by, I think,

the mover of this bill in the Senate—about why the explicit definition of informed consent isn't necessary. In principle, my position would align with that proposing the amendment, but at the same time, by removing it we are repudiating an amendment that was made by the Senate. It was an amendment made in committee.

I don't know if Ms. Levman is the best person to answer this, but did you follow the testimony that took place in the Senate committee on this? My understanding is a witness recommended this addition. Do you have specific reflections on the arguments they made and why those arguments weren't correct?

Also, could you tell us a little more about the statute interpretation problems this creates? If this is simply unnecessary but is not doing any harm, then it doesn't seem worth risking the disagreement with the Senate. If real legal problems are created, not just redundancies, then we should know that too.

The Chair: Thank you.

Ms. Levman.

Ms. Nathalie Levman: Those are excellent questions.

When you define the same term in one place and for one purpose and not for another, and then the courts interpret that, they may assume that Parliament intended it to mean two different things in two different contexts. They may be confused as to what Parliament intended, and it can create some interpretation problems. It's impossible to speculate as to what the nature of those problems is or could be, but we always try to strive for consistency in the Criminal Code. Consistent approaches lead to consistent applications of the law, so we try to adhere to a basic criminal law principle when we draft criminal legislation.

To answer your first question, I have read the record and I understand the arguments that were put forward, but it's my understanding that this person was maybe not aware of the fact that a specific decision had been taken in another context—the criminal law context that crosses over with health law principles—to not define that term, and allow the provincial and territorial law on the issue to fill that gap as requested by the medical community.

• (1610)

The Chair: Thank you, Ms. Levman.

Parliamentary Secretary Virani, please.

Mr. Arif Virani (Parkdale—High Park, Lib.): Yes, I have just two points.

One is that I think clarity, consistency and avoiding confusion in the Criminal Code are important objectives. This is something that I think is a non-partisan issue. It's something that all governments strive for.

As an example of that, there are zombie provisions in the Criminal Code that we've sought to remove and that members of Mr. Genuis's party have sought actively to remove, just for that very reason. Having provisions in the Criminal Code that are no longer operative or are inconsistent can lead to misinterpretation of law.

The second point is just to respond to what Mr. Abouttaif raised, Ms. Levman, if you can let us know. He referenced the fact that informed consent is used in the prior clause, in paragraphs 240.1(1) (a), (b) and (c). Is it your testimony before this committee that notwithstanding if the definition were removed, the ability to enforce these new provisions, were they to become law, would not be jeopardized? Phrased in another way, does the lack of a definition compromise the ability to enforce this were it to become law?

Ms. Nathalie Levman: No. I don't believe that it does jeopardize the way in which these provisions would be implemented, because it would be the health law definition that would be used to interpret each of these offences. As I've stated, the health law understanding of what informed consent means is clear. What it means is that the patient has to understand and agree to the nature, risks and consequences of any given medical procedure. I think that's well established.

The Chair: Thank you.

If there's no further debate on the amendment, does the amendment carry?

(Amendment agreed to)

The Chair: We will now move to the third amendment.

MP Wrzesnewskyj, I think this is yours too, within clause 2.

Mr. Borys Wrzesnewskyj: That's correct.

In testimony we heard earlier this week, and more specifically from Mr. Matas, there had been some debate around the financial transaction paragraph in clause 2, and he provided some helpful insights. He referenced the wording used in the Istanbul declaration, and I believe it provides, once again, greater clarity.

I move that in clause 2, we replace lines 28 to 30 on page 2 with the following:

person, knowing that it was obtained for consideration for the purposes of exploitation, or being reckless as to whether or not it was obtained for those reasons.

The key wording there is “for the purposes of exploitation”. That comes from that Istanbul declaration. As I mentioned, that was a very helpful suggestion from Mr. David Matas.

The Chair: Thank you, MP Wrzesnewskyj.

Is there any debate?

MP Genuis.

Mr. Garnett Genuis: This is more of a technical question. Maybe Mr. Wrzesnewskyj or Ms. Levman, or both, can comment on this.

When somebody receives an organ in the context of trafficking, they are not so much intending to exploit; they are simply indifferent to the exploitation. Their intent is to get an organ for themselves. They're not aiming at exploitation as a core objective. Their objective is to get that organ, but exploitation is part of the process. Maybe there's something in the legalese here that I'm missing, but the term “for the purposes of exploitation” doesn't seem quite as clear.

I see the benefit of amending it, but to me, something like “obtained for consideration in a way involving exploitation” seems

clearer, in plain English at least. Maybe there's some legal connotation that I'm missing.

Mr. Borys Wrzesnewskyj: I defer to Ms. Levman's thoughts on this.

Ms. Nathalie Levman: Thank you.

That's an excellent question. I think what you're pointing to is a conceptual problem, in that you don't understand how someone can purchase something with the intent to exploit. Essentially, “obtained for consideration” is another way—a technical legal way in contract law—of saying “purchase”. I would agree that there are some conceptual problems with that language. I'm not sure what it means myself.

• (1615)

Mr. Garnett Genuis: It's a good thing I asked.

The Chair: Do you have a suggestion on language to be able to address this?

Ms. Nathalie Levman: Unfortunately, I'm here to answer legal and technical questions about the bill and the amendments proposed. I'm not actually sure what the policy objective is with this amendment, which also makes it complicated.

Mr. Garnett Genuis: Maybe I can piece it to that.

Look, the concern was—and I felt prosecutorial discretion was sufficient to address this—that there may be some ambiguity around somebody getting expenses covered in the context of receiving an organ donation. Someone is travelling to another place and receiving an organ that is being donated to them, but that person receives.... Let's say they have hotel and travel expenses paid for them as part of that process of organ donation. Could that be misunderstood as doing it for consideration?

It seems to me they're not doing it for consideration in that case, very clearly. They're donating it and getting expenses covered. But the question was: Could we further clarify this clause to ensure that it would not catch people in the net who are receiving organs from somebody who is getting expenses and so forth covered?

Ms. Nathalie Levman: I agree that “for consideration” would likely not cover reimbursement of expenses. That language is contract language. What it means is that a person exchanges something for something else. Reimbursing expenses wouldn't fall within that category, in my view, although I'm not a contract law expert; I'm more focused on criminal law. But I do deal with another provision that uses language like that.

The other issue is the term “exploitation”, which is a very subjective term. People have different ideas of what that means, especially in contexts involving vulnerable people. So, you might want to consider that language.

The Chair: MP MacGregor, please.

Mr. Alistair MacGregor (Cowichan—Malahat—Langford, NDP): Thank you.

I also have a question for Ms. Levman. I'm using some notes from my colleague, who is the regular member of this committee.

If consent regardless of the circumstances in which it is given is ineffective in contexts such as sexual assault and human trafficking, do you think the treatment of consent in the context of organ trafficking should be different or should be in line with those?

Ms. Nathalie Levman: I'm not sure I understand exactly. In the trafficking provisions, it specifically states that victim consent is irrelevant. It's a basic principle of criminal law that, if you are exploited, and by that I mean according to the definition in section 279.04, even if you consented to the conditions that created your exploitation, that doesn't make it not a criminal offence. It's still a criminal offence.

Could you clarify what your concern is about consent?

Mr. Alistair MacGregor: There has obviously been some concern raised over.... You said "exploitation" is a subjective term. I'm just trying to add my thoughts on how we clean this clause up.

The Chair: MP Saini.

Mr. Raj Saini (Kitchener Centre, Lib.): Ms. Levman, I had some concerns about the way this was written, and I used a very simple but I think very profound example. I immigrated here from India. I have a large family back home and a very small family here. I think that speaks to millions of Canadians who have immigrated here from parts of the world where large families are the norm.

If someone from here returned to their country of origin and they received an organ, legitimately, from a family member, whether it be a first cousin, second cousin, third cousin, uncle, aunt, or whomever.... Obviously, as you can appreciate, in certain jurisdictions around the world the health care system is not as robust as ours, so they would have to go into the private system to have an organ transplant surgery done.

In that case, if a family member donates an organ to you, and you obviously covered the medical expenses required for that surgery, how would that process be impacted by what is here?

• (1620)

Ms. Nathalie Levman: These are very interesting factual situations. Of course, a court would have to consider all the facts of the case. If a case like this were to come before the court, and the court were to consider what amounts of money—let's say it's money—were paid in that situation, and determined that it was merely to reimburse those expenses, then my previous comments would hold. I don't believe a court would interpret that as obtaining for consideration.

If one were to pay an exorbitant amount and say it was to reimburse expenses and the court found that it was for more than the actual expenses, a court might pierce the veil, so to speak, and find that, no, in fact, this was an amount paid for the organ. This particular offence, as currently drafted, does cover situations where someone merely purchases an organ, regardless of whether the person who sold it consented, meaning even if they consented, as long as they received any kind of a benefit or consideration for it, the offence would apply.

The Chair: If I can just interject, I want to pose something else to you.

The Istanbul Protocol, which has been referenced here and is where the exploitation language came from, does reference a number

of scenarios where money can change hands. These include paying the donor of the organ for lost wages, medical expenses and medications. A number of items are listed that would be deemed excluded, which I suppose is the intent of the exploitation language there.

What are your thoughts on addressing that list of possible reasons that money might change hands, none of which go to the root of the exploitation category?

Ms. Nathalie Levman: As I've said, I do think "obtain for consideration" has a meaning in law, and that reimbursement of legitimate medical expenses would not be captured by that phrase.

I would like to point out that the Istanbul declaration and other health-related instruments really are focusing on the non-commercialization principle which we have in Canada in all of the human tissue gift acts. There is consensus that organs should not be commodified or commercialized internationally. Where there isn't consensus is on this type of offence, and where you extend extraterritorial jurisdiction over people—sick people—who go abroad to purchase life-saving organs from people they believe are consenting.

On that issue, it's criminal law, meaning that it's not a fine or a general civil ban; it's incarcerating people upon their return from receiving an organ, while they're healing. There isn't consensus on that, not even in the criminal treaties we have. The Council of Europe treaty specifically leaves it to independent states to determine whether or not they're going to extend their criminal law in that way. It's my understanding that only a very few countries, a handful, actually use the criminal law to address transplant tourism.

The Chair: Thank you very much.

MP Saini.

Mr. Raj Saini: Ms. Levman, just to make this clear, I gave you a unique example. The reason I don't want to broaden this out is that I think it really would affect a lot of people. From what I understand, you're telling me that if someone were to return to this country, they would not be captured under this legislation.

Ms. Nathalie Levman: We're assuming that the person went abroad, had an organ transplant there with a family member, reimbursed expenses at a reasonable rate and returned home. We're also pretending that this offence is in force.

Mr. Raj Saini: Yes.

Ms. Nathalie Levman: Would you be caught by that offence in that scenario? I do not believe so.

Mr. Raj Saini: Okay, that's fine.

Thank you, Chair.

The Chair: MP Genuis, please.

Mr. Garnett Genuis: Very briefly, in addition to that, I wanted to note, on Mr. Saini's point, that purchasing organs is illegal in India. It's illegal in any of these other countries. The question asked in the House was: What happens if someone goes abroad to a place where this practice is legal? To my knowledge, the only country where it's legal to purchase an organ is Iran, and they don't allow foreigners to purchase organs. It's almost certain that if somebody were running afoul of this law, they would already be running afoul of the domestic law where they were anyway.

We have to think about the standard of proof as well. If you were giving a bit more than expenses, it wouldn't meet the standard of proof. If it were exorbitant and clearly beyond a reasonable doubt that far more money was changing hands, it would be caught in Indian law as well as Canadian law. I think Canadians thinking about the case you're thinking about can rest pretty easy, given that information, and the response we heard.

• (1625)

The Chair: Thank you very much.

MP Wrzesnewskyj, please.

Mr. Borys Wrzesnewskyj: Having heard Ms. Levman's explanations, I believe that has assuaged some of the concerns that several committee members had expressed at our earlier meeting, so I withdraw this amendment.

The Chair: Can I seek unanimous consent to withdraw the amendment, please?

Some hon. members: Agreed.

(Amendment withdrawn)

The Chair: I believe the last amendment in clause 2 is MP Saini's, please.

Mr. Raj Saini: I'm going to put on my medical hat for this one.

I'm proposing that clause 2 be amended by deleting lines 34 to 39 on page 2. It removes the duty to report.

There are several issues with this duty to report. When you look at the medical profession, whether you're a doctor, nurse or pharmacist, I don't think you would break your medical privacy code to report to another authority. I don't think that would be possible; neither do I think it's necessary. Also, you are encroaching upon provincial and territorial jurisdiction in regard to health, which would be another issue.

The other thing is that the way it's written, it would broadly capture organ transplants that happened lawfully in Canada and you would have to create another reporting authority, which I think is unnecessary.

On the duty to report, I'll just give you a very clear answer. If somebody goes to get a transplant in another jurisdiction and they come to Canada and go to see a physician, the physician will not report that. If that patient comes to me, there are very specific, targeted medications for transplant patients. I will, under no circumstances, report it. If the person needs medical care in a hospital and a nurse is involved, there is no way that a nurse is actually going to report that.

This duty to report is not practical. It's going to create another regime, which is obviously going to take up resources. I don't think the duty to report is necessary, so I say we should just remove it.

The Chair: Thank you very much.

MP Genuis, please.

Mr. Garnett Genuis: Thank you, Mr. Chair, and thank you, Mr. Saini, for proposing an amendment and for your active engagement within the discussion. I do respectfully disagree with what you've proposed. I'll just make two points in response.

The first is on the exceptions in terms of confidentiality in a medical context. There are already exceptions in law for things around child abuse and around the reporting associated with gunshot wounds. These are things that doctors do. Hopefully they're not necessary to do very often, but they're things that are established in law because we recognize that the protection of vulnerable people at certain points in time exceeds that bond of confidentiality. I think that's right and appropriate.

In terms of the issue of the Governor in Council designation, there is nothing in this provision that precludes a designation of provincial bodies for the purposes of that designation. Arriving at those designations, when and where possible, in collaboration with the provinces and territories would be a very reasonable thing to do. At the same time, this is a question of tracking information for the purposes of criminal law, recognizing that there's health and there's criminal law and there's a point where there needs to be a dialogue between the two, and that obviously involves the engagement of different levels of government.

We're amending the Criminal Code here. To do that effectively, we need to establish the provisions for that designation. However, again, this should be implemented with a good level of provincial and territorial co-operation, including potentially in the process of that designation.

The Chair: Parliamentary Secretary Virani, please.

Mr. Arif Virani: Thank you very much, Chair.

In response to this discussion, I just want to contribute a few points.

The issue of, clearly, doctor-patient confidentiality is quite sacrosanct. It is purist on occasion. What is entered into the debate in the context of this bill has been the examples of the duty to report gunshot wounds and the duty to report child abuse. Those examples raised just now by Mr. Genuis were raised yesterday in the testimony with Mr. Matas. In both of those contexts, it is the provincial legislative mechanism that has been invoked and is used to compel that breach of the doctor-patient confidentiality.

Doctors are regulated largely, almost exclusively, by the provinces themselves in terms of the College of Physicians and Surgeons of Ontario, for example, in setting standards of practice, the oaths that are taken, the licensing requirements, and so on.

In respect of federal-provincial-territorial suppleness, for want of a better phrase, in terms of being able to adapt to amendments that might happen here, the FPTs have actually not been engaged on this bill to date. I think that's important to inject into the context of this committee's deliberations.

•(1630)

The Chair: MP Genuis, go ahead, please.

Mr. Garnett Genuis: Thank you, Mr. Virani, as well, for your comments and your engagement on this.

I would just say that of course there are many examples of federal statutes, probably the most famous being the Canada Health Act, that do touch on matters to do with health, and so I think the fact that the federal Parliament and members of Parliament are engaged with these issues to some extent already is reasonable and reflects the kinds of conversations we have with our constituents in terms of being engaged with health matters. But again, the reporting mechanism is left to the Governor in Council, so this is something that can be arrived at.

Obviously, on private members' legislation, there's no mechanism for us to be actively engaged in negotiations with provincial counterparts at this stage, but this is the sort of thing that is pretty common sense, and I think something significant is lost by removing this section. What is lost is a clear certainty that we will have an effective mechanism for identifying and prosecuting effectively those who are involved in this. So I think, with respect, that it is a workable mechanism and it is very much worth leaving in.

The Chair: MP Saini.

Mr. Raj Saini: I respectfully disagree with Mr. Genuis.

I can give you a personal example. In the House of Commons, there are people who have asked me for medical advice, from the opposition, from my own benches, serving staff, police officers, sometimes administration staff and sometimes the bureaucracy.

So I have a wide range of people in Parliament itself, and I say that because nobody will ever know who those people are. There is something sacrosanct in medicine that no law will change. To suggest that a law is going to compel someone to do something... Especially in the medical profession, that is the one thing that we keep very, very close to us, that medical professional relationship.

So putting it in or not putting it in, I can tell you, practically, is not going to work. It's better just to remove it and not cause any further complications to the passage of this bill.

The Chair: Parliamentary Secretary Virani, go ahead, please.

Mr. Arif Virani: I think it's entirely appropriate that this committee, among others today in Ottawa, is talking about confidentiality, but when you underpin, you explore what confidentiality is meant to promote, it's so clear that sometimes we don't think about it, but it's there to promote people coming forward.

We keep these things confidential so that someone feels that it's not going to be shared with another person, so they can talk about their depression; they can talk about their anxiety; they can talk about whatever health issues are plaguing them to their pharmacist, to their doctor, or whatever the case may be. That's because we want people to get better. We want them to safeguard their own health. That is a fundamental imperative, which I think supersedes any objectives that have been articulated otherwise and which is why that doctor-patient relationship is so sacrosanct. I think that's important for this committee to underscore.

The Chair: Thank you.

MP Genuis, go ahead, please.

Mr. Garnett Genuis: Mr. Chair, with great respect, I don't think anybody here is debating the importance of confidentiality in a medical context. My wife's a physician. There are many physicians in my family. I know it well. I know the importance of it well. I think all members do, and all members understand the critical importance and exactly what Mr. Virani said about why.

There are also exceptions in law which are designed to protect the most vulnerable, so that if a child is being abused, that child can be protected. The fundamental concern for justice for the innocent supersedes that principle of confidentiality. It's not to deny its importance; it's to recognize the need for those exceptions that already exist in law.

It's hard for me to understand why it would be suggested in this case—where we have instances of people's vital organs being taken from them while they're alive, simply because of their political convictions, or in other cases being exploited because of their poverty—that we would somehow not automatically equate that with the other forms of abuse where we already have these exceptions in law. It's not something new. It's simply an extension, from my perspective, of a very clear-cut moral principle.

I have a few other points. One is that adding this section was an amendment that was specifically requested by the Senate and supported by the Senate. I think it was very important. All of the previous versions of the bill—from Irwin Cotler and, I believe, from Mr. Wrzesnewskyj as well—had a reporting mechanism in them. If you want to get this done, if you want to protect people, then there has to be an effective reporting mechanism that creates a possibility of prosecution. There is no sense in which facilitating the prosecution of heinous criminals like child abusers undermines the wider principle of physician-patient confidentiality.

I really hope we don't pass this amendment because—well, I won't repeat myself. That's enough. Thank you.

•(1635)

The Chair: Thank you very much, MP Genuis.

Seeing no further debate on this point, I will bring it to a vote.

(Amendment agreed to)

Mr. Garnett Genuis: Mr. Chair, I'd like a recorded vote on this, then.

The Chair: Sure.

Mr. Greg Fergus (Hull—Aylmer, Lib.): I have a point of order, Mr. Chair.

The Chair: Yes, MP Fergus.

Mr. Greg Fergus: I'm not a member of this committee, and I would hate to break the normal relations that happen on this committee, but it's my understanding that once a vote has been taken, if it hadn't been called as a recorded vote, then the vote's actually done.

The Chair: I will ask the clerk.

Yes, I'm told it can be either before or after the vote, but as long as it's asked for, we will allow it.

(Amendment agreed to: yeas 5; nays 4)

The Chair: We will now go to the vote on clause 2 as amended.

Sorry, Ms. Levman.

Ms. Nathalie Levman: I don't want to hold you up, but I just wanted to point out that because you removed the definition of informed consent and retained the financial transaction offence, you do have a numbering problem. It's very minor, but it goes—

The Chair: Thank you for pointing that out. We will address that right now.

Ms. Nathalie Levman: In subclause 2(4), it should say “(1) or (2)”. It's just a tiny technical thing.

The Chair: Thank you.

The renumbering will be reflected when they reprint the bill.

We will now vote on clause 2 as amended.

(Clause 2 as amended agreed to)

(On clause 3)

The Chair: I don't believe there are any changes that have been put forward. Is there any debate on clause 3?

Ms. Vandenberg, please.

• (1640)

Ms. Anita Vandenberg (Ottawa West—Nepean, Lib.): I have a question for Ms. Levman.

It refers to the minister. I'm wondering if it needs to specify which minister.

Ms. Nathalie Levman: I believe that's an excellent question. I am not an expert on the Immigration and Refugee Protection Act. There are experts on the IRPA in the room. Would you like to hear from them?

The Chair: Could we call the IRPA expert in the room to answer this question? Thank you.

MP Vandenberg, I'll have you re-ask the question of our new guest.

Welcome.

Ms. Anita Vandenberg: It refers to the words “in the opinion of the Minister”. My question is whether there is enough clarity about which minister or whether that needs to be specified.

Ms. Mory Afshar (Deputy Executive Director and General Counsel, Legal Services, Department of Citizenship and Immigration): Thank you.

There is no need to indicate which minister. However, we have noted that in the summary it refers to the citizenship and immigration minister. In fact, the minister responsible for proposed section 35 that's noted in clause 3 is the public safety minister. There is no need to specify which minister because we already have provisions in the Immigration and Refugee Protection Act that set out which minister has responsibility for which provision.

The Chair: Thank you very much, Ms. Afshar.

Hearing that, I think there is no need to provide further change there.

Shall clause 3 carry?

(Clause 3 agreed to)

The Chair: Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall the bill as amended carry?

Some hon. members: Agreed.

The Chair: Shall the chair report the bill as amended to the House?

Some hon. members: Agreed.

The Chair: Thank you very much.

With that, the meeting is adjourned.

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