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Chair

Mr. Anthony Housefather

Standing Committee on Justice and Human Rights

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• (1100)

[English]

The Chair (Mr. Anthony Housefather (Mount Royal, Lib.): Ladies and gentlemen, welcome to this meeting of the Standing Committee on Justice and Human Rights.

We are going to proceed to our clause-by-clause review of Bill S-201, an act to prohibit and prevent genetic discrimination. We have one short item before we do that, which is the NDP is replacing its committee member, and Mr. MacGregor is now going to be joining our committee permanently. I'm going to turn it over to the clerk for one brief moment.

Mr. Clerk.

The Clerk of the Committee (Mr. Michael MacPherson): Good morning. We need to elect a new second vice-chair. Pursuant to Standing Order 106(2), the second vice-chair must be a member of an opposition party other than the official opposition. I'm now prepared to receive motions for the second vice-chair.

The Chair: Mr. McKinnon, would you like to nominate Mr. MacGregor?

Mr. Ron McKinnon (Coquitlam—Port Coquitlam, Lib.): There are lots of nominations here. I welcome him to the committee and I'm going to support you on this vote.

The Chair: He is nominated by Mr. McKinnon.

Hon. Rob Nicholson (Niagara Falls, CPC): I second it.

The Chair: It's seconded by Mr. Nicholson. We have warm-hearted people on this committee already.

The Clerk: Is it the pleasure of the committee to adopt the motion?

(Motion agreed to)

The Chair: Fantastic.

Mr. MacGregor, welcome.

Some hon. members: Hear, hear!

Mr. Alistair MacGregor (Cowichan—Malahat—Langford, NDP): Thank you. I appreciate that. I got the news yesterday that this was going to happen. I've been the pinch-hitter for a few committees, and as we all know, some committees function better than others. In my short time in this committee, I have a lot of admiration for all of the members here, for how well we seem to work together, and especially you, Mr. Chair, in keeping us going. I know everyone here is very dedicated to the subject matter that we take on. It's a very real honour. I don't have a legal background, but I

have a real love of the law. I don't know how long my tenure will be here, but I certainly have appreciated working with you, and I look forward to the future. Thank you very much for the warm welcome.

The Chair: We all look forward to continuing to work with you, and it's a pleasure to have you here.

I would also like to welcome Mr. Clement, who is replacing Mr. Cooper today. Welcome, Mr. Clement.

Hon. Tony Clement (Parry Sound—Muskoka, CPC): Thank you. I'm the new and improved Michael Cooper.

The Chair: Exactly.

Mr. Fragiskatos, I believe, is replacing Mr. Hussen. Welcome, Mr. Fragiskatos.

Mr. Peter Fragiskatos (London North Centre, Lib.): Thank you. It's nice to see everybody again.

The Chair: It's great to have you both.

Today we're proceeding with our clause-by-clause study of Bill S-201, an act to prohibit and prevent genetic discrimination.

From the Department of Justice today we have Laurie Sargent with us. Laurie, I'm not going to use your huge title today. You've been here enough times that everybody knows you now. We're joined by Élène Bérubé, by Peter Monette, by Lori Straznicki—and it's always good to have a second Lori here—and Barbara Moran.

Welcome to all of you. You're here to answer our questions with respect to anything that we have as we go through clause-by-clause review. Members of the committee can feel free to call upon you if they have questions or clarifications. Again thank you very much for being here.

Ladies and gentlemen, we're going to proceed to the bill.

Our first item is going to be clause 2, which is the interpretation clause.

Does anyone have any amendments they wish to propose to clause 2?

Not hearing any, I will then move to the vote on clause 2.

(Clause 2 agreed to)

(Clauses 3 to 5 inclusive agreed to)

(On clause 6)

• (1105)

Mr. Falk has presented an amendment to clause 6.

Mr. Falk.

Mr. Ted Falk (Provencher, CPC): Mr. Chairman, I have presented an amendment, and I suppose there are two ways we could look at it. We could either delete clause 6, or in the absence of that, I have submitted an amendment which I think would satisfy my concerns with clause 6.

The reason I've submitted it is that, as it is written, I believe clause 6 is overly broad. I haven't heard any testimony to make me believe there's any good reason for researchers, or physicians, or pharmacists, or other health care practitioners to be exempt from the prohibition against discrimination based on genetic characteristics. Clause 6, the way it is written now, effectively makes physicians, researchers, and pharmacists above the law that we're trying to apply to everyone else. I believe that occupation shouldn't be an excuse for discriminatory behaviour.

What would be your preference, Mr. Chair, to vote on the clause, to delete it, or would I be better off to propose my amendment?

The Chair: Let me ask a question. I believe, Madam Clerk, that if he proposes to delete the clause, then there would have been an actual....

If you're against the clause and you just want to strike the clause, you would vote against clause 6. Clause 6 then disappears if you vote against clause 6. To strike it, you would vote against it.

Mr. Ted Falk: Yes.

The Chair: You can also separately move an amendment to clause 6. Then, if the amendment is defeated, then still vote against clause 6 if you want to strike it.

Mr. Ted Falk: Okay.

The Chair: I guess my recommendation is that you move the amendment, because then you would have another opportunity to also vote against the clause itself.

Mr. Ted Falk: Okay, then I will continue on with moving the amendment that I submitted, and for that reason.

The Chair: Sure.

Mr. Ted Falk: It still provides physicians, pharmacists, health care practitioners and medical researchers with the protection that they need to do their work, but it doesn't give them exclusion when it comes to any discriminatory behaviour against genetic characteristics.

The Chair: Thank you very much.

On debate, Mr. Bittle.

Mr. Chris Bittle (St. Catharines, Lib.): Mr. Chair, I do appreciate what Mr. Falk is trying to do, and I think there's good intent in the amendment, but I don't believe it's necessary. We haven't heard from any witnesses who have said that this is a necessary component. I believe that what exists within clause 6 does limit the conduct to the provision of health services or a participant in research, the actual conducting of a research study.

Again, although I do appreciate it, I don't know that this amendment accomplishes what Mr. Falk is setting out to do. I don't believe it's necessary, though I do appreciate the intent.

The Chair: Further debate, Mr. MacGregor, then Mr. Nicholson, and then Mr. Khalid.

Mr. Alistair MacGregor: Mr. Chair, I also appreciate Mr. Falk's intention on this.

I took the time this morning to review the testimony when this concern was first brought up, in particular testimony from the Canadian Medical Association, and the back and forth with Mr. Falk. I believe, Mr. Chair, you also sought clarification at the very end.

I am satisfied, through the answers that we received from the Canadian Medical Association, that with the code of conduct that doctors have to abide by, the Hippocratic oath, the confidentiality that exists between doctors and patients, there are already a lot of safeguards. Doctors can face some pretty steep punishments and prohibitions from their regulating bodies.

Looking at the wording of this amendment, I also think the wording could be problematic, if we are limiting it to specific medical treatments for specific health care conditions. Could that involuntarily preclude genetic tests for other means, if it only has to be done for a specific medical condition or a medical treatment?

Again, I appreciate his concerns on this, but I am satisfied from the testimony that we've heard and the existing safeguards in place that there are sufficient protections already there.

• (1110)

The Chair: Thank you.

Mr. Nicholson.

Hon. Rob Nicholson: For clarification, Mr. Chair, there is another amendment coming with respect to making sure that this aligns with other legislation.

The Chair: Exactly.

Hon. Rob Nicholson: So it's going back to the Senate one way or another.

The Chair: Yes.

Hon. Rob Nicholson: If, presumably, it gets passed.

It seemed to me when I looked at this, and Mr. Falk has just clarified the situation, that it doesn't change the intent, which I completely endorse and have endorsed. But it seems to me that it does make sense in exactly where and how this will apply and where it doesn't apply, these sections here. I was pleased he came forward with this, so I'm supportive of it.

The Chair: Thank you.

Ms. Khalid, and then Mr. Fraser.

Ms. Iqra Khalid (Mississauga—Erin Mills, Lib.): Mr. Chair, I really appreciate Mr. Falk's concern with this. When he initially raised it during our study of this very important legislation, I took a moment to look at it and really study it. I tend to agree with Mr. MacGregor and Mr. Bittle in that I think that these are measures.... I think your concern, Mr. Falk, has already been addressed by other regulations, other ways in which we can hold our medical professionals to account.

They are bound by a very powerful oath to protect the people that they treat. I think that oath is more powerful than what this proposed amendment would do.

The Chair: I saw that Mr. Fraser had his hand up.

Mr. Colin Fraser (West Nova, Lib.): Mr. Chair, I agree with Mr. MacGregor, Mr. Bittle, and Ms. Khalid. Mr. MacGregor, in particular, mentioned the wording. While I totally think it's good that Mr. Falk brought this amendment forward so we could think about it and discuss it, I think there are some problems with the wording, specifically with the word "required" in regard to the medical treatment. How do we know what "required" means, and could there be a debate around whether it actually is required, on what standard? I think it would be best to leave it to the profession. We didn't hear anything from the CMA regarding problems with this clause.

I think we'd be better not to wade into these waters and go without any expert testimony on this issue.

The Chair: May I ask Mr. Falk a question of clarification, just to establish the intent?

Mr. Falk, the original wording talks of an exemption to clauses 3 through 5. With the new wording that is being proposed it reads:

commits an offence under this Act

That would be the entire act.

I understand it could be argued that a criminal offence is the only offence you could commit under the act, but I don't think you intended it to apply to the labour code or the human rights code, did you? Otherwise, we might want to say "clauses 3 to 5 under this Act".

I'm just wondering what you intended.

Mr. Ted Falk: We could certainly do that, but this is actually giving broader protection to these people because it would apply to the entire act.

The Chair: So that was your intent. Okay.

Mr. Ted Falk: May I speak?

The Chair: Of course.

Mr. Ted Falk: I think the intent of clause 6 was to provide protection for health care workers, practitioners, physicians, pharmacists, and researchers during the use of DNA testing.

My amendment doesn't prevent any of that. What my amendment says is that you can't discriminate. You can still discriminate by withholding goods and services from individuals like that if it's required to address their medical need or to complete some research, but this is an act that prohibits discrimination. It doesn't authorize or prohibit the use of DNA testing; it prohibits discrimination. That's the only thing that I'm addressing with my amendment. It gives them the ability to discriminate under these circumstances, providing it's related to an actual treatment that a patient may be receiving.

It actually gives these professionals the ability to discriminate, which is something that this act is addressing. It's not addressing the use of DNA testing. That's a completely different issue. This is addressing the discrimination that could happen as a result of DNA testing. It gives physicians, pharmacists, health care practitioners,

and researchers the ability to discriminate when necessary in the treatment of an individual's health or research.

• (1115)

The Chair: Ms. Khalid.

Ms. Iqra Khalid: Mr. Falk, if I may seek a point of clarification then, does this not apply to predictive DNA testing, or is it just for DNA testing that's required for medical treatment?

Mr. Ted Falk: This is for what's required for medical treatment. It was mentioned that there was concern with the word "required". If a health care practitioner or a physician asks for a DNA test and on that basis discriminates against an individual, they're protected.

Ms. Iqra Khalid: By the same instance, if it's a predictive test that's required by, let's say a physician, then it's okay to discriminate if the patient then refuses to get the...?

Mr. Ted Falk: In the treatment of an illness or an individual's specific health care conditions, yes, that may be required to treat an individual's health care condition. It may require a predictive test.

Ms. Iqra Khalid: What I'm trying to understand is that you're differentiating between predictive versus treatment.

Mr. Ted Falk: No, there's no differentiation there. If it's required for an individual's specific health care condition, whether it's predictive or prescriptive, the physician would be covered.

Ms. Iqra Khalid: Sorry, that's not how I read the text that you provided, so please help me in understanding this.

Mr. Ted Falk: If a physician would say, "I need to complete a DNA test on you because I might be suggesting a particular medical treatment or the withholding of medical treatment, but I'd like to really take a look at your DNA to see perhaps how this might negatively or positively affect your health condition by authorizing or withholding a treatment," that of course would be predictive. Under that circumstance, he's still treating a health care condition of an individual and he would be protected in doing that.

Ms. Iqra Khalid: Okay.

Mr. Ted Falk: It gives broad coverage to all these health care professionals in the course of their duties in treating any health care condition of an individual. It accomplishes what clause 6 was intending to do, but clause 6 gave these individuals much broader protection than what the bill intended. I still believe they should be afforded protection, and that's what my amendment does, but it doesn't give them the ability to....

The whole act is intended to protect individuals who are going to discriminate unjustly against people.

Ms. Iqra Khalid: I will say, and I've said this before, this legislation or any legislation that we look at is not in a vacuum. We must look at the totality. If there are other regulations or other laws in place that already provide those protections to, in this case, patients, I don't think we need to be redundant in providing excessive support for them.

Mr. Ted Falk: Right, but this would—

The Chair: I'm going to be flexible because we have so few amendments. Continue, Mr. Falk.

Mr. Ted Falk: This amendment would apply very nicely in a situation where an individual goes to see a doctor and there's no reason that would warrant a DNA test, but a doctor says, "I want a DNA test from you." The individual says, "You know, really, I don't want to have a DNA test on record, because there's a chance it may get abused at some other point in my life or may cause one of my relatives to be negatively impacted by my DNA test. I just have a sore throat. I want you to look at my sore throat." The doctor might say, "No, I'm sorry, if you don't have a DNA test done, I'm just not going to facilitate looking after you." This would say that a health care practitioner can't do that, but if they do DNA testing, they are protected.

Ms. Iqra Khalid: By the same token, then, first, that health care professional is under a Hippocratic oath to provide the medical assistance that is required, and second, the rest of this legislation provides safeguards for patients to not be discriminated against if they indeed go ahead and take that genetic test. That's the point.

• (1120)

Mr. Ted Falk: Not to minimize what you're saying, there are lots of professions that take different oaths and commitments to codes of ethics and standards by which they will conduct their business. We don't make laws for the people who adhere to those; we make laws for people who contravene.

The Chair: Mr. MacGregor has had his hand up for a while, and again, we'll be very flexible in this debate.

Mr. MacGregor.

Mr. Alistair MacGregor: I just want to offer my opinion on the back and forth.

My father is a physician, so I have a bit of insight. I would say that when it comes to a doctor providing care to a patient, they are bound by the Hippocratic oath and they must do that. Patients have rights. If they are not being cared for by their physician, they can certainly take it up with the licensing bodies in each province. However, if physicians feel that providing a good level of care would require a test, they can withhold that care because they would be swimming in uncharted waters, so to speak. The level of care could be completely dependent on that genetic test, so a doctor could rightly refuse and say, "We can go no further until I get that genetic test, because I'm swimming blind here."

I believe that's just a bit of clarification to illustrate a point.

The Chair: I'm going to go to Mr. Bittle next, because he hasn't spoken for a bit.

Mr. Bittle.

Mr. Chris Bittle: That's seldom said.

Just to make an analogy to the legal profession, of which many of us around the table are members, and to build on Mr. MacGregor's point, in the solicitor-client relationship, it is a position of trust. If a lawyer recommends x and the client says, "No, I want to do y ," the lawyer is within his or her grounds to fire the client, so to speak.

It is something similar. If a doctor makes a recommendation on the basis of the person's health and the best outcome for his or her

health, it is highly regulated by the colleges of physicians and surgeons across the country and we should leave it to them. I think Mr. MacGregor makes a good point.

The Chair: Ms. Khalid.

Ms. Iqra Khalid: Could we then refer to our expert witnesses on seeing the effects of the doctor-patient relationship as a whole?

The Chair: Definitely.

Before we do that I want to clarify one thing because I think we're differentiating. The colleges of physicians and surgeons and the bars have disciplinary measures and those are not in criminal law. This is an exemption to the criminal law, which is different, so I think we have to keep that in mind, because we seem to be....

Who wishes to answer that?

Mr. Monette, please.

Mr. Peter Monette (Manager, Bioethics and Science Advice, Strategic Policy Branch, Department of Health): Yes, I'll take a shot at this. As clarification, I'm with Health Canada, not with Justice.

The concern I have with the amendment is that it offers a bit of a problem with interpretation. The original Bill S-201, from our understanding, has quite general provisions for physicians, pharmacists, and researchers, so we didn't have any issues with it. We thought that our practices were exempt.

I think the amendment introduces some issues with interpretation so we do.... As has already been mentioned here, several interpretations have to be done both for the practice of medicine and also for research. We would have to go back to try to find out what all those implications would be, and we haven't had the time to do that.

The Chair: Thank you, sir.

Mr. Clement.

Hon. Tony Clement: With all the implications, it's plain reading of the bill. This is not rocket science. What does "required" mean? Either case law or common sense applies to all these kinds of cases. I don't think we should be hung up that we are faced with an amendment that was not contemplated exactly in the original construction of the bill. This happens all the time. Amendments in other committees pass. Dogs don't start sleeping with cats; Niagara Falls doesn't reverse itself, so let's accept the plain meaning and the reasonableness of those who parse the legalities of laws that are passed by Parliament.

The Chair: Thank you very much.

We do pass amendments, so don't worry.

(Amendment negated [See *Minutes of Proceedings*])

(Clause 6 agreed to on division)

(Clauses 7 to 10 inclusive agreed to)

The Chair: Now I believe we have an amendment.

Mr. Fraser.

• (1125)

Mr. Colin Fraser: Mr. Chair, I would propose that we add a clause 11 that relates to coordinating amendments. I believe it's been circulated.

In my belief, the coordinating amendment is necessary in view of Bill C-16, which was previously considered by this committee and is now in the Senate. It ensures that if one of these pieces of legislation comes into effect, and then contemplating the other one, it would give effect to the wording in the Canadian Human Rights Act with regard to the changes that are sought by each bill.

For example, if this bill were to pass and come into effect and then later Bill C-16 passes, the wording we're giving effect to in the Canadian Human Rights Act with regard to genetic characteristics would be wiped out when Bill C-16 comes into effect. This protects the integrity of this bill if Bill C-16 comes into effect afterwards, or vice versa.

Therefore, it's important that we ensure consistency with regard to the effect that we want for each of these bills. That's why I am proposing the amendment.

The Chair: Thank you very much.

Mr. Falk.

Mr. Ted Falk: If you could guarantee that the wording of Bill C-16 would not come into effect, if we defeat this, I'll vote against it.

Mr. Colin Fraser: That's why I explained it in the way I did, where S-201 comes into effect, C-16 would wipe out S-201's wording.

Mr. Ted Falk: See, we wouldn't want that.

Mr. Colin Fraser: I'd be completely satisfied.

The Chair: The good news is that neither bill has any effect unless it gets royal assent and is adopted by both houses of Parliament, so just make sure that Parliament's views are taken into account.

(Amendment agreed to [See *Minutes of Proceedings*])

The Chair: Are there any other amendments?

We will now move to the short title of the bill.

Shall the short title carry?

Some hon. members: Agreed.

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 I report the bill, as amended, back to the House?

Some hon. members: Agreed.

Hon. Rob Nicholson: You're doing a fine job.

The Chair: Thank you so much.

Ladies and gentlemen, I want to thank our witnesses for being here today. We've had a very short but constructive meeting.

I want to welcome again Mr. Clement and Mr. Fragiskatos, who added so much to this meeting.

The meeting is adjourned.

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