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Chair

Mr. Anthony Housefather

Standing Committee on Justice and Human Rights

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● (0850)

[*English*]

The Chair (Mr. Anthony Housefather (Mount Royal, Lib.)): Ladies and gentlemen, good morning.

It's a pleasure to call this meeting of the Standing Committee on Justice and Human Rights to order as we resume our clause-by-clause consideration of Bill C-14.

[*Translation*]

It's a pleasure to have you all here this morning. I hope our discussion continues to be fruitful.

[*English*]

Yesterday was a long session, and I really appreciated everyone's openness and tone. It was an excellent session in terms of tone, and I hope that continues today. I'm sure it will.

We are starting from where we left off, with amendment PV-5.

I'm going to turn to Ms. May to explain PV-5.

Ms. Elizabeth May (Saanich—Gulf Islands, GP): While you're extending compliments to the members of the committee for the tone, may I extend compliments to you as chair for conducting a very difficult and fraught process, over a critical bill, in an exemplary fashion.

With that sucking up to the chair, I will proceed to my amendment. In brief, in form and substance it's basically taking the same piece that I argued last night in relation to what I regard as a set of conditions that misinterpret, to put it mildly, the court's understanding of "grievous and irremediable" to include this nonsense of "reasonably foreseeable".

I'm not trying to be light about this. I do think it's a critical issue. This amendment appears in the safeguard section and is merely consistent with the arguments I made last night, where the person's natural death has become reasonably foreseeable. I've changed that to:

> the person has been diagnosed with a grievous and irremediable medical condition causing enduring and intolerable suffering, taking into account all of their medical

That's my amendment that I put to you.

The Chair: For discussion, is there any member of the committee that wishes to speak?

Mr. McKinnon.

Mr. Ron McKinnon (Coquitlam—Port Coquitlam, Lib.): I believe this amendment has a great deal in common with the subsequent amendment BQ-4.

The Chair: I agree. BQ-4 is a line conflict. I should have mentioned that at the beginning, so thank you Mr. McKinnon for letting me raise that.

BQ-4 and CP-17.2 have line conflicts with PV-5, so if PV-5 is adopted, we will not move forward with BQ-4 and CP-17.2.

Ms. Elizabeth May: That's another great argument for adopting this, given all the time you will save because you won't have to deal with the other two amendments.

The Chair: Mr. McKinnon.

Mr. Ron McKinnon: I would be comfortable supporting the subsequent one. It does what this one tries to do in a more concise way, so I will vote against this one and support the following one.

The Chair: Or you can move to amend this one to be consistent with the next one, whatever you prefer.

Ms. May, do you have a position on that?

Ms. Elizabeth May: Mr. Chair, I would be pleased to see a response by the majority of the members to take some steps toward fixing this. Although my attempt at a definition is one that comes closer to the details of the courts, if Liberal members of the committee—and I don't assume Mr. McKinnon is speaking on behalf of anyone but himself—are more comfortable with the BQ-4 motion, I'm prepared to withdraw mine to support BQ-4.

● (0855)

The Chair: Mr. Fraser.

Mr. Colin Fraser (West Nova, Lib.): I would support the following one and agree with Mr. McKinnon's comments.

The Chair: Ms. May, are you content for the moment to withdraw this one and move to BQ-4?

Ms. Elizabeth May: As a procedural matter, I'm not sure if I'm empowered to withdraw a motion that has been submitted on the basis of—

The Chair: No, once it's put on the table, you're not able to.

Can I suggest, though, out of curiosity, so that we don't lose this one, that we move to the debate on BQ-4 and come back to yours, because in the event BQ-4 is adopted, this one then becomes redundant?

(Amendment allowed to stand)

[*Translation*]

The Chair: We are going to proceed to amendment BQ-4.

Mr. Thériault isn't here to introduce his amendment. Mr. Plamondon, are you going to do it on Mr. Thériault's behalf?

Mr. Louis Plamondon (Bécancour—Nicolet—Saurel, BQ): Yes, exactly.

I'll introduce the amendment very quickly. I think everyone's read it and discussed it given that you're preparing to substitute it for amendment PV-5. After reading the Barreau du Québec's submission, we decided to propose this amendment. Given that the Carter decision would inevitably give rise to legal challenges, I believe our amendment is entirely appropriate.

Thank you, Mr. Chair.

The Chair: Thank you.

We will now begin the debate.

Would anyone like to comment?

[*English*]

Mr. Fraser.

Mr. Colin Fraser: I support the language in BQ-4. I believe it makes it simpler and easier to understand. For the reasons stated earlier by Mr. McKinnon, I'd be prepared to support that.

The Chair: Mr. Falk.

Mr. Ted Falk (Provencher, CPC): We should probably have this discussion as a group instead of just between you and me, sir.

To adopt these amendments would be inconsistent with what the committee has done up until now, and that's removing this line:

the person's natural death has become reasonably foreseeable

We haven't made any amendments or allowed any amendments to that clause previously, and that we're now going to delete that from this section of the bill doesn't make any sense. If we're not willing to change it in any of the prior clauses or proposed subclauses, then I don't think we should change it here either. It's been put there because it's consistent with the rest of the clauses.

An hon. member: The law has to be consistent.

Mr. Ted Falk: It has to be consistent. You can't just pick and choose where you want it and where you don't.

An hon. member: That's right.

The Chair: I'll allow Ms. May to speak because it's partially her motion, and then we'll go to Mr. McKinnon.

Ms. Elizabeth May: I would just suggest to Mr. Falk that given that the language that remains after BQ-4 uses the term "grievous and irremediable", and that it has previously been defined in proposed subsection 241.2(2), it actually is consistent as a result.

The Chair: Mr. Fraser.

Mr. Colin Fraser: Yes, I concur exactly. "Grievous and irremediable" is defined elsewhere in act, and this wording would be consistent with that. It comes following the definition. I agree with Ms. May.

The Chair: Given that this is a relatively new one, Mr. Rankin, did you want to intervene?

Can we just give them time to understand this for a second? They want to go back and understand their definition.

In terms of the department, we have a request from Mr. Falk for the department's position.

Ms. Joanne Klineberg (Senior Counsel, Criminal Law Policy Section, Department of Justice): I would just point out for the committee that the use of words "grievous and irremediable" in this section would track all of proposed subsection 241.2(2) from the previous page, but included within proposed 214.2(2) on the previous page is the person's subjective experience of intolerable suffering. The committee might want to consider the impact of saying that the person was informed of proposed paragraphs 241.2 (2)(a), (b), (c), and (d), where proposed paragraph 241.2(2)(c) is their unbearable suffering.

Mr. Colin Fraser: I'm sorry. Can you repeat the last part? I didn't hear it.

Ms. Joanne Klineberg: This amendment would mean that the written request would have to be signed and dated after the person was informed that they have a serious and incurable illness, that they're in a state of advanced and irreversible decline in capability, and that the illness, disease, or disability is causing them enduring and intolerable suffering.

The legal effect of the amendment is that the person would have to be informed of their own suffering. It's the (c) element of proposed subsection 241.2(2), because you're capturing all four elements.

● (0900)

The Chair: They wouldn't be informed of it; that would have to be the case before this could happen. It tracks back to the definition as a whole. Is there any further discussion or debate on this if you feel it's necessary and you're adding something?

Mr. Garnett Genuis (Sherwood Park—Fort Saskatchewan, CPC): I know I can't move it, but I wonder if members would consider a subamendment that clarified, as defined in the previous section....

The Chair: It's clear because it's a definition. It's really clear.

Mr. Garnett Genuis: Okay.

The Chair: Is there any further discussion? If not, we're going to vote on BQ-4.

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

The Chair: As a result of BQ-4 being adopted, CP-17.2 is no longer acceptable because it would amend the same line that BQ-4 did. We're going to jump over CP-17.2 and go to BQ-5.

[*Translation*]

Mr. Plamondon, you may go ahead.

Mr. Louis Plamondon: We prefer to withdraw this amendment.

The Chair: Okay, then. Great. Amendment BQ-5 has been withdrawn.

We now move on to amendment BQ-6.

Mr. Plamondon, the floor is yours.

Mr. Louis Plamondon: The purpose of the amendment is to immediately make clear, in proposed subsection 241.2(3)(d), that the decision must be voluntary and informed, and that the request may be withdrawn or delayed. What we are proposing seems pretty clear from the text.

The Chair: Thank you very much. That was very succinct.

[*English*]

Does anybody wish to intervene on this amendment?

Mr. Falk.

Mr. Ted Falk: It's a good amendment and we'll support it.

The Chair: Are there any other interventions on this amendment?

Mr. McKinnon.

Mr. Ron McKinnon: I feel this amendment is redundant. We've covered this off in the safeguards quite thoroughly, so I will vote against it.

The Chair: Is there any further discussion or debate on this amendment?

[*Translation*]

Mr. Plamondon, did you want to add anything?

Mr. Louis Plamondon: No, I'm fine. Like you, I'm waiting for the vote.

The Chair: Very good. Thank you.

[*English*]

We'll proceed to a vote on BQ-6.

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

The Chair: Now we'll move to CPC-17.3. It's Mr. Falk's.

Mr. Ted Falk: Part of the information that I think is critical for a person to make an informed decision is that they must also have been given a full consultation and briefing on their palliative care options and what's available to them. I think that's absolutely critical when you're making a serious and grave decision like this. The full spectrum of palliative care must have been explained to them, that they understand it, and they have been able to consider it.

The Chair: Are there any further interventions on CPC-17.3?

Mr. Fraser.

Mr. Colin Fraser: While I appreciate the intention of the amendment, I will not support it. I believe we had this discussion yesterday on several other amendments dealing with palliative care. It tells the physician how to decide on informed consent, rather than leaving it to the physician to decide.

Obviously, we would hope and trust that palliative care would always be discussed. “Have had” puts an undue requirement that I believe would potentially create an unnecessary barrier. Therefore, I would not support the amendment.

● (0905)

The Chair: Is there any further discussion or debate?

If not, I'm going to go back to Mr. Falk to close.

Mr. Ted Falk: I find it interesting that my colleagues opposite think they're going to trust and hope that this happens, but they're not going to make a stipulation in the bill that it has to happen.

It doesn't put an undue restriction or barrier on anything. It's a consultation to make sure that the person is aware of the available options in palliative care. There are two primary concerns: addressing pain, and dealing with fear and anxiety. Both of these can be dealt with effectively through proper palliative care.

I think it is only proper to allow a person to make that decision with the full understanding of all options. I don't think we should leave it to chance.

The Chair: Now we'll move to a vote on CPC-17.3.

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

The Chair: We'll move to the next one, CPC-17.4. I believe this one relates to the nurse practitioner, Mr. Falk. Correct?

Mr. Ted Falk: It does apply to a nurse practitioner, so I will be withdrawing it. One of the reasons given yesterday for leaving nurse practioners in the list of individuals who have the ability to make these life-ending decisions for people, and to help them in that process.... It calls for life-ending decisions to be delegated to a nurse practitioner, yet we don't even allow nurse practitioners to ask for an X-ray or to issue a narcotic drug, but we're willing to give them the ability to assign death.

There's something intrinsically wrong with that. I don't want to minimize the value of nurse practitioners or the work they do, but if they can't even call for an X-ray, maybe calling for death is a little bit out of their scope.

The Chair: Thank you very much. I appreciate that comment.

We'll now move to PV-6, Ms. May.

Ms. Elizabeth May: What we're proposing to do in PV-6 is make changes after line 23 on page 6, inserting essentially a new section altogether. If people are looking for where it inserts, it's a standalone after paragraph (e). It is, as you can see, set out to ensure that:

> If the person meets all of the criteria as set out in subsection 2 also suffers from a cognitive impairment or psychological condition, the person's capacity to provide informed consent has been assessed by a regulated health care professional whose scope of practice includes the assessment of such impairment or condition.

As members of the committee may recall, this is based on a recommendation from the Canadian Psychological Association. The concern was that if someone has both a cognitive psychological and physical condition, that makes it difficult to assess their capacity to give consent. They shouldn't be excluded from this framework, but should have the specific mental health professional who has competence in that field.

Just to underscore part of their evidence, while I have time:

> The assessment of a person's capacity to give informed consent particularly when that person has a concomitant psychological or cognitive disorder must be left to those regulated health professionals with the training and expertise to undertake these kinds of complex assessments.

My amendment seeks to address that concern of those health care professionals.

The Chair: Is there any debate?

Mr. McKinnon.

Mr. Ron McKinnon: This is similar to an amendment we turned down yesterday, and I think for the same reason. I will vote against it today because I think that medical practitioners, or nurse practitioners, who can identify a person as having a cognitive impairment such that this new provision would be activated, would also be competent to know whether they were capable of judging that impairment and whether or not to bring in a consult. I think it's well within the current framework to expect a nurse practitioner or a physician to bring in the necessary consultants anyway. I will vote against it.

The Chair: Any other discussion?

Ms. May, to close.

● (0910)

Ms. Elizabeth May: If one regards that as an implied obligation of a health care professional, and I think there's some question as to that, there certainly is no harm in making what you see as implicit and acceptable, explicit and required. There is no harm done by ensuring that such a potential gap in the framework is addressed at this stage. I would hope that members would consider accepting this amendment.

The Chair: Any further comments?

(Amendment negatived)

The Chair: We will move to, I believe, CP-17.5.

The Chair: Mr. Falk I think 17.5 is again about the nurse practitioner.

Mr. Ted Falk: I could speak to it again, but I think you know the issues.

The Chair: Yes, I do.

We're going to move past 17.5 and we move to Liberal-4.

Mr. Bittle.

Mr. Chris Bittle (St. Catharines, Lib.): I'd like to amend it to include the language in G-1, which is found at page 71 of our package. It would say:

> Ensure that there are at least seven clear days between the day on which the request was signed by or on behalf of the person.

The Chair: Would you be able to, as part of the procedure, give us something, or write it down and hand it to the clerk?

Mr. Chris Bittle: Sure.

The Chair: Can you just read it one more time, Mr. Bittle to make sure we're correct.

Mr. Chris Bittle: It reads:

> Ensure that there at least seven clear days between the day on which the request was signed on or behalf of the person.

It is LIB-4 and G-1.

The Chair: Got it.

Mr. Bittle, over to you for debate.

An hon member: Mr. Chair—

The Chair: We normally let him introduce his motion, and then we would move to you.

Mr. Bittle.

Mr. Chris Bittle: We've passed a robust definition of “grievous and irremediable”. There are significant steps that an individual must prove before they're able to access medical assistance in dying. We've heard from witnesses that this isn't a decision that people come to lightly, that it's something they've agonized over, potentially for months, whether it's something they wish to take advantage of. If they have an incurable illness, if they are in an advanced state of irreversible decline and is enduring suffering and their death is reasonably foreseeable, why are we requiring them to wait over two weeks to access this treatment? In my mind that's cruel. I believe there are valid public policy reasons to have a waiting period, but the longer the waiting period, the less likely we are to treat people like adults. I believe seven days is a more reasonable number to allow people to change their mind and in an extreme situation allow an application to be delivered to a court, while still providing all the safeguards while reducing the period of suffering an individual must endure.

The Chair: Is there debate?

Mr. Fraser.

Mr. Colin Fraser: Mr. Chair, I'm just wondering about the procedure here, because I know that Mr. Bittle proposed an amendment. I would like to propose a subamendment for debate purposes. Whether that is in order or not, I don't know.

The Chair: Yes, of course.

Mr. Colin Fraser: I would propose for discussion purposes that rather than “seven clear days”, the amendment read, “10 clear days”. I agree with what Mr. Bittle is saying, but “10 clear days”, I think, would be satisfactory for achieving the proper reflection period that we would want. In looking at other jurisdictions, I know that in American states it's 15 clear days for a reflection period when the request is given orally, and in written form it's 48 hours.

I do believe we should move off the 15 days to allow that person not to suffer as long as that. I think 10 strikes the right balance, and that's why I would propose that subamendment.

● (0915)

The Chair: We're now debating the subamendment. For clarity, the subamendment is to change “seven days” in the amendment to “10 days”. We're not debating—

An hon. member: It's “10 clear days”.

The Chair: Yes, “10 clear days“. We're not debating the principal amendment right now, only debating whether to change “seven” to “10” in this amendment.

Mr. Rankin.

Mr. Murray Rankin (Victoria, NDP): On the issue of “10 clear days”, “seven clear days” or “15 clear days”, I'm just wondering whether we need to introduce the concept of “clear days” at all. I wonder whether it would make better sense to an individual, for plain language reasons, to know how many days the reflection period is.

As you know, determining clear days requires looking at the Interpretation Act and figuring out whether there's a holiday or a Sunday, or whatever. I'm just wondering why, with a patient who's suffering this kind of pain, we should care about things like “clear days”. I think it complicates it unduly. I would be prepared to suggest “10 days”, which may not be that different from “seven clear days”, and provide some much needed certainty in this area.

The Chair: Right now there's an amendment, and we can't subamend the subamendment. Right now it's “10 clear days” unless Mr. Fraser changes his subamendment. Right now that's still on the floor, to change “seven clear days” to “10 clear days”.

Is there any further debate or discussion on this subamendment?

Mr. Casey wishes to intervene.

Mr. Sean Casey (Charlottetown, Lib.): I'll be very brief: the government supports this subamendment.

The Chair: Okay.

I go to Mr. Fraser, because it's his subamendment.

Mr. Fraser, do you want to close on this?

Mr. Colin Fraser: I believe the words “clear days” should be in there. I understand Mr. Rankin's point, but I do think we need certainty with regard to what a day is. If you do it at 11:50 p.m. and then just past midnight, it actually closes the time to eight days. So I do think we need to be clear and precise that it is clear days.

The Chair: There being no further debate, the proposal is to change “seven clear days” to “10 clear days” for the purpose of debate of the amendment.

(Subamendment agreed to)

The Chair: Now we're going to go back to the principal amendment. Any debate on the principal amendment?

Mr. Falk.

Mr. Ted Falk: I heard Mr. Fraser's explanation for making the adjustment from seven to 10 days and, with the practice in the United States, I can appreciate that. However, we also heard testimony about the practices in the European environment, which most people would consider to be within very liberal regimes for this. They indicated they have a 30-day waiting period or time for reflection and consideration. I would still support the wording that's found in the original drafting of Bill C-14 and recommend that it remain at 15 days.

Mr. Michael Cooper (St. Albert—Edmonton, CPC): Just to reiterate Mr. Falk's point, I really don't understand what the basis is for reducing a relatively short 15-day period to an even shorter 10-day period, when the subsection provides the medical practitioner with flexibility to deal with situations where the person is clearly consenting and in a situation where they're suffering intolerably. The legislation doesn't say hard and fast that it would be 15 days under any circumstances. It leaves that in the hands of the medical practitioner, but applies a general rule of 15 days, so I think it should be left as is.

The Chair: I'm going to let Mr. Bittle go last, if that's okay.

Mr. McKinnon, Mr. Fraser, and Mr. Bittle.

Mr. McKinnon?

Mr. Ron McKinnon: I'd just like to respond to Mr. Cooper's comment that the latitude in the current language is that it can be reduced from 15 days if the medical practitioner believes that the death is more imminent than 15 days. It's not a blanket discretion to reduce it.

● (0920)

The Chair: Mr. Fraser.

Mr. Colin Fraser: Just to build on that, it also allows abridgement if death or loss of capacity is imminent. It's not a blanket provision. It doesn't deal with the situation, as we heard from Mr. Fletcher's testimony, where the person who is suffering intolerably but they're not about to die, they're not about to lose capacity. Why would we prolong that? I think it's appropriate to reduce that time to 10 days.

The Chair: Mr. Genuis had one, and then I'm going to close with Mr. Bittle if nobody else wishes to intervene.

Mr. Genuis.

Mr. Garnett Genuis: I agree with my colleagues on the issue of the waiting period. I think it protects an individual's autonomy to ensure that they have thought the decision through fully. Of course, most will do that, but there is still the risk that someone will rush into this in the midst of a psychological valley.

I do want to encourage some debate on the other part of this amendment that allows the request to be signed on behalf of a person, which presumably commences this waiting period. As I understand, the effect of the now-combined amendment is that somebody else can start the clock. It means that somebody else can say that grandma wants this assisted suicide and then sign to begin the process.

That doesn't negate the other consent provisions, of course, but it does create a further problem for deciding that there should be some process of deliberation if we, in fact, see that the initial request can be made by a person who is not the person receiving it. On that basis, as well as on the basis of the concerns raised by my colleagues, I think this amendment should be defeated.

The Chair: To close, Mr. Bittle.

Mr. Chris Bittle: Just to respond to Mr. Cooper's question as to why we're doing this, I look back to Mr. Fletcher's testimony that if you're in a state of enduring physical or psychological suffering, 15 days could be 15 lifetimes. I think this strikes an appropriate balance.

The Chair: We're now going to move to the vote on LIB-4, but LIB-4 as amended by both the subamendment and, as proposed by Mr. Bittle today, which reads differently than it did originally. It would now read:

> ensure that there are at least 10 clear days between the day on which the request was signed by or on behalf of the person

(Amendment as amended agreed to)

[*Translation*]

The Chair: We now move on to amendment BQ-7.

Mr. Plamondon, you have the floor.

Mr. Louis Plamondon: We are proposing that the clause be amended by deleting lines 27 to 36.

The Chair: I must tell you that one of the items on my list indicated that a number of amendments concerned the same lines of the bill. Unfortunately, I think amendment BQ-7 is now out of order since we've already amended line 27.

I'll confirm it all with the clerks.

Mr. Louis Plamondon: No, in this case, it's a matter of deleting the lines, not amending them.

The Chair: I'm being told that an amendment can be proposed to delete those provisions.

Mr. Louis Plamondon: This isn't about changing the number of days specified but, rather, about removing the time frame completely.

I would remind you that Quebec's legislation was passed after years of consultation, with unanimous support from all the parties in the National Assembly. The act has unanimous support in Quebec and works very well. In Quebec, our experience has been that the time frame provision has never been used. In that sense, then, it seems completely needless to include a time frame, so we are suggesting doing away with the 15-day period completely.

The Chair: Any comments on the amendment?

Mr. Plamondon, do you have anything further to say?

● (0925)

Mr. Louis Plamondon: That's all.

The Chair: Very good.

[*English*]

We'll go to the vote on BQ-7.

(Amendment negatived)

The Chair: G-1 was incorporated into LIB-4, so we'll move to CPC-17.6.

I'm not sure, but I think this is regarding nurse practitioners again. We're going to presume that Mr. Falk has repeated his statement and we'll move to BQ-8.

[*Translation*]

We now move on to amendment BQ-8.

Mr. Plamondon, over to you.

Mr. Louis Plamondon: The amendment seeks to delete proposed subsection 241.2(3)(h). It is our view that, in making their request, the person has given de facto advance consent. That applies to anyone with a grievous and irremediable medical condition, whether an illness, a disease, or a disability, that causes them enduring and intolerable suffering given their medical circumstances.

Therefore, we move that proposed subsection 241.2(3)(h) be deleted, in other words, that lines 37 to 40 be deleted.

The Chair: Thank you very much. Are there any comments on this amendment?

[*English*]

Is there any debate?

Mr. McKinnon.

Mr. Ron McKinnon: I vote against this amendment because it introduces a back-door advance directive. It allows the directive to be given, but it removes an opportunity to withdraw it before the assistance is carried out.

The Chair: Mr. Falk, did you have something you wished to say?

Mr. Ted Falk: No, I was just agreeing with Mr. McKinnon.

The Chair: Is there any further debate?

[*Translation*]

Mr. Plamondon, did you have anything to add?

Mr. Louis Plamondon: I would just like to say that the rationale for this amendment comes from our experience with the legislation in Quebec. We believe the amendment is extremely relevant. The fact is that, ever since the act came into force, we have not had to use such a measure and the legislation works quite well in Quebec.

The time frame for our study is very tight, so I think we can draw from the experiences of other countries or provinces.

Thank you.

The Chair: Thank you very much.

We will now vote.

[*English*]

I want to let everyone know that I had only seen 17.1, and it's a nurse and medical practitioner that would be in conflict, because I figured that Mr. Falk would withdraw it, but I have to note that PV-7 would also, if this were adopted, fall away because it would be amending something that was no longer there.

We're going to go to a vote on BQ-8.

(Amendment negatived)

The Chair: I guess 17.1 is the same thing.

Mr. Ted Falk: We dealt with that. There's a new one, though, CPC-17.7.

The Chair: Mr. Falk, amendment 17.7.

Mr. Ted Falk: Amendment CPC-17.7 is intended to add clarity to that final consent given just prior to the administration of the lethal dose. It says currently, as the bill is written, “immediately before”. I think most people would understand what that means, but “immediately before” to some people could mean a week prior.

The change in wording to “at the time of” means that at the time the procedure is going to be administered, that person is given one final opportunity to say “no”. It's just changing the words from “immediately before” to “at the time of”.

The Chair: So it's to change “immediately before” to “at the time of”. Got it.

Mr. Fraser.

Mr. Colin Fraser: Could I hear from the officials on this point, please?

The Chair: Could I have the officials comment on that one, please?

Ms. Joanne Klineberg: I would just say from a drafting perspective that we would probably say that “immediately before” is quite clear and not open to being interpreted as anything other than in the moments immediately before. The concern with “at the time of” might be that medical assistance in dying is actually the administration of the lethal substance. So if it's at the time of the administration, that might be a moment too late.

The Chair: You're considering that it might already have started if you say “at the time of”.

Mr. Falk, given that comment, do you...?

Mr. Ted Falk: I can appreciate what the official said. It specifically doesn't say “during”. I just want to make certain that “just before” doesn't mean a week before. That's the intent.

I'm perfectly fine—

● (0930)

The Chair: Yes, I understand.

Could I ask the officials whether there is anything other than “immediately before” that you would suggest would satisfy his concern, or could you explain that it means exactly what he is saying?

Ms. Joanne Klineberg: I can't propose anything novel at this time, but I would draw to the committee's attention that the starting paragraph of proposed subsection 241.2(3) says “Before”, and paragraph (g) says “immediately before”. So in the drafting room we made an effort to distinguish between “before” and “immediately before”. The safeguards were also drafted in temporal order so that although they're not temporally linked to each other, the last one is immediately before, which in the drafting room is how we thought was the best way of conveying that it's in the moment before.

Mr. Ted Falk: Okay. Just to close it up, I know what “immediately before” means. I would just hate it if this were misinterpreted, and I thought that maybe I could add clarity to that, but I'm actually fine, so we can vote.

The Chair: Okay. Do you mean to vote or withdraw it?

Mr. Ted Falk: It's too late to withdraw it.

The Chair: Okay. So we'll vote on amendment CPC-17.7.

(Amendment negatived)

The Chair: We will now move to amendment PV-7.

Ms. May.

Ms. Elizabeth May: This is a critical amendment that I'm proposing, and I seem to be the only member proposing something that would deal with....

When I first read this bill at first reading, I had a discussion with my staff. I said that this can't mean what it says because it creates a nonsense. You can't say, as it currently reads, that you must give the person an opportunity to withdraw their request and ensure that the person gives express consent in a context in which someone has given clear directives around their medically assisted death and no longer has the capacity to form consent. Given the kinds of grievous and irremediable conditions that are the very subject of this bill, it struck me as bad drafting. I'm afraid it gradually dawned on me that it was intentional, that this was an intentional effort on the part of the government to ensure that people who've lost capacity will have no access to medically assisted dying.

This then leads to the very large problem that the Supreme Court's decision was premised on exactly this circumstance. They felt that people would be pressed to perhaps end their lives prematurely while they still had the capacity and the ability, knowing that when the moment comes when they had most sought medically assisted death it would be denied to them because they would have passed the point where express consent can be given.

My amendment is very simple. It's to insert the clause “if the person is still capable”. It would then read:

> immediately before providing the medical assistance in dying, if the person is still capable, give the person an opportunity to withdraw their request and ensure that the person gives express consent to receive medical assistance in dying.

I submit to you that anything less creates both an injustice and a nonsense.

The Chair: Mr. Fraser, and then Mr. Cooper.

Mr. Colin Fraser: While I appreciate the intent of the amendment, I note that this is exactly why the abridgment of the “clear days” required is in there, so that if the medical or nurse practitioner felt it were likely that the person was about to lose their capacity, then that time could be abridged to address that issue. The whole idea here is that the person is given an opportunity to change their mind. That's what the point of the reflection period is and this amendment—saying that the person only has to have the ability to withdraw the consent if they still have capacity—would fly in the face of the other provisions and safeguards that are in there, including, in particular, the abridgment clause, which was put in there for exactly the reason that she is concerned about.

The Chair: Are there any other comments or discussion?

Not hearing any, I'll go back to Ms. May to close.

Ms. Elizabeth May: With all due respect to Mr. Fraser, I don't know how many people you've been with as they're dying, or how many cases you've known. In my case, I know that my own father was incapable of forming anything like consent for a year and a half before his death. There are many people who would say, “I don't care what kind of condition I have deteriorated to. I don't care how lost my personality is to me, how lost my ability to form words is, or how lost my ability is to make eye contact due to my grievous and irremediable condition. That's not my concern. I want to stay with it as long as long as I possibly can draw breath of life.” Others would say that the Carter decision is clear, that it is a violation of my rights under the charter to be denied the opportunity to have a medically assisted death that does not force me to take my life prematurely, so I avoid a year and a half of grievous and irremediable deteriorating condition in which the ability to form legal consent is no longer possible.

I submit to you, with all respect, that 10 clear days of reflection is an irrelevant concern to people who has lost the ability to either reflect or form consent far more than 10 days before their deaths.

● (0935)

The Chair: Now, we're going to move the vote on PV-7.

(Amendment negatived)

The Chair: Now we will move to PV-8. Ms. May.

Ms. Elizabeth May: Amendment PV-8 is looking at that issue of the difficulty of communicating by reason of a physical or mental disability. This would create a paragraph (i):

> If the personal difficulty communicating by reason of a physical or mental disability take all reasonable measures to provide a reliable means by which that person may understand the information that is provided to them and communicate their decision.

This comes from a recommendation by Communications Disabilities Access Canada to the committee.

I think it's straightforward as presented, so I don't think I'll use all of my time. I hope the committee members will consider it.

The Chair: Mr. Fraser.

Mr. Colin Fraser: Ms. May mentioned mentioned “all reasonable measures”. The wording is “all necessary measures”. There wasn't a subamendment to that was there? It is supposed to be “all necessary measures”.

Ms. Elizabeth May: Sorry, that is “all necessary measures”.

Mr. Colin Fraser: Okay. I think this is reasonable. I believe this does directly respond to the testimony we heard, to ensure that all reliable means are given to the person to understand what they are trying to convey is appropriate in the circumstances. I would support this amendment.

The Chair: Mr. Falk.

Mr. Ted Falk: Mr. Chair, I would like to support this amendment and would support it, if I could make a subamendment, which would be to delete the words after “communicating” and before “take”. My subamendment would delete “by reason of a physical or mental disability”.

In particular, the bill, as it is written today, does not provide for mentally incompetent people to make this decision. This would be already opening the door for that. I think if it would read:

> if the person has difficulty communicating, take all necessary measures to provide a reliable means, without defining physical and mental.

I don't want us to define “by reason of physical or mental disability”. I just want to take that wording out of there. It doesn't change what would happen, but to me it's important that the wording in the middle not be included. That would be my subamendment.

The Chair: Ms. May, would you be willing to amend your motion as such? If not, we'll make a subamendment.

Ms. Elizabeth May: Under the strange rules in which I find myself, I'm not certain I'm allowed to comment on or accept or reject subamendments to my amendments, because they're only—

The Chair: No, I'm not asking you to accept or reject the subamendment. Because we've been very flexible at this, if you want to change the motion you put forward, we could do it that way too, to avoid having to vote on a subamendment.

Do you accept that? If not, we'll do it as a subamendment and start debating the subamendment.

Ms. Elizabeth May: Thank you, Mr. Chair. I'm sorry I misunderstood initially.

I prefer my version of the amendment, and I'm still thinking about Mr. Falk's subamendment. I constructed this specifically in relation to the circumstances that were raised by Communication Disabilities Access Canada. I'm grateful to Mr. Fraser to know that he supports my amendment. I don't think it does violence to my amendment to accept Mr. Falk's amendment, but I'm still thinking through Mr. Falk's amendment.

● (0940)

The Chair: Okay, thank you very much.

We're going to debate the subamendment by Mr. Falk.

Mr. McKinnon.

Mr. Ron McKinnon: I support the subamendment.

The Chair: Any other debate on the subamendment?

Mr. Fraser.

Mr. Colin Fraser: Yes, it's just removing “physical or mental disability”. It would still leave it open to somebody who couldn't communicate, for whatever reason. I would have no difficulty supporting that. I don't see why that would be a problem.

The Chair: All right.

(Subamendment agreed to)

Mr. Chair: We're back to the principal motion, as amended, which would now read:

> if the person has difficulty communicating, take all necessary measures to provide a reliable means by which the person may understand the information that is provided to them and communicate their decision.

Is there any further debate?

Mr. Casey wishes to speak.

Mr. Sean Casey: I want to put the government's position on the record.

This amendment is well intentioned, but because the amendment is drafted in the conditional, it's incompatible with acceptable language for Criminal Code provisions. You may want to get the view of the officials on this.

The criminal law sets minimal standards for acceptable behaviour in society. Conditional circumstances are typically better addressed by medical practice regulation.

Also, uncertainty would be created. It's unclear if it places an obligation on the medical or the nurse practitioner to determine whether the person has difficulty communicating or what degree of difficulty would trigger the provision. If there's a desire to require additional communication technologies or resources for certain classes of persons, it should be left as a matter of medical practices to be determined by the provinces and medical regulators.

Bill C-14 already requires medical and nurse practitioners to provide medical assistance in dying with reasonable care and skill, according to any applicable provincial standards. This is sufficient to address the concern raised by the amendment, which is unnecessary in the government's view. Existing informed consent procedures require that a person understands the medical options available to them.

The Chair: Thank you very much for your comments, Mr. Casey.

Are there any further comments by members of the committee?

Mr. McKinnon.

Mr. Ron McKinnon: Could I suggest a subamendment to deal with the conditionality. I'm not sure if it truly deals with conditionality, but to change the word “if” to “when”.

The Chair: Once a subamendment is adopted, you can have another subamendment, but I'm not sure that this really.... Do want to put that forward as a subamendment?

Mr. Ron McKinnon: I don't know if it helps. If it helps I do, and if it doesn't then why bother?

The Chair: I don't think it makes a difference either.

Mr. Colin Fraser: My only difficulty would be that the word “when” would be presuming they may have one. It would add an extra element of uncertainty around the timing.

The Chair: I agree it doesn't help, but it's not my role to decide.

Do you want to put one forward, Mr. McKinnon?

Mr. Ron McKinnon: No, I'll disregard that.

The Chair: All right.

I'm going to go back to Ms. May to close.

Ms. Elizabeth May: Is it possible to ask the officials if there's any language they can see that would deal with the conditionality problem, since I see Mr. Fraser and Mr. McKinnon would both like to support this amendment.

I have never practised criminal law, but it does seem to me that it doesn't impose the kind of conditionality that would create conflicts within the Criminal Code in understanding how to interpret the framework we're putting forward. Is it possible for me, in my position as a non-committee member, to ask an official if there's—

The Chair: If you are the mover, I'm giving latitude to the mover.

Ms. Elizabeth May: Thank you.

Could the officials help out here?

Ms. Joanne Klineberg: I'm not sure there's any way to cure the conditionality, because in many patients this simply won't be an issue. This is a fact or a safeguard that would apply in some cases, but not in all cases. By it's very nature, I think it's conditional on the facts of the case. It may be entirely sensible from a health law point of view, but from a criminal law point of view, the committee has to ask who the obligation is on, and when it is on them. Is it on the physician, in order for them to feel confident that they will not be incurring criminal liability when they provide medical assistance in dying? How many steps do they have to take to ascertain whether this contingent circumstance exists or doesn't exist? If they simply make a reasonable guess about it, will someone have to challenge them on that afterwards?

Anything that is conditional in this context is inherently problematic from a criminal law point of view, unless you're very clear about....

It's stated in the objective. If this circumstance exists objectively in the world, it's not stated in terms of where the physician or the nurse practitioner believes this might reasonably be the case. We usually strive for that kind of clarity about subjective mental states in criminal law drafting.

● (0945)

The Chair: Thank you for the comments.

Ms. May, I'm going to ask you to close.

Ms. Elizabeth May: Before closing, I'm wondering if there are other members of the committee who might entertain the notion that where a physician or nurse practitioner is of the opinion that the person has difficulty communicating, the physician or nurse practitioner shall take all necessary measures.

There's a willingness, clearly, on the part of both the Liberals on this committee and Conservatives on this committee to support this amendment if the language is right. I'm just taking in the advice from our officials and suggesting that if we use the language that's been used in previous paragraphs of subclause 3(3) on safeguards, and apply it to this condition—

The Chair: Ms. May, I'm sorry, I don't know if this is my role as chairman—I'm new at this—but if you go back to the beginning of the subclause 3(3) on safeguards, that's how it would read.

Ms. Elizabeth May: Thank you for that, Mr. Chair. That's very helpful.

I would say that I think the concern raised by officials is dealt with, as you suggest, by the overarching context of subclause 3(3), which begins:

> Before a medical practitioner or nurse practitioner provides a person with medical assistance in dying, the medical practitioner or nurse practitioner must

What we're suggesting is that the medical practitioner or nurse practitioner has the obligation. Therefore, the conditionality implied in subparagraph 241.2(3)(b)(i) should be acceptable. I believe that the committee has accepted the subamendment, thanks to my friend, Mr. Falk. It would now read:

> (i) if the person has difficulty communicating, take all necessary measures to provide a reliable means by which the person may understand the information that is provided to them and communicate their decision."

I hope that will be acceptable to members of this committee and will be passed. Thank you very much.

(Amendment as amended agreed to)

The Chair: We will now move to CPC-18.

Mr. Ted Falk: Mr. Chairman, I so move.

The Chair: Mr. Falk, moves it for Mr. Genuis.

Mr. Genuis.

Mr. Garnett Genuis: I would like to clarify that there was a earlier version of this. This is the version that has an (a) and (b), and goes on to a second page. Is everybody clear about the version of this that we're looking at?

The Chair: Mr. Genuis, is the version that you want to kick CPC-18 or CPC-18.1?

Mr. Garnett Genuis: It is neither. It's an updated version of both.

The Chair: If there is an updated version, I don't believe that anybody has that in the printed copies that we're looking at.

Mr. Garnett Genuis: Okay. This was provided to the clerk—

The Chair: You distributed it electronically, but everybody has the hard copies that we have in front of us. Your distribution of an electronic document without indicating that there was a change to it wouldn't really help the committee to know that.

Could I ask that we get copies of the new amendment if people want paper copies?

What reference number do you want us to look at?

Mr. Garnett Genuis: It's reference no. 8249115.

● (0950)

The Chair: Can I ask what members of the committee actually have a copy of 8249115?

Mr. Genuis, is there only one, or are there two separate ones, because for some reason the two look relatively identical? Do you have two that you're proposing?

Mr. Garnett Genuis: There was some concern about receivability, so the updates improve the amendment in any event. We made changes on a last minute basis.

The Chair: Is 8249115 the only one right now, on this subject matter, that you're putting forward?

Mr. Garnett Genuis: Exactly. I'm not going to be proposing the previous CPC-18 or CPC-18.1.

The Chair: So we just need a copy of 8249115.

Are you also moving 8249490?

Mr. Garnett Genuis: Yes, I'm moving 8249490.

The Chair: Both of those are missing from the package committee members have, so we're going to need to....They're quite long. It would be better if we had copies of them.

We're going to suspend for a couple of minutes while we make copies of these for the committee because they're too long to just hear you read them and try to understand them.

● (0950)

(Pause)

● (1000)

The Chair: Please take your seats.

[*Translation*]

We will now resume the meeting.

We have copies of Mr. Genuis's new amendment, so we can now get started.

[*English*]

Mr. Genuis, the floor is yours.

Mr. Garnett Genuis: This first amendment deals with the issue of advance review, but I think it does it in a different way than it's been done before. We had proposals for ministerial or judicial review, and colleagues in other parties have raised concerns that this could impose an undue burden.

If members are willing to support this amendment, it would provide a fairly good compromise. It says that there must be some kind of review by a competent legal authority. This authority is up to the province to designate. In the event that the province chooses not to designate, however, the Minister of Health in conjunction with the Minister of Justice will designate the authority.

That leaves a lot of flexibility. Theoretically, you could have a system of judicial review, but more likely the minister would designate lawyers or notaries for the purpose of reviewing the legal criteria. My concern with the bill as it stands is that this is a medical as well as a legal decision. We have relatively complex criteria and it is important that the criteria be followed. We must have proper consent.

In the absence of an advance review, it is up to doctors to make legal decisions. We know, though, that people can go from doctor to doctor and eventually get the outcome they want. More concerning, perhaps, the person's relatives can go from doctor to doctor until they get a particular reading of the criteria from people who are not legal experts.

It's a very modest proposal to say that someone, to be designated by the province, who has competent legal authority to interpret the act should be designated to provide a review. It is very easy to do this in a way that would not be onerous for the patient. There's already a requirement for two witnesses and two physicians. To have someone conduct a legal review to see if the criteria are met is an important safeguard. It ensures that people who don't meet the criteria don't consent, aren't pushed forward. If we don't have this, then, frankly, I see the criteria as pretty meaningless.

The Chair: Is there any debate?

Mr. Fraser.

Mr. Colin Fraser: We addressed these points yesterday and said no. We talked about having judicial or some sort of pre-oversight, if not by a minister of health, then in conjunction with a minister of justice.

My problem with both of these is that judicial oversight or some sort of prior review takes away from the health care professionals the ability to determine informed valid consent. We trust them every day to make those decisions. We're taking that ability away from them and putting in place a layer of safeguards.

With regard to (b), making it a political decision is inappropriate. The Minister of Health has stated that she'll work with her colleagues in the provinces and territories to put together a framework to ensure that the profession observes safe and legal practices.

● (1005)

The Chair: I want to see if there's any other debate. Does anyone else wish to intervene? Mr. Genuis.

Mr. Garnett Genuis: I have a quick response to Mr. Fraser's comments. I do want to make sure that before they vote on this, members have read the amendment. What Mr. Fraser implied was that the Minister of Health, with the Minster of Justice, would be reviewing the cases. That's not at all what the amendment says. However you vote, please read the amendment through. The amendment says that in the absence of a province designating an authority for the purposes of advance review, the Minister of Health, in conjunction with the Minister of Justice, would designate an authority for that purpose. It is simply to get around the absence of that designation. I am in no way proposing that the Minister of Health would make those decisions.

Mr. Fraser said that we had dealt with this yesterday. We didn't deal with this yesterday. This is substantively different in terms of the process. This doesn't require or even mention judicial review. It certainly does not imply that these would be political decisions. What it does say is that there would be some kind of prior review conducted by competent legal authority.

For those who say that health care professionals make these kinds of decisions every day, no, they don't. My wife is a physician. She doesn't make decisions about who gets to take their life every day. She doesn't make complex legal decisions every day on criteria that legal scholars can't even agree might apply or might not apply. Physicians don't make those decisions every day; physicians don't make those kinds of decisions ever. These are very complex legal questions. Therefore, I think it is a modest proposal to say that the people who have been trained and identified as having the competency to make complex legal decisions be the ones who are making those decisions.

The Chair: As chair, I have to make a decision as to the receivability of this motion. I've listened to the entire debate—not that there have been many exchanges in the debate—and I'm taking the general position that I've taken. I can easily take the position that this is not receivable because it would create a system that doesn't exist, one that would somehow come into force before the coming into force of the bill, in order to allow any medical assistance in dying. In the same way that I ruled against the licensing scheme that Mr. Viersen had proposed, I think this is very similar.

Given the tenor of the debate and the way I like to defer to the committee, I'd point that out that I'd rather, as opposed to ruling it unreceivable, let people vote on it.

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

The Chair: Now we'll move to another motion from Mr. Genuis, CPC-18.1, but it's a new version with reference number 8249490. Please look at that one, not the original 18.1.

Mr. Falk, will you move that so it can be considered?

Mr. Falk: I so move.

The Chair: Thank you very much.

Mr. Genuis.

Mr. Garnett Genuis: This is a very important way of ensuring that we have an effective check, maximizing the chances that consent did occur and minimizing the risks to vulnerable people. It is a requirement that a person self-administer in cases where they are able to. It would set a default toward assisted suicide unless the person were not able to self-administer; then in that case, there would be euthanasia. Obviously, for somebody who is capable of self-administering, under this legislation as it's written, they have the option of accessing this service in one of two ways.

The advantage of requiring self-administration is that it absolutely minimizes the risk that it will happen to someone without their consent. It ensures that at that moment a person's life is taken, you have clear contemporaneous consent. I think that's a good thing. I think that achieves objectives that we should all agree are important.

The Chair: Is there debate?

Mr. McKinnon.

Mr. Ron McKinnon: We defeated a similar amendment earlier in relation to clause 241.1. I would vote against this for the same reason. I think it depends on the nurse practitioner. It depends on the good faith of the nurse practitioner or physician either way. I disagree with this amendment.

● (1010)

The Chair: Is there any further discussion or debate?

Not hearing any, I'll go back to Mr. Genuis to close.

Mr. Garnett Genuis: Mr. Chair, I'll just say—and I've heard this line of argumentation on a number of different amendments—that we should just trust in the good faith of physicians. Look, I think physicians are great people. As I just alluded to, there are several in my family, but there are 77,000 physicians in this country. Surely some of them are bad apples in a bunch so big.

Even that aside, a person acting in good faith can make a mistake, or misunderstand a person's words or intentions. We wouldn't say you can just leave it to the politicians since they're always trustworthy, and by the same token all of us are human beings. I don't think it makes sense to just say we don't need any kind of check on medical practitioners and that we should always just give them the greatest degree of discretion.

I think this provision protects people not only from intentional errors but also from accidental errors. It ensures that we're not taking the lives of people who don't consent.

The Chair: Thank you very much.

Now we will move to a vote on amendment CPC-18.1.

(Amendment negatived)

The Chair: Welcome to Mr. Mendicino, who is sitting in on our committee for the first time.

It's a pleasure to have you here.

Mr. Marco Mendicino (Eglinton—Lawrence, Lib.): I'm very happy to here, Mr. Chair. Thank you.

The Chair: The next one in the package is amendment CPC-19, by Mr. Viersen.

However, Mr. Viersen, as a result of the defeat of amendment CPC-17, I would have to rule that CPC-19 is consequential to CPC-17, which was defeated yesterday. I don't think this can go forward, because it's consequential to an amendment that was already defeated. I'm sorry about that.

Now we move to amendment PV-9. As chair, I'm going to take a little bit of latitude here. Amendment PV-9 is substantially similar to amendments LIB-5 and CPC-20.1, and I'm hoping that the drafters of all three can work together in a non-partisan way and come up with an amendment that's acceptable to all of you, because I think they're very similar.

I'm going to turn to Ms. May because hers was on the agenda first.

Ms. Elizabeth May: I'm certainly happy to work with others, but as you know my status here is unwilling participant in committee because I wanted my rights as they exist under report stage, and one of the disadvantages that I have under the conditions created by the motion passed by this committee is that I can't amend my motions at the table. I can't participate in the same way. However, I'm more than flexible in real life despite the restrictions put on me by the motion that this committee was forced to pass by who knows who.

The motion I'm putting forward, as has been noted, is very similar to Mr. Fraser's and Mr. Viersen's motions and it's about something that a number of witnesses brought up.

Proposed subsection 241.2(4) contains the heading “unable to sign”. So if the person requesting medical assistance in dying is unable to sign and date their request, another person, who is at least 18 years of age and who understands the nature of the request for medical assistance in dying, may do so. The way it currently reads is “in the person's presence on their behalf”. My amendment says “may do so in the person's presence under their direction”. The Liberal amendment is “may do so in the person's presence on their behalf, but only at the express direction of that person” and Mr. Viersen's amendment is “at any time, withdraw their request”.

So they're similar, but the intent is virtually identical between Mr. Fraser's and mine. I provided a summary for them. The rationale is clear that we want to have that assurance that if someone is unable to sign, the person who does so on their behalf has done so under their direction.

The Chair: Mr. Nicholson.

Hon. Rob Nicholson (Niagara Falls, CPC): This does provide some greater clarification and greater certainty. I just want to point out that this is actually almost identical to the amendments by Mr. Falk as well as Mr. Fraser. So they're all—

The Chair: That's amendment CPC-20.1. All three now add the concept that it be at the express direction of the person, in the person's presence, and on their behalf. I guess my question to the committee is since all three are substantially identical is there one that you're more comfortable with than the others?

Do you want to sort of work the wording so that—Mr. Fraser, do you have a thought on that?

● (1015)

Mr. Colin Fraser: I take Ms. May's point well.

I agree that there might be a slight difference there with the words “but only” and I don't think that necessarily provides or adds anything to what is being attempted in my amendment LIB-5.

I like Mr. Falk's wording in amendment CPC-20.1, “may do so in the person's presence on the person's behalf and under the person's”—I would add “express”—direction. However, I would be amenable to that wording, and perhaps we could propose a subamendment to Ms. May's amendment.

The Chair: Well, I think before proposing subamendments, Mr. Falk was okay with that wording, Ms. May. Are you okay with “may do so in the person's presence, on the person's behalf and under the person's express direction”?

Ms. Elizabeth May: Yes. All interpretations—what Mr. Fraser is doing, what Mr. Falk is doing, what I am doing—are to the same purpose.

I think the language of Mr. Falk's, with the addition of, as Mr. Fraser suggests, “express” direction, will achieve the same purpose as my amendment.

The Chair: So if you're okay with that, let's use Mr. Falk's as the basis and add the word “express” before the word “direction”. I think everybody is satisfied with that....

Mr. Mendicino.

Mr. Marco Mendicino: Forgive me if any of this has been covered. I'm just getting up to speed right now.

I understand there are potentially three iterations of this idea. I wonder if it might be helpful to have the analysts opine on this very briefly.

The Chair: I don't know if they're analysts, but they're representatives of the Department of Justice. If you want them to opine, they can opine, yes.

Ms. Klineberg.

Ms. Joanne Klineberg: I don't think there's any meaningful difference between any of them.

The Chair: Thank you very much.

Let's go to Mr. Falk's amendment, the revised CPC-20.1, which will now read as follows:

> may do so in the person's presence, on the person's behalf and under the person's express direction.

(Amendment agreed to)

The Chair: That was unanimously adopted. Good work, committee. That was good collegiality.

As a result of that, PV-9 and LIB-5 disappear.

We will move to CPC-20, which is Mr. Viersen's amendment....

Mr. Rankin, you have a new amendment? Does it come before this?

Mr. Murray Rankin: No, it was a clause to be added afterwards.

The Chair: Afterward, so let's deal with Mr. Viersen's first, and we'll come to yours, Mr. Rankin, when we get copies.

Mr. Falk, will you put that forward so that Mr. Viersen can speak to it?

Mr. Falk: I so move.

The Chair: Mr. Viersen, this is CPC-20.

Mr. Arnold Viersen (Peace River—Westlock, CPC): Is it 8223311?

The Chair: Correct: I have 8223311.

Mr. Arnold Viersen: All right.

This amendment comes from a concern that if a request has been signed by somebody else, there is no reference to the person themselves being able to remove or withdraw the request, essentially. I would just like to have it clarified, within this portion as well, that at any time the person making the request may also remove the request.

The Chair: Is there debate?

Mr. McKinnon.

Mr. Ron McKinnon: I will vote against this amendment, because I think it's unnecessary. I think it's already well represented in the safeguards at this point.

The Chair: Is there any further discussion or debate?

Not seeing any, Mr. Viersen, I'll give you a moment to close or to add anything.

Mr. Arnold Viersen: My concern for this bill in its entirety comes out of the fact that I do value our health care system here in Canada, and I do think allowing our health care professionals, or requiring them, to perform euthanasia or assisted suicide will undermine people's trust in the system. I do think that we have to do everything we can to ensure that people are not hesitant to go to the hospital in order to get other things other than assisted suicide dealt with. Most of my amendments come out of that desire.

The Chair: We'll move to a vote on CPC-20.

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

The Chair: Now we come to the new NDP-4.1.

I would note that this is similar to things that will come up at CPC-23 and LIB-8 related to conscience.

Mr. Rankin.

● (1020)

Mr. Murray Rankin: I was also going to note that Mr. Cooper and I think a Liberal amendment go to the same place. Our advice from legislative counsel was to introduce it here. That's why it's on the agenda where it is.

I would like to say by way of introduction that the first part that's proposed—4.1—

> Would recognize that every individual is free to provide or refuse to provide a person with medical assistance in dying, or to aid a medical practitioner or nurse practitioner to provide a person such assistance in accordance with their conscience or religious beliefs.

You will note that in the second part, a person who is aiding a medical practitioner or nurse practitioner, would be a pharmacist, or a nurse, or others.

We were told by some witnesses that all of this was in fact unconstitutional. Our efforts in the committee are to ensure that conscience is protected, because it was said that this was a provincial responsibility, and it would be worked out by the colleges of the various self-governing professional organizations. That is why it's worded as it is. It has recognized that. It's for greater certainty in 4.2, because I acknowledged that there are constitutional issues with this, but because we have heard so much about conscience during our deliberations, this is my effort to try to capture that issue, albeit in federal law.

I recognizes that a person is able to refuse to provide services, which is what we heard about primarily during our hearings, but also that person is free to provide the service if, for example, their conscience requires them to relieve suffering, notwithstanding the fact they may work in an institution where medical assistance in dying is not permitted. It covers both scenarios, and both religious and conscience reasons.

The second part, Mr. Chair, 4.2, is essentially identical to the wording of subsection 3(1) of the Civil Marriage Act, except that I've not gone so far as to say “institutions will able to avail themselves of these protections”. I don't think that institutions have consciences. Those are the reasons for my making this amendment for the committee's consideration.

The Chair: I have a question. Are you sure about this, Mr. Rankin, because this provision comes right after the subsection dealing with someone being unable to sign and before the subsection dealing with independent witnesses? Is this really the place you mean to insert this?

Mr. Murray Rankin: I am absolutely agnostic, using religious terms where this fits in our deliberations. I am acting on the advice of legislative counsel. They suggested that it appear here. It is of no material importance—

The Chair: You're agnostic as to your conscience—

Mr. Murray Rankin: That's right, or my—

The Chair: Excellent.

It's proposed here. Is there any debate?

Mr. Nicholson, then Mr. Cooper.

Hon. Rob Nicholson: I'd like to ask a question of the departmental officials. I realize there are split jurisdictions, but what this is trying to do is protect those individuals who do not want to participate in this, and for the greater certainty section, here it says that no individual shall be deprived of any benefits subject...under any law of the Parliament of Canada by reason of the fact that they are not participating.

Does this leave a person open then to sanctions at the provincial level? Since these are professions that are regulated by the provinces, could they be open to sanctions at that level?

Ms. Joanne Klineberg: I think with respect to the proposed new subsection 4.1, there is something of a danger that a provincial law might be passed that requires conduct that might amount to aiding a medical practitioner. Such a law might be found to be constitutional if it were challenged under the charter, and if so the danger is that medical professionals might be mislead by a provision like 4.1. They might feel that it gives them some right to refuse to do something, when legally and constitutionally it couldn't be a provision in the Criminal Code that protects them from having to comply with an otherwise valid provincial or territorial law.

● (1025)

Hon. Rob Nicholson: How could we word this? Is there any wording we could alter to ensure the individual is not then misled and is open to sanctions at the provincial level?

Ms. Joanne Klineberg: The statement the minister has made, both ministers in fact on a number of occasions, is that nothing in the criminal legislation compels any medical practitioner to do anything. From a strict constitutional or legal point of view, that might really be as far as Parliament can go in expressing the impact of its legislation on the affairs of medical practitioners.

The Chair: Mr. Fraser.

Mr. Colin Fraser: I really appreciate the intention of both of the suggested amendments to deal with conscience rights. We certainly heard evidence from the witnesses regarding the fact that this should be clearly stated for greater certainty. I agree with that.

In my later amendment, LIB-8 on page 94, there's some different wording that I would like to use to describe both providing or assisting in medical assistance in dying. That would capture a greater number of people and ensure that they are not compelled to participate in any fashion in providing or assisting in medical assistance in dying.

I believe, with regard to what was just stated by the officials, that is probably correct and I would be worried that we would have unintended consequences, ending up with a constitutional problem, legislating in a provincial jurisdiction and creating a conflict there.

With regard to Mr. Rankin's amendment, which I think is noble, I would prefer the wording that I have in LIB-8 on page 94 in a subamendment that I'll be proposing.

The Chair: Could you just read it, please?

Mr. Colin Fraser: The wording I would like to see would be, “For greater certainty, nothing in this section compels a person to provide or assist in medical assistance in dying”. I would remove the “directly or indirectly”. I don't think that adds anything except confusion, but the word “assist” covers a larger number of people and is intended to ensure that people are clear that they are not compelled by anything in this law to provide or assist with medical assistance in dying.

That would keep away from the potential constitutional problem and make it clear that conscience rights will be respected by this law.

The Chair: Mr. Cooper.

Mr. Michael Cooper: I certainly appreciate Mr. Rankin's amendment. I will be supporting it. I proposed an amendment that is more expansive than Mr. Rankin's, but Mr. Rankin's amendment is a step in the right direction and merits support.

I do have some concern, to the point that Mr. Fraser made, that it may be too narrow in terms of whom it protects. It only refers to a medical practitioner and a nurse practitioner, but it doesn't, for example, extend to pharmacists who may have a conscience objection, or other health care providers who may be involved in one way or another in administering physician-assisted dying.

I am wondering if Mr. Rankin might be open to an amendment to change his amendment along the lines of the wording found in my amendment CPC-23, excluding in terms of institutions, which would not be included because I understand that his amendment would not include that?

Mr. Murray Rankin: Thank you, and I appreciate the spirit in which we're having this debate.

I'm agreeing with Mr. Cooper, in that although I was attracted to Mr. Fraser's amendment, I'm concerned that it doesn't go far enough.

I prefer Mr. Cooper's suggested language, which is on page 91, namely the phrase “direct or indirect medical assistance in dying”. I'm worried, Mr. Fraser, about people like pharmacists who may not be considered to be assisting. They may have provided the medication long ago and, therefore, they may not at the time be seen as under the protection.

It's only a matter of technical drafting that we're debating here. We agree with the principles. I agree with Mr. Fraser and with the fact that we can only deal with federal laws, and I appreciate that uncertainty. I don't think the fact the ministers made a statement is of any relevance at all, but I do agree that we can only deal with federal jurisdiction, obviously, so there is a problem that has been properly flagged.

Regarding "direct or indirect", or the wording on page 91, would it make sense for the three of us to try to put our heads together?

● (1030)

The Chair: Do you want to suspend for a couple of seconds to let the three of you try to work it out?

Mr. Murray Rankin: Yes.

The Chair: Sure, let's do that.

● (1030)

(Pause)

● (1035)

The Chair: We'll resume. We have five minutes left. We've agreed that the different groups will work, and we'll come back to this subject at our meeting this afternoon. In the meantime, since this is probably not the location in the bill where we would insert this clause, we can move ahead with the other amendments or at least do a couple more.

Mr. Rankin, do you agree to stand it for the moment?

(Amendment allowed to stand)

Mr. Murray Rankin: That was helpful. Thank you.

The Chair: We'll figure out the right place to put this afterwards, but it will be later in the section.

So this allows us to move to LIB-6.

Mr. Fraser, I believe you're withdrawing it.

Mr. Colin Fraser: If I'm permitted, I withdraw that amendment. I wanted to make sure before I did that.

The Chair: You're not putting LIB-6 forward, which allows us to move to CPC-20.2.

You can move whatever you want.

An hon. member: [*Inaudible—Editor*]

Mr. Colin Fraser: I've decided that the vagueness of the wording would add extra complexity and, therefore, I'm not putting LIB-6 forward. That's not to suggest that a future amendment couldn't be made.

The Chair: So we're going to move to CPC-20.2.

Mr. Falk.

Mr. Ted Falk: I'd be happy to elaborate further but I don't think it's a good idea to do that.

● (1040)

The Chair: I'll pretend what you said before you said again.

Then LIB-7, Mr. Fraser, is the same idea. So I assume you're also not moving that one.

Now we move to G-2, which I think Mr. Fraser is going to put forward.

Mr. Colin Fraser: That's correct. What page is that on?

The Chair: It is page 87.

We're at proposed paragraph 241.2(6)(a) in the bill, addressing independence—medical practitioners and nurse practitioners.

Mr. Colin Fraser: This is from the Liberal G-2, but I'll be advancing this motion to modify the wording by replacing line 20 and 21 on page 7 with the following:

> (a) are not a mentor to the other practitioner or responsible for supervising their work

The Chair: Thank you very much, Mr. Fraser.

Do you want to speak to it?

Mr. Colin Fraser: Those are my comments.

The Chair: Is there any discussion?

Mr. Rankin.

Mr. Murray Rankin: I'm sorry if I missed the explanation for the amendment. Could you just repeat it, Mr. Fraser.

Mr. Colin Fraser: We're taking out the business relationship and adding that they "are not a mentor to the other practitioner or responsible for supervising their work".

The Chair: It was as a result of the fact that we heard testimony that in small communities there are medical practitioners who practise together and it would be difficult to find a referral where they don't have a relationship that has an independence issue, but they have a business relationship.

Mr. Murray Rankin: Thank you. Understood.

The Chair: Is there any further discussion on this issue?

Mr. Genuis, you wanted to add a small point?

Mr. Garnett Genuis: The removal of the reference to "business relationship" is concerning to me because, effectively, the result would be that you have two doctors who jointly operate a clinic who jointly sign off on each of these orders. The independence provisions are designed to prevent that. Two doctors working together in a business relationship who are doing this together creates some real problems that are avoided by the original wording.

The Chair: I know it's not necessarily my role to take, but I believe that proposed paragraph (c) covers that issue.

Mr. Garnett Genuis: Can you explain that? I don't quite understand that.

The Chair: Sure. It says, "do not know or believe that they are connected to the other practitioner or to the person making the request in any other way that would affect their objectivity". So if the business relationship was such that it would affect their objectivity, they couldn't then include....

I know it's not my role to explain the bill. I apologize.

Mr. Garnett Genuis: I do not agree with that assessment at all, but okay—

The Chair: We're coming up to 10:45, and I want to get through this one before we break.

Is there any other discussion from members of the committee?

Mr. Fraser, do you want to conclude?

Mr. Colin Fraser: I'd just reiterate that we did hear testimony from witnesses that this could cause problems with regard to access to this in remote areas. I believe that proposed paragraph 241.2(6)(c) clearly determines the issue of objectivity and any problem that could have arisen under the previous wording, so I would propose the amendment for that reason.

The Chair: Thank you very much.

(Amendment agreed to)

The Chair: I encourage the members now to work together over the course of the day to clarify and come to a consensus on this important amendment related to conscience.

This meeting is adjourned, and we'll see you at 4 o'clock.