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Chair

Mr. Anthony Housefather

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● (1610)

[*English*]

The Chair (Mr. Anthony Housefather (Mount Royal, Lib.)): I would ask everyone to please take their seats.

[*Translation*]

We are ready to begin.

[*English*]

Ladies and gentlemen, I'd like to call this meeting of the Standing Committee on Justice and Human Rights to order as we continue our work in doing our clause-by-clause review of Bill C-14.

We are currently at page 88 in the legislative package that we received, which would be amendment CPC-21.

I would note for everybody's information that NDP-4.1 that we started to deal with this morning will be deferred, as it wasn't in the appropriate section, until we get to Liberal-8. Then NDP-4.1 will be put forward in a different way, before Liberal-8, thanks to the collaborative work of all three parties. Good job, everyone.

We'll move to Mr. Viersen's proposal, CPC-21. I'd ask Mr. Falk if he'd be willing to move it so Mr. Viersen can speak to it, if he's here.

Mr. Ted Falk (Provencher, CPC): I so move.

The Chair: Mr. Viersen, please go ahead.

Mr. Arnold Viersen (Peace River—Westlock, CPC): Thank you, Mr. Chair.

I'm sitting with the friendly company over here.

This amendment is to deal with doctors financially benefiting from providing assistance in dying or assisted suicide or euthanasia, however you want to term it.

We really felt that if this service is to be provided it should be provided out of purely altruistic motives. Therefore, we felt that there should be no material benefit for performing this act of killing somebody, seeing as it is such a profound act.

We felt if this act is indeed driven out of altruistic motive there should be only altruistic motive as the motive.

Thank you for the opportunity to speak to it. That's my—

The Chair: Thank you very much.

Again, Mr. Viersen, I want to just ask the question for receivability. Wouldn't it be up to the provinces to set a fee schedule for any medical act? Does the federal government have the power to tell a province they can't set a fee schedule for anything that is a medical act? Have you thought about that?

Mr. Arnold Viersen: Yes, for sure. This comes back to my initial amendment that I brought, the very first amendment we addressed, and the fact that I did feel that this shouldn't be health care. This should be outside of the realm of health care. This may be announced too late, perhaps, but I do think we need to ensure the viability of our health care system, that people's trust in our health care system must be maintained.

I do think this would be one of the great ways that we can ensure that people are confident that when they go to the hospital they will be treated with the utmost respect and care.

The Chair: I understand, and from a substantive public policy ground, I understand.

May I ask the officials from the Department of Health. Does the federal government have any powers to not allow a province or territory to set a fee under medicare or anything else if this is a medical act?

Ms. Sharon Harper (Manager, Continuing Care Unit, Health Care Programs and Policy Directorate, Strategic Policy Branch, Department of Health): No, we don't.

The Chair: I'm going to have to rule this out of order, as not receivable, because it's not within the competence I believe of the federal government. I'm sorry, Mr. Viersen.

We'll move to amendment CPC-22, by Mr. Kmiec, but this is identical to CPC-21, and so I would have the same ruling.

Mr. Arnold Viersen: He did prepare a statement for me to read. I don't know if I can do that or not.

The Chair: Again, it's out of order. Is it a very long statement?

Can we ask Mr. Kmiec to email this statement to the members of the committee instead of reading it out? Because, again, it's not in order.

Mr. Arnold Viersen: All right.

The Chair: I'm sorry.

PV-10, Ms. May.

Ms. Elizabeth May (Saanich—Gulf Islands, GP): Most of my amendments with respect to this point have come directly from evidence and witness recommendations that you had before you. This comes from concerns that were raised by witnesses, but no one actually has put forward this exact language.

I thought this up myself. I put it to you that here's the circumstance, and we've heard it discussed even in clause-by-clause. What of people who are in a small and remote community? You have two problems. You have people who may be related to each other as they are in small practices, they know each other, and it may be difficult to find independent health professionals to provide a truly independent written opinion.

Knowing from friends of mine who are medical practitioners in remote communities, they quite often use video consults. I wanted to make this possible under the law.

It may be that this could be taken as implied, and they could use video consults to obtain consent, but I felt it was worth inserting proposed subsection 241.2(6.1) to say that: “In communities where it is not possible to find another independent medical practitioner or nurse practitioner to provide the written opinion referred to in paragraph (3)(e), the opinion may be provided by recorded video conference by another independent practitioner or nurse practitioner from elsewhere in Canada”.

I hope this addresses the problem that was raised by quite a few witnesses.

● (1615)

The Chair: I'm going to read in that you meant to say “independent medical practitioner” in the second to last line, because otherwise it wouldn't be consistent. If we can, we'll deem that word was there.

Ms. Elizabeth May: Yes, thank you very much. It was a drafting typo.

The Chair: Any debate?

Mr. Fraser.

Mr. Colin Fraser (West Nova, Lib.): I understand the intention of it and respect the intention of it. I do have a concern that it would be infringing on provincial and territorial competency in order to deal with the issue. I know our government has stated they are certainly interested in working collaboratively with the provinces and territories in having a pan-Canadian approach, but there may be some issues with regard to one province, under different jurisdiction, so I'd worry about that.

I also note, and Ms. May alluded to, the fact there's nothing in the act preventing this now, that would make this impossible. For those reasons, I don't support the amendment, even though I do respect the intentions.

The Chair: Further debate or discussion?

If not, can I just ask the officials, can you clarify there's nothing in the act that restricts it from being done by video conference?

Ms. Joanne Klineberg (Senior Counsel, Criminal Law Policy Section, Department of Justice): There's absolutely nothing in the legislation that requires a physical examination of the patient by the doctors. There is a requirement for a written second opinion, but nothing requires the physical presence of the practitioner with the patient, or the two practitioners to be together.

The Chair: Thank you.

Ms. May, I'm going to go back to you for closing.

Ms. Elizabeth May: I know I can't move amendments to my own motions at this point because they had to be in 48 hours ago. I'm wondering if Mr. Fraser might consider changing “from elsewhere in Canada” to “from elsewhere within the same jurisdiction”. That would avoid any issues vis-à-vis the provinces or territories in which a medical practitioner or a nurse practitioner was licensed.

I ask the question. Otherwise, I suggest this would allay a lot of concerns for people living in remote areas where it is hard to access, independent of each other, more than one medical practitioner and more than one nurse practitioner.

Mr. Colin Fraser: I agree that would be more satisfactory, but I don't think it would be satisfactory enough for me to support the amendment. I do believe it would still be up to the ministers of health across the country; federal, provincial, and territorial working together. I note as well, based on the information from the department, that nothing would not allow this now. I think it would be better not to play around with that wording.

The Chair: As chair, I have the discretion to let you move the amendment however you say you want to move the amendment. I'm okay with your moving the amendment and using the words “nurse practitioner within the same province or territory”, or “within the same jurisdiction” if you want to.

Ms. Elizabeth May: Mr. Chair, that would cause us to have us to vote on the subamendment and then vote on the main amendment, and I don't think it would make any difference in the end. In the interest of the committee's time, I'll accept that we put it to a vote as was written.

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

This is on PV-10.

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

The Chair: We'll move now to CPC-23.

Mr. Cooper.

Mr. Michael Cooper (St. Albert—Edmonton, CPC): Very simply, this amendment would provide conscience protections for medical health professionals, as well as health institutions. It is important that everyone's charter rights are respected and not only the charter rights of patients who have the right to access physician-assisted dying, but also the charter rights of health professionals with freedom of conscience and freedom of religion. These rights, under section 2 of the charter, are not just any charter rights; they are fundamental freedoms. I think there is certainly a need for consistency, and that would be what this amendment would provide.

It is analogous to legislation that is already on the books, and that is section 3.1 of the Civil Marriage Act.

● (1620)

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

Mr. Bittle.

Mr. Chris Bittle (St. Catharines, Lib.): I have serious concerns about this, in explicitly granting conscience rights to institutions, especially since these institutions will be publicly funded. These institutions are not analogous to institutions under the Civil Marriage Act, because those are churches and these are publicly funded institutions. It may be that the only institution in a community is a religious-based institution, and I don't see how this meets what we're trying to accomplish.

Furthermore there's no court case—and I believe I've asked witnesses—apart from a minority decision in a Supreme Court case that refers to a private Catholic school. There's no case where the Supreme Court has granted conscience rights to a publicly funded institution.

The Chair: Thank you very much.

Mr. Fraser, go ahead.

Mr. Colin Fraser: I agree with that. The only thing I would add is that, with regard to individuals, we will be dealing with that in a moment, on another amendment that will be brought forward with the collaboration and work of members from all parties.

The Chair: Again, I just want to thank Mr. Cooper, Mr. Rankin, and Mr. Fraser for working together so collaboratively on what will come forward, regardless of how it is dealt with.

Is there any further debate?

Mr. Nicholson, go ahead.

Hon. Rob Nicholson (Niagara Falls, CPC): Mr. Cooper raises a very good point, that institutions motivated or bound by certain philosophies, religions, and everything else could find themselves exposed. I think this is exactly what he is targeting here. Just because there are only one or two cases, or a minority decision that is directed at a religious institution, that doesn't mean this isn't going to be something we will have to look at in the future. I would like us to do the right thing now and protect the institutions that will have a problem with this. I am hoping that the members of the committee will join together and give that protection to everybody, not just the individuals but the institutions as well.

The Chair: Thank you very much.

Mr. McKinnon.

Mr. Ron McKinnon (Coquitlam—Port Coquitlam, Lib.): I would like to respond to Mr. Nicholson.

Institutions are not individuals; they are not people. They don't have rights under the charter. I side with Mr. Fraser's argument that we can't be talking about rights of institutions in this context, so I will not be supporting this amendment.

The Chair: Mr. Falk, go ahead.

Mr. Ted Falk: I think Mr. Cooper has raised a very important issue with this amendment. It is by far one of the most predominant issues that filled our time with our witnesses. In this particular case, I think institutional conscience falls into the very same category as individual conscience, because many of the hospitals we have right across our country were originally founded by faith-based organizations. Their boards of directors and administrators are still faith-based and make decisions for that institution from a faith-based perspective. I think we need to respect that. We wouldn't have these institutions here today that provide these services if it weren't for these faith-based organizations that initiated them. I think this just affords them the protection they need to have to operate in a conscientiously driven organization. I think they deserve it. They have earned this.

The Chair: Thank you very much.

We have had three Conservative speakers. Let me just see if anybody else wishes to speak on this side.

Mr. Genuis, do you have something to add? I'll let you add something very briefly.

● (1625)

Mr. Garnett Genuis (Sherwood Park—Fort Saskatchewan, CPC): I just want to say that, aside from the philosophical questions here, there is a real practical risk to not protecting the rights of institutions. There are cases internationally where a failure to protect the conscience rights of religion-based charitable institutions has led to those institutions closing. I am very worried that we will get into the same situation when it comes to Catholic hospitals and Catholic health care institutions. That is a big cost. Even if you don't agree with conscience rights for institutions philosophically, I would ask members to think about the cost for patients, in terms of access to other services, that would result if many of these health care facilities ceased to operate.

The Chair: Thank you very much.

Mr. McKinnon, go ahead.

Mr. Ron McKinnon: I just wanted to respond again that, while I take the point about the concern for institutions—how they operate and how they need to have the freedom to do so—no individual who acts within these organizations, whether as a director, a doctor, a nurse, or whatever, is compelled to provide services under this act. By protecting the rights of the individuals, we would be indirectly protecting the institutions. That would be my point.

The Chair: Is there any further discussion?

I am going to go back to Mr. Cooper to give him a chance to sum up the arguments and close.

Mr. Michael Cooper: In response to the point that was made by Mr. McKinnon that institutions are not people and therefore do not have charter rights, it should be noted that Chief Justice McLachlin, in the Loyola decision, specifically said, about the charter rights under section 2, freedom of religion and freedom of conscience, that individuals and institutions are intertwined. It is a very real issue. I know that health institutions have expressed significant concern. I think it is important that we provide those institutions that provide high-quality health services in many parts of our country with the protection they have asked for. There is nothing this amendment would do that would preclude access to medical assistance in dying for patients who wish to access it.

The Chair: Thank you very much.

I think it was well argued on both sides. Now we're going to get to the vote.

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

The Chair: This now brings us to amendments NDP 4.1 and Lib 8, which I think are the joint product now of the working group that was created.

Mr. Murray Rankin (Victoria, NDP): That's exactly right, and I'd like to salute Mr. Cooper and Mr. Fraser. This is definitely a joint effort.

Mr. Chair, it's in two parts. The main part I think has been distributed. It's a handwritten page, very similar to Mr. Fraser's, but with a couple of key changes.

The suggestion was that after line 2 on page 8, we add, “for greater certainty, nothing in this section compels an individual to provide or assist in providing medical assistance in dying”. The phrase “medical assistance in dying” is already defined. You'll note it deals with an individual.

I can foreshadow there will also be an amendment proposed to the preamble that will make explicit reference, as you'll see in the next page, to the charter and nothing affecting the guarantees of freedom of conscience and religion in the charter.

I know we're not talking about that, but I think people need to know that reference will be made as part of this package we've agreed to.

The Chair: Before we get to debate, I need to say, as chair, because right now we're only dealing with this specific motion, while you can say this is what you intend to propose, there can be no link between one and the other. I wanted to make sure everybody's debating the motion on the floor, which is after line 2, on page 8.

Mr. Rankin.

● (1630)

Mr. Murray Rankin: I would just echo some of the comments made in the debate over the last motion by Mr. Cooper. We heard enormous testimony, both at the joint panel and at the justice committee hearings, on the need to find some way to provide comfort to people who have freedom of religion or freedom of conscience reasons for not wishing to participate in any way, shape, or form in this procedure.

This is an attempt to make sure people don't feel there's any compulsion to, either directly or indirectly, assist in providing it or doing it themselves. That was the objective of the proposed amendment.

The Chair: Thank you.

Mr. Fraser.

Mr. Colin Fraser: Thank you very much, and I do appreciate Mr. Cooper and Mr. Rankin working on this with me to come up with language that was satisfactory to the three of us and hopefully for the entire committee.

I think it is important from the testimony we heard, and from the evidence we heard, that it perhaps was an issue. People felt that maybe their conscience rights weren't being protected as adequately as they could be. All along I have agreed with the minister's position that nothing in the act compels, so for greater certainty, this puts it in there.

We'll work on language in the preamble, as well, that hopefully will get adopted and be able to make this absolutely certain. I do think the language is adequate in order to not stray into territory that could potentially cause problems constitutionally, and therefore I'm definitely supporting this amendment.

Thank you.

The Chair: Thank you.

Mr. Casey.

Mr. Sean Casey (Charlottetown, Lib.): I wanted to point out that the government's position on this is informed in large measure by the excellent work that's being done over in the Senate in their pre-study. That was certainly a part of the reason for the government's support of this motion.

The Chair: Mr. Falk.

Mr. Ted Falk: I'd like to propose a subamendment.

After the word “assist”, I'd like to add “either directly or indirectly”, because I believe that's what I heard Mr. Rankin say, “in providing medical assistance”.

The Chair: Maybe Mr. Rankin can respond, because this was assessed a lot before, so he can explain to you what—

Mr. Ted Falk: Well, this was verbiage that he just used in—

The Chair: I don't know why it's not in the draft, but maybe he can explain it to you before you propose this.

Mr. Murray Rankin: I appreciate that. I've been persuaded by officials that in a Criminal Code amendment, the words “directly or indirectly” would be too vague to be accepted. As a result of that advice, we've taken out those words. I meant to say in providing the reason for this that it would affect people who provide it and those assisting in it, and assisting covers a wide array of activity.

That was the reason why those words couldn't be inserted, on the basis of legal advice.

Mr. Ted Falk: Would this also cover a situation where there are referrals?

Mr. Murray Rankin: It wasn't intended to.

The Chair: As we know, nothing within the act requires a referral. There is no section of the act that requires a referral. This act is about the Criminal Code, so all we are clarifying is that there is nothing within this act that compels an individual to provide or assist.

Again, we all discussed the words “directly or indirectly”. Based on the officials' recommendations, they are not there.

It is receivable; you can propose it.

Mr. Ted Falk: Okay, I will. Thank you.

The Chair: Okay.

There is a subamendment by Mr. Falk to add the words. Can you just tell me where you would like to add them?

Mr. Ted Falk: Yes, right after “assist”, to insert the words “either directly or indirectly” so that it would read “either directly or indirectly in providing medical assistance”.

The Chair: Right now, what is on the floor is the subamendment —only whether or not the words “either directly or indirectly” are added after the word “assist”.

Mr. Fraser, go ahead.

Mr. Colin Fraser: While I appreciate the point, I don't think it adds anything. I think it creates uncertainty in the law. We heard from the department that “directly or indirectly” causes a problem for an amendment to the Criminal Code. The words “to provide or assist”.... The word “assist” is very clear in that it is covering more people than just those actually providing the medical assistance in dying. I think it covers what we are trying to do. I think “directly or indirectly” would cause a problem for us, and I wouldn't support the subamendment.

The Chair: Is there any further debate on the subamendment?

Mr. Falk, do you want to close?

Mr. Ted Falk: No, I think I have made my point. I think it is important that it be there. I also hear what my colleagues here are saying, and the opinion of the justice officials, although I will support it anyway.

The Chair: Perfect.

We will move to a vote on Mr. Falk's subamendment, about adding the words “either directly or indirectly”.

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

The Chair: Now we are back on the principal amendment from Mr. Rankin, which we will call NDP-4.1.

Is there any further discussion on that? If not, I will go back to Mr. Rankin to close.

● (1635)

Mr. Murray Rankin: I think this adds a lot of comfort to a lot of people, based on the testimony we have heard, and I hope it is accepted by the committee.

The Chair: Thank you very much.

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

The Chair: Mr. Falk, I think CPC-24.1 is also tied to the medical practitioner and the nurse practitioner. Is that dropped?

Did I miss CPC-24? I am sorry. Let me go back. We are going to go to CPC-24, about line 35 on page 7.

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

Mr. Genuis, go ahead.

Mr. Garnett Genuis: This touches on some similar issues that were just discussed, but I think it includes some important elements.

I want to say that the previous amendment does not provide conscience protection. It recognizes that the federal legislation on its own does not compel an individual to provide or assist in assisted suicide or euthanasia, but in conjunction with existing policies, especially college policies in the province of Ontario, it would infringe on conscience. There is no solution of the conscience question by this amendment. I think it is a good amendment, but it does not fundamentally address the underlying problem.

My amendment clarifies that every person is entitled to refuse “to receive medical assistance in dying”, I don't think that point is particularly controversial, but “to provide, or refer for, medical assistance in dying”.

It actually provides a robust conscience protection for individuals. It does not mention institutions, but it provides that protection of conscience, which the previous amendment does not.

It specifically clarifies that referral constitutes involvement. This is an important point, perhaps sometimes disputed. If a country does not have capital punishment, it would almost certainly not extradite for capital punishment, because to directly refer or send someone to a place where they are receiving something that someone regards as unethical is a form of complicity. In the medical context, referral is not providing directions; it is not letting someone know that a service is available; it is not providing for an early transfer of medical records. These things all need to happen and should happen. A referral is a direct recommendation of an individual to someone else for a service that individual recommends they receive but is not qualified, for whatever reason, to provide oneself.

In the context of conscience objection, referral is not a solution. Referral requires an individual to be complicit in the action. If you think of that via the extradition analogy, it is particularly clear.

This provides conscience protection—there seems to be some consensus that it needs to be provided—and it clearly delineates the inclusion of referral as well, in terms of conscience protection.

On that basis, I think it needs to be passed.

The Chair: Thank you very much.

Mr. Bittle.

Mr. Chris Bittle: The issue of referral should be left to the colleges, to the provinces, as something that needs to be regulated, As I'm a lawyer, if an issue comes before me in my firm, something that I object to on any level, I can refuse to take that client. It's my job to refer an individual to a next step. That's done through a self-regulating body, the Law Society of Upper Canada, through legislation from the province.

I would like to get the department's analysis on this section, please.

Ms. Joanne Klineberg: I'm a little outside my expertise, but the view of the department is that this would be outside Parliament's jurisdiction. The provinces have the competence jurisdictionally to legislate on this, and likely it would be invalid federal law.

The Chair: Mr. McKinnon.

● (1640)

Mr. Ron McKinnon: I'd point out once again that part (a) of this amendment is already hard-wired into our safeguards. To receive medical assistance in dying, an individual first has to request it. They can't be compelled to do that, and they have an explicit entitlement to confirm that before medical assistance in dying is rendered, so I don't see that (a) provides any useful capability, any useful protection, and of course (b), as we have heard, is probably outside our jurisdiction, so I shall vote against this.

The Chair: Mr. Nicholson.

Hon. Rob Nicholson: Going back to the example of legal advice, if you don't want to provide legal advice or take on a client, Mr. Bittle, you indicated that within the legal profession we can and should refer them to somebody else, but this is something very different here. These are people who have conscientious objections to what is going on, and we've already included, directly or indirectly, a person's ability on the grounds of conscience not to have to participate in this.

It is a reasonable expansion of that to say you're not under an obligation to have to refer a patient to somebody who is going to do that for them. If on conscience grounds the individual does not want to get involved with this, they don't have to go the next step of getting the kind of assistance that the patient is looking for. This is just a reasonable expansion of what's already part of this.

The Chair: Mr. Bittle, do you want to respond?

Mr. Chris Bittle: I see where this amendment is coming from, and I appreciate this, but this is a solution without a problem. We asked individuals, asked witnesses, and heard evidence to the fact that there is no issue among the colleges and the associations with respect to physicians exercising conscience rights across the province. There's nothing in this bill that requires an individual to do something. I believe this is outside the scope. I don't think it's an appropriate time for the federal government to be legislating the affairs of the colleges of physicians and surgeons across the country.

The Chair: We'll go back to Mr. Genuis to wrap up the arguments on this one.

Mr. Garnett Genuis: I have three quick points. They claim that this is a solution in search of a problem. Dr. Nancy Naylor in Strathroy, Ontario, has spoken out about the fact that she is leaving her palliative care practice because of the effect of the Ontario College of Physicians and Surgeons policy with respect to referral and this legislation. I doubt there are that many palliative care physicians in Strathroy, Ontario, so those who are concerned about access should take the opportunity to solve that problem very simply seriously enough.

In terms of the jurisdictional question, I would view this as an exception to an exemption in the Criminal Code, and it is legitimate for the federal government to put conditions on that exception.

To respond to Mr. Bittle's comparison to lawyers, a better analogy is if someone comes to you in your law practice and says they want to commit tax fraud. If you were to say you didn't do that, but you'd refer them to a lawyer who is willing to, that is a better analogy because you'd be willing to refer someone to a service you can't provide. I don't think you would refer someone to a service that you objected to ethically. That is the correct analogy, sir.

The Chair: Before we vote, I want to explain why I'm allowing this amendment. Previously I disallowed Mr. Viersen's because I thought it was undebatable that the subject of the amendment was completely outside the scope of federal powers. In this case, while I doubt that it's within the scope of federal powers, I do not dispute that there's a legitimate argument that it could be, and as a result I'm allowing this to go forward, in my usual practice of letting the committee decide, rather than just me.

I just wanted to explain this, because obviously somebody could consider it a contradiction that they said this isn't within federal power and I'm still allowing it to go forward. I just wanted to explain it.

Now we'll move to a vote on amendment CPC-24.

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

The Chair: Amendment CPC-24.1 is dropped.

Amendment Lib-8 is dropped because amendment NDP-4.1 was adopted.

Then we have amendment CPC-24.2, which I think is exactly the same on the medical practitioners.

We move, then, to amendment CPC-25.

Mr. Falk, will you put that forward for Mr. Kmiec?

● (1645)

Mr. Ted Falk: I will so move.

I don't think Mr. Kmiec is here. Mr. Viersen will be speaking for him.

The Chair: Mr. Viersen.

Mr. Arnold Viersen: This would amend the bill to read “of an indictable offence and liable to imprisonment for life without eligibility for parole until they have served 10 years of their sentence”.

This is a simple amendment for the simple reason that wilfully ignoring the law and killing someone without following the necessary precautions and guidelines is second-degree murder. We cannot allow gross negligence to go unpunished, and there must be sufficient deterrence to emphasize the importance of these guidelines. This is a human life we are dealing with, and it should not be trifled with.

The Chair: Thank you for your succinctness.

Mr. Bittle.

Mr. Chris Bittle: I think this is excessive. This is creating a lesser offence. The offences of murder and manslaughter still exist, and you're creating imprisonment without life. I don't think it's appropriate in this particular case. I think the safeguards are there for a reason.

I wonder whether I can get the opinions of the department on this.

The Chair: Ms. Klineberg.

Ms. Joanne Klineberg: I think the idea behind this offence was to give the possibility of a lesser offence being charged in cases in which breach of the safeguards was perhaps not as serious as it might be in other cases. It is true that the amendment would cause the penalty for this offence to match the penalty for murder. In that sense, it wouldn't be a lesser offence; it would be an offence of the same seriousness as murder.

One of the concerns that motivated the creation of this offence is that in jurisdictions that have these laws, breach of safeguards is sometimes detected, and yet there is very rarely any prosecution. That might be, it's surmised, because the choice is either to prosecute for the offence of murder or not to prosecute at all. The idea is to create a middle option, so that there can be a prosecution for an offence that more closely matches the wrongdoing.

The other point I would make, just from a pure criminal law perspective, is that medical assistance in dying might be provided by way of medically assisted suicide, and aiding a person to die by suicide is a less serious offence than murder. It carries a maximum punishment of 14 years and no minimum. There might be a strange impact on a physician who had aided someone to die by suicide whereby they could face a higher penalty for breach of the safeguards than they could have if they had been prosecuted for the offence of aiding a person to die by suicide.

The Chair: Thank you very much.

Is there any further debate? If not, Mr. Viersen, I'll give it back to you to close.

Mr. Arnold Viersen: We are talking about the taking of life. That is the number one thing we're dealing with in this new bill. I think we need to ensure that we have consistency in ensuring that if you take a human life without the exemptions, you pay. Those who do the crime do the time, essentially. That's probably the impetus for this amendment.

I would like to point out that in Belgium they have significant stats concerning people who are being euthanized without explicit consent. They have statistics on this. You'd think it would be a hidden kind of thing, but no, they actual have stats on it—the proper documentation not being filled out, and those kinds of things.

We need to ensure that in Canada no one is put to death without consenting to their death. One person whom that happens to is one too many. How many are we okay with? That is the question. In Belgium last year, 1,000 people were put to death without explicit consent. If that happens here in Canada, I would expect that there would be a sentence similar to that for manslaughter or second-degree murder.

The Chair: I just want to say that we had no testimony to the effect of 1,000 people in Belgium being put to death that way. I just want to caution that I'm not sure that is entirely accurate, but I understand the point you're making. You're trying to make the point that we should be very cautious.

Mr. Arnold Viersen: Yes.

The Chair: So now we will move to a vote on CPC-25 from Mr. Kmiec.

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

The Chair: We now move to PV-11.

Ms. May.

● (1650)

Ms. Elizabeth May: Thank you, Mr. Chair.

This is an amendment based on recommendations that the committee heard from a couple of witnesses from the Barreau du Québec as well as from Peter Hogg. He was not at this committee. He testified at the Special Joint Committee on Physician-Assisted Dying back in January. Peter Hogg is, of course, one of Canada's leading constitutional law experts.

To save time, I won't read out all three clauses. You have them in front of you. The essence of this is to ensure that there are provisions to allow equivalency in recognizing the federal law for medically-assisted death with provincial laws.

I'll just quote from Professor Hogg at this point:

> The advantage of doing that is that it would avoid overlapping legislation. Also, if you don't do something like that, issues of conflict between the federal and provincial law will be quite complicated, and they will be resolved by the rule of federal paramountcy. That would be a bad situation. I think it can be resolved by a so-called equivalence provision.

What I've drafted is based on many precedents in other federal laws where one can assess that the provincial law under consideration is sufficiently equivalent to what's being put in place federally that we'll avoid federal-provincial conflict of jurisdiction in this area. I hope you'll consider this amendment. Thank you.

The Chair: Monsieur Bittle.

Mr. Chris Bittle: I was wondering if I could get analysis of this section from the department.

Ms. Joanne Klineberg: We have a few comments we can make, for the committee's interest.

First, it's not entirely clear how equivalency would in effect be assessed in this particular context. For instance, if it were assessed fairly liberally, in Quebec, where it's not required that there be an independent witnesses to the person's written request, the federal criminal law would not apply. Then there might end up being a situation of differential standards and differential safeguards across the country.

Another issue with respect to this is that it might be for the committee's consideration that the Minister of Justice would be better placed than the Minister of Health to determine when a provincial law is equivalent to the federal Criminal Code.

A technical issue that we've been informed of by our legislative counsel with respect to the amendment is that it doesn't entirely accomplish its intended effect. It creates a power for the Governor in Council to order that provisions of the criminal law would not apply in a particular province, but it does not incorporate that notion into the exemptions themselves. The exemptions still require physicians and nurse practitioners to comply with section 241.2 of the Criminal Code. Wording in the order of "or to comply with a provincial law that has been found to be equivalent" would also have to be incorporated into the exemptions in order for the exemptions not to require compliance with the criminal law.

The Chair: Thank you very much.

Ms. May.

Ms. Elizabeth May: I appreciate, as ever, the advice from officials, and Professor Peter Hogg is someone who wrote the book on constitutional law, literally. Even when I was back at Dalhousie law school in 1980, we were using Peter Hogg's text on issue of paramountcy, conflict of laws, and federal–provincial jurisdiction.

The recommendation that the Governor in Council may act is not a decision being made by the Minister of Health. The Minister of Health is making a recommendation. The decision to accept a provincial set of laws as equivalent is one that would be made by cabinet as a whole, with the inclusion of advice from the Minister of Justice. The concern about how one would, in effect, determine whether it was sufficiently equivalent is one that would engage the cabinet as a whole and be based on the key sections of this act the officials are concerned about.

I think there are enough safeguards in this amendment, as drafted, to ensure that cabinet will make a determination that's clear as to whether or not a provincial set of measures are sufficiently equivalent to allow the federal government's actions to exempt a province from the federal law if the provincial law is sufficient.

We certainly have many agreements of this type in other areas of law. I understand the Criminal Code is different. I accept that, but I think the Governor in Council will be cautious in stepping back and allowing a provincial law to stand. Out of necessity—as there is in the case of the Fisheries Act, or in numerous acts where the federal government determines that provincial legislation is sufficiently equivalent to step back—there would be a negotiated agreement between the two levels of government.

● (1655)

The Chair: I want to be as flexible as possible. My understanding is that there's a second issue with respect to the amendment, which is that we would also need to modify proposed sections 227 and 241 to then read that it would not be an offence to do medical assistance in dying, provided that it was in accordance with this section, or in accordance with the laws of the provinces or territories, where a Governor in Council....

My presumption is that if we pass this, we would have to go back and make sure we did that. I want to allow you, in principle, to consider things, so we can be flexible enough, if it's adopted, to go back, find the right sections, and do that.

Is there any other debate?

Not hearing any, do you want to finish on any principal point?

Ms. Elizabeth May: I think, Mr. Chair, that should this pass, I'm certainly open to finding other sections that need fixing, but let's not put the cart before an unlikely horse.

The Chair: Fair enough.

We're going to move to the vote on PV-11.

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

The Chair: We will then go to CPC-25.1. It's new, so let me look at it.

Mr. Viersen, I'm sorry that I keep having these issues with the amendments that only you seem to put forward, but there's a real issue of receivability again on this amendment, with respect to the scope and the intention of requiring a court of appeal to rule first.

To be flexible, why don't I let you at least argue your amendment? If you could try to explain to me why you believe it's receivable, I'll listen to you.

Mr. Arnold Viersen: Thank you, Mr. Chair, for your graciousness. I guess it's probably part of being new here that this whole inadmissibility thing is coming up more often, but I do thank you for your consideration regardless.

This amendment came from...as I went through the bill, there seemed to be no way for an outside person to say.... This is to prevent doctor shopping, essentially. If we have someone who is depressed and wants to die, my concern is that if a doctor said, “No, you're just depressed, we need to get you some help”, the person can move away from that doctor and move to the next doctor, say, “Can you provide me with assisted suicide?”, and find two other doctors. That first doctor may be sitting there, wringing his hands, and saying, “This person's just depressed. We need to get them help.” This would give the first doctor the ability to put a stop to that particular case and to say, “Hey, I don't think we're looking at all the information. Can we go before a judge to see if this is where I can present, perhaps, in a different setting?” That's what this comes out of.

We might lose one life without consent, that's what I'm trying to go after.

The Chair: I certainly understand substantively the principle you're trying to raise.

I'm still forced to rule that this is beyond the scope of the bill and is not receivable. There's no doubt in my mind. Despite how flexible I want to be, and I'm always erring on the side of....

I'm sorry, Mr. Viersen. The next time, if you want some help, I'll be happy to work with you on some of them beforehand.

Mr. Arnold Viersen: The timing of it was very rushed. It was Wednesday evening, and they said we had to have amendments in by five o'clock tomorrow.

The Chair: I totally understand.

At this point, we have gone through all the amendments on clause 3. Now we will have a vote on clause 3 as amended, meaning all the amendments we have adopted so far in clause 3 would be incorporated as part of clause 3.

Is everybody good with moving forward with that? Is there any debate on clause 3 as amended?

(Clause 3 as amended agreed to [See *Minutes of Proceedings*])

The Chair: We now move to clause 4.

● (1700)

Mr. Colin Fraser: Mr. Chair, now that we're moving on to a different clause, I'm wondering if it would be a good time to take a five-minute break.

The Chair: Absolutely.

Is that okay with everyone, that we take a five-minute health break?

Some hon. members: Agreed.

The Chair: The meeting is suspended for five minutes.

● (1700)

(Pause)

● (1715)

[*Translation*]

The Chair: We are resuming the meeting.

(On clause 4)

The Chair: We will now move to clause 4.

[*English*]

We're now moving to amendment CPC-26 in clause 4. However, this is one of the ones tied to the whole licensee scheme that was already ruled unreceivable. Amendment CPC-26 is part of that whole process and is thus not receivable.

That brings us to amendment CPC-26.1.

Mr. Falk, is this one of those again concerning the nurse practitioner?

Mr. Ted Falk: Yes.

The Chair: So is this one we'll skip over?

Mr. Ted Falk: Yes, unless you would like me to explain why.

The Chair: If you feel that you want to repeat the same thing again, you're more than welcome, but I think we can all deem that we heard it and appreciated it very much.

Ms. Iqra Khalid (Mississauga—Erin Mills, Lib.): If I may, I would really like to hear it again.

Mr. Ted Falk: It's okay; we'll move on. I want to make sure we get through our agenda.

The Chair: I do want to say that you were incredibly eloquent when you presented it this morning.

I think amendment CPC-26.2 is not related to that matter. It's over to you, Mr. Falk.

Mr. Ted Falk: Thank you very much, Mr. Chair.

It's a very simple change. It's changing the word "may" to "shall"; we're insisting that the Minister of Health "shall" make regulations corresponding to this bill.

I don't know that it needs more explanation than that.

The Chair: No. I think that's pretty clear.

Mr. Fraser.

Mr. Colin Fraser: I have a concern regarding the discretionary ability of the minister, and I'd like to hear the department or the officials comment on the change from "may" to "shall."

Ms. Joanne Klineberg: What we're told is that the use of a mandatory type of language is not typical for regulation-making powers.

Other concerns with respect to that kind of language relate to what mechanism for enforceability there would be, for instance, if those regulations were not made. Within what period of time must they be made?

It's all those questions surrounding how you would enforce a failure on the part of the minister to undertake these obligations, when the language becomes mandatory. There's no mechanism proposed for the timelines and enforceability, which is why they tend to be expressed in the permissive rather than the mandatory.

The Chair: Mr. Fraser.

Mr. Colin Fraser: On that, I agree with that sense, that this should be permissive language in order not to take away the discretion of the minister to make whatever regulations the minister deems fit and ensure that the permissibility is there for regulations to be made on these various matters.

I would tend to agree with the analysis of the department, then, and also note that it seems irregular that this would be anything but permissible language. I therefore would not support the amendment.

The Chair: Mr. Falk.

Mr. Ted Falk: Would changing the word "shall" to "should" find more traction with the justice department, or is that also problematic?

Ms. Joanne Klineberg: It's my understanding that "may" is the standard formulation.

The Chair: Mr. Rankin.

Mr. Murray Rankin: Do any examples come to mind in which it's not permissive—in other words, in which the word "may" is not used—in regulation-making powers? I can't think of any.

Ms. Joanne Klineberg: Unfortunately, this is where you hit one of the boundaries of my personal knowledge.

When we receive these motions, we do quite a lot of consulting within the department to get the views of the experts. I don't know of any—but I wouldn't, necessarily.

The Chair: Mr. McKinnon.

Mr. Ron McKinnon: I have gone through the same journey as Mr. Falk, being also a non-lawyer, and I've come to understand that this is our opportunity to extend a role of discretionary power over aspects of the Criminal Code to the health minister.

We're basically offering to the health minister the ability to make such regulations as he or she sees fit.

The Chair: Thank you.

Is there any further discussion?

Mr. Falk, do you want to close?

Mr. Ted Falk: Yes. Notwithstanding what I heard from the justice officials, I think it would still be a good idea to give direction to the minister.

When you look at the content and the subject matter of the bill, it should be incumbent on somebody to make regulations, and the word "may" gives a person discretion not to do it, quite frankly.

Maybe at the end of the day it satisfies our needs here better if there are no regulations made and the thing just falls away.

● (1720)

The Chair: Okay. We'll move to the vote now on amendment CPC-26.2

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

The Chair: We will now move to amendment CPC-26.3.

Is it withdrawn?

Mr. Ted Falk: It's withdrawn.

The Chair: Okay. Then we will move to amendment LIB-9.

Mr. Fraser.

Mr. Colin Fraser: This is on the same clause 3, under proposed subsection 241.31(3). What I'm proposing is actually to change the wording I had in the notice for amendment LIB-9, so that we would add a subparagraph 241.31(3)(a)(iv)—I believe it would be at line 28—and add the following words: "collection of information from coroners and medical examiners".

Adding this as subparagraph (iv) would allow and ensure that all coroners and medical examiners are included, rather than use the language I previously submitted, which is to create a class composed of coroners and medical examiners.

We heard testimony to the effect that they should be added in order for the health minister to have the ability to make regulations in regard to working collaboratively with the provinces, and then ensure that the information relating to coroners or medical examiners—the terminology differs from one jurisdiction to another—is subject to the health minister's proper regulation.

I would propose the amendment in that fashion, which is slightly different from the amendment LIB-9 that I submitted.

The Chair: Basically, as I understand it, the proposal is to add, after line 28 on page 9, the following: "(iv) collection of information from coroners and medical examiners".

Mr. Colin Fraser: That is correct.

The Chair: Thank you.

Is there debate?

Not seeing any debate, we go back, Mr. Fraser, to you.

Mr. Colin Fraser: I have nothing further to add.

The Chair: Okay.

We're going to proceed to a vote on this amendment, LIB-9.

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

The Chair: Amendment BQ-9, I understand, was withdrawn.

A voice: Yes.

The Chair: Okay. Amendment BQ-9 is withdrawn, which brings us to amendment CPC-27.

Mr. Genuis.

Actually, amendment CPC-27 is very similar to amendment LIB-10, so LIB-10 cannot be put forward if CPC-27 works. I hope the two of you have worked together, perhaps, on a wording.

Ms. Iqra Khalid: We have, Mr. Chair.

The Chair: Excellent. I'm very happy for that collaboration.

Mr. Falk, will you move this so that Mr. Genuis can put it forward?

Mr. Ted Falk: Yes.

Mr. Garnett Genuis: On this admittedly relatively small point, we are trying to bring sunny ways back.

The version I'm going to move is an altered version, and it has been provided to the clerk. Maybe I should just read it out for the benefit of those who may not have it in front of them: "The Minister of Health, in cooperation with representatives of the provincial governments responsible for health, may establish guidelines on the information to be included on death certificates in cases where medical assistance in dying has been provided, which may include the manner in which to clearly identify medical assistance in dying as the primary cause of death, as well as the illness, disease or disability that prompted the request for medical assistance in dying."

By replacing the "must" with the "may" and the "are to" with "may" later on, it addresses the jurisdictional concern. It doesn't create an obligation on the minister, but I think the minister would be wise to bring in these guidelines, especially based on the evidence we heard about some very serious concerns from the perspective of those who fill these documents out in the various provinces about conflicting guidelines from their professional bodies, and potentially from the legislation.

I think there's consensus here, and there we are.

● (1725)

The Chair: Ms. Khalid, do you want to speak to that?

Ms. Iqra Khalid: Thank you very much, Mr. Chair, and thank you Mr. Genuis for the opportunity to collaborate with the other side.

I had proposed Lib-10 which speaks to that. I think that the reasons for it are to have sound data that informs our decisions going forward with respect to what this bill will entail and how it will affect Canadians. I think it's a great step forward. I completely agree with Mr. Genuis's amendment CPC-27 and I will be supporting it.

The Chair: Excellent. Is there any further debate?

Mr. Bittle.

Mr. Chris Bittle: I was wondering if we could hear from the department on this language.

Ms. Joanne Klineberg: Again, I'm passing on information from some of my colleagues who are more expert in these areas. The Minister of Health already has the ability without this amendment to sit down and work with the provinces to establish guidelines on a co-operative basis, and of course, there is nothing that Parliament could do to compel the provinces to make these changes, which are in their area of jurisdiction.

The Chair: Mr. Fraser.

Mr. Colin Fraser: Thank you. I appreciate the amendment and will be supporting it.

I think it responds to a very important matter that was brought forward by witnesses to our committee. We heard that there are definitely issues with regard to the cause of death as stated on death certificates. I believe this adequately responds to that. While it is permissive and will result in collaboration between the provinces and territories and the federal government, I believe it gives some direction in that regard. Ultimately, it responds to the issue that we heard about, and therefore I think that it's a reasonable amendment.

The Chair: Mr. Rankin.

Mr. Murray Rankin: Mr. Chair, I'm concerned about the amendment for reasons that may be semantic, but the end of it reads: “identify medical assistance in dying as the primary cause of death, as well as the illness, disease or disability that prompted the request for medical assistance in dying."

As I see it, the cancer, let's say, is the condition that causes it, and the medical assistance in dying is the manner in which it occurred. Otherwise, I'm concerned that we'll witness a sudden drop in deaths caused by cancer, ALS, and so on. That specification, if I'm understanding it properly, causes me great concern. Unless that's clarified I won't be able to support this.

The Chair: I think we may be able to clarify it.

Mr. Genuis, Ms Khalid, do you have a proposal? Perhaps we could say, “clearly identify medical assistance in dying as the manner of death”, as opposed to “the primary cause”. That way, I think Mr. Rankin might be able to support it.

Mr. Murray Rankin: That is correct.

Mr. Garnett Genuis: In assisted dying, it's hard to dispute that if someone takes pills or receives the injection, that is the cause of death. The objective of this amendment is to seek to ensure that there is alignment between the professional obligations of those who are filling out these death certificates and the legislative framework around medical assistance in dying, as so called.

The possibility of a sudden drop in reported deaths around cancer or ALS is why I think it's very important to identify as well, in some manner, the illness that prompted the person to seek euthanasia or assisted suicide.

I'm comfortable with the language as it is, and hopefully Mr. Rankin will consider those arguments.

Mr. Murray Rankin: One other point that I didn't raise is whether or not there could be implications for people seeking life insurance coverage as a consequence of this. We were told very clearly in committee—and there have been newspaper articles and other media to this effect—that the life insurance companies will cover people if the underlying cause, the primary cause, is cancer, ALS, and so on. But if medical aid in dying is provided, will they still cover the individual? I fear that this could have an unintended consequence, in the way it's worded.

● (1730)

The Chair: I again suggest that somebody may want to subamend to use the word “manner”.

Mr. Garnett Genuis: I'll just say that the insurance provisions and how they apply are a separate issue.

The Chair: I understand and I appreciate that, but you have an opportunity, I think, to have relatively unanimous consent to your motion if you make a wording change.

Otherwise you're going to have constant debate and not have unanimous consent. In the collaborative process that I think we've been working on, my suggestion is somebody subamend it to put the word manner there, and if you're not going to change the wording, we'll have a debate on that.

Mr. Garnett Genuis: I'm comfortable with the language as is, but of course Mr. Rankin is welcome to propose a subamendment, and then the committee can move forward in that way.

The Chair: Ms. Khalid.

Ms. Iqra Khalid: I am happy to propose that subamendment, changing “primary cause of death” to “manner of death, as well as the illness, disease, or disability that prompted the request for medical assistance in dying.”

I think that Mr. Rankin raises a good point, and I'm happy to work in collaboration.

The Chair: Now that there's a subamendment, the debate is on the subamendment to change the words “primary cause of death” to “manner of death”.

Is there any debate?

Monsieur Fraser.

Mr. Colin Fraser: On the subamendment, I don't believe that has any effect on what we were trying to accomplish with this amendment as it was presented. It would address the concern of the witnesses we heard from who had a concern regarding what is placed on the death certificate.

I have no difficulty at all in supporting the subamendment to change the wording to “manner”. I think that's appropriate.

The Chair: Is there any further discussion?

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

The Chair: Is there any further debate on the principle amendment?

Mr. McKinnon.

Mr. Ron McKinnon: Now that we have this subamendment, I think we have kind of convoluted language. “The manner in which to clearly identify the manner of death” seems a little circular, I guess.

I wonder if we could have another subamendment to get rid of “the manner in which”. We could say, “in cases where medical assistance”. Sorry, I mean, “which may specify, or may identify, medical assistance in dying as the manner of death”.

The Chair: That's what it would now say.

Mr. Ron McKinnon: Well, no, it says “the manner in which to clearly specify”.

Mr. Garnett Genuis: Mr. Chair, I can't propose subamendments, of course, but for linguistic purposes, we could replace the first “manner” with “way”, which wouldn't change the meaning and would read better.

The Chair: Yes.

Mr. Ted Falk: You could just delete the words “which are to include the manner in which to”, so delete the phrase from the word “provided” and go straight to “clearly”.

Mr. Ron McKinnon: I'd like to move that subamendment.

Mr. Chris Bittle: Before that happens, maybe we can replicate our success from earlier and take two minutes off-line, rather than going back and forth, subamendment after subamendment.

The Chair: Yes, I think that would be great.

Do you want to walk over and see how you can clarify that, with Mr. Rankin included?

We'll take a one-minute break.

● (1730)

(Pause)

● (1735)

The Chair: I congratulate everyone, again, on the collaboration. Who is going to read it out?

Ms. Khalid.

Ms. Iqra Khalid: Starting from the top, for clarity's sake: “The Minister of Health, in cooperation with representatives of the provincial governments responsible for health, may establish guidelines on the information to be included on death certificates in cases where medical assistance in dying has been provided, which include the way in which to clearly identify medical assistance in dying as the manner of death, as well the illness, disease, or disability that prompted the request for medical assistance in dying.”

The Chair: Basically we're changing the word “manner” to “way”?

Ms. Iqra Khalid: Yes.

The Chair: That's a subamendment.

Ms. Iqra Khalid: Hold on, I think Mr. Genuis wants to speak.

Mr. Garnett Genuis: On a small point of clarification, Ms. Khalid, when you read it out, I don't think you said the word “may” before the word “include” in line 9.

Ms. Iqra Khalid: Right, it's “may include”.

Mr. Garnett Genuis: I just want to make sure that you're not meaning to remove that.

The Chair: The only change we're now making, because that was already there, is changing the word “manner” in line 9 to “way”.

Mr. Garnett Genuis: Yes.

The Chair: That's the subamendment that you're putting forward, Ms. Khalid.

Ms. Iqra Khalid: Yes.

The Chair: Let's vote on the subamendment.

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

The Chair: Now we come back to the principal motion as amended by both subamendments.

Is there any further discussion on the principal motion? Not hearing any, let's vote on the principal motion, amendment CPC-27 as amended.

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

The Chair: Excellent. That's a good, collaborative job.

Amendment LIB-10 is combined now with amendment CPC-27, so it goes away. Amendment CPC-27.1 is withdrawn. Now we move a vote on clause 4 as amended.

(Clause 4 as amended agreed to [See *Minutes of Proceedings*])

The Chair: That's well done, everyone.

We move to clause 5.

(On clause 5)

Mr. Colin Fraser: Mr. Chair, may I ask the department to give their input on this clause and any thoughts they may have on its effect?

Ms. Joanne Klineberg: I'd be happy to briefly explain it to the committee.

You will recall that in subsection 241.4 (2) is a new offence for destruction of documents related to medical assistance in dying, with a specific mental intent to do a couple of things, either intend to impede someone's access...and so on.

This would amend that offence. Once the monitoring regime comes into force, it would add the specific intent of someone who destroys a document with intent to interfere with someone's compliance with their monitoring obligations. The rules related to monitoring are set to come into force on a day to be determined by order in council, unlike the rest of the legislation, which comes into force on royal assent, to allow time for the Minister of Health to develop the regulations.

This one would only come into force when the regulations are ready, because only when the regulations are ready will physicians and nurse practitioners have the obligation to report. Interference with their obligation would be an amendment made to this offence when those other provisions come into force.

It's definitely complex.

● (1740)

The Chair: All of the members of this committee can clearly understand complex issues, so everybody has grasped that, I'm sure.

Is there any debate on clause 5?

(Clause 5 agreed to [See *Minutes of Proceedings*])

The Chair: Now we move to clause 6.

(On clause 6)

The Chair: Amendment CPC-28 is not receivable. Again, it's the licensee thing that we've ruled out of order from the beginning.

Amendment CPC-28.1 is again related to the nurse practitioner, so it's withdrawn.

Mr. Ted Falk: Amendment CPC-28.2 is withdrawn.

Amendment CPC-28.3 is withdrawn.

The Chair: Amendments CPC-28.2 and CPC-28.3 are withdrawn. This means that clause 6, then, has no amendments for us to consider, and we can move to debate on clause 6 itself in the original form.

Mr. Rankin.

Mr. Murray Rankin: I'm in favour of it. I just want to ask the officials whether there's any problem with the fact that in some places we're using the word "individual" and in other places we're using, as we do in proposed paragraph 245(2)(b) of the exemption, "a person". Does that cause any difficulty from a drafting perspective?

We used "individual", you will recall, a moment ago in the greater certainty clause, as an example.

Ms. Joanne Klineberg: It creates a funny situation. Sometimes "person" in the Criminal Code means both an individual and a corporate entity or other type of organization. In other circumstances, because of the context, it's likely to be restricted to something a human being is actually physically able to do.

The standard formulation for offences and exemptions is always framed in terms of any person, so this is absolutely consistent with the way the criminal law is drafted.

Mr. Colin Fraser: On that point—I think it is an excellent point—I want to be consistent in the wording. I would imagine that this, obviously, means an individual as well. It would be identical.

Would there be any problem with amending the wording, so that it's consistent, to "an individual" throughout?

Ms. Joanne Klineberg: Yes. There would be a problem of coherence with the entirety of the Criminal Code with that. We just don't use "individual" unless there's a very specific context in which we're absolutely certain we mean only to catch human beings, as distinct from corporate entities.

Otherwise, corporate bodies and organizations are able to commit criminal offences and be prosecuted for criminal offences. It very much depends on the context whether it's an offence that an entity is able to commit. But there's no problem with drafting using the term "a person".

Mr. Colin Fraser: Do you know of other examples of sections within the Criminal Code that would interchange between "an individual" and "a person"?

Ms. Joanne Klineberg: I can't think of any, off the top of my head, in which we use "individual".

The Chair: Mr. McKinnon.

Mr. Ron McKinnon: I'd like to ask the officials.... I'm not quite clear on the context that this exists in. Could you clarify it for me?

Ms. Joanne Klineberg: Section 245 is the offence of administering a noxious substance to a person. In the Carter ruling, the Supreme Court did not identify this offence as being core to the prohibition against physician-assisted suicide. This offence has not been struck down.

It is an offence that is extremely unlikely to ever be charged in the context of medical assistance in dying. Nonetheless, we consider that out of an abundance of caution, because technically it might be an offence that could be legally applicable in the context of medical assistance in dying, a basic set of exemptions were put in to give certainty that also this offence should not be charged when a person has engaged in medical assistance in dying in conformity with the rules.

But it's extremely unlikely that this is an offence that would ever be a live issue in such a case.

● (1745)

The Chair: Mr. Falk.

Mr. Ted Falk: I have a question for the officials.

What you're saying is that the clause 6 we're looking at right now, with its proposed new subsection 245(2), is actually outside of the Carter ruling.

Ms. Joanne Klineberg: Yes. The offence has not been found to be unconstitutional, but nonetheless, the offence of administering a noxious substance to a person is in law potentially an offence that could be charged, where a physician or nurse practitioner administers a substance to a person within the meaning of medical assistance in dying.

Because it's an offence that could technically be committed in law when a physician engages in medical assistance in dying, the exemptions were put into this offence as well, just to ensure that there was not some.... We went through the Criminal Code to ensure there weren't other offences that might be committed for which the exemptions also had to be made available. This is the one that we identified.

The Chair: Mr. Fraser.

Mr. Colin Fraser: I would just add, Mr. Chair, that it would seem to me this provision makes sense. It would have to be there, because that offence would be necessarily incidental in carrying out medical assistance in dying; therefore, I think this is a good measure, obviously, to have in here.

The Chair: Understood; is there any further debate?

Not hearing any, we're going to move to a vote on clause 6 as drafted in the legislation.

Mr. Nicholson, did you vote in favour, or are you abstaining?

Hon. Rob Nicholson: I abstain.

(Clause 6 agreed to [See *Minutes of Proceedings*])

The Chair: Next we move to clause 7.

(On clause 7)

The Chair: My ruling on CPC-29 is that it's incidental to CPC-1 and CPC-4 that were ruled unreceivable. As a result, CPC-29 cannot go forward, because it would have presumed that we have done something that we have not done in the other two amendments.

The bells are going for the vote. Could I suggest that we do CPC-29.1 and then go to the vote, and then we'll come back?

I need unanimous consent to carry on once the bells start ringing. Do I have unanimous consent of the committee members to do that?

Mr. Chris Bittle: No.

The Chair: Okay, then we will reconvene after the vote.

● (1745)

(Pause)

● (1850)

The Chair: We're going to continue our clause-by-clause review.

We have agreement among the different parties that we will go through to clause 11. We will finish with clause 11 and then we'll break and come back at four o'clock tomorrow to do the preamble. We will be working collaboratively on different parts of the preamble that we all want to make sure are properly reflected in hopefully unanimous agreement for tomorrow.

My guess is that we'll be finished in about an hour tomorrow, provided people present things that are receivable or collaboratively agreed.

We'll move now to where we were, clause 7. Amendment CPC-29.1 is an amendment from Mr. Genuis.

Mr. Falk, will you move it to put it on the floor for Mr. Genuis?

Mr. Ted Falk: I so move.

The Chair: Mr. Genuis.

Mr. Garnett Genuis: This amendment makes what I think is a language consistency fix. The clause presently refers to assistance that a person was "entitled to receive". Now, that is not language that is used elsewhere in the bill, so I've changed it to "for which they were determined to be able to receive that assistance". It doesn't use language that is not consistent with language used elsewhere. I changed "illness, disease or disability" to "illness or disease", because I don't think disability is reasonably covered in the language used in other parts of the bill.

Of course, If people like the second part of the change and don't like the removal of "disability", then, of course, you're welcome to move a subamendment, which would change the one point, but not the other.

The Chair: Mr. Hussen.

Mr. Ahmed Hussen (York South—Weston, Lib.): I'd like to get the Department of Justice officials' take on the consequence of this amendment.

Ms. Joanne Klineberg: Unfortunately, I can only speak very generally to this clause, because the lead for this particular legislation and amendment belongs with another department, and they worked with a different set of drafters, so I was not present in the drafting room.

If the committee is looking to change the word "entitled", I would think the best word might be "eligible", because that would match up with the eligibility criteria. I'm not really comfortable making too many comments, just because this is a statute under the responsibility of a different department and minister.

The Chair: Mr. Genuis.

Mr. Garnett Genuis: If members agree, I'd be quite comfortable with the use of "eligible" instead of the word "able", if that is what people want. It doesn't bother me.

The Chair: If you want, it could be deemed moved with the word "eligible", so that we don't have to start dealing with a subamendment but just move it with the word "eligible".

Mr. Fraser.

Mr. Colin Fraser: My reading on this is that the entitlement or the eligibility is with regard to the medical assistance in dying and not the pension scheme itself. Is that the reading of the department? I think it probably is, but I just want to be absolutely sure.

Ms. Joanne Klineberg: That would be my reading as well.

Mr. Colin Fraser: Okay. That being the case, I would support that use of the word "eligible".

I believe, though, I would take Mr. Genuis up on his comment that he would be okay with adding the word "disability" if it were required in the first part to get support.

I think it's important to maintain consistency throughout the bill and so I would look to insert the words "or disability" there. But with the word "eligible", I think his would be an amendment I could support.

The Chair: Okay. There's a subamendment to....

I'm assuming that you're not just in agreement to make it as if he moved that way?

● (1855)

Mr. Garnett Genuis: I would like to move it the way I moved it, in that way, but I think a subamendment is a....

Mr. Colin Fraser: I will move that subamendment.

The Chair: —to add the words "or disability".

Right now the vote is to add the word—"illness, disease or disability"—as going back to the way it was drafted before in that part, with those three words, "illness, disease or disability". So we're adding back the word "disability" and we're putting a comma between "illness" and "disease" and an "or" between "disease" and "disability".

Is that correct, Mr. Fraser?

Mr. Colin Fraser: That's correct.

The Chair: Is there any discussion on the subamendment?

We will vote on the subamendment, which is changing only "illness or disease" to be "illness, disease, or disability".

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

The Chair: We're back to the main amendment, as amended. The amendment is "deemed to have died as a result of the illness, disease, or disability for which they were determined to be eligible".

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

The Chair: I think this is the end of clause 7.

(Clause 7 as amended agreed to [See *Minutes of Proceedings*])

(On clause 8)

The Chair: I believe that clause 8, from CPC-30, is related to other amendments, Mr. MacPherson, that you introduced that were back to CPC-1 on the terminology, and as a result it is inadmissible.

We're going to bypass CPC-30, which is inadmissible, and we'll get to a vote on clause 8.

Is there any debate on clause 8 as a whole?

Mr. McKinnon.

Mr. Ron McKinnon: I'd like to ask officials to confirm this is the same situation as previously noted, regarding noxious substances.

The Chair: No, it wouldn't be.

Ms. Klineberg.

Ms. Joanne Klineberg: No, this is an amendment to the Corrections and Conditional Release Act.

The Chair: Basically it says they don't have to go through a process when the person dies to do—

Ms. Joanne Klineberg: —an investigation that is otherwise required when an inmate dies in custody. This is an amendment that says the investigation is not required when the person dies as a result of medical assistance in dying.

Mr. Ron McKinnon: Thank you. I am squared away now.

The Chair: Is there any further discussion on clause 8?

(Clause 8 agreed to [See *Minutes of Proceedings*])

(On clause 9)

The Chair: CPC-31 is connected to CPC-1, and CPC-31.1. is receivable, Mr. Genuis, in order to reflect the changes that were agreed to before. We'll now move it with the changes from before. Do you want to read what you would now propose, Mr. Genuis?

Mr. Garnett Genuis: Sure, but I have only one copy.

This is the same amendment, and I'm moving it in a way that reflects the subamendments that were made previously. It reads, "is deemed to have died as a result of the illness, disease, or disability for which they were determined to be eligible to receive that assistance in accordance with", etc.

It's substantively the same as the previous amendment.

● (1900)

The Chair: Mr. Fraser.

Mr. Colin Fraser: Can I get the department officials to illuminate whether it would be considered the same as the previous one that we did?

Ms. Joanne Klineberg: Yes.

The Chair: Since we've already just passed it, I don't think we need that much debate. All those in favour of CPC-31.1?

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

The Chair: Let me just check if there is anything else left on clause 9. No, there's nothing left.

Is that correct, Mr. Clerk?

Perfect. Now we will move to clause 9 as amended.

(Clause 9 as amended agreed to [See *Minutes of Proceedings*])

The Chair: Ms. May is proposing to insert a new clause 9.1, so we move to PV-12 at this point.

Ms. May, would you take the floor on PV-12? I would note that G-3 comes after PV-12. Because PV-12 was inserted first, if PV-12 is adopted, there would be a problem with receiving G-3. The first one is PV-12.

Ms. Elizabeth May: I did intend to canvas the subsequent amendment G-3 as well as my amendment PV-12, because although the language is different in the first subsection, subclause 9.1(1), the intent and the effect are entirely identical between G-3 and PV-12 in my first clause. The intent here in the first clause is to ensure that within three months of the coming into force of this bill, the Minister of Justice will initiate studies dealing with those areas that were canvassed and included in the recommendations that came from the all-party special House and Senate committee: the question of requests made by mature minors, the question of whether "grievous and irremediable condition" is a mental illness, and requests for, basically, advance directives. That cluster of issues was not included in this bill, but we've had indications they might be included later. The first part of my clause initiates studies in this area.

Now, what's not in G-3, and which I think is quite important, is my subclause 9.1(2) in PV-12, which, having initiated the studies—which would also be undergone under the following Liberal amendment—ensures that there would be a public tabling of a report based on those studies. The timeline is generous. Three months after the coming into effect of this bill, after royal assent, these studies would be initiated by the Minister of Justice. Also, two years after royal assent at the latest—they could come in earlier—there would be reports tabled in Parliament of any studies and recommendations from the studies.

That's a summary of what I'm proposing. Again, I've spoken to Ms. Khalid about it. We're absolutely certain that the first half of mine and all of the Liberal amendment are virtually the same. The big difference between mine and the subsequent amendment is to ensure that the studies that are initiated go someplace, and that the place that they go is Parliament, with a time limit.

● (1905)

The Chair: Ms. Khalid.

Ms. Iqra Khalid: I do appreciate the spirit in which Ms. May has presented this amendment, and I very much agree with the intent behind it. I think that the past couple of weeks, and, in fact, this whole experience with medical assistance in dying, have really shed light on how important such an issue is and how varied the opinions are on how this should become law, whose rights are to be included, and how the process is to be administered. I appreciate that such a study needs to be done....and that we really undertake a big review on how and what the best way is to do this.

I do appreciate that such a review should be initiated. However, having gone through the time constraints we have with passing this bill and getting it through the House, etc., I also appreciate the time that is required in undergoing such a review. I don't think it would be beneficial to tie the hands of the minister by setting a specific timeline. I think we should give this a wholesome review as it is, so I will not be supporting the second clause of this amendment.

The Chair: Mr. Warawa.

Mr. Mark Warawa (Langley—Aldergrove, CPC): I would agree. I believe the Liberal motion that is going to be following is better. The time frames are more realistic, and therefore I would not support Ms. May's amendment.

The Chair: Is there any further discussion?

If not, I'll go back to Ms. May to close.

Ms. Elizabeth May: Given that the second amendment comes from not just one Liberal member, but the Liberal caucus, and is now presented as a government amendment, we can assume it will pass.

I think it's unfortunate to initiate the studies without the request for tabling them back to Parliament afterwards. I do think two years is generous, but if Ms. Khalid feels, or the Liberal caucus feels, two years is too much of a rush, perhaps they would like to offer a different time limitation.

It certainly is unfortunate to have studies initiated without a requirement that the studies themselves and their recommendations be made public.

The Chair: We'll now move to a vote on PV-12.

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

The Chair: Now we'll move to G-3.

Ms. Khalid.

Ms. Iqra Khalid: Thank you, Mr. Chair.

As I indicated earlier, this amendment proposes to initiate a study. I will go ahead and read it: “The Minister of Justice and the Minister of Health must no later than 180 days after the day on which this Act receives royal assent, initiate one or more independent reviews of issues relating to requests made by mature minors for medical assistance in dying, to advance requests and to requests for mental illness as a sole underlying medical condition.”

I believe these three issues were something that continued to come up as we listened to witness testimony, and I'm appreciative of the Liberal caucus, as a whole, trying to find solutions for addressing the concerns that were raised by Canadians.

The Chair: Mr. Warawa.

Mr. Mark Warawa: Thank you, and I appreciate the amending motion.

I believe a five-year review, which is what is in C-14, would be a more appropriate time for us to review.

The legislation has to be up and running for a reasonable length of time for us to be able to spot problems and changes that are necessary.

If a standing committee of justice wants to after a couple of years say how is it going, and we want to discuss the issue of advance directives and minors, that would be appropriate, but for it to be in the legislation is presumptive. I think it would be more appropriate to stick with C-14 and a five-year review.

The Chair: Mr. Fraser.

Mr. Colin Fraser: I support the amendment. I think it's reasonable based on the evidence we heard from the witnesses regarding the concern about the elements of mature minors, advance requests, and requests for mental illness. Those concerns were addressed in a special committee, and there the majority report and the minority report were well done, but we hadn't had a chance at this committee to take a fulsome approach. We need to undertake that so we have a broad consultation with Canadians.

I think it's reasonable that after six months that study should begin. It doesn't say when necessarily there has to be an answer on that. I think it's a reasonable way for us to study those answers without prejudging any sort of outcome before hearing Canadians on all sides, which we haven't had the opportunity to do, given the time constraints we've been under to get this legislation in place.

I think it's a reasonable measure, and I support the amendment.

● (1910)

The Chair: Mr. Falk.

Mr. Ted Falk: Mr. Fraser, I appreciate your comments, although if we would consider all the witness testimony we heard last week, there are a lot of things we would have done differently in this bill so far.

We could argue both sides of this particular amendment based on witness testimony.

I would strongly support Mr. Warawa's comments that we have a five-year review coming. It's part of the legislation the government has asked us to study. I think that review is a reasonable amount of time to see if there are any particular trends that are developing, or if there are going to be any concerns with the bill that need to be addressed. I think that's the time when we should be studying to expand or contract the bill as it is today.

The Chair: Mr. Rankin.

Mr. Murray Rankin: I have two points. The first is to Mr. Falk. Under the terms of review in its current wording, the act only allows —of course, it could be amended—that the provisions enacted by this act be referred for discussion within five years. So anything else, such as mature minors, advance requests, and mental illness would not be part of that because, just by the very wording of the section, they wouldn't be eligible.

The other question I had is just a technical question. We don't define the term “advance requests” anywhere in the bill. Does that cause anybody any difficulty? We know, having looked at it for months, what we mean, but I'm not sure that the average Canadian reading this would know. Therefore, if this were to have any meaning, I would have thought we should provide a specific definition of that term.

The Chair: I'm just going to look at the preamble to see how it was referred to.

Line 21 of the preamble refers as well to advance requests. That doesn't mean it's clear but that's what it refers to.

Mr. Murray Rankin: Yes, I had this amendment proposed. As it is, I was going to make the same comment when we got to the preamble. I know what it means. We around here know what it means but does anybody else?

The Chair: Can I ask a question to the department? Again, as chair, I'm not sure that's what I'm supposed to do, but I'm going to do it anyway.

If the words “advance directives” were to replace “advance requests” would that cause any issues for either the Department of Justice or the Department of Health, provided it was consistent throughout the act?

Ms. Joanne Klineberg: I would like our colleagues from Health Canada to comment, but my understanding of why we tend to use “advance requests” relates to the fact that, should it one day be something that Parliament decides to do, it might be outside of the advance directive regimes that the provinces have set up for other purposes, meaning that it might be a kind of stand-alone regime.

Also, I don't think “advance directives” is the common term used in all jurisdictions across the country. I think there was some desire to use slightly more general language, so that we weren't giving the sense that people were being boxed in to the legislative advance directive regimes under provincial governments.

Mr. Murray Rankin: That's exactly what Professor Downey said when she spoke on behalf of the provincial-territorial task force for which she was a research director. That's exactly the point that she made.

The Chair: Are you comfortable, Mr. Rankin?

Mr. Murray Rankin: No, I'm just making the same point. I don't know what an advance request is. I'm comfortable leaving it. I just asked for clarification. It was only to see if you're comfortable that the term has meaning. It's not defined anywhere. It appears in a criminal code. It's a bit odd. I just put that out there.

The Chair: I would think that the Minister of Health and the Minister of Justice would probably have a common understanding, in the same sense as we would, as to what this actually means in the context of the act, but obviously, I'm prepared to receive any subamendment that is proposed to substitute any other wording.

While you're thinking about it, Mr. Rankin, I believe Mr. Genuis wanted to say something.

● (1915)

Mr. Garnett Genuis: Yes, I just wanted to say this, and maybe ask the officials about it.

When we discussed the amendment about death certificates, the point was made that to have a “must”, a requirement of the minister in the Criminal Code, was unusual and raised some issues. So we changed the wording in that case to “may”.

The proposed amendment, on the other hand, does use a Criminal Code provision to instruct the justice minister. I wonder if in this case you would regard that as common or appropriate, and if language like “may” would be more appropriate in this case, given what we decided in the case of the other amendment?

Ms. Joanne Klineberg: The first thing I would note is that the location of this clause in 9.1 is such that the text of this clause would not actually go into the Criminal Code. It's a part of the bill, but it's not an amendment to the Criminal Code to insert this into the Criminal Code.

In theory, yes,“must” has the same challenges, in the sense that it raises the question of what would be the mechanism for enforcing it if it didn't happen. There's at least a timeline, so there's a period by which it has to happen. If it doesn't happen though, the enforcement mechanism is still uncertain.

Mr. Garnett Genuis: I can move subamendments, of course, but on the basis of clarity, I might suggest that a member of the committee make that change so that the public has a clear understanding of what the words actually mean in this context.

The Chair: Well, if a member chooses to do that, then a member may choose to do that. I'm going to look to the members.

Mr. McKinnon.

Mr. Ron McKinnon: What subamendment would you propose?

Mr. Garnett Genuis: To replace “must” with “may” in line 2 of the amendment. I think that makes the same change that we made in a similar context elsewhere.

Mr. Ron McKinnon: I don't have a problem with that amendment. I'm just not sure it does anything.

I mean, the Minister of Health and Minister of Justice may do this anyway. We're not really extending them anything. I think what we're trying to do is make a recommendation to them.

Is there more common phraseology for making a recommendation, that the minister give us a report “at some point in time”?

Can anyone answer that?

The Chair: Ms. Khalid.

Ms. Iqra Khalid: To clarify, I think the prior amendment that Mr. Genuis is referring to dealt with a provincial jurisdictional matter. We were talking about proposing regulations that may be more of a collaborative approach with respect to the provinces.

I think this is a little different, in that we are not talking about any jurisdictional issue with respect to provinces and are really enforcing within the department and within the ministries for such a report to take place.

The Chair: Mr. Warawa.

Mr. Mark Warawa: I think the suggestion of changing the word “must” to “may” is a good one.

It provides, as a part of Bill C-14, clear direction to the ministers of Health and Justice, but it does not bind them. It provides a suggested direction—gives them the discretion of who is the lead on this. It gives them discretion, if 180 days is not a practical date and maybe 270 days is more practical. It gives them the discretion, as there are consultations ongoing with the provinces and territories. It gives them discretion as what the independent review would look like. I think it's a good suggestion to give them that latitude so that they're not bound. Otherwise, they're accountable but with no clear consequence if they don't meet that, but it could be embarrassing to the government or the minister.

Providing that discretion, I think is a good idea, and I would suggest a subamendment of changing it from “must” to “may”. I'd like to move that.

The Chair: Basically, Mr. Warawa has put forward a subamendment to change the word “must”, in line 2 of the new clause 9.1, to “may”.

Now the debate is on the subamendment.

Mr. Bittle.

● (1920)

Mr. Chris Bittle: Thank you, Mr. Chair.

I appreciate Mr. Warawa's concern about embarrassment to the Minister of Health and the Minister of Justice. It touches my heart.

However, I think this is something that the ministers have committed to and we should go forward on. I think it's something that they should be compelled to do, and it's to begin this. This isn't a complete report in 180 days. It requires them to begin, and I think it's an excellent step. It shows willingness to hear from concerns of Canadians, and that Canadians want to see action and look forward to seeing that report being initiated 180 days after the act receives royal assent.

The Chair: Mr. McKinnon.

Mr. Ron McKinnon: I was going to suggest that as a subamendment we use “is requested to”, but I don't really have a strong objection to keeping it the way it is, or the amendment itself.

The Chair: When a subamendment is on the floor, you can't suggest a subamendment to the subamendment. It's out of order.

Mr. Ron McKinnon: I'm not saying that. That's what I would have said, if—

The Chair: Mr. Genuis, briefly.

Mr. Garnett Genuis: I appreciate your indulgence.

I just want to be clear. The point of my suggesting the subamendment was not to say that the minister should or shouldn't be compelled. The officials' advice is pretty clear that we cannot compel the minister through the section.

I think on that basis, the word “must” is misleading. It's not that it's substantively different, but it implies an obligation on the ministers that doesn't actually exist. I think “may” works. I think that if this subamendment is defeated, a subamendment that replaces “must” with “should” would provide what I think maybe both sides are looking for.

It's just that this section effectively does not compel the minister, so to say that it does or to say that it could is, I think, not really on point.

The Chair: Mr. Fraser.

Mr. Colin Fraser: With regard to the subamendment, while I appreciate the apparent inconsistency with what was stated earlier, I don't think it was that it cannot happen. I thought it was that it was unusual the wording would be different. More important is the fact the previous use of the word “may” rather than “shall”, in regard to the minister's discretion, was dealing with setting out a regulatory scheme or framework with which the minister was able to make regulations.

That's quite a bit different than this, which is clearly for one purpose, and that is for a study to be commenced within 180 days. I think therein lies the difference. I would not support the subamendment.

The Chair: Thank you very much.

Mr. Falk.

Mr. Ted Falk: As a matter of consistency with what we've been doing thus far, when we take it and change the word “must” to “may”, because we don't want to give definitive direction to the minister, it has no teeth to enforce it. The same situation arises here. There's no means of enforcing this “must”. There's no means to be able to provide any meaningful impact for the word “must”.

I don't think legislation in this House has often been used to give direction to a minister of the crown, and not so definitively.

I think we should stick with the wording we used before, which was “may”, and then the minister can decide.

The Chair: Is there any further debate on the subamendment?

Mr. Warawa, you moved, do you want to close on anything?

Mr. Mark Warawa: It's clear.

The Chair: We're voting only on the subamendment, which is the motion to change in the subamendment “must” to “may”.

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

The Chair: We' re now back to the main amendment.

Ms. Khalid, do you want us to close on that one?

Ms. Iqra Khalid: I'll reiterate that we do need sound data to make good choices about issues that have been brought up by the special committee, as well as the witnesses that we've heard over the past few weeks.

I'm looking forward to this being carried.

The Chair: We're going to move to the vote on the main motion.

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

The Chair: Do we now vote again because there's a new clause 9.1 being created, or is that just deemed because the motion was the one that created it, and we don't have to vote?

We do not need to vote again.

We will move now to the review of clause number 10.

(On clause 10)

The Chair: The first one is CPC-32, which is Mr. Viersen.

Mr. Falk, do you want to put it forward? No, okay.

Is there any member of the Conservatives who will put it forward? I'm not hearing any.

Sorry, Mr. Viersen, your motion is not being moved.

We will move to CPC-32.1, or is that the same? It's the same. CPC-32.1 will not be submitted.

We will move to CPC-32.2, Mr. Falk.

● (1925)

Mr. Ted Falk: Just to read it quickly: “referred is to review them and the state of the palliative care in Canada submit a report to”

That's in addition to the report that is going to be provided by this committee.

It is also to provide a report on the palliative care in Canada at that time.

The Chair: Okay, that's receivable.

Mr. Falk, did you want to speak at all to your motion?

Mr. Ted Falk: We have heard, throughout the witness testimony at the committee last week, about the need for a proper palliative care system here in Canada. We have heard that most Canadians don't have access to the standard of palliative care that one would expect they should and are entitled to have.

This government is committed to improving our palliative care system and has committed $3 billion to that end. We would like to make sure that money is employed properly. What better way is there to do that than to say we are going to have a review at the same time as a report is established here? It is going to be like a report card to see if the Liberal government has done a good job in doing what they have said they are going to do.

As we have heard from witness testimony here last week, when there are good palliative care options, the request and the need for physician-assisted suicide are greatly diminished. I think that should be the objective of all of us around this table—not to see if we can expand this particular exemption, but to see if we can actually minimize it.

We should get back to the point where Parliament respects the sanctity of life, which is what the Supreme Court said we should do. So far, we have not shown a whole lot of respect for life around this table, and certainly not the sanctity of it. I think a review of our palliative care system at that time would move towards that.

The Chair: Mr. Rankin.

Mr. Murray Rankin: I want to speak forcefully in favour of the amendment. I think it is a very good one. Anyone who has attended any of the hearings at the Senate-House committee or at our justice committee would know how essential palliative care is. We have heard the minister say that she hears that more than anything else. I am entirely in favour of this.

The Chair: Thank you very much.

Mr. Bittle.

Mr. Chris Bittle: I think all parties are in agreement that we should have good palliative care, and the minister has been vocal about her concern that Canadians don't have access to palliative care.

I think the purpose of this review is to focus on one particular issue, which is medical assistance in dying, and I would be concerned that we would water that down. The minister has committed to this. The government has acted, in terms of $3 billion of new money in the budget. I don't see this as necessary. I see it as watering down the purpose of the provision to deal with and focus on medical assistance in dying.

The Chair: Mr. Cooper.

Mr. Michael Cooper: With respect to Mr. Bittle's comments, I don't believe the issues are separate. Palliative care is an essential component of end-of-life decision-making. Indeed, many have said —and I believe the president of the CMA herself has said—that one cannot truly consent to medical assistance in dying unless they have all options made available to them, including palliative care.

We know that in Canada today, somewhere in the neighbourhood of only 15% to 30% of Canadians have access to palliative care. It is absolutely essential that we have a pan-Canadian national strategy with dedicated funding to ensure not only that Canadians have the option of palliative care, but that they have access to palliative care. I think it would be appropriate to include a review with respect to palliative care.

● (1930)

Mr. Ahmed Hussen: Just in response to that, I am of the view that palliative care is important to this discussion. However, as my colleague has stated, the government has put money on the table with respect to palliative care and other health care-related objectives.

In addition to that, the government has made it clear that they intend to sit down with provinces and territories to reach a health accord, which includes palliative care as a big portion of what they are looking at. I think that is where this needs to be dealt with, not as an added item with respect to the review of medical assistance in dying.

The Chair: Mr. Fraser.

Mr. Colin Fraser: I'll pass. I agree with Mr. Hussen.

The Chair: Mr. Warawa.

Mr. Mark Warawa: I agree with the comments made by my colleagues on both sides of me.

Looking back to previous comments, we just dealt with the advance directives regarding mental illness and mature minors, and we have dealt with conscience protection. The only issue that we are not dealing with in Bill C-14 is palliative care.

We have heard, as has been shared time and time again, that an adult who is in a state of suffering cannot provide consent if they do not have their suffering dealt with. Palliative care could be physical, emotional, or depression related. If you do not give someone palliative care, or at least offer it to them, then that issue is not being dealt with properly. You cannot properly administer medical aid in dying if palliative care is not part of it.

We've dealt with mature minors. We've dealt with advance directives and the mental health issue. This is the time when the government has an opportunity to deal with palliative care. If the government does not support it, then they leave that issue off the table. Other than aspirational commitments, this is an opportunity to make a specific commitment, as they have done with the other issues.

I encourage the government to reconsider and support this.

The Chair: Just remember that members of the committee aren't the government.

Mr. Rankin.

Mr. Murray Rankin: I appreciate what Mr. Hussen said about the health accords, and the fact that we're going to be dealing with that later. I think that's a good point, but to study medical assistance in dying without studying palliative care seems to me to be something that would be very hard to do. They are interconnected, which is the evidence we've heard time and again, and I think they do go together very well.

This is an argument which I appreciate isn't in order, but I'll just put it out there. As you know, on page 134, I have some very specific proposals on palliative care that come out of the committee below. If we could ground at least one reference in the bill to palliative care, I'm told that procedurally it would be easier for those to be considered, so I have an additional reason for wanting this reference.

I don't think it takes anything away. I think it only adds something that many Canadians would be pleased to see in the work that this committee would be doing in the future. I think it adds a lot and takes away nothing.

The Chair: Mr. Fraser.

Mr. Colin Fraser: I'll be brief.

We talk about the study that's supposed to commence within 180 days, dealing with advance directives and the other two elements that we've heard about from witnesses. Going forward, it will be essential in determining how we're going to deal with those things, specifically linked to changes in the bill. It is not the same as a study of palliative care. A commitment has been made by the government that there is going to be funding for that, that it is going to be addressed, and that work is going to be done with the provinces. Making it something that would be necessary as far as the study of medical assistance in dying wouldn't be appropriate in my view.

It doesn't mean that it's not going to be part of it. In fact, I agree with the point that palliative care is an important part of the consultation process at the end of life. It's just about whether it would be appropriate to put it in this context, and I don't believe it would be.

With regard to Mr. Rankin's comment, I agree that we are looking at getting some wording in the preamble. If there's a way we can get it in the bill and bring it forward I'd be happy to do that, but I wouldn't agree that it would be appropriate to put it in this part and make it a necessary part of the medical assistance in dying review, which may or may not include that. Hopefully, we'll be able to get it in the preamble in a fashion that everybody can agree on.

● (1935)

The Chair: I'd like to ask one of our clerks a procedural question, because perhaps we're all trying to fit a square peg into a circle.

My understanding was that, if there's something we feel strongly about that doesn't go in the bill, there's a way for the committee to do a report or some recommendation back to the House outside of the bill saying that we're interested in this subject. It doesn't fit in the bill, but we think it should be studied.

What is the right way to do that, if we were to decide that palliative care would be that way?

I just want the members of the committee to consider that because we started a review of the bill early, we started a subject matter study of the bill before we actually moved to study the bill itself. We could report the bill back, and then separately, if there's an issue we think should be studied as part of a subject matter study, we could report back on an issue like palliative care, for example. We could say that it's outside of the bill itself, but that the committee deems it important that the minister consider that palliative care is an important alternative, and should work with the provinces. We could do something like that. I just want to let people know that it's something to consider as we go along. This is an amendment that relates to an issue, and we'll vote on it, but that is an option for the committee to consider.

I just wanted everybody to understand that. Let's get back to the amendment itself.

Mr. McKinnon.

Mr. Ron McKinnon: I'm inclined to support this amendment. I think there's a lot of merit in the arguments on all sides. It's true we are committing money. We have made a commitment, and both of our ministers have made a commitment. But I don't think there's any problem with reporting at some point down the line on the state of palliative care. I don't think it will water down anything, so I will support this amendment.

The Chair: Thank you, Mr. McKinnon.

Mr. Casey wishes to just advance the position of the government.

Mr. Sean Casey: The government is opposed to this amendment. There is nothing to preclude the government from advancing its agenda with respect to palliative care, and the specific reference to it in the five-year review adds nothing to the political commitment that's been made. It is something that I would argue is unnecessary, involves provincial jurisdiction, and would be the subject of negotiation as opposed to something that belongs in this bill.

The Chair: Mr. Rankin.

Mr. Murray Rankin: I appreciate that. I appreciate what Mr. Fraser said as well. Am I right in thinking, though, that there would be no reference to it at all in the bill, that the words “palliative care” would not appear unless we're able to find a way to bring them into the preamble? Am I right in saying that the words “palliative care” would not appear anywhere in this bill? That's a question that I'm asking the group.

I have to say, having sat through all of the Senate-House committee—I see Mr. Cooper nodding—and all through the justice committee, to not even see those words appear would be shocking.

The Chair: Just to answer the question, the only place that I see any reference that would be similar is already in the preamble where it says, “...whereas the Government of Canada has committed to develop non-legislative measures that would support the improvement of a full range of options for end-of-life care...”

If end-of-life care is synonymous with palliative care to some extent—

Mr. Murray Rankin: To some extent, I'm not sure.

The Chair: —that would be the only place that it is currently in the bill.

Mr. Murray Rankin: I say again therefore that the words palliative care would not appear anywhere, and I don't agree that those words are synonymous; they're overlapping.

The Chair: I didn't suggest that they were. I just said that would be the only place I see anything similar.

Mr. Falk was the one who moved this.

Mr. Falk, I'm going to go back to you to close the debate.

● (1940)

Mr. Ted Falk: For all the reasons and perspectives the other side brought up there in perhaps not supporting it, I think it just actually strengthens the whole notion that it's actually an imperative to have in here.

When I look at the scope, the G-3 amendment that we just inserted into this bill did not have to be there either. We chose to put it in there for the review.

All of our witnesses attested to the relationship between palliative care and physician-assisted suicide. You cannot separate the two. They're so critically important to each other. Say that we don't want to include in there a report or review of the whole aspect of palliative care because it's an inter-jurisdictional issue; well, so will physician-assisted suicide be inter-jurisdictional as well. It's going to require the same amount of collaboration with jurisdictions to get a decent report there as well.

This just helps to encompass the wholeness of what we're trying to do here, and that's to see whether this bill is really going to be effective, whether it's doing what we're asking it to do, and what the influencing factors that have affected the activity of this bill are. Palliative care is absolutely essential to that. If you do not review palliative care, you're not going to get a comprehensive review.

The Chair: Thank you very much.

I think we've now finished the debate, so we're going to move to a vote on CPC-32.2.

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

The Chair: We will now move to CPC-32.3.

Mr. Falk, this appears to be yours.

Mr. Ted Falk: It's a follow-up. It's actually quite simple. It's actually putting a parameter on what we just asked for. It's saying that within six months there should be a report from the time that the review has been initiated.

The Chair: Okay. I understand. It's receivable.

Mr. Ted Falk: I don't know if I need to say more than that. It says "six months", and I think six months is probably adequate to do a review and then provide a report.

The Chair: Is there debate on CPC-32.3?

Mr. Fraser.

Mr. Colin Fraser: Mr. Falk, this is the first time I've seen this, so I apologize, but can you explain to me the purpose of this, just so I get it?

Mr. Ted Falk: If you look at subclause 10(2), it states:

> Report
>
> (2) The committee to which the provisions are referred is to review them and submit a report to the House or Houses of Parliament of which it is a committee, including a statement setting out any changes to the provisions that the committee recommends.

I'm suggesting that we insert, on the 27th line, the following: "a committee within six months after the day on which the provisions are referred to it, including a statement setting out".

In other words, from the time that the report begins, within six months they should be tabling a report of that review to either House or both Houses.

The Chair: Mr. Warawa.

Mr. Mark Warawa: Speaking to that, what Bill C-14 requires is that a report be submitted but with no time frame attached to it. It has happened, in the 12 and a half years I've been here, that to meet a requirement a study will be started or initiated, with no continuum of that study, but they've met the requirement to initiate a study. At times, if it's vague on when it has to be reported, sometimes it never is.

I think this tightens it up. I think to say that from when a report started it has to be submitted within six months takes away the vagueness. We would know that a report would be submitted. There's a tangible timeline. Without that, it's left vague.

● (1945)

The Chair: Understood.

Mr. Fraser.

Mr. Colin Fraser: Can I ask the officials if they have any comment on that?

I'm just concerned that we have the words "may be designated or established", in terms of setting up a committee possibly, and then we're saying that within six months they have to do something. I'm just wondering if there would be a conflict of terms between subclauses 10(1) and (2).

Ms. Carole Morency (Director General and Senior General Counsel, Criminal Law Policy Section, Department of Justice): I think the wording you have in Bill C-14 as proposed is fairly standard wording for a parliamentary committee report or a review to be undertaken. There's no question that numerous bills that have been passed by Parliament, including in recent years, include a requirement for Parliament to study an issue. It's true that sometimes those studies don't get started, because committees are in control of their own agenda. The matter has to be referred to the committee. The committee takes it on. It's also true that sometimes a committee will undertake a study, and perhaps before the report is tabled there's an election call, or Parliament is prorogued. There are rules to deal with that.

It's also my understanding that when a committee undertakes a study, if they haven't completed the study within the time that the House requires the report to be completed, the committee also can go back to the House and seek an extension of the time in that situation.

So I think there are opportunities within the rules that would allow for and perhaps address the concern that has been raised by the member, but certainly the wording in this clause as introduced is fairly standard in terms of parliamentary committee review.

The Chair: Mr. Fraser, does that answer what you were asking?

Mr. Colin Fraser: Yes, it does.

I don't think I'll be supporting the amendment as worded. I worry about the binding effect of the language. I realize that's the intent of it, of course, but if this is standard language for committees, and we're talking five years after for a review, I think I'd prefer to leave it the way it is.

The Chair: Mr. Falk.

Mr. Ted Falk: Can I also ask a question of the department?

Is an amendment like this, where there's a time frame stipulated, uncommon?

Ms. Carole Morency: I couldn't comment. I'm not aware of it.

I know that in my appearances before this committee over the years, usually the debate has been over how many years should pass before Parliament undertakes a review of the subject matter or the bill's provisions, as opposed to the completion of the report. Again, I'm suggesting, based on my experience, that the parliamentary rules provide sufficient guidance to the committee and to the House in terms of how and when reports should be completed and/or submitted or extensions provided.

Perhaps the clerk would have more particular information.

Mr. Ted Falk: So when a committee is tasked with doing a review like this, it will automatically—for sure—generate a report?

Ms. Carole Morency: I can only comment on the ones that I've been directly involved in where reports have been generated and have been produced. Sometimes they call for a response by the government. Again, there are rules that apply to how that is dealt with.

The committee, when it undertakes a report and study, could ask for the government to respond. I think there are rules that are in play such that when Parliament has been prorogued it can come back, and they can resume. A motion could be adopted to enable a committee to resume the work that was committed to in the previous session and just to adopt the evidence that's already been heard to that point. Certainly, that's been my experience. Maybe there's been some.... I'm aware of that happening in at least one parliamentary committee study; I think it was on prostitution, quite a number of years ago.

● (1950)

The Chair: Mr. Falk.

Mr. Ted Falk: My only concern with this motion, if we're going to do the review, which now we've committed to doing, is that there's actually a report. I would be flexible on a time frame, but we want a report.

The Chair: I understand. That's clearly the intent of the motion.

Mr. Colin Fraser: If I'm still here, I'll make sure we get a report.

The Chair: Nicely said, Mr. Fraser.

Is there any further debate on this motion? Not hearing any, let's move to a vote on CPC-32.3.

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

The Chair: Next we move to CPC-33, which is Mr. Viersen's.

Is there any Conservative member of the committee who wishes to move this on behalf of Mr. Viersen?

Mr. Ted Falk: Yes.

The Chair: Mr. Viersen, over to you.

Mr. Arnold Viersen: Thank you, Mr. Chair.

This amendment would add the words: “recommends and, in the event of serious breaches of these provisions, providing for the possibility of imposing a moratorium”.

This comes out of having followed how similar legislation has played out in the Netherlands, just in my family's experience, essentially. Initially they brought in very similar legislation, and now we are hearing reports of several hundred people a year who are being euthanized without explicit consent.

I would say that if in Canada we are going to have one person lose their life without consent, that would be one too many. What I would like, after this review has been done, if there have been significant breaches and if maybe they find that there was a lack of consent in certain cases, is that they would impose a moratorium and therefore give them time to write up new law or change the law to ensure that we are getting consent in every case. This just allows the committee to impose a moratorium.

The Chair: Who has the right to do that? The committee certainly wouldn't have such a right. Are you suggesting that it be drafted so that the government has this right at the recommendation of the committee?

Mr. Arnold Viersen: Yes. The recommendation would allow them to impose a moratorium—

The Chair: But who? Who would do that?

Mr. Arnold Viersen: The Minister of Justice at that point. I'm not sure. Again—

The Chair: Can I ask you to perhaps try to draft it in a way that I can receive it? Do you want to work with the legislative clerk for some help? I find this vague and I find it impossible to comprehend how the moratorium would thus occur.

Mr. Arnold Viersen: I'm not sure how it ends up in this section. It was my recommendation to the drafters that it's for the minister to be able to impose a moratorium in the event of findings from the committee.

Page 12 is the committee report. It's the same section we just amended—

Mr. Ted Falk: You're adding it on to 2 at the bottom.

Mr. Arnold Viersen: Yes, as part of the report.

The Chair: Yes, that's right.

Mr. Arnold Viersen: You raised a good point.

The Chair: I'm confused by the whole issue, because the committee may recommend to somebody to impose it, but I'm still not clear who would be able to.

How could I receive this if it would create a completely unclear element of the law? Unless you redraft it, I think we should move on.

I defer to the mover.

Mr. Ted Falk: Yes, there isn't clear direction given as to where this is supposed to land, and that's the issue here. I think the intent of the motion is good. It would give the minister a tool, so that if the report would reveal there's been some serious breaches procedurally in the administration of this particular bill, then the committee could, when reviewing the report, recommend to the minister that the minister impose a moratorium until the problems are fixed.

● (1955)

The Chair: Can I ask the department, because I'm having trouble following how this would logically conclude, do you have any explanation of how this would work?

Ms. Joanne Klineberg: The only thing we could contribute at this point is to say that to stop it from being lawful, medical assistance in dying, would take legislative amendments to the Criminal Code.

The Chair: Yes. I think this doesn't work in this way. I'm sure if the committee finds there are serious problems, the committee will report the serious problems, and any government that doesn't want to be politically embarrassed would have to act, if that solves anything.

Ms. Khalid.

Ms. Iqra Khalid: If I may, to be fair to Mr. Viersen, I'm considering this is the last item for clause 10 before we start on the preamble, which I believe we're doing for tomorrow. If Mr. Viersen wants to go away tonight and think about it, maybe we could come back to this in the morning and vote it on it as well.

The Chair: The only thing I wanted to deal with—and this is the reason I wanted you to break—is a review of the law as amended through clause 11 to make proper decisions on receivability on the preamble issues. I can't do that unless we've completed the rest of the bill.

Again, I look to you Mr. Viersen. Let me ask, because let's say I received it, is there any debate? Is there anybody who wishes to speak to it as a motion? Can I ask for an unofficial vote? Who would vote in favour of this motion? Who would vote against?

Mr. Viersen, are you willing to withdraw it?

Mr. Arnold Viersen: Yes.

The Chair: Thank you very much.

Is there anyone who wants to discuss clause 10 as amended? I'm not hearing any, so we'll move to a vote on clause 10 as amended.

(Clause 10 as amended agreed to [See *Minutes of Proceedings*])

The Chair: Now we move to clause 11. Is there anybody who wishes to debate clause 11?

(Clause 11 agreed to)

The Chair: Ladies and gentlemen, thank you for your incredible co-operation today. We will reconvene at 4 p.m. tomorrow, and we will work on those preamble resolutions right now.

Thank you so much.