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Official Report of Debates (Hansard)

Tuesday 11 April 2017

Journal des débats (Hansard)

Mardi 11 avril 2017

**Standing Committee on
Finance and Economic Affairs**

**Comité permanent des finances
et des affaires économiques**

Medical Assistance in Dying
Statute Law Amendment Act,
2017

Loi de 2017 modifiant des lois
en ce qui concerne l'aide
médicale à mourir

Chair: Peter Z. Milczyn
Clerk: Eric Rennie

Président : Peter Z. Milczyn
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
FINANCE AND ECONOMIC AFFAIRS**

**COMITÉ PERMANENT DES FINANCES
ET DES AFFAIRES ÉCONOMIQUES**

Tuesday 11 April 2017

Mardi 11 avril 2017

The committee met at 0902 in committee room 1.

**MEDICAL ASSISTANCE IN DYING
STATUTE LAW AMENDMENT ACT, 2017
LOI DE 2017 MODIFIANT DES LOIS
EN CE QUI CONCERNE L'AIDE
MÉDICALE À MOURIR**

Consideration of the following bill:

Bill 84, An Act to amend various Acts with respect to medical assistance in dying / Projet de loi 84, Loi modifiant diverses lois en ce qui concerne l'aide médicale à mourir.

The Chair (Mr. Peter Z. Milczyn): Good morning. Committee is now in session. As per the order of the House dated March 27, 2017, we're assembled here for clause-by-clause consideration of Bill 84, An Act to amend various Acts with respect to medical assistance in dying. The committee is authorized to sit today from 9 a.m. to 10:15 a.m. and from 3 p.m. to 6 p.m.

Ralph Armstrong from legislative counsel is here to assist us with our work, should we have any questions for him.

A copy of the numbered amendments received by the Clerk is on your desk. The amendments have been numbered in the order in which the sections appear in the bill. Are there any questions before we start?

Before we begin section 1, I will allow each party to make some brief comments on the bill as a whole. Afterwards, debate should be limited to the section or amendment under consideration. Are there any comments? Mr. Fraser.

Mr. John Fraser: Thank you very much, Mr. Chair. I appreciate the opportunity to speak to this bill. To all members of the committee, I want to thank them for their work and especially all their work during the public hearings. I wanted to say a few things that were a reflection on the bill and especially the public hearings—and I'll be brief, Chair.

At the public hearings we heard from a lot of people, we heard from a lot of practitioners on either side, both coming here out of their conscience that included compassion, of mercy, of love, from two very opposite points of view at times. For committee members that makes it hard to reconcile, in some ways.

Our job as legislators is to listen to all voices—most importantly to listen to those voices that we can't always

hear. What struck me about the committee hearings and about the debate was that we weren't presented with the people who are at the centre of this. We did not have a deputation from somebody who needs this care, from somebody who has a grievous and irremediable condition whose suffering, some of us may have seen in family members and friends, but I think all of us can't imagine.

When we think about that and consider that—and we need to consider that—we know there's a need for balance. What's incumbent upon us as we head into this debate is to make sure that we have balance and, as importantly, that our obligation—whether we're a friend, a family member or a practitioner, a social worker, a nurse—when we're faced with that kind of suffering, is that we have to find a safe path for those people to travel on. That is our obligation. That is an obligation that we all have.

There are two things in particular in this bill that I feel very strongly about. One is the preamble and the importance of striking a balance in stating the issue that confronts us; and the other is the requirement on government to provide a care coordination service that allows access to all end-of-life options, to palliative and end-of-life care, to medical assistance in dying. I think that that's critical. I think it's critical, from the point of view of that person who is suffering, that we create a path, to make sure that there is a safe path for those people to travel on, because they are the most vulnerable. There are not a lot of them, but they are the most vulnerable people in our society.

It's incumbent upon us to create that pathway, and I think that there's an obligation for all of us to make sure that those people get both feet on that pathway.

That's all I have to say, Mr. Chair. Thank you.

The Chair (Mr. Peter Z. Milczyn): Thank you. Other comments? Mr. Barrett.

Mr. Toby Barrett: Chair, yes, just a brief comment. Our critic is unable to attend today. As we go through clause-by-clause, with respect to Bill 84, the medical assistance in dying legislation—I've attended all the hearings and I appreciate what the government representative indicates with respect to a safe path. It's a path not only for the patient but for the health care professionals, who are being asked to do certain things with this legislation as it is presently written. That's the reason that, as opposition, we feel very strongly about some of the amendments that are being proposed here.

We recognize—and I know this has been mentioned on this committee—that the Canadian Charter of Rights and Freedoms protects citizens from being forced by the state to do things against their conscience or religious convictions or other strongly held views, and we feel it's very important that that be reflected in this legislation in its final draft.

We have heard certainly from a number of physicians who feel there should be some changes in the legislation so they can continue to serve their patients, of course—that's primary—but also have their conscientious objections legally protected while at the same time providing a process for access to medical assistance in dying.

During this clause-by-clause, the debate will continue today. It remains proposed legislation; I like to think this is not carved in stone. It's incumbent on all of us—we've got some decisions to make. We have to ensure we're protecting not only the public, not only the patient, specifically, but that we are protecting health care providers, and we do have an opportunity in our deliberations today to protect conscience rights of health care professionals with some of the amendments that we see before us today.

The Chair (Mr. Peter Z. Milczyn): Thank you, Mr. Barrett. Madame Gélinas?

M^{me} France Gélinas: I find we are in a very sad place right now. We have known that people have wanted medical assistance in dying for a long time. It has gone through the courts, the Supreme Court ruled on it, the federal government legislated on it, and finally our provincial government is about to pass legislation.

0910

Throughout all of this, we knew exactly what was going to happen. We knew that there was a group of people who are very, very vulnerable who have wanted to gain access to this service, and we know that there are providers who have very strong conscience objections to that service. What did other provinces that live in our same country, that faced the exact same people we are facing, do? They got proactive. They put in place programs and services that would give a voice to those very vulnerable people who want to have access to medical aid in dying while being respectful of the people who have a conscience objection to the whole process. So when it came time to do the same work that we are doing here now, it became a non-issue. Their bills went through to make sure that you keep your insurance and you cannot go to court—basically what Bill 84 is all about—but the underlying elephant in the room, that there are two groups that needed to find common ground, had been worked on.

Whether you look at Saskatchewan or the example that has been brought to us—the most was the example in Alberta. In Alberta, sure, we talked about the care coordination and how the patient's family, PSWs, social workers, anybody can gain access to medical assistance in dying through the care coordination, but they did way more than this. They have a physician and family support group so that when a physician, a nurse practitioner, a

pharmacist, a nurse or a social worker goes through this for the first time, there are people there who help them. When a family chooses to have medical assistance in dying, there are supports for them that were put into place, that were set up so that it's easier after the death happens.

Us, we will go to the coroner. I have problems with that. In other provinces, they have put in a medical assistance in dying regulatory review committee that looks at the review, looks through so that we can learn from this, but within the health care system, not with the coroner. Us, it's as if we knew that we had work to do to protect the people who want access to something that Canadians and Ontarians have been wanting to have access to for a long time, and we knew that we had providers that had conscience objections, and we did nothing but open it up for 50-some people to come and talk to us for three minutes at a time.

We couldn't have done this worse if we had planned it to be worse, so we end up with the mess that we are in now. At the eighth hour, on a committee where the Liberal government has a majority, we will be dealing with something that cannot be dealt with here, that should have been dealt with with safe places to talk in, in our communities, that were never put forward.

I have no intention of giving people false hope. I know exactly how things will be. The Liberal government will get their way on each and every step of the way, and the Conservatives and I will lose on each and every step of the way. Really, on something as non-partisan as life and death, we are left with the only process where medical assistance in dying was ever open to our community.

I say, shame on all of us. We failed. We failed the families. We failed the people with conscience objections. We failed.

The Chair (Mr. Peter Z. Milczyn): We've completed our opening remarks on the bill.

I'll proceed to clause-by-clause now—Mr. Fraser?

Mr. John Fraser: Chair, I seek unanimous consent to move a motion with respect to the bill's preamble at this time.

The Chair (Mr. Peter Z. Milczyn): Is there unanimous consent for this? I heard a no.

Mr. John Fraser: Thank you, Chair. I believed it was important to have these two principles at the beginning of our discussion here today. I hope that when this comes up in its position at the end, that my colleagues across the way will give it its fullest consideration.

Mr. Steve Clark: If not, and right back at the parliamentary assistant, Chair, through you, I think Ms. Gélinas put some very sound comments on the record today, and I would say to you that you should look at some of the amendments that we're putting forward today. Let's see if they get forward.

The Chair (Mr. Peter Z. Milczyn): Mr. Clark, we'll deal with this as we go along through the clause-by-clause.

Are there any comments on section 1, which amends the Coroners Act? Seeing none, shall section 1 be carried? All those in favour? Opposed? That is carried.

On section 2, which amends the Excellent Care for All Act, 2010, there is amendment number 1. Madame Gélinas.

M^{me} France Gélinas: I move that subsection 2(1) of the bill be amended by adding the following definition to the Excellent Care for All Act, 2010:

“‘registered nurse’ means a member of the College of Nurses of Ontario who holds a certificate of registration as a registered nurse under the Nursing Act, 1991; (‘infirmière autorisée’ or ‘infirmier autorisé’)”

Basically, because of the few hundred people who have managed to gain access to medical assistance in dying, in all of those cases, a registered nurse was involved. I think it would be wise to put them into the bill, given that the short experience we have here in Ontario showed that, in almost all cases, a registered nurse is involved.

The Chair (Mr. Peter Z. Milczyn): Mr. Fraser.

Mr. John Fraser: I thank the member for that motion. I will not be able to support this motion and a number of these motions coming forward with respect to this, and I’ll explain why.

If you take a look at the federal legislation, the federal legislation specifically speaks about doctors and nurse practitioners. To make sure that our legislation is in alignment with federal legislation, I think that it’s appropriate for us to do that. They are the only two that provide the active medical assistance in death.

At the current stage, nurses—my mother’s a nurse as well, so I fully respect and understand the role of nurses, the roles of PSWs and the roles of pharmacists in assisting, but I think that if we have any inclusion of this, we’re going to run the risk of (a) not being in alignment with the federal legislation, and (b) then, rightfully so, there is a whole list of people who we can continue to add there. They are not excluded from this. Their roles are recognized, and they are captured in the legislation as it’s written right now. So that’s how I feel about this.

The Chair (Mr. Peter Z. Milczyn): Mr. Clark.

Mr. Steve Clark: I just want to take this opportunity to thank Ms. Gélinas for tabling this amendment. It will be an amendment that we’ll be supporting, based on what she’s read into the record. Certainly, we’ve read the RNAO submission as well, and we’re quite willing to support it as presented by the NDP.

The Chair (Mr. Peter Z. Milczyn): Further discussion? Madame Gélinas.

0920

M^{me} France Gélinas: I realize that pharmacists and social workers and many other members of the interdisciplinary team may be involved, but the one that is there at the bedside and the one that starts the IV most of the time is a registered nurse. They deserve to be included in the act, given the way that medical aid in dying is available in Ontario.

They have asked to be included, and I think that they should. It’s just to be prudent.

The Chair (Mr. Peter Z. Milczyn): Any further discussion? Seeing none, on the amendment to sub-

section 2(1), amending section 1 of the Excellent Care for All Act, 2010, all those in favour of the amendment? Opposed? That is lost.

The next amendment is to subsection 2(2), amending subsection 13.8(1) of the Excellent Care for All Act, 2010. Madame Gélinas.

M^{me} France Gélinas: I move that subsection 13.8(1) of the Excellent Care for All Act, 2010, as set out in subsection 2(2) of the bill, be amended by striking out “physician or nurse practitioner” and substituting “physician, nurse practitioner, registered nurse”.

The argument stays the same: The professional who is most likely to be there when medical assistance in dying is provided is a registered nurse. Although the physicians and the nurse practitioners may do the assessment and provide for the care to become accessible, the one who will be there when medical assistance in dying is being provided, when the persons die, will be a registered nurse. They deserve to be protected by all of the protection that this act gives the physicians and the nurse practitioners.

The Chair (Mr. Peter Z. Milczyn): Mr. Fraser.

Mr. John Fraser: They are protected in this act, as the act is written, very clearly. I understand the request and the significance of being mentioned in the legislation. I go back to making sure that we are aligned with the federal legislation, which is very specific in naming nurse practitioners and physicians.

A physician’s assistant could put the IV in. While I sympathize and understand the argument, nurses are protected, I believe, in this legislation, very clearly, as are social workers, as are physician assistants, physiotherapists, chiropractors and anybody else who is involved in that process. I think to say that they’re not protected is not correct, as the legislation is written.

The Chair (Mr. Peter Z. Milczyn): Madame Gélinas.

M^{me} France Gélinas: Well, I’ve never seen a physiotherapist start an IV before, and I certainly hope I never see one. I’ve never seen a chiropractor start an IV.

We have over 250,000 registered nurses in Ontario, and we have less than 500 physician assistants. So the chances are, it’s going to be nurses who will be there every single time a person gains access to medical assistance in dying. They’ve asked to be protected. They feel vulnerable. I think we have an opportunity to include them in the bill to give them that protection.

The Chair (Mr. Peter Z. Milczyn): Mr. Clark.

Mr. Steve Clark: Just to be clear, we have an amendment that we feel is more pertinent to section 2(2). I just wanted to make sure that we have that discussion.

I appreciate what the government said, but I do think some of these sections do need to have a little more clarity. We’ll be moving our amendment shortly on that.

The Chair (Mr. Peter Z. Milczyn): Further discussion? Mr. Fraser.

Mr. John Fraser: Just to clarify, nurses are protected under this legislation. I just want that to be understood. They are not left vulnerable in this piece of legislation.

My mother was a registered nurse. She spent 35 years at the National Defence Medical Centre, working on the

floor. I know the importance of nurses at the bedside. I know the critical care they provide.

What I strongly believe is that it's not necessary in this legislation for us to include a list of practitioners other than the ones that are identified in the federal legislation, because they are covered. Every practitioner, social worker, PSW, who would be somehow assisting in this is protected by this legislation.

I understand the member's intent. What's central here is that practitioners are protected. That's what's already in the bill, and I think the wording that we have there is fine.

The Chair (Mr. Peter Z. Milczyn): Mr. Clark.

Mr. Steve Clark: With all due respect, Chair, through you to Mr. Fraser: Part of the error in this process is the quickness that we've dealt with this in the House and in committee up to this point. You may say that you feel that there's adequate mention of these professions in the legislation, but clearly the opposition parties are hearing something different. We're hearing that there needs to be more substantive wording in this bill. So you can repeat that till you're blue in the face, but it doesn't mean to say that your feeling is shared by the broader health care community.

The Chair (Mr. Peter Z. Milczyn): Mr. Fraser.

Mr. John Fraser: To the member opposite: I don't feel that way; I'm not saying it because I feel like they're protected. I know they're protected because I've read the legislation and I've sought advice. They are protected. If they weren't protected, I can guarantee you right now, that is the work that I would be doing.

I don't think we need to have this debate about this right now. I don't think this is a necessary amendment to the legislation. That doesn't mean that we do not value the role and work of nurses and other professionals in this province.

This isn't about feeling; I know.

The Chair (Mr. Peter Z. Milczyn): Further discussion? Seeing none, on the amendment to subsection 2(2), amending subsection 13.8(1) of the Excellent Care for All Act, 2010: All those in favour? Opposed? That is lost.

An amendment to subsection 2(2), amending section 13.8 of the Excellent Care for All Act, 2010: Mr. Clark.

Mr. Steve Clark: I move that section 13.8 of the Excellent Care for All Act, 2010, as set out in subsection 2(2) of the bill, be struck out and the following substituted:

"Immunity, MAID

"13.8(1) No action or other proceeding for damages shall be instituted against a physician, nurse practitioner, other registered nurse, pharmacist as defined in subsection 1(1) of the Drug and Pharmacies Regulation Act or any other person assisting such a person for any act done or omitted in good faith in the performance or intended performance of medical assistance in dying.

"Exception

"(2) Subsection (1) does not apply to an action or proceeding that is based upon the alleged negligence of a

physician, nurse practitioner, other registered nurse, pharmacist as defined in subsection 1(1) of the Drug and Pharmacies Regulation Act or other person."

We just finished having this discussion. We believe that there needs to be an amendment specifying these areas and also mentioning the professions as outlined in the second half of the amendment. I think we've had a number of folks come forward indicating that they feel that we should be including this.

Again, I want to say, through you, Chair, to the parliamentary assistant that he may know that people are protected, but there are some sections in this act that we believe need to be expanded upon. This is one of those sections.

One of the things that Ms. Gélinas said at the start was a concern that every one of the opposition amendments is going to be defeated in favour of the government. I think the government needs to understand that there has been a lot of discussion outside of this Legislature, and some of these sections, I think, are of the calibre that the government should be supporting, like this one.

0930

Mr. John Fraser: Chair?

The Chair (Mr. Peter Z. Milczyn): Mr. Fraser.

Mr. John Fraser: Chair, we have legal counsel here with us—is there legal counsel here? Could someone speak to the protections that are provided in this bill?

The Chair (Mr. Peter Z. Milczyn): Well, we have legislative—

Mr. John Fraser: Legislative? Sorry, legislative here.

Mr. Ralph Armstrong: It might be more appropriate for counsel for the ministry, who I believe have been giving the advice to the parliamentary assistant to this point. I'm at the mercy of the committee. Which would they prefer?

The Chair (Mr. Peter Z. Milczyn): Ministry staff can also come forward to answer technical questions.

If you could just introduce yourself and your title, sir.

Mr. Liam Scott: Hello; my name is Liam Scott. I'm counsel with the Ministry of Health and Long-Term Care. With respect to Bill 84, in section 13.1 where it speaks to immunity from MAID, where it says, "No action or other proceeding for damages shall be instituted against a physician or nurse practitioner or any other person assisting him or her for any act done or omitted in good faith," that wording, "or any other person assisting him or her," would capture other members of the care team, which could include anyone assisting, such as a registered nurse, a pharmacist, a physician assistant etc.

The Chair (Mr. Peter Z. Milczyn): Madame Gélinas?

M^{me} France Gélinas: I would like you to elaborate a little bit. Independent health practitioners act on their own behalf. They often would take great exception to saying that they are assisting somebody else. You have your scope of practice, as a regulated health professional. You act within your scope of practice. You are not assisting anybody. You are providing care. So can you see why—let's take the case of a registered nurse, who is

not assisting anybody by starting an IV. She is doing her job, within her scope of practice, to set up an IV. She would feel that she is not covered by the provision that says “any other person assisting,” because as far as the college of nurses is concerned, she’s not “assisting.” She is providing care within her scope of practice.

Mr. Liam Scott: That point is understood. However, the federal legislation does provide a limit in that it provides that only physicians and nurse practitioners can provide the act of MAID. They can be assisted by others in that activity, but only those two classes of providers can provide it, which is why the language tries to track the language of the federal legislation. The federal legislation, at this point, only allows those two classes of providers to provide MAID.

M^{me} France Gélinas: What will happen when people push to have the oral medications for MAID available, where the patient self-administers this oral medication, and we have this in our bill?

Mr. Liam Scott: I think that if the federal government changed its legislation to change the circumstances under which MAID could be provided, that might necessitate looking at the provincial legislation to potentially make further amendments to it at that time. The federal government is currently conducting a review of its federal legislation with regard to certain matters that are mentioned in Bill C-14, so that may necessitate further changes or potential changes to the Ontario legislation, depending on the decisions that they make.

M^{me} France Gélinas: What harm would happen if we were to change the wording of 13.8(1) to what is proposed by the PCs?

Mr. Liam Scott: The only concern, from a legal perspective, would be that it not be suggested that a pharmacist or a registered nurse could provide medical assistance in dying, because that would be contrary to the federal legislation. They, as I mentioned, can assist in providing medical assistance in dying but they cannot actually provide it themselves. That’s the legal restriction.

M^{me} France Gélinas: So no harm would be done? We already know that there’s not a nurse or a pharmacist who will provide. This is regulated by their colleges. By adding registered nurses and pharmacists, no harm is done.

Mr. Liam Scott: No harm is done provided it is not suggested that those additional classes of people can provide medical assistance in dying; correct.

The Chair (Mr. Peter Z. Milczyn): Mr. Clark.

Mr. Steve Clark: Just to continue with that questioning from Ms. Gélinas: I think it’s pretty clear in that first section on immunity that it mentions the fact that they’re assisting such a person. Run this by me again. Why do you not think that we couldn’t pass this now, as opposed to waiting for amendments? I think it’s pretty clear that—

Mr. Liam Scott: No, it’s not my decision whether you would pass it or not. All I’m saying is that in the wording it has to be clear that only physicians and nurse practitioners can provide MAID, because that is the requirement set out in the federal legislation.

Mr. Steve Clark: So what do you think in the wording is unclear?

Mr. Liam Scott: I’m not saying that the wording is unclear. I’m saying—

Mr. Steve Clark: You’re saying that we have to be clear. I’m asking you your legal opinion on whether the wording is clear.

If he wants to take a bit of a break to review it—

Mr. Liam Scott: No, I’m happy to speak to this. The provision in 13.8(1), as proposed in motion 3, says, “No action or other proceeding for damages shall be instituted against a physician, nurse practitioner, other registered nurse, pharmacist as defined in ... the Drug and Pharmacies Regulation Act or any other person assisting...”

That wording potentially suggests—if you talk about other persons assisting and you list pharmacists and registered nurses with physicians and nurse practitioners—that the registered nurses and pharmacists might be providing MAID and having others assist them.

Interjection.

Mr. Steve Clark: Yes, that’s it.

Mr. Liam Scott: All I am saying is that it needs to be consistent with the federal bill C-14.

Mr. Steve Clark: But you just said that they may change C-14 and we may have to deal with further amendments.

Mr. Liam Scott: Correct. There is a review being undertaken by the federal government, and that may necessitate changes to the provincial legislation, depending on the outcome of that review.

The Chair (Mr. Peter Z. Milczyn): Mr. Fraser.

Mr. John Fraser: It’s okay, Chair. Thank you.

The Chair (Mr. Peter Z. Milczyn): Is there any further discussion on the amendment? Madame Gélinas.

M^{me} France Gélinas: I would like to ask legal counsel if he shares the view that we just heard: that by adding in the immunity clause of the bill “registered nurse, pharmacist as defined,” and then “other person assisting,” are we saying that pharmacists and registered nurses can administer MAID?

Mr. Ralph Armstrong: I think that is a suggestion that may well be taken out of it, because it’s assumed that by making the change, the committee is taking that point of view. In my role as adviser to the committee, I think I pretty much associate myself with everything Mr. Scott has said on this point.

The Chair (Mr. Peter Z. Milczyn): Further discussion on this amendment? Then, on the amendment to subsection 2(2), amending section 13.8 of the Excellent Care for All Act, 2010: All those in favour? Opposed? That amendment is lost.

The next amendment is on subsection 2(2), amending section 13.8 of the Excellent Care for All Act, 2010. Madame Gélinas.

M^{me} France Gélinas: I move that section 13.8 of the Excellent Care for All Act, 2010, as set out in subsection 2(2) of the bill, be struck out and the following substituted:

“Immunity, MAID

“13.8 No action or other proceeding for damages shall be instituted against a health care practitioner, including a physician, nurse practitioner, registered nurse or any other person assisting him or her, or against a health sector organization, a director, officer or employee of a health sector organization, for anything done in good faith in the exercise or intended exercise of providing medical assistance in dying, or for any alleged neglect or default in the exercise of good faith in the provision or intended provision of medical assistance in dying.”

0940

Basically, we are talking about immunity. This is a new service for the people of Ontario that has a lot of people nervous. A lot of people would like to be specifically named in the immunity so that we don't have overzealous lawyers trying to cause all sorts of problems. Whether it is a hospital, a long-term-care home, their director, their officer—no offence to the lawyers, but when lawyers see a conflict, they tend to get very creative.

A lot of institutions, directors, officers, and health care sector organizations as well as registered nurses feel very vulnerable. Given that we are talking about the immunity clause, they would like to be specifically named in the immunity clause so that if their lawyers happen to have to defend them against other lawyers, they can refer to the immunity clause in that bill and feel protected.

This is to make sure that the intent that we have for this bill—that if you provide medical assistance in dying, you will not find yourself in front of the court—that the intent be carried out by making it clear to the people that are most likely to find themselves in front of the courts, having to defend that medical assistance in dying was either provided in or by or close to.

The Chair (Mr. Peter Z. Milczyn): Mr. Fraser.

Mr. John Fraser: Thank you, Chair. I won't be supporting this motion. I think that, first of all, we'll go back to the debate we've had over the last three motions, and I won't go over that. We've sought some advice on that, and that advice is clear. I think, going forward, if you take a look at motion 5, it very thoroughly goes through some amendments from the perspective of institutions. I think that that will satisfy the need of the committee.

The Chair (Mr. Peter Z. Milczyn): Mr. Clark.

Mr. Steve Clark: I just wanted to add, again, to be the contrarian to what Mr. Fraser was saying: I think there's still an appetite out there for including registered nurses and pharmacists in this piece of legislation. Certainly, from my perspective, I understand—in speaking to them and also speaking to our critic about it—that it was a key piece that they wanted to have in this legislation under the immunity clause.

While I can appreciate that Mr. Fraser is setting the table for the committee's majority on their motion next, I think Ms. Gélinas still continues, as we do, to make points that there are still a number of groups that wanted to be mentioned specifically in this legislation.

The Chair (Mr. Peter Z. Milczyn): Mr. Fraser.

Mr. John Fraser: Just very quickly: I really appreciate that these three motions talk about immunity. I think it's critical. It's an important part of the bill. We're all striving to make sure that that happens. We do have a motion coming forward. We just sought advice about the best way forward that will ensure that people have immunity and to be in alignment with the federal legislation and not have any unintended consequences.

These motions are not about the role and the value of those practitioners inside Ontario; they're about making sure that we have a piece of legislation that's consistent and is effective. So, while I appreciate the member's comments and agree with them in many instances, I think it's important that we get this right.

The Chair (Mr. Peter Z. Milczyn): Any further discussion? No? On the amendment to subsection 2(2), amending section 13.8 of the Excellent Care for All Act, 2010: All those in favour? Opposed? That is lost.

On the next amendment to subsection 2(2), amending section 13.8 of the Excellent Care for All Act, 2010: Mr. Fraser.

Mr. John Fraser: I move that subsection 13.8 of the Excellent Care for All Act, 2010, as set out in subsection 2(2) of the bill, be amended by adding the following subsections:

“Care providers

“(3) No action or other proceeding for damages based on direct or vicarious liability shall be instituted against a care provider or a director, officer or employee of a care provider for any act done or omitted in good faith,

“(a) by the care provider in relation to the delivery of medical assistance in dying; or

“(b) by a physician or nurse practitioner or any other person assisting him or her in the performance or intended performance of medical assistance in dying.

“Exception, negligence

“(4) Subsection (3) does not apply to an action or proceeding that is based upon the alleged negligence of the care provider, director, officer, employee, physician, nurse practitioner or other person.

“Definition, ‘care provider’

“(5) In this section,

“‘care provider’ means,

“(a) a health system provider as defined in subsection”—

The Chair (Mr. Peter Z. Milczyn): No, Mr. Fraser.

Mr. John Fraser: I'm sorry. Did I miss something?

Mr. Ralph Armstrong: “Health service provider.”

The Chair (Mr. Peter Z. Milczyn): Could you correct it?

Mr. John Fraser: Okay. I'm sorry.

“(a) a health service provider as defined in subsection 2(2) of the Local Health System Integration Act, 2006,

“(b) a licensee as defined in subsection 2(1) of the Retirement Homes Act, 2010, and

“(c) any other prescribed person or entity.”

Counsel, is that good?

Mr. Ralph Armstrong: Thank you, sir.

Mr. John Fraser: Thank you. Sorry for the stumble there.

Again, I spoke to this a little bit earlier. This is what we heard from the public hearings in terms of making sure that those institutions and those people associated with that have that immunity. We were asked to do this. I think that it's an appropriate amendment that very clearly covers those circumstances in which immunity is required.

I would encourage, if there are any questions about that—I'd be happy to talk.

The Chair (Mr. Peter Z. Milczyn): Madame Gélinas.

M^{me} France Gélinas: I don't understand, for the life of me—yes, I heard all of that, but we also heard that the nurses who are the ones that have been there in the little span that we have been providing MAID—they are asking to be protected. To say that “other person” means a nurse is a stretch when you're a nurse who feels very vulnerable. I don't know why the resistance to add “registered nurse.” You've added a whole bunch of stuff that is not in the federal bill but yet continue to refuse to give immunity and protection to people who have come here and asked to be protected because they are there at the bedside when MAID is provided.

The Chair (Mr. Peter Z. Milczyn): Mr. Clark.

Mr. Steve Clark: Just again, I want to say that I agree with Ms. Gélinas about this. I think we've heard loud and clear from registered nurses and pharmacists that specifically they wanted to be mentioned in this bill. I think the submission that we received from RNAO was pretty clear in terms of how they wanted to be included. I'm disappointed that some of the amendments that have been put forward to date have either been dismissed outright by the government or not felt that those voices needed to be heard.

We clearly feel that they should have been included. We felt that the previous amendments that the government used their majority to slap down were more appropriate. Again, for the life of me, I'd love to hear it from the parliamentary assistant again on why those voices should not be included in this legislation.

The Chair (Mr. Peter Z. Milczyn): Mr. Fraser.

Mr. John Fraser: They are.

Mr. Steve Clark: They don't feel that they are.

Mr. John Fraser: Well, they are. They are. It's a question of the advice that we got. They're protected, and we're debating this motion right here.

Is there anything with this motion, number 5, that anybody on the committee has a question about with regard to the protection of institutions? That's the intent of this motion, and I think it's important and critical that this motion pass to ensure that that immunity is granted to places like retirement homes. This will provide that coverage, and I hope that—

The Chair (Mr. Peter Z. Milczyn): Madame Gélinas.

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M^{me} France Gélinas: I do have a quick question. I'm going from memory now. Under the Local Health System Integration Act, are group homes included or not? I take

it that hospitals and long-term-care homes are included. I'm pretty sure. I'm not as sure with group homes.

Mr. John Fraser: I don't have the answer to that question, but if you look at (c) of that, “any other prescribed person or entity”—if, as we go forward, there are people who are not captured, then we can make that determination.

M^{me} France Gélinas: Can I ask the lawyer to let me know if group homes are included in the Local Health System Integration Act?

The Chair (Mr. Peter Z. Milczyn): The—

M^{me} France Gélinas: The legal counsel. Sorry.

The Chair (Mr. Peter Z. Milczyn): Counsel for the ministry, if you could answer that.

Mr. Liam Scott: Group homes are not defined in the definition under the Local Health System Integration Act. In terms of a health services provider, there are a large number of entities that are specified there. The purpose of the motion providing for other entities to be prescribed by regulation was because the definition of “health services provider” might not capture all of the potential entities where MAID may be provided.

The Chair (Mr. Peter Z. Milczyn): Other questions of counsel?

M^{me} France Gélinas: So the idea is to add them in regulation? Is that it?

Mr. Liam Scott: If necessary. The issue was, as I understand it, that certain stakeholders such as the Ontario Hospital Association asked for hospitals to be protected, but the intent is to cover any possible place where MAID be provided, which of course could include a long-term-care home and could potentially include other places such as retirement homes.

Obviously, given that MAID is a fairly new service, we don't know in the future where MAID may ultimately be provided, and if it may be provided in other settings. Allowing us to have a regulation-making authority to add other entities to protect them may help us in the future if MAID starts to be provided in other settings. You gave the example of group homes; it could be in other settings as well that aren't currently captured by this definition.

M^{me} France Gélinas: Are psychiatric hospitals covered in the Local Health System Integration Act?

Mr. Liam Scott: Yes.

M^{me} France Gélinas: Thank you.

The Chair (Mr. Peter Z. Milczyn): Other questions of counsel? No?

Further discussion on the amendment? On the amendment to subsection 2(2), amending section 13.8 of the Excellent Care for All Act, 2010: All those in favour? Opposed? That amendment is carried.

The next amendment to subsection 2(2), amending section 13.10 of the Excellent Care for All Act, 2010: Mr. Clark.

Mr. Steve Clark: I move that subsection 2(2) of the bill be amended by adding the following section after section 13.9:

“Participation in MAID voluntary

“13.10(1) Participation in medical assistance in dying shall be voluntary. A person may refuse to do something that is for the purpose of medical assistance in dying. This includes refusing to,

“(a) assist an individual’s”—

The Chair (Mr. Peter Z. Milczyn): Could you correct yourself there? You said “assist.”

Mr. Steve Clark: Oh, sorry.

“This includes refusing to,

“(a) assess an individual’s capacity to give informed consent for the purpose of medical assistance in dying;

“(b) diagnose an individual for the purpose of medical assistance in dying;

“(c) determine an individual’s prognosis for the purpose of medical assistance in dying;

“(d) facilitate an individual’s access to medical assistance in dying;

“(e) provide medical assistance in dying;

“(f) assist in providing medical assistance in dying;

“(g) dispense a substance to an individual for the purpose of medical assistance in dying;

“(h) refer an individual to a person who will not refuse these things.

“Access to records of personal health information

“(2) This section does not alter a health information custodian’s obligations respecting an individual’s right of access to a record of personal health information about the individual.

“No adverse legal or practical consequences

“(3) The following provisions apply with respect to refusing to do something that is for the purpose of medical assistance in dying:

“1. No action or other proceeding for damages shall be instituted against a person for refusing to do something that is for the purpose of medical assistance in dying.

“2. A contract is void to the extent that it would prevent a person from refusing to do something that is for the purpose of medical assistance in dying.

“3. No board as defined in section 1 of the Public Hospitals Act shall deny a physician appointment or re-appointment to a group of the medical staff of a hospital as defined in section 1 of the Public Hospitals Act, change a physician’s hospital privileges or deny a physician a change in hospital privileges for refusing to do something that is for the purpose of medical assistance in dying.

“4. No employer or person acting on behalf of an employer shall intimidate, dismiss or otherwise penalize an employee or threaten to do so because the employee refused to do something that is for the purpose of medical assistance in dying. This paragraph may be enforced as if formed part of the Employment Standards Act, 2000.

“5. No administrative sanction, professional discipline, suspension or other adverse consequence shall be imposed on a person for refusing to do something that is for the purpose of medical assistance in dying, nor shall a refusal to do something that is for the purpose of medical assistance in dying affect a person’s eligibility to be a student, licensed, credentialed or a member of a college

as defined in subsection 1(1) of the Regulated Health Professions Act, 1991.

“6. In the event of a conflict between this section and any other act, including any rule or policy set by a college as defined in subsection 1(1) of the Regulated Health Professions Act, 1991, this section prevails.”

The Chair (Mr. Peter Z. Milczyn): Mr. Barrett.

Mr. Toby Barrett: To summarize, the purpose of this opposition motion, as we’ve heard, is to ensure that it be voluntary for any health professional to be involved in medical assistance in dying. The way it lies now, as I understand it—and I could be corrected by legal counsel. The reason this was put forward is that, as it stands now, or would stand in the future, it’s mandatory either to provide or to assist in providing medical assistance in dying. It’s mandatory to dispense a substance to an individual for the purpose of medical assistance in dying and it would be mandatory to refer an individual to a person who will not refuse to do these things. That’s my understanding of the first part of this motion that’s outlined on page 6, unless there’s any clarification or correction on that.

Again, the very lengthy motion continuing on page 6a: If it’s not passed, my understanding would be that the way it would stand, an action or other proceedings for damages can be instituted against a person who refuses to provide medical assistance in dying. It means that a hospital board can deny a physician appointment or reappointment to a group of the medical staff. A hospital board can change a physician’s hospital privileges or deny a physician a change in hospital privileges. An employer can intimidate, dismiss or otherwise penalize an employee, or threaten to do that, again, if they refuse to be part of this. It goes on: administrative sanctions, professional discipline, suspension and other consequences that can be imposed on a person through, for example, if their own conscience refuses to be part of this.

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That’s my understanding of what we’re trying to ask for here, on behalf of so many people who testified before this committee. I would say that on behalf of physicians who communicated with me.

The Chair (Mr. Peter Z. Milczyn): Mr. Fraser.

Mr. John Fraser: I’m pleased to respond to this motion. I feel compelled to read this, because it talks about the balance that we must achieve:

“The people of Ontario and their government recognize:

“That the government of Ontario is committed to uphold the principles set out in the Canada Health Act—public administration, comprehensiveness, universality, portability and accessibility—with respect to medical assistance in dying.

“That everyone has freedom of conscience and religion under section 2 of the Canadian Charter of Rights and Freedoms, and that nothing in this act affects the guarantee of freedom of conscience or religion.”

Freedom of conscience and religion is protected under our charter. As I said earlier, we heard a lot of deputa-

tions here at committee from both sides, coming here in conscience. The voices that we did not hear and that we were not confronted with were the voices of those people whose suffering is something that we can't imagine: someone who is trapped inside their body because of ALS, somebody who has 30 or 40 spasms a minute that are painful and hard to control, somebody who's gasping for air, or, as a colleague told me the story, who can't be touched because the cancer in their bones is so painful. Those people need to be on a safe path. We're going to talk about that later in committee.

More importantly, in my own community at the Ottawa Hospital, objecting physicians and practitioners providing MAID on a team work together. They found a way to work together, because what they realized is that people need to get two feet on that path and that as their practitioner or as somebody who is involved with that person, your obligation at a minimum is for them to get two feet on that path. It's not good enough to say, "Just go over there." These are really vulnerable people, and there are not a lot of them. We can't imagine what they're going through, but we can think it must be bad because of what they're considering. They need to have access to that, which is their right choice, but also to have full access to palliative end-of-life care, to have counselling, to have those things that they need provided for them because, quite frankly, we know that about half of those people don't choose that. To not make sure that they're on the safe path is, I think, as an individual, myself, I would say that would be an abdication—and I'm not a practitioner—of my responsibility, no matter how I feel about the end result of that.

This is the thing that we have to keep foremost in front of us right now: to ensure that people get to that safe path. We have to. We don't have a choice. I know it's a moral challenge. I don't think it's a moral dilemma, because I think it's one of those things where we can meet our obligations on either side. I know it, because I've seen people do it in my community. We're going to do that with the care coordination service in a more general way, but people need to find their pathways to do this.

When I look at this motion and I look specifically at (d), which says to "facilitate an individual's access to medical assistance in dying," I have concerns about very vulnerable people, because I don't really believe, in a publicly funded health care system, that is good enough to say, "Just go over there." We have a greater duty and obligation to people in that kind of suffering than to do that. For that reason, I can't support this motion.

The Chair (Mr. Peter Z. Milczyn): Madame Gélinas.

M^{me} France Gélinas: I guess my opening comment will stand, as well as: I'm really happy that the hospital in Ottawa works. I can tell you that for hospitals in northern Ontario it doesn't work.

The Chair (Mr. Peter Z. Milczyn): Mr. Clark?

Mr. Steve Clark: Again, it's unfortunate that our critic can't be here today. I know he's spent a considerable amount of time on Bill 84. He's worked so very diligently meeting with stakeholders and really research-

ing this bill. I want to make sure I mention Mr. Yurek for his exceptional work that he's done on behalf of Her Majesty's official opposition.

When Bill 84 was first tabled, the gentleman opposite to me, Mr. Fraser, gave his opening comments for the minister. I was the first MPP who provided two minutes of questions and comments, and I put in a very short period of time the priority that I had in addition to some of the things that Mr. Fraser put on the record.

I felt very strongly that we needed to have an amendment to this bill—in this case, the one that I read into the record—to provide that conscience rights section within this act. It became very clear to me—and I know many other MPPs put comments on the record—that in addition to what Mr. Fraser was saying about getting someone on the path that they want, we need to be respectful of the views of everyone involved in the health care system and this whole issue about effective referral. We heard that so many times during the debate that we had and the issue of whether it's mandatory or not mandatory to provide or assist someone as part of that journey.

When the minister put his comments on the record, again, for whatever reason, I was in the House that day and I provided a very similar two minutes, and if I had been able to speak, I can't emphasize enough how important this clause is to me and to many Ontarians who have communicated to me that they felt there was something lacking in this legislation.

One of the things I've learned in the short period of time I've been here is, we need to realize that these laws sometimes need changing. Ms. Gélinas hit the nail on the head in terms of whether all of the opposition amendments are going to be defeated in favour of only the government's views.

I think we had an opportunity with this legislation, and we tried to make ourselves crystal clear at the start about the addition that we wanted to see to Bill 84. I'm disappointed that after all that time—and again Mr. Yurek spent hundreds of hours meeting with stakeholders, writing briefs, listening to responses from our community. We had a tremendous amount of letters and emails, phone calls and comments at public events about this piece of legislation and the fact that there was a feeling that especially when it comes to this issue and that the participation in MAID, as my colleague Mr. Barrett said, should be voluntary, we felt that it had to be. He had a doc from his community that I guess I shared with him. I didn't know this, that there was one of his doctors—

Mr. Toby Barrett: Dr. Drijber.

Mr. Steve Clark: —Dr. Drijber, who came to meet with him as one of his constituents, but who also has property in Leeds–Grenville. It was a very good meeting, to be able to sit across the table from someone who is a palliative care doctor, who had comments that he felt needed to be voiced by two of the people who represent him and represent his family.

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We took a lot of time with this amendment, and we felt it was very important. Many Ontarians are going to

be watching the debate this morning and this afternoon on how the government handles these amendments and these voices. I feel very strongly that this motion should be passed and that we should move forward with it. I'm very firm that we need to be able to have the balance that you talk about, but also the recognition that the system has to deal with those people on the front line and that whole issue of voluntariness.

Mr. John Fraser: I don't believe that this motion achieves that balance that I spoke about earlier.

The Chair (Mr. Peter Z. Milczyn): Further discussion on this amendment?

Mr. Steve Clark: Can I have a 20-minute recess before the vote? And we'd like a recorded vote.

The Chair (Mr. Peter Z. Milczyn): It's almost 10:15.

Mr. Steve Clark: Then we can do the vote this afternoon; procedurally, you have to.

M^{me} France G linas: Chair, can I ask one quick question before we recess? Is there any way to take some of the practical consequences that are there and keep them in some ways? It's clear that the Liberals are going to vote this down. But there is some pretty good language here that would give a lot of people a sense of, "I am putting it out there. Don't throw it all out."

Interjection.

The Chair (Mr. Peter Z. Milczyn): It being basically 10:15, committee is recessed till 3 p.m. this afternoon.

The committee recessed from 1015 to 1501.

The Vice-Chair (Ms. Ann Hoggarth): Good afternoon. We're assembled here for the clause-by-clause consideration of Bill 84, An Act to amend various Acts with respect to medical assistance in dying.

When we recessed this morning, the question was being put on PC motion number 6, related to subsection 2(2), section 13.10 of the Excellent Care for All Act, 2010. We will immediately proceed to a recorded vote without any further debate or points of order.

Ayes

Clark.

Nays

Colle, Des Rosiers, Fraser, Wong.

The Vice-Chair (Ms. Ann Hoggarth): The motion is lost.

We're moving on to PC motion 7, subsection 2(2), section 13.10 of the Excellent Care for All Act, 2010. Mr. Barrett.

Mr. Toby Barrett: I move that subsection 2(2) of the bill be amended by adding the following section after section 13.9:

"Participation voluntary

"13.10(1) Participation in activities authorized pursuant to sections 241.1, 241.2, 241.3 of the Criminal Code (Canada) shall be voluntary.

"No adverse consequences

"(2) A person is not subject to civil, administrative, disciplinary, employment, credentialing, regulatory or other sanction or penalty or loss of privileges, loss of membership or any other liability for refusing to participate, directly or indirectly in activities authorized pursuant to sections 241.1 through 241.3 of the Criminal Code (Canada).

Clarification

"(3) For the purposes of this section, participate includes, but is not limited to, performing, assisting in the performance of or making a referral for any activities related to, or for the purpose of, medical assistance in dying.

"(4) For the purposes of this section 'participate' does not include"—what's the terminology for the Latin? This would be "one." What is that Latin term?

Interjection.

Mr. Toby Barrett: Pardon? One, two, three?

Interjection: "Eye-eye-eye."

Mr. Toby Barrett: Yes, maybe.

M^{me} France G linas: Roman numerals.

Mr. Toby Barrett: I'm sorry—Roman.

"(i) the provision, upon request, of information about services that can provide access to medical assistance in dying;"

Then we have two i's: "(ii) the provision, upon request, of a patient's relevant medical record, to the patient, or"

Then we have three i's—I did not study Latin in school.

Mr. Steve Clark: "Eye-eye-eye." Just say "eye-eye-eye."

Mr. Toby Barrett: Yes.

Mr. Mike Colle: Aye-yai-yai.

Mr. Steve Clark: I knew you were going to do that.

Mr. Toby Barrett: And I wasn't going to do that.

"(iii) communicating to the appropriate person in authority a patient's request for a complete transfer of care so that the person in authority can facilitate the transfer."

Conflicts with other legislation

"(2) In the event of a conflict between section 13.10 and other legislation, section 13.10 prevails."

The Vice-Chair (Ms. Ann Hoggarth): Thank you, Mr. Barrett. Would you like to speak to your motion?

Mr. Toby Barrett: We've certainly talked about this at length with respect to Bill 84 and medical assistance in dying. We've certainly had many, many meetings. My colleague and I were speaking of one presentation by a physician in my area, Dr. Philip Drijber. He has been involved in palliative care for over 20 years. As he explained and as so many people explained, many physicians are not able to participate in euthanasia for reasons of conscience, for reasons of ethics or religious conviction, for reason of the fact that they have taken the Hippocratic oath. Further to that, many consider referral of any kind as a form of participation in euthanasia.

The Vice-Chair (Ms. Ann Hoggarth): Any other further comments?

Interjections.

Mr. Steve Clark: I'm just waiting to be recognized.

The Vice-Chair (Ms. Ann Hoggarth): Oh, I'm sorry. MPP Clark.

Mr. Steve Clark: Thanks, Chair. Again, I just want to express my disappointment in our previous amendment not passing. We put this amendment forward—again, we used language from California's End of Life Option Act when we dealt with conscience rights and the fact that they are protected.

I guess what I didn't say in debate this morning before we adjourned for question period is that none of the MAID statutes in Washington, Oregon, Vermont or California require a physician to make effective referrals. As some of my colleagues have said in the House, there's no other jurisdiction in Canada requiring objecting physicians to refer.

Again, I believe, based on the many deputants who we had at this committee—there were a number of physicians who felt that their rights were not protected, and quite frankly, there were a number of physicians who are questioning remaining in practice without a conscience-rights amendment being included in Bill 84. There was a doctor in earlier this week, or recently, Mark D'Souza, who said at a press conference or a media availability that he was accepting his final palliative care patient. So there are doctors who came to committee, doctors in our communities, who want their conscience rights protected by an amendment for Bill 84.

While I would have loved to have the previous motion pass, with the committee's indulgence, I ask them to seriously consider including this amendment in the final bill that is reported back to the House.

The Vice-Chair (Ms. Ann Hoggarth): MPP Des Rosiers?

M^{me} Nathalie Des Rosiers: I just want to say that obviously all the other legislation doesn't have the backbone of the federal legislation, which we do. The federal legislation is referred to, and it does have in the preamble strong protection for conscience rights. Similarly, the charter applies to all legislation.

This amendment, I think, would put us squarely in the midst of litigation, and ongoing litigation, involving ourselves directly in the self-governance of physicians, which we generally try to protect as being a fundamental of good governance. I think that's the reason why I would vote against.

1510

The Vice-Chair (Ms. Ann Hoggarth): MPP Fraser.

Mr. John Fraser: I want to refer back to my comments with regard to the last motion, and I will explain why I can't support this motion. I believe that there is a need for balance. As we said earlier, we heard from deputants from either side of the debate—practitioners. We didn't hear from anybody who was really directly impacted at committee—directly impacted in the sense that there were no patients here. There were no families of patients. There were no people talking about the needs of that person who is at the centre of this legislation. We

must make sure that someone who's coming to us with that kind of suffering gets on to a safe path.

In my community, objecting physicians, physicians of conscience and physicians of faith have found a way to get people to that path and put their feet firmly down on that. Some of them have continued to follow them along a path, which includes palliative and end-of-life care, one of the things that's on that path.

We have a motion later on with regard to the care coordination service. I think it's important that we enshrine that in law so that that is a pathway that we are obligated to create. That pathway will provide enough space to do the right thing and make sure that very vulnerable people get to that safe space. In general but more specifically, if you take a look at number 2, "conflicts with other legislation," that clearly puts that access at risk.

The Vice-Chair (Ms. Ann Hoggarth): Madame Gélinas.

M^{me} France Gélinas: I just wanted to reinforce the comment that MPP Clark had made, that because we do not have care coordination, because nothing has been done to prepare Ontario for this, there will be physicians who do not want to be asked this question who, starting in the next couple of days or couple of weeks, won't be practising medicine in Ontario anymore. What he said is true. I have physicians who have reached out to me to tell me just that.

The Vice-Chair (Ms. Ann Hoggarth): Okay. Any other discussion? Prepared to vote?

Mr. Steve Clark: Recorded vote.

The Vice-Chair (Ms. Ann Hoggarth): Recorded vote.

Ayes

Barrett, Clark.

Nays

Colle, Des Rosiers, Fraser, Wong.

The Vice-Chair (Ms. Ann Hoggarth): I declare the motion lost.

We'll move on to motion number 8.

Mr. Steve Clark: Motion 8 we're going to withdraw in favour of motion 8.1 that's in people's packages. So 8 will be withdrawn.

The Vice-Chair (Ms. Ann Hoggarth): Okay. Motion 8 is withdrawn.

We're now dealing with PC motion 8.1: subsection 2(2), on section 13.10 of the Excellent Care for All Act, 2010.

Mr. Steve Clark: Mr. Barrett is going to deal with that.

The Vice-Chair (Ms. Ann Hoggarth): MPP Barrett.

Mr. Toby Barrett: I move that subsection 2(2) of the bill be amended by adding the following section:

"No duty to participate

“13.10(1) A physician, nurse practitioner, pharmacist as defined in subsection 1(1) of the Drug and Pharmacies Regulation Act or other person shall not be under any legal duty, including by contract, to participate directly or indirectly in the provision of a lethal dose of medication to a patient.

“No professional consequences

“(2) A health care facility or health care provider shall not subject a person to discipline, suspension, loss of licence, loss of privileges or other penalty for actions taken in good faith reliance on subsection (1) or a refusal to act under subsection (1).”

The Vice-Chair (Ms. Ann Hoggarth): Discussion?

Mr. Toby Barrett: Again, on page 8.1: This is a conscience rights protection amendment that prevents anyone from being under any legal duty of participating directly or indirectly in the provision of a lethal dose of medication. As we continue to propose and to debate amendments, we feel that we have to ensure that we are protecting not only the public, but that we are protecting health care providers. With this motion, we have an opportunity to protect the conscience rights of health care professionals. It’s that simple.

The Vice-Chair (Ms. Ann Hoggarth): Any other discussion?

M^{me} Nathalie Des Rosiers: This amendment, I think, has a difficulty because it does talk about the provision of a lethal dose of medication to a patient. It’s actually a bit incompatible with the way in which the federal legislation—which prescribes how we reach a decision. It’s not necessarily a lethal dose that would be administered; it could be other things. It’s quite specific, so I think it’s a bit dangerous. It could lead to a misunderstanding between what the federal scheme is and this.

Let’s come back to the reason for Bill 84. It certainly is a technical bill to simply abilitate the federal legislation, which does provide and does protect conscience objectors’ rights; the charter does so, as well. So we don’t want to, in a way, inadvertently create some difficulty in the interpretation of a very delicate balance between the right to access to this service and also ensuring that people are supported in palliative care, if they wish to do that, and so on.

I will vote against it for these reasons.

The Vice-Chair (Ms. Ann Hoggarth): Any other discussion?

Mr. Steve Clark: Similar to our last amendment, the issue that I want to bring forward is the fact that—I want to key in on the word “indirectly.” This would also deal with the effective referral. In the previous amendment that was turned down, some of the wording was based on the California legislation. With this piece, we’ve looked at the Vermont legislation and we’ve tried to provide some of their wording. Again, those four states that I mentioned earlier all have the requirement that they not make that referral. That’s what we’re trying to do by putting it before the committee again: using just a bit of a different approach, but using it from a jurisdiction that

has the section in the legislation, which you’re not providing.

The Vice-Chair (Ms. Ann Hoggarth): MPP Fraser.

Mr. John Fraser: It’s a pleasure to respond to the member. Again, Vermont does not have the overriding power of the federal legislation that we have here.

At the risk of repeating myself, we have to put patients at the centre of this. Someone who comes to any of us, comes to any practitioner with the kind of suffering that we’re talking about, needs to get to a safe place, a safe pathway. It is, I would argue, a minimal responsibility to make sure that those people and their families are able to get there and that we confirm that they’re there, so they can have access to palliative end-of-life care, so they may have access to MAID. I think to do anything less—and this motion will potentially create an opportunity for less to happen—is not balanced and not right.

I can’t support the motion.

The Vice-Chair (Ms. Ann Hoggarth): Any further discussion? Shall we proceed to the vote?

Mr. Toby Barrett: Recorded vote.

Ayes

Barrett, Clark.

Nays

Colle, Des Rosiers, Fraser, Wong.

The Vice-Chair (Ms. Ann Hoggarth): I declare the motion lost.

We move to motion 9.

1520

Mr. Steve Clark: We’re going to withdraw.

The Vice-Chair (Ms. Ann Hoggarth): Withdrawn?

Mr. Steve Clark: In favour of 9.1.

The Vice-Chair (Ms. Ann Hoggarth): We are proceeding to motion 9.1. This is subsection 2(2), on section 13.10 of the Excellent Care for All Act, 2010.

Mr. Steve Clark: I move that subsection 2(2) of the bill be amended by adding the following section:

“No compulsion to participate

“13.10 Nothing in this act requires a physician or nurse practitioner to provide or participate directly or indirectly in medical assistance in dying.”

The Vice-Chair (Ms. Ann Hoggarth): Discussion? MPP Barrett?

Mr. Toby Barrett: It’s a motion or a legislative process that we feel and I think that bears repeating. We just feel that this should be put in place to allow physicians or nurse practitioners objecting to Bill 84 to continue to serve their patients and have their conscientious objections legally protected, at the same time—to achieve that balance that we hear so much discussion about during these deliberations—providing the process for access to medically assisted dying to fulfill that requirement for balance.

The Vice-Chair (Ms. Ann Hoggarth): Any further discussion? Madame Des Rosiers?

M^{me} Nathalie Des Rosiers: Yes, I think the dilemma is well expressed. Some people want to have an express reference to the conscientious objectors' rights, in a context where it's probably not necessary because we have the charter that applies. It is under the federal legislation, which provides for it. The danger in expressing something that's not necessary is that it could create ambiguity. For example, the word "indirectly" here could be interpreted as even preventing a transfer of care or providing assistance to reach the care coordinator that we hope will be put in place.

So "directly" could create more problems, let's put it this way, than solving some, particularly in the context where the intention of the bill is to begin the process, a conversation, where this is not going to be the first time that we are going to have to deal with this. We have to evaluate the legislation in five years and see how it has been rolled out. I think that's one of the issues, so I'll vote against it.

The Vice-Chair (Ms. Ann Hoggarth): MPP Barrett?

Mr. Toby Barrett: I just don't understand why this would be unnecessary because it's referenced in the charter. We're debating new legislation here in the Legislature, the Anti-Racism Act. Is that not covered in the charter? If we're debating issues of anti-racism, are you suggesting that's unnecessary duplication?

We see this so often with provincial legislation. I think of the cosmetic pesticides act of a few years ago—clearly a federal responsibility. This present government saw their way clear to duplicate federal legislation and to take over a federal responsibility covered by the Pest Management Regulatory Agency, which is a federal agency, and to essentially duplicate that legislation. We've seen this time and time again, so I just don't buy this argument of duplication.

The Vice-Chair (Ms. Ann Hoggarth): MPP Fraser, and then MPP Clark.

Mr. John Fraser: I'll try not to repeat myself, so I will simply say that this motion does put at risk ensuring that people get on that path, directly or indirectly, in medical assistance in dying. There's nothing that compels, either in this legislation or in federal legislation, any practitioner to provide medical assistance in dying directly.

The Vice-Chair (Ms. Ann Hoggarth): MPP Clark.

Mr. Steve Clark: Thank you, Chair. Through you back to Mr. Fraser: Regardless, there is a feeling by many who came before this committee and many in our community that, regardless of the federal legislation, we should have a statement like what we're proposing in 9.1 that emphasizes that there's no compulsion to participate.

I know what you're going to say, because you've said it many times. You don't think it's necessary, but there is a section of people out there who feel that, as part of our deliberations, we should do it.

I go back to what Ms. Gélinas said at the very start: that this is just going to be an exercise where you vote

down all the opposition amendments for your own. This is not a process that I think is particularly helpful.

I believe that there is no ambiguity in this section. I think it's a good motion and should be supported. That's all I'm going to say on the matter.

The Vice-Chair (Ms. Ann Hoggarth): Any further discussion? MPP Des Rosiers.

M^{me} Nathalie Des Rosiers: To repeat exactly what the federal legislation would say, without adding, might be correct. It might not be as dramatic, but to add a different section that creates a new type of protection, I think, risks undermining the federal protection. That was my point. If we were repeating exactly what the federal legislation—in the preamble, for example, then I wouldn't have as much of a problem as I have with this.

The Vice-Chair (Ms. Ann Hoggarth): MPP Fraser.

Mr. John Fraser: I just want to repeat that our collective obligation is to the people that the legislation deals directly with and that we ensure that those people get to a place that's safe and will provide them with what they need, whatever that may be. This motion puts that at risk.

We didn't have a chance to discuss the preamble. I know we will at the end of the bill. I hope that my colleagues will give it their fullest consideration.

The Vice-Chair (Ms. Ann Hoggarth): Any further discussion? We'll call the vote.

Mr. Steve Clark: Recorded vote.

The Vice-Chair (Ms. Ann Hoggarth): It's a recorded vote.

Ayes

Barrett, Clark.

Nays

Colle, Des Rosiers, Fraser, Wong.

The Vice-Chair (Ms. Ann Hoggarth): I declare the motion lost.

We now move on to PC motion number 10: subsection 2(2), on section 13.10 of the Excellent Care for All Act, 2010. MPP Clark.

Mr. Steve Clark: I move that subsection 2(2) of the bill be amended by adding the following section:

"Copy of medical records

"13.10 If a health care provider is unable or unwilling to carry out a request under paragraph 241.2(1)(d) of the Criminal Code (Canada) and the individual transfers care to a new health care provider, the individual may request a copy of his or her medical records under the Personal Health Information Protection Act, 2004."

The Vice-Chair (Ms. Ann Hoggarth): Discussion?

Mr. Steve Clark: Yes. This was an amendment that we drafted in conjunction with someone who appeared before the committee. Essentially, doctors who don't wish to participate still want to have that conversation. It's to clarify that objecting doctors will provide a copy

of their patients' medical records if they're requested. It's a specific recommendation.

The Vice-Chair (Ms. Ann Hoggarth): Further discussion? MPP Fraser.

Mr. John Fraser: The motion that is put forward is already covered under PHIPA, so there's already an obligation. That record belongs to the patient. There is an obligation amongst all practitioners to ensure that people have access to their records, so it's—

Mr. Steve Clark: So you're going to support it.

Mr. John Fraser: We don't need it, actually. I would like to say yes, but it's not necessary to do it.

The Vice-Chair (Ms. Ann Hoggarth): I notice that the Chair has returned.

1530

Mr. Steve Clark: I had no better luck with the Acting Chair with my amendments than I had, sir, with you in the chair.

The Chair (Mr. Peter Z. Milczyn): I thought it would all be finished by now without me in the chair.

Is there any further discussion on this amendment? Seeing none, on the amendment to subsection 2(2) amending section 13.10 of the Excellent Care for All Act, 2010: All those in favour? Opposed? That is lost.

An amendment to subsection 2(2) amending section 13.10 of the Excellent Care for All Act, 2010: Mr. Fraser.

Mr. John Fraser: I move that subsection 2(2) of the bill be amended by adding the following section to the Excellent Care for All Act, 2010:

“Care co-ordination service

“13.10 The minister shall establish a care co-ordination service to support patient access to medical assistance in dying and other end-of-life options in Ontario.”

As I said earlier in our discussion here today, this is a critical part of the bill—and I do want to acknowledge that the NDP brought forward a very similar amendment. This is something we heard at committee, and we've heard repeatedly, that not only physicians objecting but on the other side of practitioners and physicians, people who are talking about access, they feel that this is a critical part, that we have a patient-facing service that will provide information, a pathway that involves palliative and end-of-life care, medical assistance in dying and that it is accessible to people—anyone who wants to get there.

It will also provide a pathway for people to be safe, to get the information they need and a pathway that I understand in the presentations that were here will be something that objecting practitioners will be able to comfortably get people on that path, very similar to what they do in Alberta.

I hope members opposite can support it. I really believe that it's important for us to put this in legislation, that we must do this, and I hope you can support it.

The Chair (Mr. Peter Z. Milczyn): Thank you, Madame Gélinas.

M^{me} France Gélinas: I will start with: You will all remember that when we ended the deputations for Bill

84, I asked that this committee be granted—we did not sit last Thursday—a chance to listen to the government plan for a care coordination service. I followed up, and it was unanimous, that you, Chair, were to reach out to the Ministry of Health to see if such a briefing could happen. Is it appropriate for me to ask how it went?

The Chair (Mr. Peter Z. Milczyn): That's out of order. We're discussing the amendment that's before us.

M^{me} France Gélinas: Okay. Then I will tell you how it went at my end. I went and talked to Minister Hoskins, who said it was a really good idea and we should get a briefing. I happened to see Deputy Bell at another committee and asked him the same thing, where he promised that that was a really good idea and it should happen. Here we are, 10 days later, and nothing has happened.

Now we are asked to vote on a government motion that, at some time yet to be defined, the minister “shall establish a care co-ordination service to support patient access to medical assistance in dying and other end-of-life options in Ontario.” To me, that can mean a million things. I would have liked the courtesy of the Liberal government to come and tell us what that means.

You all know that I have a similar motion coming on the next page. I talk about patients and caregivers. If we only put “support patient access” in the motion, does that mean that only the patients can make a request, and not the caregiver?

Also, I don't know if you're allowed to do this, but I'm going to tell you anyway: If we look at supporting patient access to medical assistance in dying, what about if you only want information about it? You haven't made up your mind, you're still exploring your options and all you want is information. Is this care coordination service going to give you information, or do you have to have made up your mind that you want to go through with this before you gain access to the care coordination services?

These two lines—I know that they are put there in good will. I know that it is put there because everybody who has come to depute on Bill 84 talked about the care coordination services. I have the care coordination services from Alberta, I have the care coordination services from BC and I have the care coordination services from Saskatchewan—should I continue?—and they're all very, very different, Chair. Which one of those am I supposed to guess that “care coordination services” is going to mean in Ontario?

How come we're doing so poorly again? The Liberals knew that this was a polarized issue. They put that in there to buy peace, and yet they do so poorly with it.

At a minimum, I would ask that we do an amendment to their motion, and add “patients and caregivers,” as well as “to access information about medical assistance in dying,” very similar to what you have on the next page. That would at least give me a little bit of comfort, that the model that will be more in line with what they have in Alberta than in line with what they have in other provinces, which I would not support.

The Chair (Mr. Peter Z. Milczyn): So, Madame Gélinas, you are proposing an amendment to the amendment?

M^{me} France Gélinas: An amendment to the government motion.

The Chair (Mr. Peter Z. Milczyn): Which is an amendment.

M^{me} France Gélinas: Ah. Yes, I am.

The Chair (Mr. Peter Z. Milczyn): Do you have that in writing?

M^{me} France Gélinas: Yes, I do. It's the next one.

The Chair (Mr. Peter Z. Milczyn): Okay. I'm wondering whether, just procedurally, in order to ensure that that's written in a way that it can be an amendment to an amendment, we could pass that to legislative counsel so that he can review it and put it properly.

Mr. John Fraser: Yes, I'd like to see it.

The Chair (Mr. Peter Z. Milczyn): We should have a 10-minute recess now so that that could be prepared and circulated to members, and then we can continue our debate.

M^{me} France Gélinas: You realize, Chair, that they already have it. All they have to do is go to the next—

Mr. Steve Clark: Photocopy the next one.

M^{me} France Gélinas: Photocopy the next page.

The Chair (Mr. Peter Z. Milczyn): In any case, a 10-minute recess.

The committee recessed from 1538 to 1600.

The Chair (Mr. Peter Z. Milczyn): Committee is back in session.

Before the recess, Madame Gélinas, you were moving an amendment to the amendment.

M^{me} France Gélinas: I understand that I can withdraw my amendment to the amendment and that something good is going to come at some point.

The Chair (Mr. Peter Z. Milczyn): All right, so your amendment is withdrawn.

Mr. Fraser.

Mr. John Fraser: I move that the motion be amended by striking out section 13.10 and replacing it with:

“Care co-ordination service

“13.10 The minister shall establish a care co-ordination service to assist patients and caregivers in accessing additional information and services for medical assistance in dying and other end-of-life options.”

The Chair (Mr. Peter Z. Milczyn): Discussion?

Mr. John Fraser: I want to thank the member opposite for her suggestion. I hope that all members can support this motion. I don't want to repeat myself, although I have been this afternoon. I think this is an important part of the bill.

I do want to say that the care coordination service is not about one group of people feeling better; it's about ensuring that there's access for people who are very vulnerable, that they can access that pathway on their own and that physicians and practitioners who object can access that pathway for the people that they're serving in a way that will allow them to do that. I think that it's important that we make this a requirement in legislation. I'll leave it at that.

The Chair (Mr. Peter Z. Milczyn): To Mr. Clark.

Mr. Steve Clark: Yes, just on the amendment—I don't want to repeat myself, but I do feel that while this amendment is going to create an avenue through which patients and their families can obtain information, it still, in my mind, the way it's written, doesn't guarantee the conscience rights protection that a number of our stakeholders and a number of our deputants have asked for. I appreciate what the member has tried to put on the floor—and on the information side for families and patients, that's one thing—but I still believe it's lacking because it doesn't guarantee those conscience rights protections that I think some of the previous amendments that the heavy hand of the government came down on would have provided.

Interjection.

Mr. Steve Clark: Not to repeat yourself, but go ahead.

The Chair (Mr. Peter Z. Milczyn): Mr. Fraser.

Mr. John Fraser: I simply want to say that it does provide that safe pathway. It's something that we were asked for, but that's not the sole reason for doing it. The most important reason is that we ensure that there are safe paths for people who are suffering grievous and irremediable suffering, and that we support those people and their families and ensure that there's a place for them where they can access information, where they can access services, where the people who care for them can get them to that pathway.

I appreciate the member's comments. It's a critical part of the bill.

The Chair (Mr. Peter Z. Milczyn): Madame Gélinas.

M^{me} France Gélinas: All I would say is that I hope it happens really quickly.

The Chair (Mr. Peter Z. Milczyn): Any further discussion?

M^{me} France Gélinas: I guess I could also say I couldn't have written it better myself.

Mr. John Fraser: I would have to agree.

The Chair (Mr. Peter Z. Milczyn): On the motion to amend the motion that was before us, so on the amendment to the motion, all those in favour? Opposed? That is carried.

On the motion, as amended: So this is government motion number 11 on subsection 2(2) to amend section 13.10 of the Excellent Care for All Act, 2010. All those in favour? Opposed? That is carried, as amended.

The next amendment to subsection 2(3) of section 13.10 of the Excellent Care for All Act, 2010. Madame Gélinas.

M^{me} France Gélinas: I will withdraw, given that the motion we just passed is identical.

The Chair (Mr. Peter Z. Milczyn): Madame Gélinas withdraws.

Now, there being no further amendments to section 2, shall section 2, as amended, be carried? All those in favour? Opposed? It is carried.

In section 3 is a motion to amend section 3, subsections 65(11) and (12) of the Freedom of Information and Protection of Privacy Act. Mr. Fraser.

Mr. John Fraser: I move that subsections 65(11) and (12) of the Freedom of Information and Protection of Privacy Act, as set out in section 3 of the bill, be struck out and the following substituted:

“Non-application of act

“(11) This act does not apply to identifying information in a record relating to medical assistance in dying.

“Interpretation

“(12) In subsection (11),

“‘identifying information’ means information,

“(a) that relates to medical assistance in dying, and

“(b) that identifies an individual or facility, or for which it is reasonably foreseeable in the circumstances that it could be utilized, either alone or with other information, to identify an individual or facility; (‘renseignements identificatoires’)

“‘medical assistance in dying’ means medical assistance in dying within the meaning of section 241.1 of the Criminal Code (Canada). (‘aide médicale a mourir’)

Pardon my French.

The Chair (Mr. Peter Z. Milczyn): Discussion?

Mr. John Fraser: This motion actually would promote a consistent approach with records-based language used in other exclusions within the act. The proposed change also helps to clarify that an exclusion can apply to an entire record or part of a record as applicable.

This is a request that we had from the Information and Privacy Commissioner, as well as the Ontario Hospital Association.

The Chair (Mr. Peter Z. Milczyn): Mr. Clark.

Mr. Steve Clark: I want to ask legislative counsel: If this amendment passes, would our amendment 14 be in order?

Mr. Ralph Armstrong: Orderliness is for the procedural Clerk, sir, but I would say it’s not in order because your amendment refers to a person or facility, and this amendment would change it to an individual or facility.

Mr. Steve Clark: Yes. I just want to get on the record that when the Information and Privacy Commissioner was here, one of the quotes that I have was, “The public’s ‘right to know’ is a fundamental principle of freedom of information legislation. Providing members of the public with access to information that identifies facilities will promote transparency, accountability and meaningful public debate, which are essential to the proper functioning of a democracy.” Further, no evidence has been provided to justify this erosion of the public’s right to know, or why existing provisions of the act are insufficient.

1610

Again, the reason we tabled our amendment following was to deal with those facilities, as per the deputation. I wanted to make sure that that’s on the record.

The Chair (Mr. Peter Z. Milczyn): Madame Gélinas.

M^{me} France Gélinas: Although I have no problem that we make sure that the entire record cannot be accessed, I am completely opposed to granting this to facilities. The facilities already have the right to not give information if it’s to cause an issue. They use that right extensively. The privacy commissioner was here and told

us clearly that there is no reason to keep from the public which hospitals offer medical assistance in dying and which do not.

This information is already being tabulated and shared on websites here in Ontario. It’s obviously information that people want to know. Most of the LHINs are organizing their different hospitals for those who will provide and those who won’t provide, and this information will become known. To change this section so that entire records for people who request MAID—I have no problem protecting people’s privacy, but I disagree that facilities need the same protection when you can do a Google search right now on your phone and can already list about 50 hospitals that have voluntarily given out that information without a freedom of access to information.

The Chair (Mr. Peter Z. Milczyn): Mr. Fraser.

Mr. John Fraser: We heard testimony at committee about concerns with regard to—I know that some of that information is out there—the safety of both physicians and facilities. I think that’s important for us to remember. We heard testimony at committee about what has happened previously with issues that can evoke a lot of emotion.

I think the other thing that we need to consider when we protect institutions in this way is that it’s much more than just hospitals that are trying to sort this out. I think that it’s critical that we have a period where we create enough space for an institution like a hospice, who are trying to find that path for people, who are trying to find a set of policies that ensures that it meets the obligation that they have to their patients and meets the ethos of their institution and the concerns of the people who work inside that institution.

We’ve all heard about how they created a pathway at the Ottawa Hospital, where objecting practitioners are working with other practitioners to make sure that people are on a safe path. I know of other hospices in Ontario that have taken that same approach. This isn’t even a year old. I think that this piece, importantly, creates that space that I think is important to ensure that we build those pathways, and that there’s not undue pressure wrought or brought forward at this time.

The Chair (Mr. Peter Z. Milczyn): Mr. Clark.

Mr. Steve Clark: Again, I think both our amendment 14 and the NDP amendment 15—both Ms. Gélinas and I are pretty open about wanting to ensure that facilities can be identified, as per the deputation. I’m not going to say anything more on it, other than the fact that I think that, again, the government is going to pass their motion and vote down our two.

Mr. John Fraser: Sorry?

Mr. Steve Clark: I said that you’re going to pass 13 and you’re going to vote down 14 and 15. Same old thing.

Mr. Peter Z. Milczyn: Madame Des Rosiers.

M^{me} Nathalie Des Rosiers: The purpose of the amendment does not prevent hospitals and other facilities from disclosing their MAID policy; indeed, that’s probably a good thing. I think that the idea of creating

more transparency is a long-term objective, but we know that not all facilities are at the same level, and some may be at risk. This creates some space to protect some facilities that could have been targeted before for particular acts of violence. It's a long process to make sure that we understand fully what dilemmas are out there. Not all facilities have the—some are in more different areas. One size may not fit everyone.

The Chair (Mr. Peter Z. Milczyn): Madame Gélinas.

M^{me} France Gélinas: The few types of health agencies that are covered by the freedom of access to information—remember, there are very few. Of the few for which you can do a freedom of access to information, there are an entire three pages of reasons why they don't need to share that freedom of information with you. If they feel that they are at risk, they are within their rights to not answer your freedom of access to information.

To put this in the bill is to open a door that I don't want open. I fought for a very long time to get health care agencies covered by the freedom of access to information. Very few of them are, and of the ones that are, they have plenty of exceptions within the freedom-of-access-to-information law to protect themselves if they feel, in any iota, threatened in any way, whether it is perceived or real or in whatever other way.

I see no reason to give them this bulletproof, wide-ranging, opposed by the commissioner—to put that in that bill.

The Chair (Mr. Peter Z. Milczyn): Further discussion on the amendment? Seeing none, then the amendment to section 3, on subsections 65(11) and (12) of the Freedom of Information and Protection of Privacy Act: All those in favour? Opposed? The amendment is carried.

The next amendment is to section 3, on subsection 65(12) of the Freedom of Information and Protection of Privacy Act: Mr. Clark.

Mr. Steve Clark: I move that the definition of “identifying information” in subsection 65(12) of the Freedom of Information and Protection of Privacy Act, as set out in section 3 of the bill, be amended by striking out “a person or facility” in both places it appears and substituting “an individual”.

The Chair (Mr. Peter Z. Milczyn): I am ruling that this amendment is out of order, as specific wording found in the amendment no longer appears in the bill due to a previous amendment that carried.

The next amendment is to section 3, on subsection 65(12) of the Freedom of Information and Protection of Privacy Act: Madame Gélinas.

M^{me} France Gélinas: I am psychic and I'm kind of guessing where this is going to lead, but I'll read it into the record anyway.

I move that subsection 65(12) of the Freedom of information and Protection of Privacy Act, as set out in section 3 of the bill, be amended by striking out “or facility” wherever it appears.

The Chair (Mr. Peter Z. Milczyn): Discussion? Madame Gélinas.

M^{me} France Gélinas: There are lots of provisions within the Freedom of Information and Protection of Privacy Act for the few health care agencies that are covered by that act. There are many, many layers that allow them to say no if they feel threatened, if it's not, in their perception, for the good of what they do, of patient care. There are so many exceptions where they do not have to meet the freedom-of-access request that they don't need that.

If somebody files a freedom-of-access request regarding MAID that they feel could be used for hatred, for violence or for perceived threats of any kind, they will use the provision of the act and respond to you that they cannot respond to your freedom-of-access request. If they are in a position where it is safe to do so, they will, but if they are in a position where they don't feel safe to do so, they won't and they will be fully covered by the act. Facilities do not need that in the bill.

1620

The Chair (Mr. Peter Z. Milczyn): Mr. Clark?

Mr. Steve Clark: I'm pleased to support the motion, for reasons I've already put on the record.

The Chair (Mr. Peter Z. Milczyn): Mr. Fraser?

Mr. John Fraser: Thank you very much, Chair. I won't be supporting the motion, for the reasons I've put on the record as well, too.

The Chair (Mr. Peter Z. Milczyn): Further discussion on the amendment? Seeing none, then on the amendment to section 3, on subsection 65(12) of the Freedom of Information and Protection of Privacy Act: All those in favour? Opposed? The amendment is lost.

Seeing no further amendments to section 3, shall section 3, as amended, carry? All those in favour? Opposed? That is carried.

There is an amendment to introduce a new section 3.1, to amend the Long-Term Care Homes Act, 2007. Madame Gélinas.

M^{me} France Gélinas: I move that the bill be amended by adding the following section:

“3.1 The Long-Term Care Homes Act, 2007 is amended by adding the following section:

“Immunity, medical assistance in dying

“181.1(1) No action or other proceeding for damages shall be instituted against a licensee or against a director, officer or employee of a long-term-care home for anything done in good faith in the exercise or intended exercise of providing medical assistance in dying, or for any alleged neglect or default, in good faith, in the exercise or intended exercise of providing medical assistance in dying.

“Definition, “medical assistance in dying”

“(2) In this section, “medical assistance in dying” means medical assistance in dying within the meaning of section 241.1 of the Criminal Code (Canada).”

The Chair (Mr. Peter Z. Milczyn): Thank you, Madame Gélinas. I'm ruling this amendment out of order as it proposes to amend a parent act that is not before the committee.

M^{me} France Gélinas: Sorry—Chair?

The Chair (Mr. Peter Z. Milczyn): Madame G elinas.

M^{me} France G elinas: Can I ask for unanimous consent to open this section of the Long-Term Care Homes Act?

The Chair (Mr. Peter Z. Milczyn): Is there unanimous consent? I heard a no.

On to section 4 now: There is an amendment to section 4, on subsections 52(5) and (6) of the Municipal Freedom of Information and Protection of Privacy Act. Mr. Fraser.

Mr. John Fraser: I move that subsections 52(5) and (6) of the Municipal Freedom of Information and Protection of Privacy Act, as set out in section 4 of the bill, be struck out and the following substituted:

“Non-application of act

“(5) This act does not apply to identifying information in a record relating to medical assistance in dying.

“Interpretation

“(6) In subsection (5), ‘identifying information’ means information,

“(a) that relates to medical assistance in dying, and

“(b) that identifies an individual or facility, or for which it is reasonably foreseeable in the circumstances that it could be utilized, either alone or with other information, to identify an individual or facility; (‘renseignements identificatoires’)

“‘medical assistance in dying’ means medical assistance in dying within the meaning of section 241.1 of the Criminal Code (Canada). (‘aide m edicale a mourir’)

The Chair (Mr. Peter Z. Milczyn): Further discussion?

Mr. John Fraser: I hope the members opposite can support the bill, but I don’t think that they will, based on how the debate has gone so far. I think, for the reasons that I’ve stated before, this is a critical piece to have in the legislation.

The Chair (Mr. Peter Z. Milczyn): Mr. Clark?

Mr. Steve Clark: Yes, Mr. Chair, through you: Again, the privacy commissioner discussed the facility. I think my colleague from the NDP mentioned it as well. I think some of the other amendments that are before the committee, either motion 18 or motion 19, would be more in order because it would deal differently with the facilities. Again, I think that comes as no surprise to the government, but that’s our position.

The Chair (Mr. Peter Z. Milczyn): Madame G elinas.

M^{me} France G elinas: I was just curious. The Municipal Freedom of Information and Protection of Privacy Act: Are those solely for municipal homes for the aged? Who are we getting at through this?

Mr. John Fraser: What?

M^{me} France G elinas: Who are we getting at through this?

Mr. John Fraser: It would be municipal homes for the aged. It could be a CHC, a community health centre, depending on the community. So any facility that would be governed by the Municipal Act by virtue of its connection with a municipality as a funder or as an administrator is what you’d want to capture.

The Chair (Mr. Peter Z. Milczyn): Madame G elinas?

M^{me} France G elinas: Of the very few health agencies that are covered by the freedom of access to information, they certainly do not need any more reason to deny freedom of access to information. They have all of the powers to do this within the existing law. They use it fully, and we don’t need to give them more reason not to comply.

The freedom-of-access-to-information law was already prudent enough so that if there is any danger at any level, they have the right to decline, and they do.

The Chair (Mr. Peter Z. Milczyn): Further discussion on the amendment? Seeing none, on the amendment to section 4, on subsections 52(5) and (6) of the Municipal Freedom of Information and Protection of Privacy Act: All those in favour? Opposed? The amendment is carried.

Another amendment to section 4, on subsection 52(6) of the Municipal Freedom of Information and Protection of Privacy Act: Mr. Clark.

Mr. Steve Clark: I move that the definition of “identifying information” in subsection 52(6) of the Municipal Freedom of Information and Protection of Privacy Act, as set out in section 4 of the bill, be amended by striking out “a person or facility” in both places it appears and substituting “an individual”.

The Chair (Mr. Peter Z. Milczyn): I am ruling this amendment out of order as specific wording found in the amendment no longer appears in the bill due to a previous amendment that carried.

Another amendment is proposed to section 4, subsection 52(6) of the Municipal Freedom of Information and Protection of Privacy Act. Madame G elinas.

M^{me} France G elinas: I move that subsection 52(6) of the Municipal Freedom of Information and Protection of Privacy Act, as set out in section 4 of the bill, be amended by striking out “or facility” wherever it appears.

The Chair (Mr. Peter Z. Milczyn): Discussion?

M^{me} France G elinas: I think we’ve made it clear that when the Freedom of Information and Protection of Privacy Act was put in place, we had already contemplated the fact that some information should not be shared for a number of reasons, including safety, including mission—those already exist. For whatever reason that a facility would not want to share information about MAID, they already have the power to do that. To further give them power to refuse freedom of access to information is not in the public interest and not supported by the privacy commissioner either.

The Chair (Mr. Peter Z. Milczyn): Mr. Clark.

Mr. Steve Clark: I’m pleased to support the motion.

The Chair (Mr. Peter Z. Milczyn): Mr. Fraser.

Mr. John Fraser: I won’t be supporting the motion, based on my previous comments.

The Chair (Mr. Peter Z. Milczyn): Any further discussion on the amendment? On the amendment to section 4, on subsection 52(6) of the Municipal Freedom of Information and Protection of Privacy Act: All those

in favour of the amendment? All those opposed? The amendment does not carry.

I see no further amendments to section 4.

Shall section 4, as amended, be carried? All those in favour? Opposed? The section is carried, as amended.

1630

Section 5: There are no amendments tabled to this section. Is there any discussion? Madame Gélinas.

M^{me} France Gélinas: Yes. I would very much like the government to consider what was done in Alberta. Rather than having every MAID reported to the coroner, they have created a MAID regulatory review committee where a death when MAID is being used is reported to the MAID regulatory review committee rather than to a coroner. A lot of families are very worried about having the death of their loved one reported to a coroner because of the power of the coroner to request the body and delay funerals and do all of the powers that a coroner can do when there are no valid reasons for that.

Alberta put the MAID regulatory review committee in place where all of the deaths have to be reported. They do analysis. They make sure that vulnerable people are protected. They do all sorts of good work. I wish Ontario would follow that lead rather than sending a death certificate that says “Suicide”—not even “MAID,” because there’s no MAID box on the report that you file with the coroner—and then giving the coroner power where the coroner has all the power to request the body and an do autopsy and do everything else that the coroner is allowed to do.

The Chair (Mr. Peter Z. Milczyn): Mr. Fraser.

Mr. John Fraser: The amendments in the bill do address the ability to ensure that the cause of death is the underlying condition. I do want to say that there is a review timeline set out for taking a look at how we’re handling this.

I appreciate the member’s comments. She has been heard.

The Chair (Mr. Peter Z. Milczyn): Further discussion on section 5? No? Shall section 5 be carried? All those in favour? Opposed? Section 5 is carried.

Section 6 of the bill: There are no amendments tabled to this section. Is there any discussion? Seeing no discussion, shall section 6 be carried? All those in favour? Opposed? Section 6 is carried.

A proposed new section 7 to create a new section 7 and amend section 29.2 of the Regulated Health Professions Act, 1991: Mr. Clark.

Mr. Steve Clark: I just want to make it clear that that first part is not part of the motion, that paragraph. It starts with section 7 of the bill, on section 29.2 of the Regulated Health Professions Act, 1991.

I move that the bill be amended by adding the following section after section 29.1:

“Medical assistance in dying

“29.2(1) Member participation in medical assistance in dying shall be voluntary.

“Definition

“(2) ‘medical assistance in dying’ means medical assistance in dying within the meaning of section 241.1 of the Criminal Code (Canada).

“No penalty

“(3) A member shall not be subject to civil, administrative, disciplinary, employment, credentialing, regulatory or other sanction or penalty, or loss of privileges, loss of membership or any other liability for refusing to participate, directly or indirectly, in medical assistance in dying.

“Clarifications

“(4) For the purposes of this section, ‘participate’ includes, but is not limited to, performing, assisting in the performance of or making a referral for any activities related to, or for the purpose of, medical assistance in dying.

“(5) For the purposes of this section, ‘participate’ does not include the provision, upon request, of information about services that can provide access to medical assistance in dying, of a patient’s relevant medical record to the patient, or communicating to the appropriate person in authority a patient’s request for a complete transfer of care so that the person in authority can facilitate the transfer.

“Conflicts with other legislation

“(6) In the event of a conflict between section 29.2 and other legislation, section 29.2 prevails.”

The Chair (Mr. Peter Z. Milczyn): Thank you. I’m ruling this amendment out of order as it proposes to amend a parent act that is not before the committee.

Now on to section 7, “commencement”: I don’t see any amendments tabled.

Mr. John Fraser: We’re on section 7?

The Chair (Mr. Peter Z. Milczyn): Seven. Is there any discussion? Seeing none, shall section 7 be carried? All those in favour? Opposed? Section 7 is carried.

Section 8, the short title: I do not see any amendments proposed. Is there any discussion? Seeing none, shall section 8 be carried? All in favour? Opposed? Section 8 is carried.

Mr. John Fraser: Chair?

The Chair (Mr. Peter Z. Milczyn): Just a moment, Mr. Fraser.

I was checking something with the Clerk.

Mr. Fraser.

Mr. John Fraser: Yes. Earlier this morning, I asked to read in a motion with regard to a preamble in the bill. May I read that in?

The Chair (Mr. Peter Z. Milczyn): You may.

Mr. John Fraser: Thank you. I move that the bill be amended by adding the following preamble:

“Preamble

“The government of Ontario and their government recognize:

“That the government of Ontario is committed to uphold the principles set out in the Canada Health Act—public administration, comprehensiveness, universality,

portability and accessibility—with respect to medical assistance in dying.

“That everyone has freedom of conscience and religion under section 2 of the Canadian Charter of Rights and Freedoms, and that nothing in this act affects the guarantee of freedom of conscience and religion.”

Interjection.

Mr. John Fraser: I misread the first line. Thank you. The first line should read: “The people of Ontario and their government recognize:”

The Chair (Mr. Peter Z. Milczyn): Thank you, Mr. Fraser. Now I will be ruling. If a bill is referred to committee after second reading without a preamble, the committee may not introduce one. Therefore, I rule this amendment out of order.

Mr. John Fraser: I would like to seek unanimous consent to consider it.

The Chair (Mr. Peter Z. Milczyn): Is there unanimous consent? I heard a no.

Mr. John Fraser: Okay.

The Chair (Mr. Peter Z. Milczyn): Shall the title of the bill be carried? All those in favour? Opposed? That is carried.

Shall Bill 84, as amended, be carried? All those in favour? Opposed? Bill 84, as amended, is carried.

Shall I report the bill, as amended, to the House? All those in favour? Opposed? That is carried.

There is no further business. Committee is adjourned.

The committee adjourned at 1638.

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Also taking part / Autres participants et participantes

Mr. Liam Scott, counsel, Ministry of Health and Long-Term Care

Clerk / Greffier

Mr. Eric Rennie

Staff / Personnel

Mr. Ralph Armstrong, legislative counsel