

*Criminal Code*

to set up a special therapeutic abortion committee or to compel a doctor to perform the operation. The amendment is that simple. I think it merely clarifies the law. The witnesses who appeared before the committee—the minister will verify this—pointed out that the rules and regulations which govern hospitals are within the jurisdiction of the provinces; most hospitals come under the jurisdiction of the provinces.

Basically, the suggestion is that the Criminal Code does not and should not require a hospital to set up a committee to deal with this question. A hospital may set up a committee to deal with it, or ask a doctor to carry out the operation, but there should be nothing in the act that forces a hospital to do so. This matter is really clarified by the provincial law, but it is thought that the hon. member's amendment would clarify the position so that hospitals will understand what is intended and that provincial law governs in this regard. There is nothing more I need to say. That is what it really means.

● (3:20 p.m.)

**Mr. G. W. Baldwin (Peace River):** Mr. Speaker there are just a couple of questions which I should like the minister to answer. The hon. member for Calgary North (Mr. Woolliams) has touched on them. I refer to the distinction between civil and criminal law, particularly the implication here with regard to the responsibility of hospitals and medical practitioners. I think this is quite important, not only for us. The value of the amendment put forward is that it would make the position of the government in this respect more clear. As the minister knows, there is a general section in the Code, I believe it is section 107, which provides that anyone who fails to obey any act or regulation of parliament is, by inference, guilty of an offence. This would be of some consequence to medical practitioners who are concerned with what their duties are under the law.

Inasmuch as we in this party have taken it upon ourselves to vote on the various clauses and amendments in Bill C-150 as our consciences dictate, I believe that medical practitioners should have a similar freedom. I know what most of them would probably do, but I think they should have that right and freedom. Therefore it becomes incumbent upon the government to indicate what opinion has been given to the minister by his legal officers as to the responsibilities, not only under the criminal but under the civil law, because one

of these amendments is obviously drafted in the belief that there may even be a civil responsibility falling upon a hospital or upon a doctor in the case of abortions.

I want to remind the minister of a case of which he may not be aware because the section is not now in the Code. Some years ago there was a provision in the Criminal Code that no civil proceedings could be launched against any person who had been charged with common assault and had suffered a penalty or had been acquitted of the charge. This was distinct from proceedings in respect of charges of grievous or actual bodily harm where civil actions could follow. That particular section dealing with common assault, which no longer appears in the Code, was the subject of varying interpretations by the appellate division in the province of Nova Scotia and, I think, in one other province. The Supreme Court of Canada gave no authoritative decision on the point. It was held in one of these judgments that the federal parliament had no jurisdiction to enact legislation under the guise of the Criminal Code, attempting to amend or change the Criminal Code by saying that civil proceedings could or could not be taken in cases of a possible infraction of the Criminal Code. In other words, the criminal law was to be considered by itself and it was not possible for the federal parliament to go outside the criminal law and to say that once an act had been declared to be a criminal act it should or should not be the subject of civil proceedings.

I am quite confident that a great many medical practitioners and hospitals in this country will be most concerned as to what their legal position will be and what the government is purporting to do in this bill. For example, there is an implication in clause 18 that there is a statutory duty falling upon a medical practitioner or upon a hospital and that the refusal by a medical practitioner or by a hospital to permit to be carried on within the precincts of that hospital or by that medical practitioner the act of abortion, which has been made legal under certain circumstances by amendments to the Criminal Code, might subject either the medical practitioner or the hospital to certain penalties either in the civil law by an action for damages or under the criminal law.

I have my own views on this matter but I bring it up to permit the minister to indicate the government's position. Under the rules under which we operate, what the minister