

*Criminal Code*

hospital not having the facilities or not choosing to have the facilities, or of a doctor precluded by his own conscience from performing such abortions, there might be civil liability attaching to both to advise a patient of her right to go to another hospital and ask for another doctor. But certainly there is no civil liability attaching, as far as we can see, as a result of the operation of the Criminal Code itself.

**Mr. Baldwin:** Am I to take it there is no intention on the part of the government, particularly by this amendment, to vary the rules as to civil responsibility which normally exist between an individual and a hospital or an individual and a doctor, or to prevent provincial laws from operating? This is a sensitive area, as has been illustrated by the events of the last few days and the exchange which took place between the Prime Minister (Mr. Trudeau) and the Minister of Transport (Mr. Hellyer). The minister seemed to think the Prime Minister was trying to lock the country into a constitutional chastity belt despite the fact that the provinces lost their jurisdictional chastity a long time ago. I want to be sure we are safe here.

**Mr. Turner (Ottawa-Carleton):** The hon. member suggests there is a constitutional aspect to this as well. The relationships in civil law between the patient and the doctor, between the patient and the nurse, between the doctor and the hospital, the nurse and the hospital, are relationships falling within the operation of provincial law, the civil law and the constitutional responsibility of the provinces—the subject of statutes which regulate hospitals and the professions. These are properly provincial matters, and this is another reason not to trespass on any of these civil relationships which may be accessory but which are not directly affected by this legislation.

[Translation]

**Mr. Maitte:** Mr. Speaker, I have a question for the minister.

In that case, if a constitutional matter is involved, would it not have been advisable to let the provinces adopt some legislation relating to abortion, and has any consideration been given to such a course of action?

**Mr. Turner (Ottawa-Carleton):** Mr. Speaker, I do not deem it right to use the Criminal Code to infringe upon the constitutional or civil law of a province. According to legal experts, clause 18 does not impose any criminal obligation or responsibility, nor any civil

liability. Civil liabilities are determined rather by the civil law and I do not find any advantage in using the Criminal Code to affect civil relations between parties. Such matters come exclusively under provincial jurisdiction.

**Mr. Maitte:** Mr. Speaker, I have another question for the minister.

Since this obviously relates to the social aspect, to health, would it not be preferable, before amending the Criminal Code, to hear the views of the provinces on the matter?

**Mr. Turner (Ottawa-Carleton):** Mr. Speaker, I can only repeat that, since civil relations come under another aspect of the law, they are not directly affected by the amendment to clause 18. I see no reason to wait until the provinces have been consulted.

**Mr. Laprise:** Mr. Speaker, I wish to support amendment No. 21, proposed by the hon. member for Halifax-East Hants (Mr. McCleave), because I myself presented an amendment along those lines. In fact, it is amendment No. 31, which reads as follows:

Nothing in subsections (4), (5), (6), and (7) shall apply to any group of medical practitioners nor to any medical practitioner, who has refused to proceed with an abortion nor to any member of the hospital staff of a hospital who has refused to take part in an abortion on purely medical grounds or on any other grounds, so that no judicial proceedings may be instituted against them.

Mr. Speaker, the amendment means that no judicial proceedings may be instituted against any group of doctors, any member of the hospital staff of a hospital, or any doctor who has refused to perform an abortion or to take part in one.

The fact that six amendments proposed relate to the same subject shows how important it is to clarify Bill C-150, and particularly clause 18.

There were many questions raised on that point? Gynecologists and physicians have feared that if clause 18 were passed as proposed by the government, the bill could on some occasions coerce those who, for reasons of principles or any others, refuse to perform an abortion.

Then, if a woman asked for an abortion and died during the operation, some legal proceedings could be brought against the hospital or the physician. Such a situation could be quite embarrassing and since they would be liable to legal proceedings, the physicians or hospital authorities would be in a dilemma.