

*Criminal Code*

says in the house is not binding upon any court, but I am sure it will be of some interest to us, and certainly to myself, to know what his view is before I come to a decision on which way I intend to vote on this amendment.

**Hon. John N. Turner (Minister of Justice):** Mr. Speaker, amendment No. 21 on the order paper and the related amendments, 22, 23, 31, 39, 40 and 41, purport to exempt from any civil liability hospitals which may fail to set up a therapeutic abortion committee, or a doctor who may refuse to perform a therapeutic abortion, or any practitioner who may refuse to participate in this type of operation. I may say that a therapeutic abortion is only one of a number of situations where conscience may preclude a doctor or a nurse from participating in an operation which is lawful. I might bring to the attention of the house the question of blood transfusion in the case of a doctor who is a Jehovah's Witness. There is the case of a doctor faced with the problem of administering a blood transfusion to a child whose parents refuse consent on the ground that such an operation is contrary to their religious belief. In other cases doctors are often faced with a problem of conscience when they may be called upon to perform a hysterectomy or a tubal ligation following several Caesarean deliveries. There are also other grey areas where questions of conscience arise, even though conflicting views or doubts exist as to the law, for example, in the case of sterilization generally and also organ transplants. So this is not a unique situation for the medical profession.

Also, I should like to draw to the attention of the house the fact that the substance of these amendments does no more than recognize what has actually been happening already in a number of hospitals with respect to therapeutic abortions. We have no evidence that questions of conscience have posed a practical problem.

Getting down to the question of criminal obligation or liability or civil obligation and liability arising from this amendment, let me say briefly that according to the advice I have received there is nothing in clause 18 to which these amendments relate which would in any way impose a criminal obligation or criminal responsibility on a hospital which refused to set up a therapeutic abortion committee or upon a doctor who refused, for reasons of his own personal conscience, to perform such an abortion, or upon a nurse or

[Mr. Baldwin.]

any other person involved in the medical services who refused to perform or participate in a therapeutic abortion. So there is no additional criminal obligation or liability attaching to the medical profession as a result of clause 18.

Turning now to civil liability, the civil liability of doctors, nurses or hospitals is based on negligence, that is to say, the failure to meet the standard of care owing to the patient. Although the phrase "standard of care" is a common law expression, the same standard of care is required within the civil law as well, and although the philosophical approach to negligence is different from that of the law of delict, in effect a reasonable standard of care is required in both cases. Obviously this standard of care is to some extent affected by legislation, including the Criminal Code, in the sense that a doctor would not be held civilly liable for failure to perform an act which the law prohibits him from performing. Where, however, the act may lawfully be done, as is the case under the proposed amendment to section 237, one of the factors to be taken into account in the event that the question of civil liability arose would obviously be whether or not the patient had been fairly and properly advised of the limitation imposed by conscience on the range of treatment available to the doctor and to the hospital.

• (3:30 p.m.)

Section 237 as amended imposes no duty on the board of a hospital to set up a therapeutic abortion committee; it imposes no duty on any medical practitioner to perform an abortion; it imposes no duty even on a medical practitioner to initiate an application on behalf of a patient. In these circumstances it is not considered necessary to purport to exempt them from duties which are not imposed by the criminal law. On the other hand, if we were to purport to grant such an exemption it might be misleading to the medical profession and unfair to patients, because such a conscience clause, so far as the medical profession is concerned, might tend to obscure the civil obligation of the profession to the patient to ensure that a patient is able to make a free choice as to both her medical adviser and hospital, untrammelled by the limitations on the conscience of her medical adviser or by the policy of a particular hospital. In other words, it is clear that under civil law, in the case of a