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• (1100)

[*English*]

The Chair (Terry Sheehan (Sault Ste. Marie—Algoma, Lib.)): I call this meeting to order.

Welcome to meeting number 28 of the House of Commons Standing Committee on Indigenous and Northern Affairs. We recognize that we meet on the unceded territory of the Algonquin Anishinabe people.

Pursuant to the order of the House, the committee is continuing its study of Bill S-228, an act to amend the Criminal Code in relation to sterilization procedures.

Before we begin, I would like to remind anyone watching our proceedings that there is a helpline, the Hope for Wellness Helpline, which is available 24-7 to all indigenous people across Canada at 1-855-242-3310. If anyone is experiencing any kind of distress during our proceedings, I encourage them to call that number.

I would like to welcome the officials from the Department of Justice who are here to assist us today. We have Matthew Taylor, senior general counsel and director general of the criminal law policy section, and Morna Boyle, counsel at the criminal law policy section.

I want to let everyone know that we also have Senator Boyer here as well. She's the individual who sponsored the bill in the Senate. Thank you, Senator, for being with us. She's observing here today.

I would like to provide members of the committee with a few comments on how the committee proceeds with the clause-by-clause consideration of a bill.

As the name indicates, this is an examination of all of the clauses in the order in which they appear in the bill. I will call each clause successively, and each clause is subject to debate and a vote. If there are amendments to the clauses in question, I will recognize the member proposing them, who may explain them. Amendments will be considered in the order in which they appear in the package each member received from the clerk. They have been given a number, in the top right corner, to indicate which party submitted them. During debate on an amendment, members are permitted to move subamendments. Once every clause has been voted on, the committee will vote on the preamble, the title and the bill itself.

I would like to thank the members for their attention and wish everyone a productive clause-by-clause consideration of Bill S-228.

(On clause 1)

The Chair: I would like to begin with clause 1. Pursuant to Standing Order 75(1), consideration of the preamble is postponed.

On clause 1, we have BQ-1, amendment number 14006584.

Deputy Gill, would you like to explain what you've put forward?

• (1105)

[*Translation*]

Marilène Gill (Côte-Nord—Kawawachikamach—Nitassinan, BQ): Yes, of course. Thank you, Mr. Chair.

Our first proposed amendment would simply align the English and French versions. This matter was brought to our attention by the Collège des médecins in particular. The idea is simply to say the same thing in both languages. That's really the purpose of the first amendment.

The Chair: Thank you.

[*English*]

Is there any discussion?

Jaime, you had your hand up.

Jaime Battiste (Cape Breton—Canso—Antigonish, Lib.): I want to thank my colleague for putting forward the amendment.

I understand that the English and French versions of federal legislation are not literal translations of each other. They are drafted to achieve the same legal effect within their respective linguistic, cultural and legal traditions. Each version is given the same weight as the other.

Could the officials here with us today please expand on that?

Morna Boyle (Counsel, Criminal Law Policy Section, Department of Justice): Thank you for the question. I'm happy to speak to that.

That's correct. As you said, in the drafting of federal legislation, the English and French versions are not literal translations of one another. They reflect the same legal objective.

In cases where the wording differs—for example, “clipping” and *occlusion*—the focus is on whether both versions achieve the same legal effect. In this case, *occlusion* refers to the closing of the edges of a natural bodily opening. In the English version of the definition, our understanding is that this idea is conveyed through the terms “tying” and “cauterizing”, which involve closing the edges of such an opening. In addition, both the English and French versions expressly include any other procedure “that results in the permanent prevention of reproduction”, which ensures that any procedure producing that outcome would fall within the scope of the definition.

That said, we took the opportunity to confirm with our legislative drafters and jurilinguists that there is no procedure, according to this current definition, that would not be captured by one or the other, so any variation in terminology would not create a gap in the scope or application.

The Chair: Is there anything more?

Go ahead.

[*Translation*]

Marilène Gill: I also consulted legal experts on this issue. If I'm told that the effect is absolutely the same and that there isn't any difference, I'll withdraw my amendment, of course. However, I didn't have the same opinion on the matter.

[*English*]

The Chair: Is there any further discussion from anyone?

Okay. I will call the vote on the amendment now that we've had the discussion.

[*Translation*]

Marilène Gill: Mr. Chair, I don't know whether you heard me. I said that I would withdraw my amendment if I received word that the effect was the same. So we don't need to proceed to a vote.

[*English*]

The Chair: We need unanimous consent.

I'm seeing nodding heads. Unanimous consent is achieved.

(Amendment withdrawn)

The Chair: Thank you very much.

We will move on to BQ-2, numbered as 14006531.

Deputy Gill.

[*Translation*]

Marilène Gill: Thank you, Mr. Chair.

This amendment ties in with the last amendment, although it isn't a matter of literal translation.

I propose to change the word “*effet*” to “*objectif*” in the French version. The Association des obstétriciens et gynécologues du Québec, for example, told us that the definition could make some doctors afraid to perform different medical procedures. The words “*effet*” and “*objectif*” don't mean exactly the same thing. The objective of a sterilization and the effect of a medical procedure aren't exactly the same thing.

The legal experts and lawyers can shed some light on this. I also consulted legal experts, and they told me certain things. Take, for example, an endometrial ablation to treat heavy menstruation, which causes iron deficiency anemia and other issues. This operation causes sterilization. Chemotherapy and radiotherapy can also have the same effect, as can multiple caesarean sections. This can lead to sterilization without consent. So the effect is sterilization, but it isn't the objective. I'm talking here about the objective of the medical procedure, not the person's intention.

That's the idea behind this amendment. It seeks to address a concern raised by doctors in this area.

• (1110)

[*English*]

The Chair: Can we have clarification from the officials, please?

Morna Boyle: Sure.

Just to clarify, would you like me to speak to whether such a procedure as chemotherapy could fall under these provisions?

[*Translation*]

Marilène Gill: That might indeed answer the question. According to the information provided to me, this is the case. The medical procedure can have this effect, but it isn't the objective.

[*English*]

Morna Boyle: Great. Thank you for that question.

I would like to start by saying that the current bill and the Criminal Code, as it's drafted right now in terms of the aggravated assault provisions, require the non-consensual application of force or recklessness as to whether or not consent was given in the case. If there is a case where a doctor provides something like chemotherapy to an individual without their consent, or they were reckless to their consent—

[*Translation*]

Marilène Gill: I don't want to interrupt, but I already have a question.

We're actually talking about consent for a medical procedure, and not for a medical procedure that may result in sterilization. So the person needs to understand this too. Obviously, we know that it isn't sterilization. However, it can have that effect. For example, a person could consent to an endometrial ablation without knowing that this procedure causes sterilization. So it wouldn't be real consent. I'm just trying to understand.

If I give my consent for a medical procedure, such as chemotherapy or pelvic radiotherapy, but I don't know the adverse or indirect consequences of this procedure that could lead to sterilization, a type of grey area comes into play. Ideally, I would like to see no grey area. That's the purpose of this amendment.

[*English*]

Morna Boyle: Thank you for that clarification.

Yes, if the individual is seeking something like chemotherapy, for example, and consents to that procedure, and if the unintended effect of that procedure is sterilization, that would not be captured in the current criminal law or under Bill S-228.

[*Translation*]

Marilène Gill: In these cases, the consent doesn't apply to the sterilization, but to the medical procedure.

[*English*]

Morna Boyle: It would be the consent to the application of force, to the touching.

[*Translation*]

Marilène Gill: Okay.

If you're confirming that it's excluded, I'll withdraw my amendment.

I'll need the unanimous consent of the committee, Mr. Chair.

[*English*]

The Chair: Okay. I see nodding heads.

(Amendment withdrawn)

(Clause 1 agreed to)

The Chair: Shall the preamble carry?

Some hon. members: Agreed.

The Chair: Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall the bill carry?

Some hon. members: Agreed.

The Chair: Shall the chair report the bill to the House?

Some hon. members: Agreed.

The Chair: Does anyone want a press release sent out or anything like that? Sometimes we ask that.

I see a yes, so we'll write a press release as well.

Thank you very much to the staff here.

Thank you very much to the committee for this very important study.

MP Schmale and Senator Boyer, congratulations.

Some hon. members: Hear, hear!

The Chair: That brings this to the end.

● (1115)

Jamie Schmale (Haliburton—Kawartha Lakes, CPC): I have a motion I'd like to bring forward before you gavel us out.

The Chair: You can read it in, and then we'll deal with it in 48 hours, on Thursday.

Jamie Schmale: You won't have time on Thursday. We're studying studying Bill S-2.

How about I just read it in? We'll get it in, and then we'll deal with it later. This is a motion that I'd like to table, and we'll discuss it later, Mr. Chair.

It should be circulated. I think we have the opportunity to circulate that. It reads:

That, given the Cowichan Tribes v Canada decision by the Supreme Court of British Columbia has raised serious concerns among Canadians about the security of their property rights, the committee report to the House its recommendation that the government:

- a) put private property rights first, ensuring they are protected as a priority over all other titles;
- b) make no agreement without explicit property protections so that existing fee simple property owners are protected in all future agreements with First Nations;
- c) publish, within 30 days, a plan to protect property rights for Canadians affected by the Cowichan decision and the Musqueam agreement;
- d) instruct the Standing Committee on Indigenous and Northern Affairs to study all legal, constitutional, and political steps to protect private property rights in Canada in light of the Cowichan ruling and the Musqueam agreement.

Thank you, Mr. Chair.

The Chair: That brings us to the end. We're finished.

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