37th PARLIAMENT, 2nd SESSION

Standing Committee on Health

EVIDENCE

CONTENTS

Monday, December 9, 2002

Mr. Glenn Rivard

The Chair

Mr. Glenn Rivard

The Chair

Mr. Glenn Rivard

Mr. Rob Merrifield (Yellowhead, Canadian Alliance)

Mr. James Lunney (Nanaimo—Alberni, Canadian Alliance)

Mr. Glenn Rivard

The Chair

Mr. Glenn Rivard

The Chair

Mr. Glenn Rivard

0925

The Chair

Mr. Glenn Rivard

The Chair

Mr. Glenn Rivard

The Chair

Mr. Réal Ménard (Hochelaga—Maisonneuve, BQ)

Mr. Glenn Rivard

The Chair

Mr. Glenn Rivard

The Chair

Ms. Carol Skelton

Mr. Glenn Rivard

Ms. Carol Skelton

The Chair

Mr. Paul Szabo (Mississauga South, Lib.)

The Chair

Mr. Paul Szabo

0930

The Chair

Mr. Glenn Rivard

The Chair

Mr. Rob Merrifield

Mr. Glenn Rivard

The Chair

Ms. Yolande Thibeault (Saint-Lambert, Lib.)

The Chair

Ms. Yolande Thibeault

The Chair

Mr. Rob Merrifield

The Chair

Mr. James Lunney

Mr. Glenn Rivard

0935

Mr. James Lunney

The Chair

Mrs. Brenda Chamberlain (Guelph—Wellington, Lib.)

Mr. Rob Merrifield

Mr. Glenn Rivard

Mr. Rob Merrifield

The Chair

The Chair

Mr. Réal Ménard

The Chair

0940

Ms. Judy Wasylycia-Leis (Winnipeg North Centre, NDP)

The Chair

Ms. Caroline Weber (Director General, Policy Planning and Priorities Directorate, Department of Health)

The Chair

Ms. Caroline Weber

The Chair

Ms. Judy Wasylycia-Leis

0945

The Chair

Ms. Judy Wasylycia-Leis

The Chair

Ms. Judy Wasylycia-Leis

The Chair

Mr. James Lunney

The Chair

Mr. Jeannot Castonguay (Madawaska—Restigouche, Lib.)

The Chair

Mr. Mac Harb (Ottawa Centre, Lib.)

The Chair

Mr. Mac Harb

Mr. James Lunney

The Chair

Mr. Rob Merrifield

The Chair

Mr. Rob Merrifield

The Chair

Ms. Caroline Weber

0950

Mr. Rob Merrifield

Ms. Caroline Weber

Mr. Rob Merrifield

Mr. Glenn Rivard

Mr. Rob Merrifield

Mr. Glenn Rivard

The Chair

Mr. Glenn Rivard

Mr. Rob Merrifield

Ms. Caroline Weber

Mr. Glenn Rivard

Mr. Rob Merrifield

Mr. Glenn Rivard

Mr. Rob Merrifield

Mr. Glenn Rivard

Mr. Rob Merrifield

Mr. Glenn Rivard

0955

Mr. Rob Merrifield

The Chair

Mr. Jeannot Castonguay

The Chair

Mr. Jeannot Castonguay

The Chair

Mr. Rob Merrifield

The Chair

Mr. Jeannot Castonguay

Mr. Glenn Rivard

Mr. Rob Merrifield

Ms. Caroline Weber

Mr. Rob Merrifield

Mr. Glenn Rivard

The Chair

Mr. Glenn Rivard

1000

The Chair

Mr. James Lunney

The Chair

- *Mr. Glenn Rivard*
- *The Chair*
- *Mr. Glenn Rivard*
- *The Chair*
- *Mr. Glenn Rivard*
- *The Chair*
- *Mr. Rob Merrifield*
- *The Chair*

1005

- *Mr. Glenn Rivard*
- *The Chair*
- *Ms. Caroline Weber*
- *Mr. Rob Merrifield*
- *The Chair*
- *Mr. Paul Szabo*
- *The Chair*
- *Mr. Paul Szabo*
- *The Chair*
- *Ms. Hélène Scherrer (Louis-Hébert, Lib.)*
- *Ms. Caroline Weber*
- *The Chair*
- *Mr. James Lunney*

1010

- *The Chair*
- *Mr. James Lunney*
- *The Chair*
- *Mr. James Lunney*
- *The Chair*
- *Mr. Glenn Rivard*
- *The Chair*
- *Mr. James Lunney*
- *The Chair*
- *Mr. James Lunney*
- *The Chair*
- *Mr. James Lunney*
- *The Chair*

1015

- *Mr. James Lunney*
- *The Chair*
- *Mr. James Lunney*
- *The Chair*

Mr. James Lunney

The Chair

Mr. James Lunney

The Chair

Mr. James Lunney

The Chair

Mr. James Lunney

The Chair

Mr. Glenn Rivard

The Chair

1020

Mr. Rob Merrifield

The Chair

Mr. Rob Merrifield

The Chair

Mr. Rob Merrifield

The Chair

Mr. Rob Merrifield

The Chair

Mr. Rob Merrifield

The Chair

Mr. Rob Merrifield

The Chair

The Chair

Mr. James Lunney

The Chair

Mr. Rob Merrifield

The Chair

Mr. Rob Merrifield

The Chair

The Chair

Mr. Rob Merrifield

1025

The Chair

Ms. Caroline Weber

The Chair

Ms. Caroline Weber

The Chair

Ms. Caroline Weber

Mr. Rob Merrifield

The Chair

Mr. Rodney Ghali (Science Policy Analyst, Special Projects Division, Department of Health)

The Chair

Mr. Rodney Ghali

The Chair

Mr. Rodney Ghali

The Chair

Mr. James Lunney

Mr. Rodney Ghali

Mr. James Lunney

Mr. Rodney Ghali

Mr. James Lunney

1030

Mr. Rodney Ghali

Mr. James Lunney

Mr. Rodney Ghali

Mr. James Lunney

Mr. Rodney Ghali

The Chair

Mr. Rodney Ghali

The Chair

Mr. James Lunney

The Chair

Ms. Hélène Scherrer

Mr. Rodney Ghali

1035

The Chair

Mr. Rob Merrifield

Mr. Glenn Rivard

The Chair

Mr. Paul Szabo

Ms. Caroline Weber

Mr. Paul Szabo

Ms. Caroline Weber

Mr. Glenn Rivard

Mr. Paul Szabo

Ms. Caroline Weber

Mr. Paul Szabo

The Chair

Mr. Rob Merrifield

The Chair

Mr. Jeannot Castonguay

The Chair

1040

Mr. Glenn Rivard

The Chair

Mr. Glenn Rivard

1045

The Chair

Mr. Glenn Rivard

The Chair

Mr. Glenn Rivard

The Chair

Mr. Glenn Rivard

The Chair

Ms. Caroline Weber

The Chair

Ms. Caroline Weber

The Chair

Ms. Caroline Weber

The Chair

Ms. Caroline Weber

The Chair

Ms. Caroline Weber

The Chair

Ms. Caroline Weber

The Chair

Mr. Jeannot Castonguay

Ms. Caroline Weber

Mr. Jeannot Castonguay

The Chair

Mr. James Lunney

Mr. Glenn Rivard

1050

Mr. James Lunney

Mr. Glenn Rivard

The Chair

Mrs. Brenda Chamberlain

Mr. Glenn Rivard

Mrs. Brenda Chamberlain

Mr. Glenn Rivard

Mrs. Brenda Chamberlain

Mr. Glenn Rivard

The Chair

Ms. Judy Wasylycia-Leis

The Chair

Ms. Judy Wasylycia-Leis

1055

The Chair

Ms. Judy Wasylycia-Leis

The Chair

Ms. Hélène Scherrer

Ms. Francine Manseau (Senior Policy Analyst, Special Projects Division, Health Policy and Communications Branch, Department of Health)

Ms. Hélène Scherrer

Ms. Francine Manseau

The Chair

Mr. Rob Merrifield

The Chair

Mr. Rob Merrifield

The Chair

Mr. James Lunney

1100

The Chair

Mr. James Lunney

The Chair

Mr. Jeannot Castonguay

The Chair

Mr. Stan Dromisky (Thunder Bay—Atikokan, Lib.)

The Chair

Mr. Stan Dromisky

The Chair

The Chair

1105

Mrs. Brenda Chamberlain

The Chair

Mrs. Brenda Chamberlain

Mme Yolande Thibeault

The Chair

The Clerk of the Committee

The Chair

Mr. Réal Ménard

The Chair

Mr. Stan Dromisky

The Chair

The Chair

Mr. Rob Merrifield

Mr. Rob Merrifield

The Chair

Mr. Rob Merrifield

The Chair

Mr. Rob Merrifield

The Chair

Mr. Rob Merrifield

The Chair

1120

Mr. Rob Merrifield

The Chair

Mr. Rob Merrifield

The Chair

Mr. James Lunney

The Chair

Mr. James Lunney

The Chair

Ms. Judy Wasylycia-Leis

The Chair

Ms. Judy Wasylycia-Leis

The Chair

Ms. Judy Wasylycia-Leis

The Chair

Mr. Rob Merrifield

1125

The Chair

Mr. Rob Merrifield

The Chair

Mr. James Lunney

Mr. Rob Merrifield

The Chair

Mr. Jeannot Castonguay

The Chair

Mr. Jeannot Castonguay

The Chair

Mr. Stan Dromisky

The Chair

Mr. Stan Dromisky

M. Réal Ménard

The Chair

Ms. Caroline Weber

1130

The Chair

Mr. Glenn Rivard

The Chair

Ms. Judy Wasylycia-Leis

The Chair

Ms. Judy Wasylycia-Leis

The Chair

Mr. James Lunney

The Chair

Mr. Paul Szabo

The Chair

Mr. Glenn Rivard

1135

The Chair

Mr. Stan Dromisky

The Chair

Mr. Stan Dromisky

The Chair

Mr. Rob Merrifield

Mr. James Lunney

The Chair

Mr. James Lunney

The Chair

Mr. Rob Merrifield

Mr. Stan Dromisky

1140

Mr. Rob Merrifield

Mr. Stan Dromisky

The Chair

Mr. Glenn Rivard

The Chair

Mr. Glenn Rivard

Ms. Caroline Weber

The Chair

Ms. Caroline Weber

Mr. Rob Merrifield

Mr. Glenn Rivard

The Chair

Mr. Glenn Rivard

The Chair

Mr. Glenn Rivard

The Chair

Mr. Glenn Rivard

The Chair

Mr. Gary Lunn

The Chair

Ms. Hélène Scherrer

The Chair

1145

Ms. Hélène Scherrer

The Chair

Ms. Hélène Scherrer

The Chair

Ms. Hélène Scherrer

The Chair

Ms. Hélène Scherrer

The Chair

Ms. Hélène Scherrer

Mr. Glenn Rivard

The Chair

Mr. Glenn Rivard

The Chair

Mr. Stan Dromisky

The Chair

Mr. Rob Merrifield

The Chair

Mr. James Lunney

The Chair

Mr. Rob Merrifield

The Chair

Mr. Rob Merrifield

The Chair

Mr. Glenn Rivard

The Chair

1150

Mr. Glenn Rivard

Mr. James Lunney

Ms. Caroline Weber

The Chair

Mrs. Brenda Chamberlain

The Chair

Mr. Rob Merrifield

The Chair

Mr. Rob Merrifield

The Chair

Mr. Rob Merrifield

The Chair

Ms. Judy Wasylycia-Leis

The Chair

Ms. Judy Wasylycia-Leis

The Chair

Ms. Judy Wasylycia-Leis

The Chair

Ms. Caroline Weber

The Chair

Ms. Judy Wasylycia-Leis

Ms. Monique Hebert (Committee Researcher)

The Chair

Ms. Judy Wasylycia-Leis

Mr. Rob Merrifield

The Chair

Ms. Judy Wasylycia-Leis

The Chair

Ms. Monique Hebert

1155

The Chair

Ms. Judy Wasylycia-Leis

The Chair

Ms. Judy Wasylycia-Leis

The Chair

Mr. Glenn Rivard

The Chair

Ms. Judy Wasylycia-Leis

The Chair

The Chair

Mr. Rob Merrifield

The Chair

Mrs. Carol Skelton

The Chair

Mr. Rob Merrifield

The Chair

Mr. Glenn Rivard

1200

The Chair

Mr. Glenn Rivard

The Chair

Mr. Glenn Rivard

The Chair

Mr. Rob Merrifield

Mr. Glenn Rivard

Ms. Caroline Weber

The Chair

Mr. Rob Merrifield

The Chair

Ms. Caroline Weber

Mr. Glenn Rivard

The Chair

Mr. Rob Merrifield

1205

The Chair

Ms. Yolande Thibeault

The Chair

Ms. Yolande Thibeault

The Chair

Mr. Glenn Rivard

The Chair

Mr. Rob Merrifield

The Chair

Mr. Rob Merrifield

The Chair

The Chair

1240

Mr. Mac Harb

The Chair

Mr. Glenn Rivard

The Chair

Mr. Rob Merrifield

Mr. Glenn Rivard

Mr. Rob Merrifield

Mr. Glenn Rivard

Mr. Rob Merrifield

Mr. Glenn Rivard

Mr. Rob Merrifield

The Chair

1245

Ms. Caroline Weber

The Chair

Ms. Caroline Weber

The Chair

Ms. Caroline Weber

The Chair

Mr. Glenn Rivard

The Chair

Ms. Caroline Weber

Mr. Glenn Rivard

The Chair

Mr. Glenn Rivard

1250

Mr. Rob Merrifield

The Chair

Mrs. Brenda Chamberlain

The Chair

Mrs. Brenda Chamberlain

The Chair

Mrs. Brenda Chamberlain

The Chair

Mrs. Carol Skelton

Mrs. Brenda Chamberlain

Mrs. Carol Skelton

Mrs. Brenda Chamberlain

Mrs. Carol Skelton

The Chair

Mrs. Carol Skelton

Mr. James Lunney

Mrs. Carol Skelton

The Chair

Mr. Rob Merrifield

The Chair

Mr. Rob Merrifield

The Chair

Mr. Rob Merrifield

The Chair

Mr. Rob Merrifield

CANADA

Standing Committee on Health

NUMBER 013 • 2nd SESSION • 37th PARLIAMENT

EVIDENCE

Monday, December 9, 2002

[Recorded by Electronic Apparatus]

(0915)

[*English*]

The Chair (Ms. Bonnie Brown (Oakville, Lib.)): Good morning, ladies and gentlemen. It's my pleasure to call this meeting to order and to thank you for being here bright and early on a Monday morning, and to apologize for being late myself. Thank you for your patience.

I think we have quorum and we can begin. We're on page 29 of your package. There is an amendment proposed by Dr. Fry. She is not here. Is there anybody who wants to--

Ms. Carol Skelton (Saskatoon—Rosetown—Biggar, Canadian Alliance): Madam Chair, can I ask a question first?

The Chair: Yes.

Ms. Carol Skelton: For my own personal satisfaction, I would like some clarification from legal counsel about the terminology “compensation”, “consideration”, “expenses”, and “expenditures” that we're going to be looking at in quite a few of the upcoming clauses. I would like you to clarify those terms for me if possible, because nowhere is there any clarification of that.

The Chair: That's fine, but we don't really have.... Oh, I see. You want to hear it before we deal with any of this.

Well, I don't know if we're dealing with this, because no one has moved it yet. We should have a motion on the table. But I think your question is excellent, and we'll let Mr. Rivard answer it the minute we get to a motion that is on the table.

Ms. Carol Skelton: But, Madam Chair, I mightn't be here, and I'd like to hear it, if we could possibly hear it before, so that we have it in the back of our minds.

The Chair: I think you'll have it in the next five minutes.

Ms. Carol Skelton: Okay.

The Chair: Seeing no hands, I would say that amendment L-2 is not moved.

We're on amendment L-3, on page 30.

I'm sorry, I was wrong, Ms. Skelton. I thought the next grouping was all about compensation, or expenses or expenditures. They're not, but I don't think it would hurt us to hear it now.

So, Mr. Rivard, there are various proposals and line conflicts when we get to that group of amendments, and perhaps you could clarify for the members how you see the different proposals that are being put forward. Start with the bill. What does it say, and what is being proposed to change it?

Mr. Glenn Rivard (Senior Legal Counsel, Department of Justice): Okay. There are three basic terms: “expenditures”, “expenses”, and “consideration”. It's important to remember that expenses and expenditures are also circumscribed by the regulations. That is, only the expenditures or expenses that would be authorized in the regulations could be paid to a surrogate.

An expenditure is the most narrow term. It requires an out-of-pocket payment by the person, and they could be compensated for that. As the bill stands, they must also provide a receipt for that expenditure.

An expense is a slightly wider term, not particularly wider, but it could include, in addition to actual expenditures, lost opportunity costs. A perfect example would be where the surrogate mother, toward the end of her pregnancy, has to take time off work. Typically, she would receive some unemployment insurance compensation for that, but there might still be a gap between that compensation and the unemployment insurance payments and her income. So if the regulations listed that lost opportunity cost, lost income, that could be recovered under the “expenses” heading.

(0920)

The Chair: I think that's a pretty narrow example. What else would come under “expenses”?

Mr. Glenn Rivard: Well, it is not--

The Chair: Give us the broadest.

Mr. Glenn Rivard: It is not a much broader term than “expenditures”. It really does come down to some lost opportunity cost, and lost income is the one that would most likely come to mind.

The Chair: But what about a person who is not working through the pregnancy? Under “expenses”, could that person claim lost income?

Mr. Glenn Rivard: If they are not earning income, then they wouldn't have lost any income, so no.

The Chair: So it wouldn't become an expense.

Mr. Glenn Rivard: It would not be an expense.

The Chair: What about self-employed?

Mr. Glenn Rivard: If they were self-employed and could document a loss of income because of the pregnancy, then that could be compensated as an expense.

Mr. Rob Merrifield (Yellowhead, Canadian Alliance): It's rather open-ended.

Mr. James Lunney (Nanaimo—Alberni, Canadian Alliance): Supposing somebody was a lawyer, for example, or a professional of some kind, self-employed within a firm, they would not have EI if they had lost income and they perhaps could have expenses in the $100,000 or six-figure income range.

Mr. Glenn Rivard: First, lost income would have to be listed in the regulations. Secondly, the regulations could indicate how that lost income was to be established. Obviously in the case of employment, that's relatively easy to do. If they're self-employed, the regulations would have to provide for some means of actually establishing that lost income--perhaps a comparison with the income of 12 months earlier or the preceding six months, something of that nature. That would have to be established by the surrogate in order to qualify as an expense under the regulations.

The Chair: Mr. Rivard, is it possible to have the receipted expenditures, which, as you say, are very narrow and very clear--the thing I worry about with the term “expenses” is it's not that clear--and add to that the exception about documented lost income due to pregnancy. In the case of EI it would be very easy in the sense that the person would get some EI and perhaps could get some money for themselves for the difference between the EI and their regular salary. Could that be attached to the clause on receipted expenditures?

You used that example only with regard to expenses, but I think “expenses” is a lot broader than that. When we talked about it before, we had other examples. I can't think what they were either, but there were other things that were expenses.

Mr. Glenn Rivard: The committee could do that as well. They could allow for expenditures and lost income. I would still suggest that the lost income be subject to the regulations--

The Chair: Oh, yes.

Mr. Glenn Rivard: --because you want to be able to establish rules as to how that lost income is established.

(0925)

The Chair: Could we say something like this, “lost income due to illness in pregnancy”? For a normal Canadian woman who is pregnant and working, she continues to work almost to the end, or maybe right to the end, unless her doctor tells her she has to stay home in bed for the last couple of months or something. Could we say “due to illness in the pregnancy”?

Mr. Glenn Rivard: You could do something like that. You might want to speak about a medical condition, “lost income due to a medical condition”, something of that nature.

The Chair: So compensation is the broadest, but we're past that anyway.

Mr. Glenn Rivard: Yes. You may want to link it to a doctor's recommendation, in other words, an actual medical recommendation that she has to take time off work.

The Chair: I was just going to say, “illness due to complications in the pregnancy”, or something like that.

Mr. Ménard.

[*Translation*]

Mr. Réal Ménard (Hochelaga—Maisonneuve, BQ): Madam Chairman, I will obviously have to vote against this provision. Under the Quebec Civil Code, any compensation to surrogates is strictly prohibited. When we discussed this previously, I mentioned that there are some incompatibilities between the bill and civil law. Would this be one of those provisions?

[*English*]

Mr. Glenn Rivard: We have examined that question. This bill does not affect the provincial laws that pertain to the validity of a surrogacy agreement, and therefore whether an agreement can be enforced in a province will depend on that province's laws. The federal legislation does not require anybody to pay anything to a surrogate; it simply authorizes, or would authorize, somebody to make payments, depending on the final version adopted by the committee, expenses or expenditures, but even--

The Chair: We're not worried about the equivalency right now. What he's worried about is any transfer of money. Does Quebec allow any transfer of money for any reason at this point in its law?

Mr. Glenn Rivard: My understanding of the civil code is that the agreements between a couple and a surrogate mother are not enforceable in the province.

The Chair: Yes, we know that....

Mr. Glenn Rivard: It really means two things, therefore. If there is a dispute as to any payment that might have been agreed to between the parties, it could not be enforced in a court. So a surrogate mother who enters into this sort of arrangement is really taking a risk that she will in fact never be paid. It also means that the transfer of custody over the child would not be governed by the agreement. The custody of the child would be determined by the courts without reference to the agreement. They would look at the best interests of the child and treat it basically as an adoption application.

The Chair: I think Ms. Skelton began this discussion.

Do you have a further question?

Ms. Carol Skelton: We still do not have the definition of “consideration” or what the term “consideration” is.

Mr. Glenn Rivard: “Consideration” is a very broad term. It basically means any form of compensation, whether it is in-cash or in-kind, whether it's a gift of some sort, an article of some sort, or actual money. It's the broadest term in the law for any form of compensation to the woman.

Ms. Carol Skelton: Thank you very much.

The Chair: Is this clear to everybody?

Mr. Szabo.

Mr. Paul Szabo (Mississauga South, Lib.): I wonder if the counsel could advise on the difficulty of “direct” versus “indirect”.

The Chair: That's under enforcement, which will be part of the—

Mr. Paul Szabo: But a surrogate is an illegal person. If consideration were given to someone related to the surrogate, I don't know whether the bill catches that. I don't know whether the intent of the bill is to catch something like that.

(0930)

The Chair: Mr. Rivard, have you considered that possibility?

Mr. Glenn Rivard: Again, in the way this section is drafted, I think the term “consideration” would encompass that. If it can be established that the real intent was to provide some form of compensation or benefit to the woman, then whether the benefit was formally transferred to her would not be a defence to the provisions in clause 6.

I suppose it is always possible for people to try to hide, if you will, these forms of compensation. But this is a matter of establishing the facts and obtaining the evidence. It is really no different with respect to any other criminal matter. Without a doubt, the language in the bill is as broad as it can be.

The Chair: Mr. Merrifield, quickly.

Mr. Rob Merrifield: The whole issue of direct or indirect is really.... As an individual, if you were wanting to pay a surrogate, you have certain dollars you can give to whomever you like. As long as it doesn't apply or it can't be linked in a legal way, would it not be a tough sell in the courts?

Mr. Glenn Rivard: I can maybe illustrate by way of example. It may be that the surrogate has an older child already, and the commissioning couple agrees to pay the child for his university tuition. Nonetheless, I think you could establish this brings a benefit to the surrogate mother and that it was really the intent of the payment to bring a benefit to the surrogate mother.

The Chair: There isn't a broader word, in any case, than “consideration”. The bill is as tight as it can be in that area the way it is. We will have amendments.

Ladies and gentlemen, I'm going to have to change the subject, because unfortunately, while we had one amendment on this topic, one that was not moved, the next three are on a different topic.

(On clause 6--*Payment for surrogacy*)

The Chair: I have to ask you to switch your minds to the age at which a person can be a surrogate mother. Amendments L-3 on page 30, LL-3 on page 30.1, and LL-4 on page 30.2 are all on the subject.

Madame Thibeault.

[*Translation*]

Ms. Yolande Thibeault (Saint-Lambert, Lib.): Thank you, Madam Chair.

I would like to move the amendment L-3 of Ms. Fry. In clause 6(4) of the bill it says that “no person shall counsel having reason to believe that the female person is under 18 years of age”. I move to replace 18 years of age by 21 years of age. I think that everyone will agree that although 18 years of age is the legal age of majority in our country, there are many precedents where the legal age is 21 years. I believe we must ensure that the woman is mature enough to make such an important decision for her own life and that of a child.

[*English*]

The Chair: Essentially, Madame Thibeault has two more amendments following L-3. She is suggesting that she has decided to withdraw LL-3 and LL-4 in order to vote in favour of L-3. Are you moving L-3?

Ms. Yolande Thibeault: I'm moving L-3 and withdrawing LL-3 and LL-4.

The Chair: So L-3 is now on the table, that is, upping the age in the bill from 18 to 21. I believe the legal counsel was approached about 25 and suggested that there is really nothing to hang one's hat on with that age, whereas 21 might be able to be connected to some other laws.

Mr. Rob Merrifield: So now LL-3 and LL-4 are withdrawn.

The Chair: Essentially.

So L-3 is on the table. Is there any comment on it, this raising of the age three years?

Dr. Lunney.

Mr. James Lunney: I'd like to have some clarification as to why age 25 would not be considered appropriate.

Mr. Glenn Rivard: Without a doubt, the higher the age put in this section, the greater the charter risk. Essentially, it becomes increasingly difficult to argue that the older woman requires this sort of protection from undue influence. Particularly if you are talking about age 25, you're talking about a fully mature woman, and it's very difficult to make that sort of argument.

Even with a woman at age 21 there is a somewhat larger charter risk than at age 18, but certainly a defence could be mounted on the basis that there are a large number of women between 18 and 21 who remain at home or are at least closely connected to their families in a way that might allow for undue influence in the case of an altruistic surrogacy arrangement. So 21 at least seems to have some sort of basis and is not manifestly contrary to the charter. The higher you go, however, the greater the charter risk you run, and 25 definitely poses a high charter risk.

(0935)

Mr. James Lunney: Might I just suggest that a person goes through a lot of changes in their world view and in their life experience in those formative years. We all remember what it was like when we were 18 and thought we knew everything, but it's pretty scary when you think back and realize how little you actually knew at that age.

For the type of consideration we're talking about here, for someone as young as that, engaging in a surrogacy arrangement has very serious implications they may well reconsider later in life.

I would argue for Madame Thibeault's original motion regardless. If we're going to just do this in terms of a charter arrangement.... There was a charter considering everything, and in fact the welfare of this woman later in life when she may reconsider what she did when she was young.... I think an argument can be made for a more mature woman entering into an arrangement like this, and we could defend it for that reason.

The Chair: However, that amendment is not on the table. The amendment that's on the table is for age 21.

Madam Chamberlain.

Mrs. Brenda Chamberlain (Guelph—Wellington, Lib.): I would say to Dr. Lunney that I was married at 20, and to preclude anybody from being able to do something at 21 would be most difficult. As much as I understand what you're saying about 25, I don't think there would be anything you could uphold that with.

We have to do things in hopes that, for instance, we could win it if we had to, and I think 21 is doable; 18 is certainly doable, but I think most committee members agree that it's way too young, and certainly coercion could be used. As much as we may not be thrilled with it, I think it's a whole lot better than 18, and we should go for that, just put all our energy into that and try to win that.

Mr. Rob Merrifield: I have one question. I agree with the provision for age 21, but my concern is with provincial jurisdiction on this one. Would that be in effect? If a province came in--let's say Quebec said, no, 18 is fine--which would supersede the other in this case?

Mr. Glenn Rivard: In fact, this is in reference to subclause 6(4), which is a prohibition, so there is no question of equivalency. This would apply across the country regardless.

Mr. Rob Merrifield: Fair enough. That's all I wanted to know.

The Chair: I'll call the question now.

(Amendment agreed to)

(Clause 6 as amended agreed to on division--[See *Minutes of Proceedings*])

The Chair: By the way, Mr. Ménard, we never did ask you how many dances you got the other night at the party. You were predicting.

Mr. Réal Ménard: I missed you for a dance.

(On clause 7--*Purchase of gametes*)

The Chair: We're now on page 6 with amendment NDP-4, and there is no line conflict.

Ms. Wasylycia-Leis.

(0940)

Ms. Judy Wasylycia-Leis (Winnipeg North Centre, NDP): Thank you, Madam Chairperson.

The amendment, I hope, addresses what I would see as just an oversight in the bill. It's simply to make sure that when we're talking about commercialization of sperm and ova, we not only include prohibitions for the purchase and offer to purchase of sperm or ova but that we also prohibit selling, offering to sell, or advertising for purposes of selling sperm and ova.

I'm assuming that it was just an oversight in the bill and that we would want to be absolutely clear that we're prohibiting all aspects of commercialization in this area. It would be consistent with subclause 7(2), where we do both in terms of in vitro embryos.

The Chair: Yes, in the case of sperm and ova we're just prohibiting the purchase, but in the case of embryos we're prohibiting the purchase and the sale.

Madam Wasylycia-Leis is suggesting we also get in the way of the “sell, offer for sale or advertise for sale” on the sperm and ova. It would make two paragraphs under subclause 7(1), so you'd have “No person shall (a) purchase” and the rest of what is there in subclause 7(1) and “(b) sell, offer”, etc.

Are there any comments on that suggestion? Ms. Weber.

Ms. Caroline Weber (Director General, Policy Planning and Priorities Directorate, Department of Health): We did again treat embryos differently from other human reproductive material in the bill and so that's why we have both the sale and purchase prohibited on embryos.

The treatment of selling has been consistently treated otherwise through the bill so that we don't criminalize the surrogate mother and we don't criminalize the donors for selling, but what we do criminalize, what we do try to penalize, is that purchase.

The Chair: That's crazy. Either you want it to happen or you don't. If you want it to happen, fine. If you don't want it to happen, shouldn't you cover all contingencies?

Ms. Caroline Weber: There were concerns about criminalizing women, especially with respect to surrogacy. We instead structured this so that we could go after the person who was offering to purchase.

The Chair: Okay, I see.

What do you think, Ms. Wasylycia-Leis, when you hear it that way? It isn't an oversight. It's done this way, perhaps, to protect young people who might be caught selling sperm or women who agree to be a surrogate mother and instead....

Ms. Judy Wasylycia-Leis: I'm still concerned. I hear the logic now. You're saying this question of selling sperm or ova is covered off in other parts of the bill so that there are limitations but not criminal sanctions.

It seems to me, though, when you're talking about trading and buying and selling in this area that most often we're dealing with middle persons who are generating a market, who are going after young women to offer to sell their eggs. We've had some recent communications from folks with evidence off the Internet...with women offering to sell for $80,000 an egg or whatever. It's a real racket. I'm not sure--

(0945)

The Chair: Ms. Wasylycia-Leis, excuse me for interrupting, but if there is a middle person, that middle person would have to pay, say, the young person for her eggs, so she would be a buyer before she sells it off at the higher price.

Ms. Judy Wasylycia-Leis: If it can be proven, but in fact your evidence may simply be the offer to sell of the individual.

The Chair: Oh, I see.

Ms. Judy Wasylycia-Leis: I thought we talked about this throughout the hearings on the bill. We compared this area to blood and tissue and organs. Isn't it equally a problem in any of these areas where we don't sanction the offer to sell and we don't sanction the purchase?

I don't know how you cannot deal with the whole thing in order to have a truly effective mechanism to crack down on this being a commercial area of market endeavour.

I'm trying to think through the ramifications, but I still think that if we're going to deal with this effectively, I don't know how we can exclude the selling aspect.

The Chair: Dr. Lunney.

Mr. James Lunney: I'm going back to the principles. Paragraph 2(e) says:

> trade in the reproductive capabilities of women and men and the exploitation of children, women and men for commercial ends raise health and ethical concerns that justify their prohibition

That was one of the underlying principles, and therefore I think the clause is well taken and I think we should support the motion and make sure our intent is clear.

The Chair: Dr. Castonguay.

[*Translation*]

Mr. Jeannot Castonguay (Madawaska—Restigouche, Lib.): Thank you, Madam Chair.

In understand Judy's point. However, we must not forget that these people are often vulnerable. I believe it would be very prudent not to sanction these people but to really go after the buyers. If we can truly control the buyers, those who might want to sell will have no market. This is why I will not be able to support this amendment. Again, I believe we are going after people who are very often vulnerable, while the buyers are at fault.

[*English*]

The Chair: Seeing no further hands, I'll call the question.

Mr. Harb, did you vote?

(Amendment negatived)

Mr. Mac Harb (Ottawa Centre, Lib.): It's a difficult question, you have to admit.

The Chair: It's very difficult.

Mr. Mac Harb: To sell or not to sell.

Mr. Rob Merrifield: You can abstain, right? There was no pressure.

Mr. Mac Harb: No, no. There was no undue pressure whatsoever.

An hon. member: The point is if we leave loopholes then there's going to be somebody who'll drive through it with a truck.

Mr. James Lunney: Okay, let's move on, Madam Chair.

The Chair: Now you know what we've been wrestling with on these kinds of questions, Mr. Harb.

CA-21 on page 31, Mr. Merrifield, in clause 7, replacing lines 22 to 26.

Mr. Rob Merrifield: On looking at this one again, I think it's covered under subclause 7(1). I think we should just hold on that one.

The Chair: Are you withdrawing that one?

He's withdrawing CA-21.

(On clause 8--*Use of reproductive material without consent*)

The Chair: CA-22 by Mr. Merrifield, replacing line 2 on page 7.

Mr. Rob Merrifield: This is just being consistent with where we're going with embryos and talking about the donor being both male and female, so we're just adding the "s" to it. At any rate, I think this goes with the intent of what the bill is really trying to get at.

The Chair: In actual fact we had a lot of witnesses talking about a donor instead of donors, when there are always two.

Ms. Weber, did you want to speak to that?

Ms. Caroline Weber: Under the Interpretation Act, the use of the term "donor" in law does imply the plural. We did it this way because there may be occasions when there is only one donor, for example, a widow or a widower. There is a posthumous donation clause in here.

And again, we've separated the donation of reproductive material from the social parents in the bill as well.

(0950)

Mr. Rob Merrifield: What you're saying then is if a male dies and you have frozen sperm and you can't get the authorization, that's why the loophole is there.

Ms. Caroline Weber: That's why it's singular.

Mr. Rob Merrifield: That's a very serious question because you're actually allowing someone to produce a child after they have expired. Is that what we're saying?

Mr. Glenn Rivard: I just want to point out that under the Interpretation Act, subsection 33(2), the use of the singular always implies the plural.

Mr. Rob Merrifield: So there'd be nothing wrong with putting the plural there then.

Mr. Glenn Rivard: When we draft, however, because of that rule, we always use the singular.

The Chair: It's strictly considered a convention of drafting legislation.

Mr. Glenn Rivard: It's a convention of drafting. Pursuant to the Interpretation Act, it will always include the plural.

Mr. Rob Merrifield: Then how would you put the brakes on the idea of someone, after they have passed on, then conceiving a child? If that was their intent, they could do it in here, could they not?

Ms. Caroline Weber: There is actually a consent requirement in that clause also.

Mr. Glenn Rivard: Subclause 8(2) deals with exactly that situation and it requires written consent prior to the death of the individual.

Mr. Rob Merrifield: What you're saying is the word “donor” actually can be interpreted both ways, singular or plural.

Mr. Glenn Rivard: Exactly.

Mr. Rob Merrifield: And therein lies some discomfort with the legislation, I think. So I guess I'm looking to you as to how we would draft it in a way that would not open ourselves up to that.

If a deceased had given written permission prior to passing away, there's maybe an argument there. But it's very difficult once a person has passed away that you can use that material for reproductive technologies.

Mr. Glenn Rivard: If I may, in the particular instance here, we're talking about the use of an already-created in vitro embryo, and there may be instances where there is only one donor. For example, if one of the couple has died, you have a widow or a widower. You have these created embryos. If you require both donors' consent then in effect nothing can be done with the embryos. You have simply blocked any dealings with the embryos whatsoever. They couldn't even be donated to another couple for their reproductive purposes.

So there are some circumstances, and unfortunately the bill has to anticipate all possible circumstances, where there will only be one donor.

However, where there are two donors, that too is included. Where you have say a husband and wife with frozen embryos, then there's no question that the consent of both will be required.

Mr. Rob Merrifield: Let's say the mother passes on. Then you have extra embryos that, we're saying under this, could go to research or to another couple on the will of the father or the sperm donor.

Mr. Glenn Rivard: That is conceivable, yes. But without this provision, nothing could be done with the embryos. They would be in a legal limbo.

(0955)

Mr. Rob Merrifield: Yes, I understand what you're saying.

The Chair: Okay. I think we've had a pretty fulsome discussion on this. I'm going to call the question as to whether you want to have the "s" added to donor.

(Amendment negatived)

The Chair: I think it was good that we heard what the implications were.

We are now at amendment CA-23 on page 33.

Mr. Jeannot Castonguay: Madam Chair, what about clause 7? Did it carry or did we vote on it?

The Chair: I haven't asked the question yet. Because these clauses are so short, I thought we might do a few at a time.

Mr. Jeannot Castonguay: Okay, fine. I respect that.

The Chair: Amendment CA-23, clause 8, on page 7, after line 4, is adding to the same clause we were discussing.

Mr. Rob Merrifield: This is fairly straightforward. It's something we talked about quite a bit as the witnesses came forward, trying to discern exactly how many embryos should be created for the purpose of reproduction. I think we should be saying that we will be reasonable in the sense that we shouldn't be producing more embryos than are needed for the intended purpose, which is reproduction. It is something that alarmed many of us when we found out there could be 25 or 30 embryos created. I think there was some discomfort around the committee with what has been happening.

The Chair: Dr. Castonguay.

[*Translation*]

Mr. Jeannot Castonguay: Madam Chair, I am not a legal expert but when I see the word "reasonably", I have to wonder if it is sufficiently precise.

Secondly, I always considered this should be part of the regulations because with the changes and improvements in our knowledge, we will likely need much fewer embryos in the future. Therefore, I think it would be much wiser to put this into the regulations.

In my view, the word "reasonably" is not very clear. Maybe the experts could give us an opinion on this.

[*English*]

Mr. Glenn Rivard: I do think this is a problem. This is a criminal offence. You seek as much clarity as possible so that individuals looking at the provision could tell from reading it whether they have or have not committed the offence. Including the phrase "reasonably necessary" I think makes it extremely difficult, if not impossible, for doctors to determine whether they have exceeded that or whether they have committed an offence in particular.

On the number of embryos that have to be produced in a particular case, there is no exact number for every woman. It is a medical decision and it will depend upon the circumstances of the particular woman. The difficulty with this provision is it really makes it impossible for the doctor to determine whether the offence has been committed. I don't believe this, as a criminal offence, would withstand a challenge in the courts.

Mr. Rob Merrifield: I would think we would have to put this in regulations at any rate. We're going to have to put some parameters around this in regulations. Is that not true?

Ms. Caroline Weber: Yes, but it is different and it doesn't create the same kind of penalty.

Mr. Rob Merrifield: That's true. I don't understand why, if the intent is reasonable for the purpose of the intent, it would not be applied under regulation. This strengthens the idea of the regulation.

Mr. Glenn Rivard: As drafted, this has no link to any regulations. It is simply a stand-alone criminal offence and as such it is too vague.

The Chair: Excuse me, Mr. Rivard--

Mr. Glenn Rivard: It's quite another thing in the regulations to say, in effect, that if that's the intention, to set out some sort of detailed description of the number of embryos appropriate in a situation. That provides a degree of clarity. As well, it's far less likely that a breach of the regulations is going to lead to a criminal charge.

(1000)

The Chair: Dr. Lunney.

Mr. James Lunney: We're dealing with a prohibited event here. Supposing we find that the average clinic is using 15--we heard of up to 25--ova for reproductive technology. But suppose we found a clinic that was extracting 50, well beyond. The average is within the 15 to 25 range, if we accept such high numbers, but then we find a clinic that's consistently 40 to 50. Surely that's the same type of profiling we do when OHIP or medical services plans across the country take a look at medical practices and find that some people are doing some services way beyond what's reasonable for others doing the same service, and they catch people that way.

So surely we're talking about something that has tremendous implications for those undergoing the procedures. This is not an unreasonable thing for us to consider to protect those from being exploited.

The Chair: Mr. Rivard, I can't help but notice that you use the word “reasonably” in clause 9. So if it's not a good word for clause 8, why is it a good word for clause 9?

Mr. Glenn Rivard: That is a good question. There is a difference here, however--

The Chair: Yes, a person “reasonably believes”. Could we use that phrasing in Mr. Merrifield's amendment? Then it would become consistent that the person “reasonably believes”.

Mr. Glenn Rivard: I think this is really a matter of the medical judgment of the physician in the particular circumstances.

The Chair: You're leaning on Mr. Dromisky's words. He's helping. So the second counsel is Dr. Dromisky.

Mr. Glenn Rivard: Might I also make the point with respect to Mr. Lunney that in the instance where a clinic is following a practice of producing a large number of embryos, above and beyond what is normally considered desirable, we have another mechanism in the bill, and one much more suited to that situation; that is, that clinic must be licensed and must comply with the regulations. Given that there is no one clear number that is the appropriate one, the more subtle, if you will, instrument of regulatory and licensing control would appear to be much more appropriate than creating an offence that can carry up to ten years in prison on some fairly open-ended language.

In other words, the mechanism already exists in the bill to address exactly that problem. I think the argument would be that it is a much more appropriate mechanism given the nature of the problem.

The Chair: I see that a couple of people are interested in this, but the rest aren't. Sometimes when you're going after an answer that others consider to be “how many angels are dancing on the head of a pin”, I have to start closing it off before the others nod off.

So, Mr. Merrifield, do you want to beat this one to death?

Mr. Rob Merrifield: No, I just want to make another point, and that is that really in the amendment we're asking for, the arguments over there make very little sense. It's talking about the will of the donors, and that should be what happens in this piece of legislation, that embryos are not produced beyond the will of the donors. Surely that's the intent of the piece of legislation.

All we're talking about is the number of embryos reasonably necessary to produce the procedure intended by the donors. To me, it's all about the donors having their rights protected here, rather than being beyond that scope. I think it's a very reasonable thing.

I haven't heard anything from legal counsel there to argue against it.

The Chair: Mr. Rivard.

(1005)

Mr. Glenn Rivard: If I may say so, that exact concern is addressed in subclause 8(1). It notes that no embryo can be created from the reproductive material of a donor without that donor's consent.

The Chair: Yes. I'm not speaking in favour of this amendment, but, in reality, we know that people who go to these clinics are desperate. They are so desperate that most of them would give their right arm if they could come out with a baby in the end, the baby they've been unable to have.

So a lot of this implies that the donors who make the embryo--one of whom may be part of this couple desperate to have a baby--are more reasonable and more rationale than they really are. They're desperate. They'll do anything. If they want to produce 45 embryos out of a set of eggs and sperm, these people would agree. They're actually not even asking these questions. They're doing what they're told. They're pretty well doing what they're told by the people in the clinic.

Dr. Weber.

Ms. Caroline Weber: Madam Chair, I just think the science isn't there yet for us to know exactly how many embryos can be produced from the material combined. So even when many ova are harvested, not all of them produce embryos, because these are people who are having reproductive problems.

I think, but I do not know, there is a lot of variation here. We won't know this until we have more information in a more regulated environment from the clinics. So, a priori, you don't know how many embryos you are going to be able to produce, and then you don't know how many of these embryos are really going to come to term.

There's just a lot of variance here. We have stayed away from trying to say exactly what is necessary and have let the medical establishment, at this point at least—

Mr. Rob Merrifield: [*Editor's Note: Innaudible*]

The Chair: Mr. Merrifield, you have had about six cracks at this. Mr. Szabo and Madame Scherrer want to get in.

Mr. Paul Szabo: Thank you, Madam Chair.

The Chair: Mr. Szabo, please be very quick. We have been on this point for about 10 minutes.

Mr. Paul Szabo: Okay.

Dr. Françoise Baylis testified to the committee that in her experience women were already being drugged up to the max and we couldn't drug them any more to make them hyperovulate. So there was testimony saying there is a concern as a women's health issue.

But given the comments made, maybe a resolution is.... There's some dynamic going on here, and because Dr. Baylis is also doing the survey of the surplus of embryos at all the fertility clinics, more information will come out. So the mover might possibly want to consider or seek a little amendment here, saying “as prescribed by the regulations”. The issue is here and it's of concern. But down the road, the regulations will be much easier to work with, as opposed to putting it all in the legislation.

The Chair: Madame Scherrer.

[*Translation*]

Ms. Hélène Scherrer (Louis-Hébert, Lib.): Thank you, Madam Chair.

I feel like my colleague and I would like to ask a question. If we do not put this into the bill and rely instead on the regulations, what language will be used in the regulations? Are we still going to have the same terminology, “reasonably necessary”, or could we expect something much more definite, something like a range if we do not have a precise number? The words “reasonably necessary” are difficult to define and if you say that the language will be the same in the regulations, are we going to be any further ahead?

[*English*]

Ms. Caroline Weber: [*Editor's Note: naudible*]...regulations using this kind of language at all. It might take us a few years of data, though, for us to know exactly what the reasonable number is. But we're anticipating that kind of timeframe for development of regulations. So this may be the kind of thing that gets regulated at the end of regs development. But I don't imagine that's using—

The Chair: That's not her question. Her question is what could we put in the bill to allude to the fact that we're concerned about this? Maybe that's a question you have to think about overnight.

Mr. James Lunney: Madam Chair.

(1010)

The Chair: Dr. Lunney, are you on this point?

Mr. James Lunney: Yes. It's on the “reasonably necessary” thing.

What we're trying to put in the bill are measures of accountability. There's this concern about so-called surplus embryos and how many are out there and how useful they'll be. But what we're trying to address here is to make sure we don't get people deliberately driving to create a surplus at the expense of the donors.

The Chair: Yes, exactly.

Mr. James Lunney: I think it's very much a reasonable thing to put in there. “Reasonably necessary” means it's defined by their colleagues in the field. It's not by their own personal belief; it's by what the consensus is in the community, and that gives at least a measure of accountability.

The Chair: Isn't it fairly frequent that the regulations put meat on the bones of the bill, that these kinds of generalities are often found in a bill? Your concern is that this is captured under the Criminal Code and that's what makes it difficult. But if it were backed up by regulations, wouldn't that lead a judge in a court?

Mr. Glenn Rivard: There's no doubt there is authority in clause 10 of the bill to do exactly this sort of thing, although, as my colleague, Ms. Weber has indicated, we can't anticipate the regulations are going to say right from the start that you can only create *x* number of embryos. It's dependent on a large number of factors, and the regulations may well set out the factors that should be taken into consideration. But, ultimately, it would rely on the medical judgment of the doctor performing the procedure.

We have to remember, too, that this is backed up by the prohibition that says, basically, embryos can only be created for purposes of reproduction. So if you have an excessively large number, it is possible to come and say, can you justify that number? How does that accord with any reasonable requirement for reproduction?

Given all of the factors involved in this, it's very problematic to either put in a very general phrase that is in the motion or a concrete hard number. It really does require the subtlety, if you will, or the details of the regulations to circumscribe this area.

The Chair: I think I'm going to call this question. We're beating this thing to death. We all understand what it's about. It's about trying to get something in the bill that would constrain some doctor who wanted to produce 45 embryos, etc.

Mr. James Lunney: Can I make a friendly amendment here?

The Chair: Dr. Lunney.

Mr. James Lunney: At the end of this clause, if that would make it more acceptable to people who are concerned about it, we could add, “as defined by the regulations”, or

"prescribed".

The Chair: At the end of the proposed (4)?

Mr. James Lunney: At the end of the proposed (4) put "as prescribed by the regulations".

The Chair: I think that's pretty self-explanatory. We're going to vote on this amendment, so we'll vote on the subamendment first: "as prescribed by the regulations".

(Subamendment agreed to)

(Amendment negatived)

(Clauses 7 and 8 agreed to)

The Chair: We have no amendments on clause 9, so I have to assume everybody is happy with it. Shall clause 9 carry?

(1015)

Mr. James Lunney: Wait a minute, Madam Chair. Amendment CA-24 does address new clause 9.1.

The Chair: The legislative clerk suggests that it would have to be a new clause, so it would come after clause 9, as written, and it would cause renumbering.

Mr. James Lunney: I see. It came back designated as clause 9.1.

The Chair: It's the only way they can do it, until they see if it carries or not. Eventually--

Mr. James Lunney: Then I suggest we put off voting on clause 9 until we deal with this. It's very simple.

The Chair: Are you adding a few words after the period at the word "donor" in clause 9?

It's a whole new thing is what we're saying here.

Mr. James Lunney: No. It relates to the prohibited activities, and clause 9 is all about that.

The Chair: Yes, but it would add a new clause under "Prohibited Activities". We understand that. That's why they've numbered it clause 9.1, to assure you that it's after clause 9 and before clause 10. In the end, if it passes, what is now clause 10 would become section 11 and yours would become section 10.

Mr. James Lunney: Okay.

The Chair: Let us look at the substance of it, Dr. Lunney. Explain to us why you want to do this.

Mr. James Lunney: The intent of this is quite simple, really. The previous clauses, clauses 5 to 9 inclusive, have dealt with prohibited activities, and this is an attempt to specify involvement in prohibited activity. It's taken out of standard law procedure, basically, and it happens to define who actually is involved in an activity and who is culpable. If you know about an activity and you fail to take the appropriate action to prevent the prohibited activity, then you're also committing an offence. It tightens up the loopholes, and if the intention is to prohibit an activity, then this simply spells out, in more appropriate legal language, and defines who is actually responsible.

It was recommended by a lawyer who had a good look at this for us and said it's standard legal procedure to define when you're prohibiting something.

The Chair: In standard drafting of legislation, I believe, when you're into prohibited activities, every provision of the Criminal Code applies, and these are the things that are found in the Criminal Code.

Am I right, Mr. Rivard?

Mr. Glenn Rivard: That's correct. This provision is based upon the Criminal Code provisions relating to the subject matters of "attempting", "who is a party to an offence", "common intention", that sort of thing. Pursuant to subsection 34(2) of the Interpretation Act, all of these sorts of provisions of the Criminal Code apply to any federal enactment, and that means any federal act or regulation for which there's a penalty attached, either an indictable or a summary offence.

So all of these provisions in the Criminal Code already apply or will apply to the assisted human reproduction bill. On the one hand, it's redundant to put this in. There is a danger as well that if the criminal law of parties to an offence, for example, evolves, changes over time through subsequent amendments to the Criminal Code, then you would have an entirely distinct regime for this bill from the mainstream of criminal law. And this could cause lots of complications down the road. So it's not necessary. It's much better to keep this bill governed by the sorts of provisions as they exist in the Criminal Code.

The Chair: You've heard the two arguments: Dr. Lunney's reason for putting it forward; Mr. Rivard's reason for not putting this in in the first place.

(Amendment negatived--[See *Minutes of Proceedings*])

(Clause 9 agreed to)

(1020)

Mr. Rob Merrifield: Just before we do that--

The Chair: No, no, I just did it. You can't just say "Just before we do that" after I do it. It is done. Clause 9 is carried. CA-24--

Mr. Rob Merrifield: I thought we had to either agree with it or not before it carried.

The Chair: I did have a sufficient number agreeing. Do I have to have unanimity?

Mr. Rob Merrifield: I chatted with you about it just before you did that.

The Chair: You didn't. I did it and then you said "Just before you do that"....

Mr. Rob Merrifield: If that's the way you're going to call it, that's fine.

(On clause 10--*Use of human reproductive material*)

The Chair: Your amendment CA-24(o)(a) is next, Mr. Merrifield, on page 35.1.1

Mr. Rob Merrifield: Yes, that's right. I think this goes along with the intent of our legislation that we restrict the amount of potential abuse for research on embryos. We probably had our terminology right on the first piece of legislation. We're saying only "if no other biological material can be used for the purpose of the research", with the promotion of healing therapies as its objective.

The Chair: It's pretty self-explanatory.

Mr. Rob Merrifield: Yes, it's pretty self-explanatory.

The Chair: It's well written and self-explanatory. It's whether you want to put this in or not. I see you reading it.

I'll call the question on amendment CA-24(o)(a). It is the addition of "if no other biological material can be used for the purpose of the research".

(Amendment negatived)

The Chair: On amendment CA-24(a), I think we might have some line conflicts.

Mr. James Lunney: Madam Chair, this is withdrawn.

The Chair: On amendment CA-25, Mr. Merrifield, we have a line conflict. Amendments CA-25 and CA-26 kind of go together. You're in clause 10 on page 7, line 26. It is "an *in vitro* embryo, for any purpose". It is changed by (b) to "an *in vitro* embryo, or any part of one, for any purpose".

Why did you want to do that, Mr. Merrifield?

Mr. Rob Merrifield: I think we should withdraw amendment CA-25 and look at amendment CA-26.

The Chair: Okay. I was looking at amendment CA-26 anyway.

Why do you want to add the words "or any part of one", Mr. Merrifield?

Mr. Rob Merrifield: I think it's appropriate under controlled activities that we put some direction on the controlled activities. When you look at any part of an embryo, we should be careful where we go with it. That's why I think it's appropriate to have it in there.

The Chair: Fine. Seeing no hands, I'll call the question.

(Amendment negatived--[See *Minutes of Proceedings*])

(Clause 10 agreed to)

(On clause 11--*Transgenics*)

The Chair: On amendment CA-27, Mr. Merrifield, lines 27 and 28. We're right at the beginning of clause 11. "No person shall" is already in there.

Mr. Rob Merrifield: No. What we're a little nervous about is that the effect of the transgenics would be banned and prohibited. That's what we'd like to see. Human genetic material, we feel, should not be combined with animals and plants. We've all had discomfort about it . We're saying it should really be in here and not be referred to the regs.

(1025)

The Chair: Okay. I think we need to know some science about this, on what it would actually do.

Ms. Caroline Weber: We also wanted some clarification of the intent. We could bring Rodney up. I wasn't sure whether you were trying to prohibit all transgenic research or only to prohibit some combinations or those that would be listed in the regulations. It seemed at first that maybe you were eliminating the licensing authority.

On further conversation with Mr. Rivard, there's a more subtle difference here that I would like him to speak to. We started to use an analogy of an on/off versus a dimmer switch

on the activity. We found it helpful.

Anyway, could you answer the first question? Then, if you'd like, we can give some legal reasoning about what the impact of this might be.

The Chair: No, we wanted scientific reasons.

Ms. Caroline Weber: You want the science. Okay.

The Chair: He's trying to remove an exception. He's trying to say there will be no exception to this: you shall not combine any part of the human genome.

Ms. Caroline Weber: So the intent is to prohibit all transgenic research.

Mr. Rob Merrifield: Yes.

The Chair: Can you explain what this would do if it eliminated all transgenic research? We don't like the idea of eliminating research, but I don't think we're that clear on what transgenic research is.

Mr. Rodney Ghali (Science Policy Analyst, Special Projects Division, Department of Health): Of course. Transgenic research is a huge field of research, not only in Canada but worldwide. Some common examples of where this research is employed is in cancer research, in Huntington's, for many diseases and disorders. The common example that I think will resonate with most people are gene knock-out experiments. That's where, in a cell, you would take a gene from another species like a mouse and you would knock out a certain gene. What that does is allow one to study what the effect of that gene has on cellular processes on protein functions. That type of research goes on.

The Chair: We're not worried about mice; we're worried about the human genome, which is part of that.

Mr. Rodney Ghali: That's what I'm saying. You can take a--

The Chair: Take an example where the human genome is involved in something that's going on right now.

Mr. Rodney Ghali: Well, say you have a dish of human liver cells and you want to study the effect of this one gene on liver cells. You could take the gene of a mouse and knock out that specific gene in those liver cells and then study what effect that gene in the liver cells has on the functioning of those liver cells, such as producing enzymes or proteins or whatnot.

The Chair: And this is already going on with this human genome?

Mr. James Lunney: There's something missing there. Why do you need a transgenic gene to knock out a human gene?

Mr. Rodney Ghali: You don't necessarily--

Mr. James Lunney: You didn't link that for us adequately.

Mr. Rodney Ghali: Okay. I was talking about cultures, but I'll bring that--

Mr. James Lunney: Nobody has a problem with them doing research on human genes. Why are we combining genes? That's what we're trying to get at.

(1030)

Mr. Rodney Ghali: I'll flip it around and I'll use the example of mice. What goes on in labs right now is you have a mouse and you introduce a human gene into that mouse. You take the human gene and it is then transplanted into the mouse. What you can do then is study the effect that gene has on the cellular processes. The reason why you need the mouse model or the animal model is to understand how that works in three dimensional spacial organization--not just in cell culture, but in an intact animal, to see how that gene effects many different processes. That's a transgenic experiment, because you have a human gene in the genome of another species, and that experiment is used in millions and millions of experiments, to study cancer, to study Huntington's, a number of central nervous system diseases.

Mr. James Lunney: Just for the record, can you give us an example of how they would put a human gene into a mouse? Do they use a virus as a vector?

Mr. Rodney Ghali: It uses a vector to introduce that gene into the host cell. That's the most common method.

Mr. James Lunney: Why would anybody want to take an animal gene and put it into a human, though?

Mr. Rodney Ghali: Are you talking intact human or human cell? You can do those experiments in culture. For example, when I was using the example of the liver cells or kidney cells, you can introduce, say, a mouse gene into a human cell while that human cell is in culture. It's for the same reason, to see how these genes interact.

The Chair: We want to know if it's ever going back into that human being from the person from whom the liver cells were taken. That person is--

Mr. Rodney Ghali: As of right now, I can't comment on whether that is actually occurring, but conceivably, down the road, there could be reasons to do that. But there are mechanisms and research protocols in place to protect the health and safety, if that is the concern of the committee at that point in time.

The Chair: Dr. Lunney, one last kick at this and then we'll vote.

Mr. James Lunney: It seems to me there are huge risks to human beings when you mix genes. We have a tremendous gene pool available among us, so why would we need to take animal genes to put them into a human being, which is a very questionable scientific pursuit? In fact, let me just go on for a minute here. It can expose us to great risks, particularly from viruses, and viruses are very species specific and they're tissue specific.

I'll tell you, these scientists--excuse me for saying so--with their great ideas exposed us to great risk, for example, with the polio virus, which was grown on monkey tissue, and monkey tissue had monkey viruses in it. I'm not arguing that we might have received a benefit out of it, but we also got an SV40 virus, a monkey virus, that then adapted to growing in human cells and is now being found in human cancers.

So when we take a mixed species, we give an opportunity for a virus from a foreign species to adapt to human cells. The question of containing that to a culture disc becomes one whereby we might wonder whether we actually have adequate safeguards in place to protect us against a virus that now adapts to a human cell. Can that be contained in a Petri dish, or can we in fact create nice plagues that nobody has contemplated as viruses and cross species that might never have had the opportunity had they not been grown or mixed?

There are some very serious scientific concerns about this, and to just say “trust us” when we have 6,000 cases of non-Hodgkin's lymphoma being diagnosed now in Canada, of which at least 30% have been identified as SV40, simian virus 40, a nice monkey virus.... It used to be a problem for monkeys; it's now a problem for humans.

So there are some legitimate questions that need to be asked about this, and “just trust us, we know what we're doing” maybe isn't good enough.

The Chair: Mr. Ghali, before you answer that, Madame Scherrer has another question.

[*Translation*]

Ms. Hélène Scherrer: All this scientific jargon sometimes goes over our heads and I would simply like an answer to the following question. If we take out the exception part of this clause, would it put an end to research that is presently under way. Is this research generally beneficial? This is what I want to know. Would we deprive ourselves of research that is

presently done and which could not take place otherwise?

[*English*]

Mr. Rodney Ghali: I think that's a very good point to bring up, and if this amendment were to go through, and if that is the intent of the committee, that would have a dramatic impact on the research sector within Canada. This type of research goes on in pretty much every major lab across the country, so it would have a significant impact on research into, as I was saying, cancer or central nervous system disorders.

I do appreciate very greatly the concerns Dr. Lunney brought up in terms of, say, transmission of viruses or going into areas where we don't know the ultimate impact they might have. I think the important thing to realize is that there are a significant number of research protocols in place, and these protocols are in place to ensure that the science is controlled to a certain extent.

You can, of course, bring up examples of where circumstances that were unseen did occur, and in your example transmission did occur, but it's important to realize that that is in the strict minority of cases and it is an exception. When you look at the amount of research that goes on, that is not the case, and this research ultimately is benefiting the health of Canadians and people worldwide.

So the important thing to realize is that by limiting all transgenic research, you are in effect shutting down important research within Canada.

(1035)

The Chair: People are getting impatient with this now.

Mr. Rob Merrifield: If we're going to vote this down, well refer it to regulations and licensing. So looking at the human embryos, and that's really the intent of where we're going, what would you license and what would you regulate?

Mr. Glenn Rivard: Just from the comments made, it appears that at least one of the concerns is the placement of an animal gene into the genome of a human embryo or human being. Paragraph 5(1)(*f*) would prohibit that, because it prohibits altering “the genome of a cell of a human being or *in vitro* embryo such that the alteration is capable of being transmitted to descendants”. There is research underway, but I'm not aware of any that actually involves placing an animal gene into the genome of a human embryo, which is allowed to develop. But in any event, this prohibition would address that.

The more normal course is either that a human gene is knocked out of a cell and the effect of that determined or a human gene is placed into the genome of an animal and then that is studied under lab conditions.

(Amendment negatived) [See *Minutes of Proceedings*]

(Clause 11 agreed to)

(On clause 12--*Reimbursement of expenditures)*

The Chair: Is your question on clause 12, Mr. Szabo?

Mr. Paul Szabo: G-1 changed the definition of DNA. Does subclause 11(2) have to be amended to conform with the definitional change made by the government?

Ms. Caroline Weber: I don't think we changed the definition of DNA.

Mr. Paul Szabo: You replaced the reference to DNA by a diploid--

Ms. Caroline Weber: That was for cloning.

Mr. Glenn Rivard: There is no connection between the two parts. That was the definition of “human clone”.

Mr. Paul Szabo: So you're saying there is no need....

Ms. Caroline Weber: Yes.

Mr. Paul Szabo: Thank you.

The Chair: We now are in a situation where we have four that are essentially in conflict with one another. We can't have them all, if you know what I mean.

Mr. Rob Merrifield: CA-28 was withdrawn.

The Chair: CA-28 is gone. We now have three.

We have G-4a, which is essentially under--

Mr. Jeannot Castonguay: I withdraw G-4a.

The Chair: Now it's G-4b, which takes us to clause 12, line 10. It's 39.3 in the new package. In the bill it's page 8. It changes the word “expenditure” to “expense”. Then it replaces line 13 by “ture referred to in paragraph (1)(*a*) or (*b*) unless a” . Essentially, it's taking out expenditures and allowing for expenses. As you'll recall, expenditures imply there will be a receipt, while expenses don't require a receipt. So the parliamentary secretary is broadening the payment methodologies.

(1040)

We took quite a bit of time discussing this at the beginning of the meeting, Mr. Rivard and Ms. Weber. It seemed to me many of the members were concerned about a surrogate, who was doing it essentially for altruistic reasons and not for a per diem or monthly fee, who found in month six and a half or seven that there was something wrong with the pregnancy and had to take time off work for her own health. They were concerned that whether she was self-employed or an employee subject to EI sick leave, there would be some way to make sure she didn't lose out on her anticipated monthly income--the one she had signed up for, and the income she had been making probably for years before she became a surrogate.

Is there any way to tie that concern to the receipted expenditures, without moving to this much broadening characteristic called expenses?

Mr. Glenn Rivard: As I've indicated before, I don't think it is a much broader term. It might be possible to prepare a section just dealing with lost income for surrogates.

The Chair: Why is the government putting forward expenses if you don't think it will be considerably broader? I thought it was to assuage those people who wanted it broadened.

Mr. Glenn Rivard: The view has always been that anything that includes an element of profit for the surrogate is prohibited by clause 6. Therefore, the only scope to allow for reimbursement really must be on the basis of something that does no more than put her in the position she would have been in, if she hadn't incurred the costs associated with being a surrogate.

The only choice then is whether you narrow that down to expenditures, or broaden it somewhat by the use of the word “expenses”. The only example of the difference between the two that comes to my mind is this question of lost income.

(1045)

The Chair: That's the only difference?

Mr. Glenn Rivard: It's the only example that has been raised with me, in terms of an element people feel would be....

Basically I have been asked, if we leave the word “expenditure” in there, whether she can be reimbursed for lost income. My advice has been she cannot, because that's not an out-of-pocket expenditure by her.

The Chair: But you could add a clause.

Mr. Glenn Rivard: So if you wanted to include lost income, you could do that by use of the word “expense”.

The Chair: You could also do it by leaving “receipted expenditures” and adding a new clause that specified lost income, could you not?

Mr. Glenn Rivard: You could do that.

The Chair: I'm surprised you're saying that lost income is the only expense you can think of, in changing from “receipted expenditure” to “expense”. It seems to me we talked about several other things; I just can't think of what they were.

Ms. Caroline Weber: The intent from a policy perspective--not to put too much burden on our counsel here--is to acknowledge the polling results that say Canadians are much more comfortable with ensuring that surrogates aren't worse off, and would be comfortable with reimbursement for lost income. So we have polling results that say Canadian values are consistent with this.

So it isn't a broad expansion. The intent really is to just include something like lost income. I have a hard time myself coming up with another example. So maybe we should draft something that gets very explicit about expenditures and lost income. We thought “expenses” was the clean way to do it, without adding a lot of words.

The Chair: The element of risk in a pregnancy, the element of possible pain and suffering, none of that--

Ms. Caroline Weber: None of that is intended to be covered by this. We were trying to expand it, but be very consistent with the principle of non-commercialization.

The Chair: So with this addition the government is suggesting in amendment G-4b there would be no need for a surrogate mother to provide receipts for anything, is that correct?

Ms. Caroline Weber: It's still subject to regulations, and so--

The Chair: No, no, in the bill. We can't anticipate what's going to be in the regulations.

Ms. Caroline Weber: Yes. They would not need a receipt.

The Chair: So a sperm donor would need a receipt, an egg donor would need receipts, but a surrogate mother would not have to keep receipts.

Ms. Caroline Weber: Correct. But I don't think that's sustainable, and I think the regulations would--

The Chair: But we can't anticipate the regulations, Ms. Weber, to be fair. We're only dealing with what the bill is going to say.

Mr. Jeannot Castonguay: That means you need receipts.

Ms. Caroline Weber: For donors of reproductive material, for sperm or eggs, yes.

Mr. Jeannot Castonguay: Paragraphs 12(1)(*a*) and 12(1)(*b*) remain there.

The Chair: Yes. It would require receipted expenditures for those people but not for the surrogate mother when you move to expenses.

So there are two ways to do it. One way is to allow for this, assuming that because there's no real compensation allowed--there's no monthly income, there's no per diem--the surrogate mother should not have to keep receipts--that's what this essentially says--but her expenses can be reimbursed. Who's going to track all that to see whether she is getting a monthly income, I don't know. But anyway, that's what it's proposing.

The other way is to stick with the receipted expenditures and ask counsel to draft an amendment that would cover the whole lost income angle for a person who had complications in pregnancy and was told to stay at home and not go to work.

Dr. Lunney.

Mr. James Lunney: Again, when you're opening the door to expenses, doesn't that open the door to living expenses? This includes her apartment, her food, her transportation costs, and her need for a holiday because of stress created by the pregnancy; maybe she needs to go to Hawaii.

Mr. Glenn Rivard: Not every expense incurred by her falls within paragraph 12(1)(*c*). It has to be an expense or an expenditure, depending on what word we end up settling on, that is incurred by her in relation to her surrogacy. Whether she is pregnant or not, she still needs a roof over her head and she still needs to eat. These are not expenses that are in relation to the surrogacy.

(1050)

Mr. James Lunney: I'm just concerned that when you have loopholes, you can have a lawyer or one of Mr. Rivard's colleagues arguing on the other side of the coin that in fact these are legitimate expenses, and away you go with commodification.

Mr. Glenn Rivard: I would also remind the committee that only those expenses that are set out in the regulations can be recovered. Again, it is a circumscribed term, and it's not any old expense that could be recovered. It would have to fit within whatever the categories were in the regulations.

The Chair: Mrs. Chamberlain.

Mrs. Brenda Chamberlain: We already know that people are contracting out to have babies, right? We know that, testimony has shown that, and the price is $18,000 to $20,000, question mark. We already know that, so really the question this committee has to grapple with is, do we agree with that or not? If we do, then I think we have to say it, and if we don't, then what does that mean? If somebody is caught paying that $18,000 to $20,000, does the middle person go to jail? What does that mean? That really is the nub of this.

Mr. Glenn Rivard: There's no doubt, given that scenario, that the person making the payment would be charged under clause 6, and it carries up to ten years in prison. That's exactly the sort of scenario caught by clause 6 of the bill.

Mrs. Brenda Chamberlain: However, we know it's going on. We know that is going on consistently, that people are being paid between $18,000 and $20,000. They're not going to jail, right? So while you say that's--

Mr. Glenn Rivard: There's no law against it now. The bill has to be adopted; it has to come into effect.

Mrs. Brenda Chamberlain: So then you would put those people in jail.

Mr. Glenn Rivard: Presumably, they will stop the conduct, but if they were to continue to engage in it, if such contracts were entered into, they would fall under clause 6 of the bill.

The Chair: We're in the unenviable position of being asked to legislate on an issue on which the law has been silent. I don't know this, but I'm guessing that every government has been hoping every other government would legislate in this area. Because family law, which is part of this web, is provincial, I think we were thinking the provincial governments might legislate. Quebec did. It fulfilled its responsibilities in that area. It's been going on and on, so finally we've decided someone has to make a law in this area because you just can't have this kind of ambiguity and people questioning out there.

After we heard the testimony, according to the committee's report the consensus of the committee members at least at that time was that they were not happy about the commodification of the making of babies. They were not happy about the commodification and the commercialization of the buying and selling of human reproductive material, and they were not happy about the commercialization, which some people called rent-a-womb.

That's why the report read a certain way. To be fair to the officials, that's why they wrote the bill that way, though slightly modified. We said that absolutely no money should change hands. They felt that was not reasonable, so they came back and opened it up just a little bit by saying “receipted expenditures”.

That's not what we said. We said that no money should change hands, which may have been a little too idealistic. They came back and said “receipted expenditures”. Now we're under some pressure to broaden it further to include expenses. This amendment would broaden it further.

Ms. Wasylycia-Leis.

Ms. Judy Wasylycia-Leis: I missed most of this discussion, and I apologize. This is a government amendment we're voting on. Could you tell me, Madam Chair, from the point of view of the committee's work and our report, whether or not this amendment is consistent at all with our committee's report?

The Chair: That's what I thought I just said. Our committee's report said that no money should change hands for human reproductive material or for surrogacy. That's what we said very, very clearly.

Ms. Judy Wasylycia-Leis: You said that's why the government brought forward this bill, and now the government's bringing in amendments.

(1055)

The Chair: The government brought forward a bill that opened up our...we had locked the door completely. They opened it up about this much by saying that we had been a little too idealistic and not sufficiently practical and that receipted expenditures of the surrogate mother should be able to be reimbursed by the commissioning couple. That's what's in the bill in front of you.

In the package you have an amendment that broadens it further to “expenses”, although the only example counsel can come up with is the putting forward of moneys to cover lost income in case the woman has to stay off work for a couple of months. They've also tried to reassure us by saying the expenses would be listed in the regulations.

The question is, do we trust the writers of the regulations to make those expenses narrow enough, or could they just be the kind of things the surrogacy proponents...? They would include everything under the sun: to keep her spirits up she needs a pink umbrella with purple polka dots. The way they talk, it's just everything to do with her life they'd like to reimburse.

Ms. Judy Wasylycia-Leis: Thank you.

The Chair: That's a summary. G-4b is broadening it beyond what the drafters of the legislation put in.

I think Madame Scherrer had something.

[*Translation*]

Ms. Hélène Scherrer: Contrary to what has been said up to now, I never had any difficulty in allowing the reimbursement of all of the expenditures of the surrogate mother. Where I have a problem is when I am told there would be compensation only for inability to work. I see it as a problem because, for example, a woman who does not have paid employment, a stay-at-home mom, would deserve just as much to be compensated for an inability to work for a given period. The example you gave of a loss of paid employment raises a problem for me. A stay-at-home mom who does not have an outside job also makes an important contribution to society. I have a problem when we say compensation would be limited to the loss of paid work, because the woman who stays at home also deserves and needs financial support during the course of her pregnancy when part of her activities will likely be curtailed. I have a problem with the explanation you have given.

Ms. Francine Manseau (Senior Policy Analyst, Special Projects Division, Health Policy and Communications Branch, Department of Health): As Mr. Rivard said, it will be a matter of drafting the regulations. The point you make about a person needing child care at home because she cannot continue looking after her children is an interesting one. I would need to talk about it with Mr. Rivard, the legal counsel. It might be possible to draft the regulations so as to allow for these exceptional circumstances, where a receipt could still be required to ensure that there was a real need. If the doctor orders the woman to completely stop working, she will need support at home. It might be possible in the regulations to...

Ms. Hélène Scherrer: In the bill as written is a receipt required for all expenses? A receipt could be produced for the services of a caregiver also.

Ms. Francine Manseau: A receipt must be provided for all expenditures.

[*English*]

The Chair: Are you ready for the question?

Mr. Rob Merrifield: I have a question.

The Chair: Some people are ready. Make it very, very quick, Mr. Merrifield. We're not going to beat this to death.

Mr. Rob Merrifield: I think what we have to understand here is--we sat around as a committee and discussed this and we've heard a lot of witnesses on it--that what we're deciding right now is whether we're going to allow commodification in this area or not.

When you add the word “expense”, make it very clear around this table when we go to vote on this that we've opened it up to all kinds of scenarios. We're not saying that a person is going to work for seven months and take unemployment. It could very easily be that if there's no receipt the person could be employed right from the day of pregnancy and be compensated accordingly. It could be all kinds of scenarios, where you're talking about babysitters or stress leaves, stress vacations, anything and everything. I think we need to understand that's where we're at with this right now.

You can say that we're going to capture that in the regulations. Perhaps we will, perhaps we won't. This is what we're deciding right now. That's the point I want to make.

The Chair: Dr. Lunney.

Mr. James Lunney: Again, I think receipted expenses.... When you start talking about child care you're into the $18,000 to $20,000 scenario, if you're talking about nine months of child care expenses.

(1100)

The Chair: But babysitting for a person who's sick could be a receipted expenditure. A babysitter could give a receipt. And if all these things are tied to the person not being well, it seems to me it would be easier to manage.

Mr. James Lunney: The current legislative language opens the door wider than we wanted, as a committee, when we looked at this in detail. I think we'd be wise to keep the door at least that secure, with all due respect.

The Chair: Dr. Castonguay.

[*Translation*]

Mr. Jeannot Castonguay: Madam Chair, the intent here is not at all to open the door wide. It is simply a matter of recognizing, as we did while reflecting together on this issue,

that a woman could at some point in time be unable to work because of complications occurring in her pregnancy, as was explained earlier. We are simply trying to recognize this possibility. The intention is not at all to open the door to commodification. At any rate, there are other provisions in the bill to keep the door secure.

Again, the intention is not at all to open the door wide. It is just a matter of being fair to these persons who agree for very noble reasons to undergo a pregnancy.

Thank you.

[*English*]

The Chair: Yes. I want to make one comment, as chair. I can't help but recall the people we had from the royal commission. A couple of the royal commissioners, who worked for three or four years and put their thing together, came and testified before us and said, “If you open this door a crack, the proponents of this activity will drive a ten-tonne truck through it”. They said, “Be very, very, very careful with this particular thing”.

So while Dr. Castonguay is giving us the absolutely harmless example, that is, the recompense for lost income should a pregnant woman become sick, that's one example. But I think there are probably many, many others, and it will commercialize surrogacy, in my view.

Dr. Dromisky, I'll give you the right to rebut, if you want, because I've taken a pretty strong stand.

Mr. Stan Dromisky (Thunder Bay—Atikokan, Lib.): I'm supporting the motion because I have faith in the group that will be creating the regulations to control. I think they are rational people. I think they'll be able to take into consideration the kinds of concerns that have been raised. But above all, from their years of experience they'll know where people cheat and deceive and lie and so forth and will therefore know what is a reasonable expenditure. I think we always have to keep in mind--

The Chair: Mr. Dromisky, “expense”. Don't use “expenditure”.

Mr. Stan Dromisky: Expense. Yes, excuse me. Delete that from the record. It's “expense”. Right.

I think we also have to keep in mind that none of us here have ever been in that position where we can call ourselves surrogate mothers. And we have really no idea what the whole process is all about pertaining to this kind of situation. Therefore, I'm calling for the vote.

The Chair: I call the question on amendment G-4b. Do we want a recorded vote on this?

Some hon. members: Yes.

(Amendment negatived: yeas 6; nays 7) [See *Minutes of Proceedings*])

The Chair: Now CA-29.

(1105)

Mrs. Brenda Chamberlain: Is there lunch being brought in, Madam Chair?

The Chair: Yes, although it's not being brought in until 12 noon. I'm wondering if you might need a little break.

Mrs. Brenda Chamberlain: That's fine. There's a vote--

Mme Yolande Thibeault: No, let's keep going. If we have to vote, I would think--

The Chair: No, they're calling it back to order.

Do you want a little ten-minute break? I think lunch is being brought in at...what time? Noon?

The Clerk of the Committee: Yes. It might come in a bit earlier.

The Chair: Shall we just keep going? Yes, we're pretty tough. You can leave for a minute.

Mr. Réal Ménard: You can have a ten-minute break. Democracy, a ten-minute break. Some people need a ten-minute break.

The Chair: What are you saying?

Mr. Stan Dromisky: A coffee break.

The Chair: Some people obviously need a break, so we'll take it for ten minutes.

(1106)

(1118)

The Chair: Could we please come back to order, ladies and gentlemen.

We're on page 41, amendment CA-29.

Mr. Merrifield, would you speak to your amendment.

Mr. Rob Merrifield: Yes. This actually goes along with a lot of the debate we just had before the break. The difficulty is that we're going to hopefully rely on the regulations to put some parameters on this whole area. But we're at least saying that when it comes to expenditures, they should be “reasonable, necessary and directly related to the objectives above”. We think it at least gives an intent of where the regulations should be going, which is why it's here.

(Amendment negatived: nays 5; yeas 3) [See *Minutes of Proceedings*])

(Clause 12 agreed to)

Mr. Rob Merrifield: Réal is not back from the break.

The Chair: No, Réal is not coming back until this afternoon.

Mr. Rob Merrifield: And is Judy?

The Chair: I don't know about Judy. But we have a quorum anyway.

CA-30.

Mr. Rob Merrifield: We only have quorum if we're here.

The Chair: Pardon me?

Mr. Rob Merrifield: We only have quorum if we're here, and....

The Chair: Dr. Lunney on CA-30, could you—

Mr. Rob Merrifield: I sure don't like the last vote and where it went, because I don't think it was reflective of where all of the opposition is. So I'm a little nervous.

The Chair: Well, we have Liberals missing too.

Mr. Rob Merrifield: Not very many.

The Chair: Dr. Dromisky, Mrs. Chamberlain, and Mac Harb are missing.

I think we can proceed. I don't see that it would have been any different, Mr. Merrifield. I think they've tightened—

(1120)

Mr. Rob Merrifield: We've got support all the way here, and there was support on the other side. That's what makes me really nervous about moving on here.

The Chair: We have a quorum.

Mr. Rob Merrifield: You only have quorum if we are at the table.

The Chair: Oh, come on.

There are no amendments on clause 13.

(Clause 13 agreed to)

(On clause 14--*Information to be collected by licensees*)

The Chair: We are on clause 14. These are two new ideas.

Dr. Bennett will not be here this week because her mother is extremely ill, and she has to be by her bedside.

Dr. Lunney on CA-30.

Mr. James Lunney: Madam Chair, as we did with the prohibitive ones, CA-30 simply seeks to tighten up the definitions of who is taking part in a controlled activity and who is culpable for violations of controlled activities. It is simply an attempt to make it clear to anyone who is involved.

The Chair: This is a similar clause to Dr. Lunney's last one, which is actually covered in the Criminal Code. I think I'll call—

Mr. James Lunney: I know. But we were concerned when we went into this subject matter that if we left loopholes somebody was going to try to drive a Mack truck through them—as we were advised by those involved with the Royal Commission on New Reproductive Technologies. It is simply an attempt to tighten it up and specify who actually would be culpable or guilty of an offence.

The Chair: Thank you, Dr. Lunney.

(Amendment negatived) [See *Minutes of Proceedings*])

The Chair: NDP-5 is the precautionary principle. We've already decided against that, so—

Ms. Judy Wasylycia-Leis: Oh....

The Chair: Unfortunately, you will recall we did that on the last day.

Ms. Judy Wasylycia-Leis: Isn't this a little different, Madam Chair?

The Chair: No, it is still the precautionary principle.

Ms. Judy Wasylycia-Leis: But it specifically refers to “all controlled activities”?

The Chair: CA-31 is Mr. Merrifield.

Mr. Rob Merrifield: Well, I'll tell you I'm a little nervous on this right at the present time, and I'll tell you why, because it's something that as a committee we have talked about. We have all wanted to put required counselling into this legislation somewhere. I am a little nervous that we're sitting with a number of committee members who are not up to speed on this bill, not up to speed on the witnesses. When we go into a vote on this I think it's inappropriate, so I would like to defer this, if that would be okay.

What this is doing is requiring a person to receive the appropriate counsel rather than just leaving it there as an option.

(1125)

The Chair: It says, “make counselling services available”, but you're thinking to yourself, what if the person doesn't want to have counselling.

Mr. Rob Merrifield: That's right.

The Chair: This is “and require the person to receive counselling”. So it's tightening up the counselling aspect.

Mr. James Lunney: For example, with the language as it is, “make counselling services available”, there could be a counsellor in the clinic if somebody requests it. But if they don't ask for it, they don't get it. So this tightens it up to make sure that if they're going to proceed with it, they have counselling and it's mandatory.

Mr. Rob Merrifield: Before we get into a discussion on that, are we prepared to defer this, or do you want to continue with it?

The Chair: Well most people....

Dr. Castonguay.

[*Translation*]

Mr. Jeannot Castonguay: Madam Chair, you all agreed that it was important to ensure that counselling would be available in the clinics and it is something we all really believe in. However, in an actual situation, I cannot impose counselling on the patient who comes to see me. I can provide information to the patient but I cannot force it down his or her throat as if the patient were a goose that can be force-fed in order to produce foie gras. I do not think it is realistic to believe we can do that. What is important is to make sure that the service is available and that the client is aware of its existence. For those reasons, I am unable to support the amendment.

[*English*]

The Chair: Dr. Castonguay, we heard testimony that there are some clinics where the doctor will not proceed until the people have met with a counsellor. So certain of the clinics are in that mode and others are what I would call loosey goosey, if you use an expression. They have somebody available if the person asks. Dr. Lunney is saying that this modus

operandi that we heard about--I think it's the clinic in London, Ontario--should be made applicable across the country.

Mr. Jeannot Castonguay: To require a person to receive counselling is so impossible.

The Chair: I know what you're thinking, but if the doctor won't see the person until they've had the counselling, the person will have the counselling. That's the way it's done in London. The doctor will not see the patient for reproductive technology services until he or she is confident that the people know what they're getting into.

I think Dr. Lunney got this idea from the testimony of one of the witnesses.

Mr. Dromisky.

Mr. Stan Dromisky: Yes, the clinic in London, Ontario, realizes, as you have said time and time again, that these people are desperate. So whether the woman wants counselling or not, she's going to accept that condition in order to go through the whole process within that clinic.

But I agree with my friend here that I don't think you can really force people. There are going to be situations in clinics across the country where possibly counselling is not the most professional in calibre and quality. There could be some kind of superficial counselling given by somebody, I guess. I don't know.

I just think you are putting a demand here that would be impossible to meet in every situation in the future in this country from coast to coast. Not every community has the kinds of clinics you have in Toronto or London, Ontario, or Montreal or Victoria or Vancouver.

The Chair: Not every community is going to have a licensed facility either.

Mr. Stan Dromisky: No, that's right.

[*Translation*]

M. Réal Ménard: Could we have the advice of our...

[*English*]

The Chair: Ms. Weber.

Ms. Caroline Weber: I will pass to Mr. Ménard, but our biggest concern here is our charter problem, that we can't interfere with the treatment. While some medical practitioners may require counselling, that's part of their medical practice. They may be open to charter violations that way, but to actually require them to do it, we'd open it all up to a charter violation.

Glenn, I don't know if you want to expand on that.

(1130)

The Chair: Mr. Rivard, and then Mrs. Wasylycia-Leis.

Mr. Glenn Rivard: I did seek an opinion from our charter experts in the Department of Justice, who indicated that in their view this raised a significant charter risk, although not so high that the Minister of Justice would withdraw his endorsement of the bill. The essential problem is that it engages section 7, the right to liberty, because it puts an impediment to a person exercising the choice of trying to become pregnant and to have a child. That's the nature of the concern. It's not a problem at all to make these services available and to inform them that they are available, as the current provision in the bill does, but requiring that they attend counselling does raise a significant charter risk.

The Chair: Ms. Wasylycia-Leis.

Ms. Judy Wasylycia-Leis: I'm not sure I'd buy this charter argument.

The Chair: Yes.

Ms. Judy Wasylycia-Leis: I would think there are probably all kinds of situations in our society today where we require certain things to be done before you'd have the right to get a licence in some areas--

The Chair: To pass a test or something.

Ms. Judy Wasylycia-Leis: --like getting your licence to drive. There's no charter problem with requiring people to take *x* number of courses before they take their test.

It seems to me that the charter argument just doesn't wash here.

The Chair: Yes. It is weak.

Ms. Judy Wasylycia-Leis: What we're dealing with is the idea of--and this we heard loudly and clearly throughout our hearings--mandatory counselling, because you have the situation of people who, yes, are desperate and will do anything and aren't thinking straight, and you have operators out there who are pushing their interventions, and who are trying to find any way they can to end-run the process and shortcut this area.

I would think this is workable. It puts an obligation on these clinics, wherever they are, to be forthcoming and honest and provide all the facts to the woman about the success rates, about the side effects of drugs, about the long-term consequences, about the hopes and possibilities, to be absolutely clear so that a person is making a completely informed decision. So I think anything we can do to require that is worth trying. If it comes to a charter challenge, let it happen.

The Chair: Dr. Lunney.

Mr. James Lunney: Thank you, Madam Chair.

I appreciate the points that Judy has raised. She raised a lot of the issues I wanted to bring up. But we heard compelling testimony from people who had been through the procedure, who are further down the line than those who are just starting in that desperation stage, and there are important issues at stake here. This is not the normal route of reproduction; let's not lose track of that. It's not just a question of a charter interfering with somebody having a baby; it's a question of this child coming from different origins and the whole question of disclosing that to the child--when you disclose it, how you do that--because for some who find out accidentally, it creates a crisis of identity.

So there were some very delicate planning procedures there, that people need to think through the whole process. And from those involved in the counselling industry, we heard some very, very compelling arguments for mandatory counselling to make sure people knew what they were getting into and looked further down the line.

The Chair: Mr. Szabo.

Mr. Paul Szabo: Maybe the counsel could advise whether there's precedent for a parallel.

I know under the Divorce Act, for instance, there are some provisions whereby a lawyer must do certain things with regard to counselling, and the Minister of Justice is now proposing to bring forward legislation that will require mandatory counselling prior to granting of a divorce. So maybe there are some precedents or parallels that currently exist that may be helpful so that the charter bogeyman is somewhat mitigated, because it is in the best interest. When you balance the principles of best interest of those involved with the child, this is consistent. So maybe there is some parallel.

The Chair: Certainly in adoption there is no way you could adopt a baby if you refused to have counselling or meet with the people. They put them through a very stringent set of inspections and counselling criteria that the couple has to meet before they can adopt.

Mr. Rivard, I'll let you answer now.

Mr. Glenn Rivard: I'll just make a few comments.

The charter is potentially engaged when Parliament legislates on a matter. Therefore that separates this from a situation where a particular doctor, as a matter of their practice, simply requires the patient to undergo counselling. That would not engage the charter.

The second point I would make is that the charter's engaged not simply because we create a requirement; it's what that requirement is created in relation to. The example was given of drivers' licences, and the basic view that the right to drive a car is not as fundamental as the right to have a child and create a family. Therefore it's the nature of the activity and how fundamental it is to an individual's liberty and basic choice of life that raises the charter risk.

I'm not aware of any other legislation that requires counselling. I can't say it doesn't exist, but I'm not aware of any.

(1135)

The Chair: Dr. Dromisky.

Mr. Stan Dromisky: I still have concern about this requirement being placed on the person. The person is to receive counselling, so the onus is on the person to prove they have had counselling. As I said before, superficial counselling could take place by somebody. Somebody could do the counselling. It could be a priest, a minister, a social worker, or the next-door neighbour. I don't know.

Maybe the onus should be not on the person but on the clinic to provide counselling services. That would meet Judy's concern that the professional level be maintained and be consistent in every counselling session. Only the professional person doing the counselling would have all the data you referred to--not a lay person, a social worker, a priest, or a minister. So the onus should be on the clinic. They should have control over it and ensure it's done very professionally.

The Chair: Subclause 14(2) is about the clinic, not the person. It says the licensee, the managerial person in the clinic, shall inform the person, make counselling services available, and obtain the written consent of the person.

Mr. Stan Dromisky: I was just concentrating on the amendment, sorry.

The Chair: Instead of “make it available”, how about “the licensee shall provide counselling services”? That would make it a sure thing.

The researcher has reminded me we want independent counselling; we don't want the doctor doing the procedure to do the counselling.

Mr. Rob Merrifield: That's why the amendment--

Mr. James Lunney: Receive counselling--it could be independent of outside--

The Chair: It could be, but that's not precise.

Mr. James Lunney: If you say “provide”, it puts it in the context of the clinic.

The Chair: They're suggesting we say “provide independent counselling” or “professional counselling”, as opposed to “medical counselling”.

Mr. Rob Merrifield: Many of the witnesses said there were different interests from the clinic's perspective and the doctor's perspective, so you should almost have this third-party counselling as part of it. We could have put that in there, but I didn't think it would pass. I would certainly favour that.

The least we're saying is that within the clinics there absolutely has to be this mandatory counselling for anyone who's going to get involved in reproductive technology. They're focused on a baby, but we've had all kinds of witnesses here who are 19 or 20 years old, and the repercussions that follow in this whole area are very significant. So we have to look a little further upstream, to make sure we do our work here. It's very reasonable. Some of the clinics are doing this as a point of practice, and some are not. We're just saying they all should be.

Mr. Stan Dromisky: Madam Chair, I'm still concerned about the amendment. It has to be a professional person who is doing the counselling. I could own a clinic and I could tell my client to go see so and so and get some counselling from that person, and that person maybe is not a professional individual but he's interested in this kind of problem.

(1140)

Mr. Rob Merrifield: Dr. Drominsky, I would accept then professional counselling as an amendment there. Just put “receive professional counselling”. I would accept that.

Mr. Stan Dromisky: Yes, sure.

The Chair: The other thing is that I notice it says “a licensee shall,” and the other paragraphs, 14(a) and 14(c), start with a verb. One is “inform,” and the other one is “obtain”. In (b) it's watered down. It says “to the extent required by the regulations, make counselling services available”. I don't know why we wouldn't want that one as strongly worded as the other two parts of this clause, and instead of saying “to the extent required, make counselling services available”, which puts it in the passive, say “provide professional counselling services to the person”.

Mr. Glenn Rivard: If I may comment, the reason that was placed in there was exactly to respond to some of the concerns here. It would allow, through the regulations, to set out in greater detail the nature of the counselling that's to be provided--what sorts of educational or professional qualifications the counsellor must have.

The Chair: We could still do that in the regulations, could we not?

Mr. Glenn Rivard: You would want to preserve--

Ms. Caroline Weber: Madam Chair, I don't think you would want the clinics to provide counselling.

The Chair: In some cases--

Ms. Caroline Weber: Some of them do, I know, but to require them to provide counselling may not get you exactly where you want to be. I think “make available”, but the intention again was--and I know this doesn't always satisfy to define what is appropriate in counselling in the regulations. We have it in paragraph 65(1)(o).

Mr. Rob Merrifield: Would it be appropriate if Dr. Dromisky's amendment were to provide third party professional counselling after the word “receive”? That would accommodate all the concerns.

Mr. Glenn Rivard: Might I suggest--not that I'm supporting the motion--instead of the words “third party”, that “independent” would be more appropriate.

The Chair: How about “the licensee shall”, in paragraph 14(b), “ensure that the person has received counselling services in accordance with the regulations”? So “shall ensure” puts the onus on the licensee. There shouldn't be a charter concern there.

Mr. Glenn Rivard: You would drop the “independent”--

The Chair: We could say “professional.”

Mr. Glenn Rivard: I'm not sure. What exactly are you seeking to replace?

The Chair: We don't like the passive nature of “make services available”, which sounds as if everybody has the choice. First of all, maybe the licensee doesn't even mention the counselling. They're just available and they're over there. We're trying to make sure that as a part of the process, counselling is a step in the process, as it is in adoption.

Mr. Glenn Rivard: I'm sorry, the suggestion therefore was...?

The Chair: To “ensure that the person has received professional counselling services”.

Mr. Gary Lunn: Independent or professional?

The Chair: We don't want to say “independent”, because, for example, the girl in London works for the clinic. She is on salary there, so that is not independent, and yet she was excellent. So we give them a little bit of flexibility--maybe in-house, maybe outside of house. When we say “professional”, we do not mean the medical implications. We mean the familial and societal implications.

Madam Scherrer.

[*Translation*]

Ms. Hélène Scherrer: Thank you.

I would like some clarification on this clause. Where is refers to the person, who are we talking about exactly? At the beginning of the paragraph, “before accepting”, are we talking about the donor?

[*English*]

“before accepting”, are we talking about the donor?

[*Translation*]

In paragraph (2), are we actually talking about the donor? As far as I am concerned, I do not see why there would be an absolute requirement to provide counselling to the donor of reproductive material. In my view, this is not essential, except for a surrogate mother or couple.

Someone who comes in to donate sperm or reproductive material probably does not have an absolute need of counselling. He may need legal information but he is not the one who is desperate; it is rather the infertile couple.

[*English*]

The Chair: As I read the beginning of that subclause 14(2), it says “Before accepting a donation of human reproductive material,” so that would include both donors, egg and sperm, “or of an *in vitro* embryo,” so that would include a surrogate mother, the commissioning couple--all those people.

(1145)

Ms. Hélène Scherrer: When we're talking about paragraph 14(2)(a), paragraph 14(2)(b), and paragraph 14(2)(c), we're talking really about subclause 14(2). So if you read that, you're going to see that we're talking about the donor. And do we really want the donor to have mandatory counselling?

The Chair: Well, certainly in the case of the donation of eggs, which requires quite an invasive procedure--

Ms. Hélène Scherrer: Yes, but we're not talking about those who are really desperate at that time. We're talking about the donor--

The Chair: We're talking about everybody in the process, essentially, because it means the donor of the sperm, the donor of the egg, the donor of the embryo, the people receiving the embryo.

Ms. Hélène Scherrer: I was wondering about the way it is written. When we're adding paragraph 14(2)(b), for example, are we talking about all of clause 14, or are we just talking about paragraph 14(2)(b)? Because if we are, I don't really want the donor to have mandatory counselling. It's not, for me, absolutely necessary. It is for the mother who's receiving...it is for the couple that's infertile.

The Chair: You don't think the egg donor needs counselling?

Ms. Hélène Scherrer: Yes, I know.

No, I was talking about the fact of the way it is written.

The Chair: Which person doesn't need the counselling? This means all the persons, essentially. It's another use of--

Ms. Hélène Scherrer: The way it is written we are talking about the donors if you read just paragraph 14(2)(b).

Mr. Glenn Rivard: Perhaps I could clarify this.

The Chair: In my view, it's everybody. Is that correct, Mr. Rivard?

Mr. Glenn Rivard: Paragraph 14(2)(b) applies to all donors and to any woman undergoing an assisted reproduction procedure, because she must provide health reporting information. So she falls under the *chapeau*, if that's the right word, of the opening paragraph of subclause 14(2).

The Chair: Okay, that's everybody.

Are you ready for the question, people?

We have amendment CA-31 in front of us. There apparently is a charter concern here because we require a “person” to do something. The onus in the whole clause is on the licensee, but we diverge from that structure in paragraph 14(2)(b) when we say we're starting to require a “person”, one of the participants, or all of them, to do something.

Even the literary style is, to me, a mistake, in the sense that if we're requiring the licensee to do something, we should require that licensee to do the things that are listed below. All of a sudden in paragraph 14(2)(b), we say “make counselling services available”.

Oh, no, that's right. Okay, my mistake.

Mr. Stan Dromisky: Can we have your amendments?

The Chair: It's been suggested that we change paragraph 14(2)(b) to say that a licensee shall ensure that the person has received professional counselling services in accordance with the regulations. This implies, because of the past tense, “has received”, that this step has been fulfilled before they proceed with the next thing.

So if Mr. Merrifield would pull this, perhaps he'd put this forward.

Mr. Rob Merrifield: I would see it as a friendly amendment, if that's what you want to do with it.

The Chair: No, it's completely different wording. You'd have to withdraw yours.

Mr. James Lunney: Is the term “has received” in the past tense potentially problematic? For example, they may have gone through a procedure ten years ago and they received counselling then. Do you know what I'm saying?

The Chair: Oh, I see.

So...receives professional counselling services in accordance with the regulations. We'll be more detailed.

Mr. Rob Merrifield: You don't want the independent person?

The Chair: No, because it could eliminate that wonderful person. It depends on how they decide to do it.

Mr. Rob Merrifield: If you put “independent” it would make that wonderful person be a contract rather than under the controlling position.

The Chair: She might be a contractor, but even so, she's paid by the clinic, she would be internal, and not independent.

Do you want to see that?

Mr. Glenn Rivard: Madam Chair, I would like to make a comment just so the committee doesn't proceed under a misapprehension. I don't see that this affects the charter risk one way or the other. It's still a requirement.

The Chair: You think it's still risky. Is that what you're saying?

(1150)

Mr. Glenn Rivard: It raises exactly the same charter risk that amendment CA-31 raises.

Mr. James Lunney: Let's go to the other side of that. What is the reality here, that somebody's going to come forward and raise a charter concern, that you've violated my rights by making me take counselling for this invasive procedure?

Ms. Caroline Weber: I mean, we can talk about it because there are so many variations in this bill. The infertile couples are using their own materials and going through an assisted human reproduction procedure. Now we're requiring them to get counselling when they are using their own biological materials. They might be offended.

Anyway, we had thought about all the variations. There are lower-risk situations where counselling may not be required. We went for the words “make available” because there are a variety of types of situations.

The Chair: Mrs. Chamberlain.

Mrs. Brenda Chamberlain: They might be offended, but you know what? if they're desperate and want a baby, they're going to take counselling. It's not a big deal. Quite frankly, it's quite small. You can't even go for birth control pills now without three sessions of counselling, for goodness sake.

The Chair: Yes, it's ridiculous.

Are you going to withdraw this?

Mr. Rob Merrifield: Rather than amending it, I'm fine with the wording of this.

The Chair: Okay. Mr. Merrifield is withdrawing amendment CA-31 and putting forward this one.

Would you read it, Mr. Merrifield, so they know what they're voting on? Then we'll call the question.

Mr. Rob Merrifield: It reads “ensure that the person receives professional counselling services in accordance with the regulations”.

The Chair: Okay.

Mr. Rob Merrifield: Do you want to check the wording on it?

The Chair: No, it's fine.

(Amendment agreed to)

The Chair: We're now at amendment NDP-6. Parts (a) and (b) of NDP-6 are editorial changes only, but it adds a new paragraph (d).

Ms. Judy Wasylycia-Leis: Right. The purpose for recommending this addition is similar to the discussion we had.

The Chair: You're at the top of page 9. Okay, go ahead.

Ms. Judy Wasylycia-Leis: The purpose for this is really similar to the discussion we just had to make sure that all steps are taken and all information is provided in the course of assisted reproductive technology. It's to require that the licensees provide full, relevant information and references the section it's in accordance with.

The Chair: What's paragraph 19(i)? What's that about?

Ms. Judy Wasylycia-Leis: It's about informed consent.

The Chair: Okay.

Ms. Caroline Weber: No. It's information that has to be provided by the agency.

The Chair: Okay. The actual clients who come forward are given the same information the licensee has about these practices, maybe across the country, on the success rates and all that stuff.

Ms. Judy Wasylycia-Leis: They would have success rates, the side effects, etc.

Ms. Monique Hebert (Committee Researcher): There's a bit of a problem, in the sense that we changed the end of paragraph (b), which should be reflected. Instead of “person”, it should be “the regulations” under your proposed amendment.

The Chair: Isn't it the licensee who shall inform the person?

Ms. Judy Wasylycia-Leis: Are you saying the words “according to the regulations” should be added? I'll accept that as a friendly amendment.

Mr. Rob Merrifield: No, it's already there.

The Chair: Okay, you take the “and” out. Is that what you're worried about?

Ms. Judy Wasylycia-Leis: In my proposed paragraph (d), it's not consistent. The suggestion is we add the words “in accordance with the regulations”.

The Chair: We already passed that.

Are you at paragraphs (a) and (b), or are you at paragraph(d)?

Ms. Monique Hebert: Can I explain, Madam Chair?

The Chair: Yes, please go ahead.

Ms. Monique Hebert: This amendment NDP-6 would begin by changing the paragraph that this committee just amended. The paragraph finishes with the words “in accordance with the regulations”.

Judy's amendment begins with deleting the “and” between paragraphs (b) and (c). Therefore, we have to have the tail-end “regulations”. Then we delete the “and” from the bill. We go on to paragraph (c) and then a new paragraph (d) would be added on with the words “in accordance with this proposed amendment”.

I'm only saying it's a consequential type of problem that arises from the fact that this committee reworded paragraph (b).

(1155)

The Chair: In your NDP-6, under (a), the word “person” is in quotes. You just put the word “regulations” there in quotes. That's the friendly amendment.

Is there anything about (b) or (c) that has to be changed?

Ms. Judy Wasylycia-Leis: Everything else is fine.

The Chair: They're fine.

The main thing is to add (d). We're changing “person” to “regulations” in (a), and adding (d) if you so desire.

Are you ready for the question?

Ms. Judy Wasylycia-Leis: I don't want to dilute my own amendment, but given the fact that in the new (b) we've added the words “in accordance with the regulations”, do we need to add those words to my (d) to be consistent?

The Chair: I don't know.

Mr. Rivard.

Mr. Glenn Rivard: Perhaps I may.... I'm not sure consistency is the point, but I guess there's a difficulty caused with the use of the word “relevant” in (d), because it stands alone. We really don't know what it means in the context of this, or who is to make that decision.

The addition of a phrase “in accordance with the regulations” would give us a mechanism to determine what is relevant. I might suggest that the word “relevant” be dropped, but at the very least the reference to the regulations would give us a way of determining what is meant.

The Chair: If we dropped “any relevant” and said “provides a person with information made available by the agency in accordance with paragraph 19(i) and in accordance with the regulations”, would that do, Judy?

Ms. Judy Wasylycia-Leis: That's a friendly amendment.

The Chair: Right. So we're going to now strike out in paragraph (d) the words “any relevant”, and add “and in accordance with the regulations” at the end.

The motion would be that Bill C-13, in clause 14, be amended (a) by replacing, in the English version, line 3 on page 9 with the following: “regulations”--which in effect deletes the “and” that follows--and then (b) by replacing, in the English version, line 6 on page 9 with the following:

"referred to in paragraph (a); and"

(c) by adding after line 6 on page 9 the following:

"(d) provide the person with information made available by the Agency in accordance with paragraph 19(i) and in accordance with the regulations".

(Amendment agreed to)

(Clause 14 as amended agreed to on division [See *Minutes of Proceedings*])

(On clause 15--*Disclosure of information restricted*

The Chair: I think this providing information business we've just taken care of.

Mr. Rob Merrifield: No, this is clause 15.

The Chair: Okay. Line 15 on page 9--

Mrs. Carol Skelton: She has "relevant" in there too, Madam Chair.

The Chair: Just a minute. Before we go forward, does anybody want to move this? The mover is not present. Not seeing a mover, we'll move on.

Mr. Merrifield, CA-32, line 35 on page 9.

Mr. Rob Merrifield: This is to say that when human reproductive material or embryos are transferred between licensees, the agency also shall be informed of what's happened and where the transfer has taken place. I don't think there's anything other than more accountability.

The Chair: It adds three words: in addition to transferring information to the new licensee that is now receiving this embryo, that the licensee which has been responsible for the embryo also alert the agency to that transfer and the health-recording information in that transfer. It seems pretty simple.

Mr. Rivard.

Mr. Glenn Rivard: With respect, it doesn't accomplish that. What it does is to say that every time there's a transfer, the entire body of health-reporting information associated with that must go to the agency. So it has to go in the initial case. Then the same data would go again and again and again every time there's a transfer.

(1200)

The Chair: Why would you suggest there would be all these transfers? To me, there's probably only one.

Mr. Glenn Rivard: My only point is that it doesn't only alert the agency to the fact that there's been a transfer. The motion requires that all the health-reporting information go to the agency. So whether it's one transfer or three or four, that body of data would go again and again to the agency. They would get the data at the outset, then they would subsequently get the same data with each and every transfer.

The Chair: But is the health data information not supposed to be being updated as certain conditions occur? That's what we foresee in the regulations, because so many times the donors are so young, they don't have much of a health history. For instance, they had measles when they were 10, but the fact that they developed diabetes at 33 or a heart condition at 42 is not in the original information. So what we're hoping for is that donors will be taught through the counselling that they have to keep updating the health information they gave in.

If the embryo has been moved once even, where will they give that information?

Mr. Glenn Rivard: First, we don't know that in fact health reporting information will be updated, although certainly the people will be counselled to do that. But if the concern is that the most recent updated information be provided, that really has nothing to do with whether the material or the embryo has been transferred.

The Chair: So maybe you don't want--

Mr. Rob Merrifield: I would disagree. It's not a matter that the agency needs all of this duplication of information. What they need to know is who has actually got the ownership of that material any more, and this is the issue that is here. So how else are they going to do it, unless when it moves from one owner to another owner that information is also going to be sent to the agency so the agency can be aware of it?

This happens in the animal field all the time so that we know exactly where all these reproductive materials are. So to say that it shouldn't or can't happen under an agency that's regulating it would be ridiculous.

Mr. Glenn Rivard: I'm simply saying that what would be provided to the agency is not a simple notice of transfer. It would mean that all of the health reporting information is provided to the agency.

Ms. Caroline Weber: It just needs another clause. I think if you want to record transfer of information, then let's create another clause that says that every time material is transferred it needs to go to the agency, or that the agency has to conduct surveys to know exactly what's being held at various locations. There are other ways to do it than this. It seems like there's a lot of data transfer happening. It raises some privacy concerns.

The Chair: Instead of transferring all the data to the agency, what about they must send a notice that this transfer has taken place, just a new clause?

Mr. Rob Merrifield: A new clause, whatever. That's fair enough. We can put this aside until we get the right language and then we can bring it back if that's what we want to do.

The Chair: I'm wondering if we couldn't do it right now. It's a pretty simple phrase, isn't it, to transfer the--

Ms. Caroline Weber: I don't know if this is even the right place to do it myself.

Mr. Glenn Rivard: I think we could return after the break with a clause.

The Chair: This afternoon?

Mr. Rob Merrifield: Yes, this afternoon. Let's do it that way.

(1205)

The Chair: So we're setting aside CA-32 because we're going to look at another way of accomplishing what Mr. Merrifield would like to accomplish this afternoon.

We're on G-5, page 10, lines 10 to 12. We're now entering the next big minefield, which is disclosure versus anonymity. This is tightening up the language with “shall not be disclosed without the donor's written consent”. This is tightening up the anonymity then?

Ms. Yolande Thibeault: Yes, it is.

The Chair: Yes, it's tightening up anonymity.

Ms. Yolande Thibeault: That's the way I see it.

The Chair: Mr. Rivard, would you like to talk to this? Why did the government put this forward?

Mr. Glenn Rivard: The intention all along was that disclosure by the licensee should be on the same basis as disclosure by the agency, which is governed by subclause 18(3). In fact, what this really amounts to is that there was an error in the drafting of the bill, and you are seeking to correct it at this point.

Under subclause 18(3), the agency cannot disclose the identity without the donor's written consent. Under subclause 15(4), the licensee can only disclose in accordance with the regulations. So there is an inconsistency here around the treatment of the donor's identity. It's a question of providing consistency as to when it's in the hands of the licensee and in the hands of the agency.

The Chair: I accept that, that these two clauses.... One is on the next page in exactly the same spot, so you can just fold it over and compare them, and they should read the same way.

This is the place where the bill diverges from the committee's original report. The committee's original report wanted to end anonymity, and the bill as presented to us takes the other tack.

Mr. Rob Merrifield: Would we not be wise to deal with that in clause 18, prior to dealing with this? I understand the intent of what the government is doing here, but what if we change clause 18 even more?

The Chair: That's why I'm pointing out subclause 18(3), because there's the same philosophical and practical question as to whether or not this committee assembled here today wants to go for this. You need the donor's written consent...the two-key approach to allowing offspring to know their roots or not.

That is the question before us. That is the question we should be discussing, because maybe neither of these two wordings is suitable to us.

Mr. Rob Merrifield: That's true, so we couldn't sign off on this before doing clause 18, and that's my only point.

The Chair: I agree, but are there amendments to clauses?

A voice: Yes, quite a few.

The Chair: I'm going to suggest that we set this amendment aside, because it is tied into the one on page 12 of the bill, subclause 18(3), and move on to another topic. I think this is such an important topic that we should be fresh.

Let us recess for lunch while we think over how we're going to handle this.

(1209)

(1237)

The Chair: Can I end this recess for you people and bring you back to order?

We are on the question of disclosure or anonymity, and it seems to be most easily focused on page 10 and page 12 of the bill. It's been the suggestion of counsel at this end of the table that we should deal with subclause 18(3), which appears at the top of page 12 in the bill.

As you will notice in your package, Mr. Merrifield had several amendments about these ideas. He seems to feel that he has a way out of this conundrum, this morass we could be led into if we go in the book. He has instead given out this extra piece of paper, which I think captures the main idea. It's CA-35B on this extra piece of paper, and it would be page 53.2. I realize we're moving ahead to clause 18, but there is this question that goes over several pages.

Subclause 18(3), at the top of page 12, says:

The Agency shall, on request, disclose health reporting information relating to a donor of human reproductive material or of an in vitro embryo to a person undergoing an assisted reproduction procedure using that human reproductive material or embryo, to a person conceived by means of such a procedure and to descendants of a person so conceived, but the identity of the donor--or information that can reasonably be expected to be used in the identification of the donor--shall not be disclosed without the donor's written consent.

Adding into that would be subclause 18(3.1), which is on the page you were just given:

Despite subsection (3), the identity of a donor referred to in that subsection shall be disclosed to any person conceived by means of an assisted reproduction procedure and to any descendant of a person so conceived upon application by the person or descendant at any time after they have attained the age of 18 years.

This is encapsulating the question of anonymity of donors or disclosure of their names.

Mr. Harb.

(1240)

Mr. Mac Harb: I just have one question about this. What would the implication be--maybe counsel can tell us--in terms of inheritance and in terms of support for that individual? Maybe you can give us a little bit of gratification.

The Chair: I just point out that if this were to pass, it would not be retroactive. It would only be for those people born of these procedures after this bill came into force. So by the nature of it, the provinces would have 18 years to get their laws in order.

Go ahead, Mr. Rivard.

Mr. Glenn Rivard: It is the case that only one province has completely regulated this issue, and that is the Province of Quebec. Through its civil code it has severed, if you will, any legal relationship between gamete donors and any eventual offspring. A few other jurisdictions have addressed that, but only with respect to semen donors and in a more limited fashion.

As a result of that, if somebody donates in most of Canada and their identity is made known to the offspring, it is possible then for the offspring to both claim child support and make a claim against the donor's estate. We're not aware of any case where that has succeeded, but our view is that this would be very likely to succeed. Let me clarify that. We're not aware of any case where that has been claimed, but if claimed, we are of the view that it would most likely succeed.

Jurisdictions that have provided for an automatic release, if you will, of the donor's identity are also jurisdictions that have prior to that regulated the family law and estate law consequences of that.

The Chair: Mr. Merrifield.

Mr. Rob Merrifield: Just a point, though: the reason it's not in law in other provinces is not because there is a contrary law on the books, but because there's a void in the legislation, in a sense, dealing with this. So we could expect this piece of legislation would vault the provinces into forcing them to deal with that issue.

Mr. Glenn Rivard: Well, I couldn't comment what would force the provinces into dealing with that issue. All I can say is nothing in this addresses that issue. So it's still the case that the provincial law in this matter remains untouched until they decide to amend it.

Mr. Rob Merrifield: Then let me put it another way. Is there something that we could amend and put in here that would give the intent? Is that possible?

Mr. Glenn Rivard: I don't think there's any provision that we can put in the federal legislation--

Mr. Rob Merrifield: Because of the provincial jurisdiction--

Mr. Glenn Rivard: --that would address these provincial matters.

Mr. Rob Merrifield: Although we have equivalencies.

The Chair: I think we've all faced the fact that one of the reasons the department backed away from the disclosure was this whole idea that we couldn't put anything in, as we would be in conflict with provincial law. However, the committee's ideal was to move towards disclosure. Since then we have found out the provinces are considering.... As I say, I did this little survey, and most of the child welfare agencies are suggesting that disclosure is better than secrecy on these things.

So as far as the connection with adoption is concerned, I see adoption changing probably at least within the next ten years. I think the only saving grace we have is it would literally take more than 18 years before this eventuality would occur; that is, that an 18-year-old offspring of assisted human reproduction might want to know who his biological parents were. And in 18 years--and this will be a promulgated law--the provinces will know. They will know how Quebec has solved it. They have lots of time to make sure that the person isn't responsible financially.

Ms. Weber.

(1245)

Ms. Caroline Weber: Just for the record, I do want to say that we have received interventions from some of the provinces. I'm saying this is a sore point for them, and they would prefer to see that we do not have mandatory release of donor identification.

The Chair: What is their reasoning? Is it just that it's a bother?

Ms. Caroline Weber: No, they do have problems in family law. They are ready to acknowledge it, but it does create some immediate conflicts for them.

The Chair: How can it, when it's 18 years down the road? What are these immediate conflicts?

Ms. Caroline Weber: Yes, that's a good point, too.

I would turn instead, though, now that I've said that, to some of the drafting issues in the new proposed amendment, because we have a couple of other fixes that I think Glen could tell us about. “Despite subsection (3)” probably doesn't really work, but there are a couple of other fixes that we could offer for this.

The Chair: Mr. Rivard.

Mr. Glenn Rivard: In the spirit of the motion, I would make some suggested changes that would have it work easier. The first is actually to the existing subclause 18(3), where it says right now, right at the end of that subclause, “shall not be disclosed without the donor's written consent”. We're talking here about the identity. I would suggest that be changed to “shall not be disclosed to the person undergoing an assisted reproduction procedure without the donor's written consent”. That means then that the limitation around the release of the identity only applies now to the woman undergoing the procedure.

You could then add the subclause suggested by Mr. Merrifield, which would then deal with the offspring and descendants. But I would suggest some drafting changes there. You would be able to drop the reference, “Despite subsection (3)”. There's a reason I'm suggesting that way of handling it. Otherwise you're saying one thing in subsection (3) and then exactly the opposite in this new subsection (3.1), whereas if you do it the way I'm suggesting it, they are congruent.

I think you could then just go on to say “The identity of a donor”--and you can drop “referred to in that subsection”--“shall be disclosed”, and you need to add “by the Agency”, “to any person conceived by means of an assisted reproduction procedure and to any descendant of a person so conceived upon”, I might suggest, “written application by the person or descendant at any time after they obtain the age of 18 years.”

The Chair: So “written application”...that is suggesting a way of making this acceptable at least for the committee to consider. Whether the committee decides to agree with it is another thing.

But you raise another concern in my mind by saying one set of rules applies to the woman undergoing the procedure and a second set of rules applies to the children 18 years later. What if the mom who undergoes this procedure is a believer in this open system that we're trying to get to eventually and wants to talk to her child more about the donor? Yet she cannot find out; only the child can find out, 18 years later. To me, that would be a charter concern.

Ms. Caroline Weber: There is still consent here from the donor.

Mr. Glenn Rivard: This is the gist of Mr. Merrifield's amendment.

The Chair: No. The gist is that the child would be able to get the information 18 years later, but you want to add to the clause that's already in the bill that it shall not be disclosed to the woman undergoing the procedures. She won't know.

Mr. Glenn Rivard: As I understand Mr. Merrifield's amendment, the restriction in subclause 18(3) would remain in effect for the woman undergoing the procedure, and the proposed subclause 18(3.1) simply sets out a more open system for offspring and descendants.

(1250)

Mr. Rob Merrifield: One of the reasons it's really important that we have counselling as part of this is that if you're going to receive any material to go ahead and create a child, you're going in with your eyes open, and you know you have consent or you don't have consent before you use the material. All of that is very, very important. So it all sort of fits together.

If a person is knowledgeable and understands that, yes, you have that information, or no, you don't, and you agree with it, then I guess that's your choice. That's fair enough. But for the descendant, the child who's 18 years old and needs to know where he's genetically from, and his or her descendants, that is where we can really do something here today, by putting it in here. It is very important.

The Chair: Mrs. Chamberlain.

Mrs. Brenda Chamberlain: I just want to understand this, though. You made the comment, Madam Chairman, about the fact that you think adoptees in another ten years will have that right. Why do we, as a committee, think that's really important? I need to understand that. I'm adopted, and I don't know who my parents are, but it doesn't overly concern me. So can you explain that?

The Chair: We're not worried about your identity. You really know who you are.

Mrs. Brenda Chamberlain: Some people wish I didn't.

The Chair: There are some people who are not so mentally healthy as you are.

Mrs. Brenda Chamberlain: Did you hear that, God?

Is that the crux of this? It's not that I'm fighting it; I just want to understand where you're coming from, as a committee, on this, why you think everybody needs to know that. I need to understand that.

The Chair: Maybe Ms. Skelton would like to answer that.

Mrs. Carol Skelton: I think that was answered. Were you here the evening the donor children testified to the committee?

Mrs. Brenda Chamberlain: No.

Mrs. Carol Skelton: That changed my outlook on the whole thing.

Mrs. Brenda Chamberlain: They all felt that they needed this?

Mrs. Carol Skelton: They did. Basically, the young woman sat there, and she just so desperately needed to know where she came from. She said she felt like a lost person. And the gentleman was there that evening who has made the film on the whole situation and everything.

When I heard that testimony, it changed my whole outlook on the wording in here.

Mrs. Brenda Chamberlain: Do we feel, as a committee, that it will have any impact from the point of view of making fewer children because you put this restriction on it?

Mrs. Carol Skelton: No.

Mrs. Brenda Chamberlain: You don't.

Mrs. Carol Skelton: No, it didn't, and they had found that over the studies they had done and everything.

Some people, like yourself, are very happy with their whole world, but they were feeling that way, and I think anything we can do to make it easier on the children that we create will basically help them and help ongoing studies and stuff.

The Chair: What time was 30 minutes down the road?

Mrs. Carol Skelton: Yes, we'd better--

Mr. James Lunney: Is that vote at one o'clock?

Mrs. Carol Skelton: It was at 1:20, they said.

The Chair: That's the other thing that can happen. There's a 30-minute bell going right now, but do you remember last spring, there was this thing that happened, that if the whips thought there were enough people present and they walked up, the vote could actually happen earlier?

Mr. Rob Merrifield: Unless we vote quickly on this one.... Let's do that.

The Chair: He wants to get this one in the bag.

Mr. Rob Merrifield: Yes, let's get this one in the bag first. This is something I think we've all been pretty passionate about.

The Chair: There are three others that come before it, and the clerk is telling me they would have an impact, so we'd have to pull them back. They are CA-35, CA-36, and NDP-7. Are you willing to withdraw these three if this one passes?

Okay, please make the statement that you're going to withdraw.

Mr. Rob Merrifield: If this one passes, we will withdraw them.

The Chair: You can't say “If it passes”. If you want to hang your hat on this one, you want to be safe, and you want to vote on these others.... But I can't say that if this fails to carry we'll go back. We can't go back.

Mr. Rob Merrifield: There's a little different content in the one, and that's why--

The Chair: I know, but they're on the same line.

Mr. Rob Merrifield: Yes, but it's a little different content.

The Chair: I know, but we can't go back. If you want to do the ones I've just named, we have to do them before this one.

If you're willing to withdraw them, we can move right to this one. But you can't have it both ways. There's no insurance. It's like the immigration system.

Mr. Rob Merrifield: We can introduce an amendment at any time, can't we?

The Chair: Yes, but not on the same topic as the one you've withdrawn.

(1255)

Mr. Rob Merrifield: But there's a different premise around the issues on the one.

The Chair: But are you withdrawing these three? Judy has said she is, and you have two.

Mr. Rob Merrifield: Okay, I'll trust the committee on this one.

The Chair: Well, I don't know if you should.

Mr. Rob Merrifield: It's a very dangerous thing to do.

The Chair: Okay, so these three are withdrawn.

Mr. Rivard, were you talking about another amendment to subclause 18(3)?

What are you saying, Mr. Castonguay?

[*Translation*]

Mr. Jeannot Castonguay: Madam Chair, I would like to make sure we know what exactly we are voting on. There have been amendments, and at one time, several issues were debated, among which on page 12, subsection 18(3):

[*English*]

"shall not be disclosed".

[*Translation*]

Next, something has been added. Furthermore, there was the amendment of my colleague Mr. Merrifield, to which changes have been suggested.

In short, I would like to know exactly what would be the subject of our vote.

[*English*]

The Chair: Because the bells are ringing and we should get over there, I'm going to ask Mr. Rivard to see if he can get the first part of subclause 18(3) written the way he wants it, which is "shall not be disclosed to the woman undergoing the procedures", or something to that effect, as you suggested, and get this re-typed by somebody, maybe in a close office, to be worded the way you think is the most legitimate.

You've suggested a couple of changes to Mr. Merrifield's amendment, but I'd like to see how those two paragraphs, starting at the top of page 12 in the bill, would look formally, because I think Dr. Castonguay is correct.

Now we'll go to vote.

We're adjourned until 3:30.