

Criminal Code

Clause 18 exempts from those two subsections a therapeutic abortion which has been approved by a medical committee in an approved or an accredited hospital where the operation is performed by a qualified medical practitioner for the purpose of protecting the woman where her life or health is in danger. This section obviously relates to any killing of the foetus before natural birth and to a miscarriage or an abortion, which legally are equivalent terms. I introduced an argument to that effect before the committee. A miscarriage or an abortion is any killing of the foetus before natural birth and before the child becomes a human being.

Section 209 is a completely different factual situation. It was before this bill and it certainly will be after the bill because clause 15 adds some clarifying words. Section 209 (1) as amended reads as follows:

Every one who causes death, in the act of birth, of any child that has not become a human being, in such a manner that, if the child were a human being, he would be guilty of murder, is guilty of an indictable offence and is liable to imprisonment for life.

Subsection 2 provides a defence where, in good faith, a person causes the death of the child before it becomes a human being when he considers it necessary to preserve the life of the mother of the child and for that reason causes the death of the child. Therefore section 209 of the Criminal Code relates to any killing of a child who has not yet become a human being at the time of the act of birth.

Section 237 relates to the killing of a foetus before the natural time of the birth. Section 209 relates to the killing at the time of the birth. Section 237 involves a miscarriage or an abortion, and section 209 involves homicide.

There is a third factual situation in the Code to be found in section 195 which is not amended by this bill. Section 195 reads as follows:

(1) A child becomes a human being within the meaning of this Act when it has completely proceeded, in a living state, from the body of its mother whether or not

- (a) it has breathed,
- (b) it has an independent circulation, or
- (c) the navel string is severed.

Subsection 2 sets forth the offence. It reads as follows:

(2) A person commits homicide when he causes injury to a child before or during its birth as a result of which the child dies.

Here we have a third factual situation: Injury caused to a child before or during birth

as a result of which the child dies after birth, after the child has become a human being. So in sections 237, 209 and 195 we have three absolutely separate factual situations. It is for this reason that we rejected the argument of the hon. member for Calgary North, supported as he was by Professor Mewett, that the Bourne case in any way applied to section 209 of the Criminal Code. The Bourne factual situation applies to section 237. That being so, I rely merely on the fuller treatment of the subject we introduced before the committee. If hon. members wish to review it, of course the proceedings of the committee are available.

Mr. Woolliams: Mr. Speaker, I should like to preface the question I wish to put to the minister by saying that the words of the amended section 209 include the phrase "to preserve the life of the mother". Subsection 2 reads:

This section does not apply to a person who, by means that, in good faith, he considers necessary to preserve the life of the mother of a child, causes the death of such child.

If in fact any person in good faith performs an operation to preserve the life or the health of the mother, is that person not performing a legal abortion? My second question is. If such a person performs a legal abortion, is the foetus not killed?

Mr. Turner (Ottawa-Carleton): The simple answer to that is that section 209 does not relate to an abortion at all.

Mr. Woolliams: I do not want to harp on this subject, Mr. Speaker, but may I ask the minister one more question. Let me read again subsection 2.

This section does not apply to a person who, by means that, in good faith, he considers necessary to preserve the life of the mother of a child causes the death of such child.

To cause the death of the foetus or of an unborn child would in fact under the law be considered an abortion. The minister said that this section does not apply to abortions, but surely these are identical words to the ones used in section 237. In spite of what the minister's advisers have told him, I ask him to consider this matter again. When a person is performing an abortion in good faith and takes the life of a foetus he is exempt from a penalty under the law, as stated in section 209(2), because he performs a legal abortion.

Mr. Turner (Ottawa-Carleton): I have done a great deal of thinking about this. Section 209 relates to a killing at the time of birth,