

*Abortion*

I do not quarrel with the adoption of the Charter of Rights and Freedoms. I certainly do not quarrel with the Supreme Court of Canada's interpretation of it. However, that allows us to look only at what our law-making power is in the Parliament of Canada, and that is to enact criminal laws. Indeed, that lies at the heart of the Supreme Court decision in the Morgentaler case involving Section 251 of the Criminal Code of Canada.

It is worthwhile reminding Parliamentarians that that provision of the Criminal Code made it an offence for a mother to have an abortion and it was punishable by imprisonment for two years. In the case of other persons involved in an act of abortion it was an indictable offence punishable by imprisonment for life. That is what the Supreme Court of Canada was looking at.

I think some people will understand that such a law was questionable. Some people would wonder whether that was the right approach to what is basically a social problem. Therefore, we should not be too critical of the Supreme Court of Canada when they tackled this problem of Section 251 of the Criminal Code and the extreme punishment that was imposed in certain circumstances on those involved in abortion. It is understandable that the law was questioned.

Therefore, what can Parliament do, having received the judgment of the Supreme Court? There are two things it can do, in my opinion. The first is to enact a new provision of the Criminal Code that does not violate the Charter of Rights and Freedoms. Second, if Parliament is determined to abolish abortion or restrict it more than the previous law did, then we must seek an amendment to the Charter of Rights and Freedoms. All Members of the House know that that involves concurrence of the provinces under the current formula, which is seven provinces representing 50 per cent of the population.

It is very clear. If you want to change the abortion law in Canada from the current void that exists following the decision of the Supreme Court, you have to enact a new provision of the Criminal Code because that is the only power Parliament has with respect to abortion.

Second, if you are not satisfied that a criminal law of less force and effect than Section 251 is sufficient, then we must have an amendment to the Charter of Rights and Freedoms. That, simply stated, is why I object to the resolution we have before us. It does not address either of these problems. It does not make clear what the change in the Criminal Code would be, and it does not even deal with the matter of a possible amendment to the Charter of Rights and Freedoms.

● (2220)

I think it is a terrible flaw in the motion that it does not mention punishment. We are talking about criminal law which means offences and punishment. Every Canadian should know that if we pass judgment on this motion, we should be condemning people involved in abortion to imprisonment or some other punishment.

I am not saying that that is wrong. Indeed, that is what criminal law provisions are all about, but let us have it in the motion. The great crime in Canada is that 60,000 and more abortions take place each year, with the consequences we have all heard described. Is the alternative to place 60,000 women in jail? Do we want to stop abortions by punishing those who have abortions with jail terms?

I do not know what the people of Canada want. I have not got a clue. I have heard submissions made to me from both sides. I know there is a real concern about the right to life and the pro-life movement. I accept that and understand it. However, what are the alternatives? That is what we have to face.

I do not believe that this resolution helps us face the real problem. That is why I introduced in the House of Commons last Monday a new private Member's Bill, Bill C-312, which proposes an Abortion Law Interim Measures Act. That Bill spells out very clearly that abortion is an offence punishable by two years' imprisonment, but there is an exception. If an abortion is medically necessary and that is certified by a medical practitioner, there is no offence. Indeed, if a woman who believes her life is in danger and that an abortion is medically necessary has one but does not have access to medical assistance of the kind described in the provision, then there is also no offence.

One of the complaints and concerns of the Supreme Court of Canada was that the previous law did not fall equally upon all Canadian women. Those who had easy access to medical practitioners and hospitals could comply with the provisions, and other expectant mothers who did not want to carry their children to full term did not have that kind of access. That meant an inequality in the law that in effect destroyed the law from within. Its failure to provide for equal application across Canada to all Canadians made it invalid in the eyes of the Supreme Court. I do not think anyone can blame the Supreme Court for coming to that conclusion because if there is one thing to which we all subscribe, and I defy anyone to deny this, it is the equality of all Canadians before the law. Once we see on the face of a law a failure to observe equality, then the law is worthless.

Through my Bill, I have tried to overcome the objection that the provision of the Criminal Code under Section 251 was unequal in its application. I have also dealt with the second point, which is that we can enact a criminal law and we can also seek an amendment to the Canadian Charter of Rights and Freedoms to protect the unborn. If we are not willing to seek an amendment to the Canadian Charter of Rights and Freedoms to protect the unborn, then we are not serious about doing anything about abortion law in Canada. Through the simple expedient of amending the Charter of Rights and Freedoms by extending it to include the unborn, we can enact a law that protects the foetus.