

*Government Orders*

rights and interests of the woman in any way that contradicts the Morgentaler decision.

Finally, there is a clear policy decision to protect the interests of the foetus throughout pregnancy because a woman can only obtain an abortion if her health or life are threatened.

There have been four issues raised during the early consideration of this bill by the public and by the media. Those are namely the question of access, the possibility of third-party criminal charges, the possibility of injunctions and the responsibility of doctors. On the issue of access there are separate questions that I do not think should be confused. First, this bill is based on the principle that the legislation must not contain any unfair or unnecessary obstacles to lawful abortions throughout the country. I submit that this bill contains no such obstacles. It is based on the principle of fairness and equality. Second, what the bill cannot do, and what the federal government cannot legally do, is to regulate the practice of medicine or the provision of medical services including access to abortion services. This is clearly under provincial jurisdiction. Our criminal law power is based on an authority to prohibit and there is no reasonable way to use this authority in a positive way to guarantee access.

On this particular issue, I would like to quote the Right Hon. Leader of the Official Opposition who on April 28, 1969 as reported at page 8059 of *Hansard* stated:

The hon. member suggests there is a constitutional aspect to this as well. The relationships in civil law between the patient and the doctor, between the patient and the nurse, between the doctor and the hospital, the nurse and the hospital, are relationships falling within the operation of provincial law, the civil law and the constitutional responsibility of the provinces—the subject of statutes which regulate hospitals and the professions. These are properly provincial matters, and this is another reason not to trespass on any of these civil relationships which may be accessory but which are not directly affected by this legislation.

The Right Hon. Leader of the Opposition was speaking to the original amendments to the Criminal Code of that day, that is Section 251. The principle still applies. Moreover, we would point out that in the exercise of their jurisdiction the provinces must respect the constitutional rights of women and doctors.

Another issue that has arisen is how this legislation will be policed. It is clear, as before, that the prosecutorial authority will rest with the provincial Attorneys General. I am confident that they and the police will act responsibly, as they have in the past, and in full respect of the Charter of Rights and all of the protections of our criminal justice system, including the presumption of innocence. Furthermore, I am confident that there will be no harassment or deprivation of civil liberties as this would not be tolerated by the Attorneys General or by the courts.

As has been pointed out, individuals can attempt to lay charges under this or almost any provision of the Criminal Code. In this context, that possibility may sound worrisome but we must remember the reason for it. It is a very profound democratic belief that, in most cases, individuals can undertake private prosecutions. However, this is subject to the controlling powers of the courts or the Attorneys General who will ensure that these rights are not abused. In this situation, a private person can only proceed if a justice agrees that the matter should proceed to court and if it is not stayed by the provincial Attorney General. There is no history of numerous fraudulent or malicious prosecutions in this area, and no reason to believe that there will be under this legislation.

[*Translation*]

Mr. Speaker, the government does not think the courts will be inundated with third party criminal charges under the new legislation.

We don't think that will happen. This is a very sensitive matter, and proceedings are likely to involve problems with evidence and other difficulties.

Furthermore, the provincial attorneys general have the power to stay prosecutions that are not in the public interest.

[*English*]

It is important to make the distinction that this is not the same issue as whether civil injunctions will remain possible. As a federal government, we cannot legislate directly in this area, but in this legislation, Parliament will have legislated on matters central to a woman's entitlement to have an abortion, and any civil injunction would have to take that into account. Specifically, it should not be questioned under civil law that a woman has the freedom to have an abortion, if a medical