

Fifth, a balance was sought between the rights of adolescents and those of their parents.

Sixth, a balance was sought between the rights of the pregnant woman and those of the legal or presumed father.

In all legislation, the health of the mother was nearly always an essential factor. Increasingly, this term is given very broad interpretation and includes physical, mental, psychological and sometimes even social and economic considerations. Some countries like Sweden and France have made their abortion laws part of their health legislation. Later on, we will see it was impossible for Canada to follow this example. This review nevertheless shows how difficult it is to reach a compromise on legislation involving so many significant parameters. I think we must bear this in mind to appreciate Bill C-43.

Honourable senators, other important findings refute some unfounded preconceived ideas underlying our discussions.

First, statistics show that an abortion law, whether restrictive or libertarian, has practically no effect on the birth rate of a country. Other social, political, economical and cultural factors influence it more. Indeed, these factors shape the individual or collective behaviour characterizing the evolution of any society. Quebec's demographic curve could almost be used as an example. In Romania, where the restrictions on family planning and abortion were the most stringent, the abortion rate has nevertheless always been much higher than anywhere else. The effect of the drastic measures that were applied lasted only a few years.

The second point the statistics make clear is that an abortion law is only effective inasmuch as it fulfills the needs and aspirations of the women in the country. Our own 1969 Act is living proof of that fact, so to speak. We all know that the therapeutic committees quickly became a gathering place. In the Morgentaler trial, the jurors bought the plea of necessity put forward by Morgentaler's counsels and dismissed time and time again the charges brought against him, in spite of the absence of such committees.

Third, a great many pregnant women tend to migrate to neighbouring countries when the law is too strict in their own country. That was true of Quebec women before 1969, when they would go to a clinic south of our border to get an abortion. The same phenomenon was observed in Ireland, with women going to England for an abortion. In an attempt to obviate such a problem, abortion has been prohibited for non residents in the state-run health services of Sweden, France and now England. However, it is not prohibited in private clinics.

Finally, in all countries examined, the attitude of the medical profession plays an essential role in the access to abortion. That is what we find in Canada, from one province to another and even within a province from one region to another.

These findings show it would be unreasonable to believe that a restrictive law could reduce the number of abortions and increase the birth rate. I think the Chantal Daigle case clearly shows that nothing can deter a woman who has decided to get an abortion. The extent and power of women's lib must not be

[Senator David.]

underestimated. Legislators, whether they like it or not, must adjust to society's evolution and refrain from proposing a moralizing model that would be rejected by the general public and ultimately doomed to failure.

Honourable senators, when we look at the legislative aspect, Canada has a problem we did not see in the other countries studied. The Constitution gives the federal government jurisdiction over the Criminal Code, while the provinces have jurisdiction over the Civil Code on the one hand and health services on the other. It is important to remember this particular difficulty when we study Bill C-43. With great modesty and at the risk of being wrong, I will try to give you my interpretation of this bill. Taking into account the legislative restrictions imposed by the Constitution on the distribution of powers, this government bill has two purposes.

The first is to subject to the Criminal Code any person other than a physician who would perform an abortion. The only purpose of this section is to protect the woman's safety, to allow her to benefit from technical advances in this field and avoid complications which could threaten her health or her life. The abortion must be performed by the medical practitioner himself or herself or by a person acting under his or her supervision and for whom he or she assumes full legal responsibility, like any physician in any hospital or clinic.

The second one is to justify abortion on the basis of a broad definition of health, whose parameters are the physical, mental or psychological state of the patient.

Those two elements, I believe, would meet the opinion of a majority of Canadians who are moderate on this issue. We avoid back street abortions which are often dangerous and we consider abortion to be a medical act covered by the Canada Health Act which provides for accessibility, universality (that is to say free services) and portability.

It is essential to understand and to accept that in medical practice, each and every medical act that is not made in an emergency situation necessarily implies two stages: consultation and decision. The doctor is a counsellor who, after eliciting his or her patient's problem, prescribes the treatment he or she believes adequate. A discussion is part of the normal practice of medicine and allows the doctor to obtain from his or her patient an informed acceptance of the suggested treatment.

Honourable senators, I already told you that I respect, as an individual and as a physician, the principles of the pro-life group. As a parliamentarian, I find excessive their proposal to sentence to variable prison terms the physician who performs the abortion, his accomplices and his client. I really cannot accept to punish in such a way an average of 70 000 Canadian women a year. I do not want to judge those women who, for some reason, feel compelled to obtain from a physician the assistance that is essential to them.

On the other hand, it is difficult for me to accept the arguments of the pro-choice group who feels that Bill C-43 is too restrictive. In the Canadian legislative framework, I cannot imagine a more reasonable compromise than the one that is