You cannot have criminal law that depends on a statute that imposes a penalty and has a definition that is that vague. As I say, it worked at the beginning, but on that count alone, Section 251 needed to be replaced.

• (1540)

There was another problem with Section 251, and that was that even when an abortion was authorized or would have been authorized, in many parts of Canada there was no procedure for a woman to have a lawful abortion pursuant to Section 251 of the Criminal Code. Whole provinces had excused themselves from the application of Section 251. That is unacceptable in a country as broad and wide as Canada with its diverse regions. If the Criminal Code is to be respected, if women are to be put through a procedure and come out entitled to an abortion, that service has to be available. Otherwise, there is no point in saying that there is a law on the books with which we should try to comply.

My third observation about Section 251 is that when an abortion was not justified and when an abortionist who performed an abortion was charged with a violation of Section 251, juries in various parts of Canada would not convict. There were cases of judges in effect telling the juries that they had no alternative but to convict the abortionists for the offences that had been proven beyond a reasonable doubt before the courts, and the juries refused to convict. That is obviously another important shortcoming in the legislation.

We already know about the pre-1969 situation, a tough criminalization of all abortions. We also know about the problems of living with Section 251, whether or not we had a Canadian Charter of Rights. It is time for us as a Parliament to deal with the issue. The Supreme Court of Canada, in the case that went before it, provided us with the opportunity that was needed to deal with the question of abortion under the law of Canada.

I would like to turn now to the resolution introduced by a Government which is determined to get the credit for tackling the tough issues of our day. The Supreme Court of Canada made its judgment on January 28. On January 29, my Leader was up on his feet in this place making four points. In particular, he demanded that the Government act with urgency to take up the challenge the Supreme Court of Canada had put by introducing legislation which would be valid.

The Minister of Justice (Mr. Hnatyshyn), who has not had the courage to speak in this debate and who, to my astonishment, was not the first speaker for the Government, rose on January 29 to say that we have responsibilities. I do not want to read the whole tortured paragraph, but he concluded by saying that we will be dealing with this matter on an urgent basis.

For six months we have had nothing of substance from the Government on the commitment that was made by the Minister of Justice the day after the Supreme Court made its decision. We still do not have anything from this Government in the way of leadership or in the way of legislation. The Government is revelling in its decision not to take a position on this important issue.

I would like to deal with one particular government commitment on the subject. On January 29, my Leader was persistent. He wanted to be certain that the Government would not throw out the Canadian Charter of Rights and Freedoms by introducing an abortion law validated by a notwithstanding clause under the Constitution, making it apply in spite of the Canadian Charter of Rights and Freedoms. He said:

> Can I have a guarantee from the Minister of Justice that his Government will rule out using the *non obstante* clause to get around the Supreme Court of Canada decision?

What did the Minister of Justice say in answer on the same day? He said:

> What I can tell the right hon. gentleman is that I do not contemplate the use of the *non obstante* clause on the part of the Government with respect to this issue.

A funny thing happened in the last six months. Even from that very minimal commitment, the Government has backed away. The resolution brought before us does require a *non obstante* clause in order to be translated into legislation, at least that is the way it appears to me. I will show how it does in a moment. The Government has indicated that there are no holds barred on the debate, so that this commitment made on January 29 is thrown out of the window.

I would like to turn now to the resolution. The resolution divides a pregnancy into two periods. In the latter period, the consent and authorization of two doctors is required, and I will talk about that later. During the earlier stage of pregnancy, it is provided in the Government's resolution that a qualified medical practitioner must be of the opinion that the continuation of the pregnancy of a woman would or would be likely to threaten her physical or mental well-being. In other words, if a woman wants an abortion, according to this resolution she still has to have a doctor agree that a continuation of the pregnancy would or would likely threaten her physical or mental well-being. That is precondition on her right to an abortion as defined by the Supreme Court of Canada. I think the only way that condition can be imposed is by having the Government propose to violate what the Minister of Justice said on January 29 by introducing a notwithstanding clause.

I will turn now to the judgment of the Supreme Court of Canada. The judgment of Madam Justice Bertha Wilson quotes the judgment of the Chief Justice which was concurred in by Mr. Justice Lamer. Three of the members of the Supreme Court of Canada, a majority of those who made the decision, are of the view that legislation would be invalid and would violate the Charter which based its decision on "criteria entirely unrelated to the pregnant woman's priorities and aspirations". That was a portion of the Chief Justice's judgment which was quoted with approval by Madam Justice Bertha Wilson. This means that the woman herself decides. Madam Justice Bertha Wilson went to on to say that Section