

*Government Orders*

Certainly there is a new element in the debate which I as one who has been here for over 20 years have to observe. On the side which calls itself pro-choice, there is an increasing sense of the legitimacy and the ethical foundation of their position. I hope members of the House are taking note of that.

• (1240 )

These individuals in the past certainly pressed their case with intensity. They have a very strong sense which I think needs to be recognized from their point of view of having an unwanted child. Not being able to control fertility is a serious ethical issue. Their commitment not to want to bring an unwanted child into the world has to be considered from the same perspective as one considers the point of view strongly held from the other side that a human being is created at conception and that the abortion policy of the country has to be founded on that.

One of the arguments that I have had some difficulty with is the argument that as a man I am not entitled to deal with the issue and that as a chamber filled with mostly men this issue cannot be dealt with by us. It is a serious argument but when one looks at the consequences of not having a national policy on abortion established in this chamber, one has to come to the conclusions that whatever our shortcomings as individuals in this House, whether we are elected men or elected women, we are elected by all the people of Canada, men and women. And if this issue is not addressed, if a national policy is not established, and a good policy, we are going to have a continuation of situations like the Dodd case and the Daigle case. We will see headlines like the one on the front page report this morning from Nova Scotia about how Dr. Morgentaler is being stopped in the province of Nova Scotia, where a different policy would prevail that applies in any other part of the country if the law he was challenging is held to be valid.

I think this is the place to establish a national policy on abortion. One of my criticisms of the legislation that I will come to in a moment is particularly with the policy expressed by the Minister of National Health and Welfare, which is that the government is not prepared to have Parliament bring forward a full policy on the subject of abortion.

When the Morgentaler decision in the Supreme Court of Canada struck down the abortion provisions of the Criminal Code, the opposition under the leadership of

the member for Vancouver Quadra was very quick to respond. Within hours we were on our feet in the House calling on the government to bring forward legislation and to bring it forward on an urgent basis.

We said that the legislation should respect the finding of the Supreme Court of Canada as to the rights of a woman, as to the interests of the foetus. In fact the Governor General-elect who was then the Minister of Justice indicated that the government would respond rapidly and that the legislation would bear more or less on the lines which my leader and I in our questions and in comments to the media indicated our caucus would support.

At the same time we made it clear that for us this would be a free vote. Members of our caucus would not be pressured or constrained to create a unanimous, monolithic party position. We considered the issue to be that important.

Now I want to turn to the actual legislation proposed by the government and deal first with my grave concern about its constitutionality. This is legislation which we know will be challenged as to its constitutionality, but it seems nowadays that all legislation is challenged as to its constitutionality.

What concerns me more about this legislation is that the challenges that we know are coming may well be valid in my opinion. Second, these challenges to this bill if enacted in its present form will in every case involve an unfortunate pregnant woman, either going to court herself or being forced into court by a man—her husband, her boyfriend, her ex-husband, her ex-boyfriend—in the ways we have seen in the Daigle and Dodd cases. This is extremely unfortunate and I feel that it is wrong to subject the country to a validation of this legislation in that format.

I suggest that the government rely on a power available only to it under the Supreme Court of Canada Act to take this legislation now in its form as a bill to the Supreme Court of Canada to have its constitutionality validated.

I want to refer to some arguments on that subject. First, I want to refer to a textbook on references to the Supreme Court of Canada which sets out the legislation and refer to the statement made by the distinguished author, Peter Hogg, at page 181: