

NEWS

Province appeals Morgentaler decision

BY MIRIAM KORN

The Nova Scotia government won't give up. It has filed for an application for leave to appeal to Supreme Court of Canada to overturn the Nova Scotia Court of appeal decision upholding a lower court ruling that the Medical Services Act is unconstitutional.

If this sounds complicated, it is because it is. The clincher, however, is that last fall, this law was used to prosecute Dr. Henry Morgentaler for performing abortions at his McCully St. clinic in Halifax (see sidebar).

The Medical Services Act's stated purpose was "to prohibit the privatization of the provision of certain medical services in order to maintain a single high-quality health-care delivery system for all Nova Scotians."

The provincial government says it wants the Supreme Court of Canada to determine the limits of provincial power over regulation of health care in the province. "It's a question of federal and provincial regulation of medical services, not just abortion," said Peter Spurway, the Attorney General's Information Officer. "We want to know where the line is drawn between federal and provincial justice in the medical services question."

At present, there is no federal legislation that controls abortion, however, Anne Derrick, Morgentaler's lawyer, notes that it is not needed. "Abortion has been shown through many cases to be a simple, safe procedure that can be performed in a clinic. We do not need a bunch of male legislators to set up legislation that limits women's rights by regulating abortion."

Derrick describes the province's legislation as "a wolf in sheep's clothing." She disagrees with Spurway as to the real reason the government is trying to appeal the decision. "In my opinion, this question of law was decided in court. There is no point in wasting time denying women abortions."

She also points out that a lot of money is being spent on this case. Basil Deakin, a columnist for the Chronicle-Herald, agrees that it is an "incredibly petty decision of the supposedly politically chastened and economy minded government... especially for an administration that prides itself on its puritanical penny-pinching, ranging from ministerial motor cars to departmental cups of coffee."

One of the senior solicitors for the Crown, Marian Tyson, on the other hand, says that the government is not spending that much extramoney on the case. She points out that they are using staff lawyers and that the first trial against Morgentaler took the most money, since it spanned a three week period while the appeal only took one day.

During the trial, the Crown said that "the Act's clear purpose is the delivery of medical services in Nova Scotia through the establishment and management of hospitals as opposed to private facilities." They used John Malcolm, the administrator of the Health Care Institutions division of the Health and Fitness Department, as a primary witness to support this claim.

"if a procedure was done at one hospital, there was no need for it to be duplicated at another"

He testified that the objectives of the Act were "the prevention of a two-tier system of the delivery of health care, one for the rich, one for the poor; high quality delivery of health care, with quality control mechanisms, and the rationalization of the delivering of medical services so as to avoid duplication of service, and to reduce overall cost to the province."

He did admit, during the proceedings, that Morgentaler's stated intention to set up a clinic to perform abortions provided the "catalyst" that resulted in the legislation being put forward in March of 1989.

Tyson supported Malcolm's testimony from the original trial. She

explained that "rationalization" of the medical services in Nova Scotia, meant that if a procedure was done at one hospital, there was no need for it to be duplicated at another. "For example, abortions are done only at the Victoria General Hospital. She added that "Morgentaler agreed that the V.G. was the best service east of Montreal." (Morgentaler stipulates that this was said prior to the opening of his clinic).

Despite the existence of this service at the V.G. Hospital, the McCully St. clinic is still fairly busy, according to its manager. An average of about 10-15 abortions per day are performed at the clinic once or twice a week. She explained that there are many reasons why there is a need for the clinic. "Women from out of the province may not have access to a hospital; the clinic provides a supportive environment for these women, and some simply want confidentiality and anonymity."

At present, an abortion at the clinic costs \$400. If MSI were to cover it, which it does not at this point in time, there would still be a \$125 charge for the service.

Other provinces have tried to obstruct the performance of abortions in various ways. For example, explained Derrick, several years ago British Columbia refused to fund abortion. Newfoundland, on the other hand, "took the sensible view and did not obstruct the establishment of Dr. Morgentaler's clinic," she noted. "Some provinces can appreciate the pro-choice majority."

Chronology of abortion debacle

The saga of the provincial government's opposition to Morgentaler's clinic in Nova Scotia is long. The following is the sequence of events.

- On March 16, 1989, the Nova Scotia Executive Council made regulations pursuant to the Health and Hospitals Act prohibiting therapeutic abortions performed outside of hospitals and, pursuant to the Health Services and Insurance Act, denying medical insurance coverage for such abortions.
- On May 8, 1989, the Canadian Abortion Rights Action League, a national pro-choice organization, commenced a constitutional challenge in the Nova Scotia Supreme Court to the March regulations. This application for a declaration, naming the Attorney General of Nova Scotia as the Respondent, was set down to be heard on a contested basis in Supreme Court Chambers on June 22, 1989.
- On May 24, 1989, the clinic opened for phone referrals and counselling for women outside Nova Scotia with no access to abortion. Sometimes, those from New Brunswick and Prince Edward Island were referred to other clinics.
- On June 6, 1989, a new bill the Medical Services Act, [the Act] was introduced to the legislature by the Minister of Health, David Nantes. The bill received first reading on June 6, and third and final reading on the last day of the legislative session, June 15, 1989.
- On November 5, 1989, an injunction was granted to the government stating that a violation of the Act was a criminal offence. The clinic continued with its counselling and referrals, but did not perform any more abortions. Morgentaler was charged with 14 counts of violation of the Medical Services Act.
- On October 19, 1989, Judge Joseph Kennedy found Morgentaler not guilty on the basis that the legislation was an attempt to enact criminal law and was therefore ultra vires, i.e. beyond the scope of the province's powers. This is usually federal law.
- On October 23, 1990 the clinic re-opened to perform procedures.
- On July 5, 1991, the Nova Scotia court of appeal upheld the original provincial court decision, 4 to 1. The province is presently seeking leave to appeal to the Supreme Court of Canada. In other words, it is waiting for the court to decide if there is reason to hear the case. It could take from three to six months until a decision is made.

LBR
 ADJACENT PARK LANE MALL
WING STEAK SPECIAL

\$1.29*

Kitchen Hours: Mon-Tue-Wed & Sat 11:30-2:30
 Thursday & Friday 11:30-6:45

*Special not available before 2:30 on Fridays

***BEVERAGE PURCHASE NECESSARY**
Lower Level Lord Nelson Arcade

Dr. S.D. Ram

*Announces the Opening of
 Her Family-Medicine Practice
 at 6108 Coburg Road, Halifax.
 Phone No. 422-1151
 Office Hours 8am - 8pm
 Monday to Saturday*

THE Hair LOFT
 "A FULL SERVICE SALON"

Perm Special
 \$44.95 (Regular Price \$65.00)
 With Advanced Stylists
 Boyd, Wanda, Shelley or Luke

The Hair Loft
 5239 Blowers Street
 423 - 5638

Matrix
 HAIR AND SKIN CARE

*When accompanied with this ad or your student I.D.
 (Offer Expires October 31st)