

*Criminal Code*

the law is now and what it will be when these amendments take effect. I asked the professor this question:

“May I ask you to pause there, so that this is on record? You are dealing with the Canadian section 209. I think it should be read in at this time. Then I will ask you the next question which is dealing right with the point you are on, if I might, Mr. Chairman.

“209. (1) Every one who causes the death of a child that has not become a human being, in such a manner that, if the child were a human being, he would be guilty of murder, is guilty of an indictable offence and is liable to imprisonment for life.

(2) This section does not apply to a person who, by means that, in good faith, he considers necessary to preserve the life of the mother of a child that has not become a human being, causes the death of the child.”

Section 209 of the code makes it illegal to cause the death of a child that has not become a human being; it is an offence to do this. Subsection 2 of section 209 provides that the section does not apply to a person who, in good faith—this, basically, has always been a doctor—causes a miscarriage in order to preserve the life of the mother. The House of Lords ruled that this section, properly interpreted, means not only the life of the mother but her health, that is, if she would otherwise become an emotional or physical wreck. I continued my question to the professor in these words:

And I take it from conversations I had with you this morning, that you feel that the Bourne case principle that interprets the preservation of the life has been applied in Ontario, and I believe it has been applied elsewhere in Canada. It does not mean to save her from violent death, but it means to preserve her life, in a case where she might otherwise be left impaired physically or emotionally. Then of course the doctor in good faith who performs such a therapeutic abortion would fall into the saving and exception clause of section 209. What you are really saying is, with the strength of section 209 and considering proposed section 237, if the word “unlawfully” were put in you would be obtaining the same result basically of what the bill is trying to do at the present time.

● (12:30 p.m.)

I emphasize those words. If the word “unlawfully” were included we would obtain the same result, basically, as that sought by clause 18 of the bill. Actually, from a legal point of view you are not in fact really changing the statute law of Canada very much. To this the professor answered that this was his view. So my first point is that by taking out the words “in the act of birth” from section 209 and adding the word “unlawfully” in section 237, according to the professor of criminal law from the University

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of Toronto you are doing the same thing as does the wording of the bill.

Someone might ask, why bring it in at all? I will tell you why, sir. This amendment will make one small change to clause 18 of the bill. Mr. Speaker, I wonder whether the hon. members over there could hold their meeting outside because I am trying to explain a very technical matter.

I was going to explain the reason for this change. Under clause 18 of the bill a committee of doctors must be set up and the operation can only be performed in an accredited hospital if the doctors say that an abortion is necessary in their view to preserve the life and health of the mother. That is the only difference between my amendment and clause 18, leaving section 209 as it is in the code except for the words “in the act of birth” and amending section 237 to make it clear that there is no onus on the doctor and he cannot be penalized. This same change was suggested by the former minister of justice, Mr. Garson, when the code was changed in 1953, so that the only change I suggest is that a committee of doctors or an accredited hospital not be made a requirement in the bill.

Let me explain briefly why I wish to make the change and why it was recommended by the professor. In remote parts of Canada far away from urban centres it is difficult or impossible to get a committee of doctors or to reach an accredited hospital. So this bill would be discriminating, by procedure only and not by law, against people who live in these areas. For instance, Tisdale or Melfort is 160 miles from Saskatoon where there are enough doctors and accredited hospitals. This is an example only. So, as I said, by amending section 209 by taking out the words “in the act of birth”, and by inserting the word “unlawfully” in section 237, we will be achieving the same thing as is achieved in the bill as presented by the minister. That is what was said by the professor from Toronto, and I submit he is correct. May I say, with the greatest respect, that the decision was arrived at with the aid of advisers, and this is a very technical point in the law.

As defence counsel I have pleaded many cases dealing with abortion. I think I understand the law and I understand what the professor is saying. My main argument in favour of this amendment is that if we delete clause 18 from the bill, as proposed in amendment No. 20, we must also make the proposed deletion in clause 15, as set out in amendment No. 13, because if either of them