

BACKGROUND

on

PUBLIC FUNDING OF ABORTION

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by

The Committee to End Tax-Funded Abortions

BACKGROUNDER ON PUBLIC FUNDING OF ABORTION

The abortion debate covers a number of hotly-contested sub-issues, including the role that government should or should not play in funding. As provinces begin to restructure their publicly funded health systems and to restrict and reduce spending in this area, the issue of tax-funded abortions will arise more frequently. This paper will examine the legal, medical and social issues involved in the topic.

LEGAL BACKGROUND

The essential legal question in determining whether the government of Alberta has the legal right to de-insure abortion is a straightforward one: who defines what is a “medically necessary service” under the Canada Health Act?

Section 3 of the Act states that “...the primary objective of Canadian health care policy is to protect, promote, and restore the physical and mental well-being of residents in Canada...” The Act provides that provincial health insurance plans must cover “insured health services” which include “hospital services”. These hospital services are defined in Section 2 of the Act as services which are “medically necessary for the purpose of maintaining health, preventing disease or diagnosing or treating an injury, illness or disability...”

Prior to 1970, induced abortion was a crime under the Criminal Code of Canada, and hence abortion was not an insured service under provincial health plans. In 1969 the Criminal Code was amended to add Section 251 which allowed abortions to be performed in accredited hospitals if an authorized therapeutic abortion committee certified that the continuation of

pregnancy was likely to endanger the life or the health of the female person. The legislation's failure to define "health"

led to the common understanding that therapeutic abortion committees would apply the term very broadly to include social and emotional considerations.(1)

Indeed, the government of the day apparently did not intend for abortion to become an insured service: when asked if Section 251 would require provincial health plans to pay for abortions, the then Minister of Justice John Turner exclaimed, "Oh no."(2) Provincial health plans did, however, insure "therapeutic" abortions that were approved by hospital committees in order not to risk contravening the Canada Health Act's Requirement that all "medically necessary services" be covered.

The Supreme Court of Canada's 1988 decision in *R. VS. MORGENTALER* ruled that Section 251 of the Criminal Code was unconstitutional because the procedural requirements for the establishment of the abortion committees were not applied equally across the country. A majority of the court, however, concluded that parliament had the power to restrict abortion and to protect unborn human beings. Nevertheless, the decision removed the framework for therapeutic abortion committees. Many legal commentators noted at the time that the absence of a federal law on abortion which, in effect, had defined all abortions as medically necessary left the door open for the provincial governments to develop their own definition and to restrict coverage under public health plans.

Within weeks, the British Columbia cabinet of Premier Bill Vander Zalm passed a regulation stipulating that abortion, except when necessary to save the life of the mother, was not to be

considered medically necessary and thus not to be insured under the province's Medical Services Act.(3) This regulation was immediately challenged by the B.C. Civil Liberties Union. Mr.

Justice Alan McEachern of the B.C. Supreme Court struck down the regulation but did so solely on narrow technical grounds that Cabinet did not have authority to stipulate what constituted a medically required service.(4) Justice McEachern held that Cabinet may have been within its authority if it had merely de-insured abortion services without saying that they weren't medically necessary. Many commentators suggested that the case could have been successfully appealed but the issue was dropped for internal political reasons.(5)

In 1989 the federal government under Prime Minister Brian Mulroney introduced Bill C-43 as a compromise on the abortion question. It failed to pass and left Canada without any law regulating abortion. When the legislation failed, then Justice Minister Kim Campbell said that it would be up to each provincial government "to draw a distinction between abortions which are medically necessary and those which are not, and to fund only those which are medically necessary, drawing on their own criteria."(6)

Since the, superior court judges in Manitoba and Prince Edward Island have said clearly that provinces have the power to de-insure abortions. The Supreme Court of Canada has never ruled on the issue of whether provinces must pay for abortions.(7)

This assessment is reiterated in statements from the Canadian Medical Association's chief spokesman Dr. Doug Geekie, according to whom Alberta "has all the leeway in the world" to de-insure abortion as "it is the responsibility and the authority of the province exclusively to determine what services will be insured.(8)

MEDICAL BACKGROUND

Is abortion a medically necessary procedure? This is clearly the central question in the debate over whether or not Alberta should eliminate publicly funded abortions. The question involves two issues: is the procedure medically indicated by a doctor and second, is it safe and healthy for women?

No credible source contests the fact that almost all abortions performed in North America are not medically necessary. As early as 1951, Dr. Roy Heferman of Tufts University told the Congress of the American College of Surgeons that, "Anyone who performs a therapeutic abortion is either ignorant of modern methods of treating pregnancy, or unwilling to take the time to use them." (9) Even the late Dr. Alan Guttmacher, formerly North America's leading proponent of abortion, wrote in 1967 that "today it is possible for almost any patient to be brought through pregnancy alive, unless she suffers from fatal illness such as cancer, and, if so, abortion would be unlikely to prolong, much less save life." (10)

Statistics from the United Kingdom (which are more complete than Canadian abortion figures) verify this claim. Of the 2.6 million abortions performed in England and Wales between 1968 and 1986, 123 or .005% were performed to save the life of the pregnant woman. (11)

In 1986, Dr. Richard Kennedy and Dr. Ruth Collins-Nakai, then president and president-elect respectively of the Alberta Medical Association, called on the Alberta government to de-insure abortions because, they said, fewer than 5% were done for medical reasons. (12) At that time, in

1986, there were 6,000 abortions a year. Both doctors commented on the high repeat rate of 15%.

By 1994, the number of abortions had jumped to 9,186 with a repeat rate of 28%. Every one of these were paid for by taxpayers. There were 23 abortions for every 100 live births in the province. 64% of abortions were performed on single women and 51% were on women aged 20 to 29.(13) These factors clearly dispute any notion of medical necessity. Why, for instance, would pregnancy pose a greater health risk for unmarried women? Or why would women in their prime child-bearing age be subject to more risk than older women?

The most persuasive evidence that abortion is almost always an elective procedure comes from professional abortion providers. In a 1988 Vancouver radio interview, Dr. Henry Morgentaler stated that “fewer than one-tenth of one percent of abortions are necessary” to save the mother’s life. In a 1990 interview with then Justice Minister Kim Campbell the president of the Society of Obstetricians and Gynaecologists of Canada, Dr. David Popkin, asked why the proposed new legislation on abortion didn’t “reflect the reality that women effectively decide to have an abortion today and doctors basically agree to provide this service...”(14)

In fact, doctors in Alberta are paid for all abortions which they perform. They are not required to give a medical reason in order to be paid. In other words, any abortion performed for which a doctor submits a bill to Alberta Health is considered medically necessary.

In terms of abortion’s effect on women’s health there is ample evidence that a significant number of women suffer serious mental health problems following abortion.(15) Physical complications

include bleeding, infection, and infertility.(16) In addition, there is a growing body of medical and scientific evidence to suggest a link between induced abortion and breast cancer. More than 20 studies have shown an increased risk of breast cancer among women who abort their first pregnancy and among those who abort during the first trimester. Younger women who abort are at an increased risk compared to older women.(17)

In summary, not only are most abortions not performed for medical indications or to improve the health of women, the medical evidence would suggest that induced abortion is often harmful for women.

CONSEQUENCES OF DE-FUNDING ABORTION

Some argue that removing public funding of abortion would result in immediate hardship for poor women who would be unable to pay to have the procedure done privately. They also argue that the costs of publicly-funded abortions are significantly lower than the welfare costs of supporting women and their children.

There are two flaws in this argument. First, there are no statistics in Canada on the income status of women who have abortions. There is no evidence to support the claim that most are poor or would end up on welfare if they don't have abortions. In fact, almost one-third of abortions performed in Alberta are done in private clinics where patients must pay between \$300 and \$800 for facility fees. The physician fee, paid by the province for abortions in private clinics, amounted to about \$110 in 1994. If women can pay the facility fee, it is reasonable to assume that an additional \$110 is not too onerous.

Furthermore, the experience in the United States where most states have de-insured abortions for poor women has shown that in fact 80% of those expected to get abortions still obtain them without government funding. More importantly, in those states that have de-insured, the pregnancy rate drops in the years following de-funding.(18)

Others argue that de-insuring would lead to an increase in “back-alley” abortions. Again, there is no evidence to support this claim. The U.S. Centers for Disease Control in Atlanta looked at this question after states began de-insuring and found no increase in illegal abortions.(19) In Canada, all abortions were illegal until 1970. After that, only those approved by a therapeutic abortion committee were legal. Now, all abortions are legal no matter at what stage of pregnancy they are performed. If abortion were de-insured there would still be clinics and hospitals performing abortions and women would have access to these. The only difference is that they would pay for them themselves.

PUBLIC OPINION

In 1991, the Saskatchewan government of Premier Grant Devine held a province-wide referendum in conjunction with the provincial election. 63% of voters said they did not want the government to pay for abortion procedures. However, the Conservative government was defeated in that election and the incoming New Democratic government did not follow the stated wishes of the electors on this issue.

In 1995 the Committee To End Tax-Funded Abortions (CETFA) in Alberta released a poll of 500 Albertans which showed 71% supported de-insuring abortions.(20) In June of 1995 ITV-

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(Edmonton television and radio stations) commissioned a poll conducted by John Yerxa Research of Edmonton. That poll of 700 Albertans found that 67% supported de-insuring abortions except in medical emergencies.(21)

CETFA also presented the government with over 40, 000 signatures on petitions calling on the government to remove abortions from the list of insured services under the Alberta Health Care Act.

In September of 1995 the Alberta Conservative caucus voted to de-insure abortions except those which are medically necessary. The government asked the Alberta Medical Association and the College of Physicians and Surgeons to define medically necessary. Both refused to do so. The government has since done nothing to fulfill its commitment to de-insure abortions and taxpayers in Alberta continue to pay for all abortions performed in the province.

FOOTNOTES

1. The 1977 Badgely Report recognized widespread use of “mental health” indications as a means of circumventing the law. (Badgely, R.F., Caron, D.F. & Powell, M.G. Committee on the Operation of the Abortion Law, Ottawa: Supply and Services Canada, 1977.
2. Hansard, (April 28, 1969, page 8078)
3. British Columbia Reg. 54/88, O.C. 221/88
4. B.C. Civil Liberties Assn. V. B.C. (A.G.), 1988
5. This was confirmed by past Federal Justice Minister Kim Campbell during the debate on Bill C-43; “The government of British Columbia moved to restrict money for abortion....That regulation was struck down, but it was struck down for a largely technical reason, that there was no statutory basis for it. But that could have been corrected by legislature.” Hansard, (November 21, 1989) p. 5966
6. Hansard, (November 21, 1989), p. 5966
7. K. Mark McCourt, A Legal Summary on De-insuring Abortion, February 1995
8. Dr. Doug Geekie, CBK Radio Afternoon Edition Interview, July 29, 1991.
9. G. Grisez, Abortion: The Myths, the Realities, and the Arguments, (New York: Corpus Publications, 1970).
10. Alan F. Guttmacher, editor, The Case for Legalized Abortion Now, (Berkley, Diablo Press, 1967) p.9
11. Hansard Written Answers (July 1, 1987)
12. Edmonton Journal, Nov. 22, 1986
13. Government of Alberta, Therapeutic Abortions Reported by Hospitals and Clinics in Alberta, for the year ended Dec. 31, 1990
14. “A Dialogue on Abortion”, Journal of the Society of Obstetricians and Gynaecologists of Canada, Vo. 12, No.8, October 1990.
15. Dr. Michael Ferri, Abortion Funding Psychiatric Brief, September 1994
16. Dr. Fawzy Morcos, Abortion Funding. A Medical Brief, July 1994
17. Dr. Joel Brind, “May Cause Cancer”, National Review, Dec. 25, 1995

18. Jacqueline R. Kasun, Ph.D., “Cutoff of Abortion Funds Doesn’t deliver Welfare Babies”, The Wall Street Journal, December 30, 1986.
19. Willard Cates, Jr. M.D., MPH et al, “The Health Impact of Restricting Public Funds for Abortion”, October 10, 1977 - June 10, 1978, American Journal of Public Health (September 1979), pp. 945-947.
20. Committee to End Tax-Funded Abortion, Public Opinion Poll, January 1995
21. John Yerxa Research, Public Opinion Poll for ITV-CHED, June 1995