

Today it's a crime to kill me... yesterday it wasn't.



Legal Abortion in Canada

By Joanne Byfield

Former Prime Minister Paul Martin raised the issue of abortion in the final week of the federal election campaign. He announced that he would repeal section 33 of the Charter of Rights and Freedoms, the so-called notwithstanding clause, to ensure that the federal government could never override a Supreme Court decision.

He specifically mentioned "a woman's right to choose" as a right that could be threatened by the election of a Conservative government under Stephen Harper. Mr. Martin also demanded that Mr. Harper make the same pledge to eliminate the notwithstanding clause and implied that the Conservative leader would not do so because so many in his party did not support abortion rights.

(It is interesting to note that former Prime Minister Pierre Trudeau who initially opposed the inclusion of section 33 in the charter eventually accepted the clause as a legitimate check on the power of the Supreme Court and in fact, said he would use it to restrict abortion. He told Cardinal Emmett Carter of Toronto in a private letter in 1981: "Should a court decide at some future date

that Section 7 (the right of women to security of the person) or 15 (equality rights), establish a right to abortion on demand, Parliament will continue to legislate on the matter by overriding the court's decision and the specific Charter right.")

Twenty-five years later, the Liberal Party and Mr. Martin sound very different. Mr. Martin never actually used the word "abortion." Instead he stuck to the vague, emotionally laden and limp phrase "women's right to choose."

The Liberal Party website in the final 10 days of the campaign began running quotes from Conservative MPs who had spoken at pro-life conferences or commented on abortion over the past number of years. Some Conservatives countered by pointing out how many Liberal MPs and candidates were pro-life and had

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SPECIAL
Report

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expressed support for protection of the unborn or opposed euthanasia.

Mr. Martin repeatedly claimed that the “right to choose” was threatened. He was never challenged for implying that abortion on demand is protected under the Charter of Rights and Freedoms. No one in the media corrected his claim nor did members of the Conservative Party. If the latter had commented, Mr. Martin would undoubtedly have attacked them and pointed out that this was proof of their “hidden agenda.” As for the media, surveys have shown that most in the media support abortion on demand in contrast to the Canadian public. They might be ignorant of the law or it may be that they just wanted to promote the notion that abortion rights are sacrosanct and protected.

In this Special Section of *The Rose*, we will clarify the legal status of abortion in Canada, what the Charter says, where Canada’s main parties stand, and what Canadians believe about legal abortion.

How did we get here?

Abortion was illegal in Canada until 1969 when the Canadian Parliament passed a law that allowed abortion in certain circumstances to protect the “health” of the mother. Abortions could only be performed in hospitals and had to be approved by a therapeutic abortion committee consisting of three doctors. All other abortions were still subject to the Criminal Code sanctions.

In 1988, the Supreme Court of Canada, in a case brought by Henry Morgentaler challenging the law, struck down the abortion law on the grounds that it was not applied equally across the country thereby violating the security of the person guarantee in the charter. Not all hospitals had established therapeutic abortion committees. Others had committees that simply approved any requests and others were far stricter. The court did agree that there was a public interest in protecting the fetus and invited parliament to draft another law restricting abortion.

At that time, Liberal MP Paul Martin declared that he did not support abortion on demand and urged the government of Brian Mulroney to enact a law.

The Mulroney government did introduce a bill to restrict abortions to those required for health reasons with maximum jail sentences of two years for doctors who violated the law. The bill passed in the House of Commons but a tie vote in the Senate meant that the law did not pass. Since then, abortions have been available for any reason and most are funded by taxpayers through the publicly funded health system. There are now over 105,000 abortions a year in Canada. We are one of the few countries in the Western world that does not have any legal restrictions on abortion.

Around the world

Most European countries have legal restrictions on abortion. Here are some examples.

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| Britain | 24 weeks (considering changing to 20 weeks) |
| France | 12 weeks |
| Germany | 12 weeks |
| Belgium | 12 weeks |
| Denmark | 12 weeks |
| Sweden | 18 weeks |
| Norway | 18 weeks |
| Italy | 13 weeks |
| Greece | 12 weeks |
| Hungary | 12 weeks |

What do Canadians think about legal abortion?

There have been many public opinion polls in the last 25 years on abortion. Those that have asked specifically about legal abortion or legal restrictions on abortion have usually found a majority of Canadians think abortion should be legal only in certain circumstances. Gallup Canada polled Canadians regularly on this question between 1975 and 2001. They consistently found that 60% or more

thought there should be some legal restrictions on abortion. In 2001, 52% said abortion should be legal only in certain circumstance and an additional 14% said it should always be illegal. In total then, 66% did not support Canada’s current position. Between 2002 and 2005, LifeCanada has commissioned polls each year on legal protection before birth. The polls, conducted by Leger Research in 2002 and 2003 and by Environics in 2004 and 2005, have found over 60% support for laws to protect human beings before birth. (See the polls at www.lifecanada.org)

Where do Canada’s political parties stand?

The Conservative Party of Canada
The party voted at its first policy convention in 2005 not to introduce legislation on abortion. Many of the party’s members and MPs are pro-life and many support abortion rights. Prime Minister Stephen Harper says he will allow free votes on abortion issues but would discourage backbenchers from introducing bills or motions in his first mandate.

The Liberal Party of Canada
Beginning with Jean Chretien in the 2000 election, the Liberal leaders have declared the party to be “pro-choice” which means they support abortion on demand. Paul Martin reiterated that position in both the 2004 and the 2006 elections. There are many pro-life members and some MPs in the Liberal Party.

The New Democratic Party
The NDP supports abortion rights unequivocally.

Bloc Quebecois
Officially, the party is pro-choice.

The only federal party that is explicitly pro-life is the Christian Heritage Party which has never elected a member of parliament.

The Public Debate

Mr. Martin’s outburst did have a positive side effect. Shortly after the January 23rd election, two columns appeared to advocate a more open discussion on the subject of abortion. First, the *Calgary Herald* ran a column by Father Raymond de Souza who gently chastised his hometown

newspaper for speculating that Jason Kenney’s pro-life stance would keep him out of cabinet. The column pointed out that conservative values are not only social or fiscal, but also Canadian values and that the government, whether they are pro-life or not, have an important role to play in ongoing political debate.

In early February, a column by Margaret Somerville that appeared in a number of newspapers across the country. Somerville is the founder of the McGill Centre for Law and Ethics in Montreal and was commenting on the suggestion that one’s opinion on abortion must fall in one of two categories: you are “pro-choice” or you are “pro-life”. She pointed down firmly with Steve Harper when asked during the 2005 election whether she was “pro-choice” or “pro-life”. She said that abortion issue are complex and do not fit into any of the neat categories. She pointed out that Canadians do not fall into one or the other support abortion in a certain way, all paid for by taxpayers. She said, “I oppose abortion for any reason.”

She also highlighted the issue in Canada. She said that Canadians are surprised to learn that a woman can get an abortion until just before birth. When I say that, many people misunderstand.”

She cited Statistics Canada showing that about 5% of abortions were performed after 25 weeks gestational age to be born. She said that hospitals volunteer to perform viability is hard to determine. In medicine it is not unusual for babies born post-25 weeks and in some cases, even after 30 weeks, have survived. Certain week baby would be born.

She also reported that she had recently been consulted on two different cases. One was a 29 year-old woman who was a graduate student who had a family that would disown her. The other was a 33-year-old woman who had been born with a cleft palate—a major abnormality—and she

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Dr. Somerville pointed out inconsistencies in the law and attitudes on abortion. For example, aborting a baby late in pregnancy is legal as long as the baby is "born dead."

did not want "a defective child." Dr. Somerville was consulted because although the requested abortions were not illegal, the doctors thought they were unethical and sought advice on how to handle the situation.

Dr. Somerville pointed out inconsistencies in the law and attitudes on abortion. For example, aborting a baby late in pregnancy is legal as long as the baby is "born dead." If, on the other hand, the baby survives the abortion and is born alive and then killed, "the charge would be murder," said Dr. Somerville. In fact, here in Alberta in 1998, a baby was aborted at the Foothills Hospital in Calgary at 35-weeks gestation. That baby survived for 12 hours and according to nurses was given no hydration or comfort and left to die. Following a public outcry about the case, which the hospital initially denied and then admitted, the College of Physicians and Surgeons of Alberta amended its "Pregnancy Termination Guidelines" to allow doctors to inject potassium chloride into the hearts of babies slated for late abortions to ensure they were dead before birth.

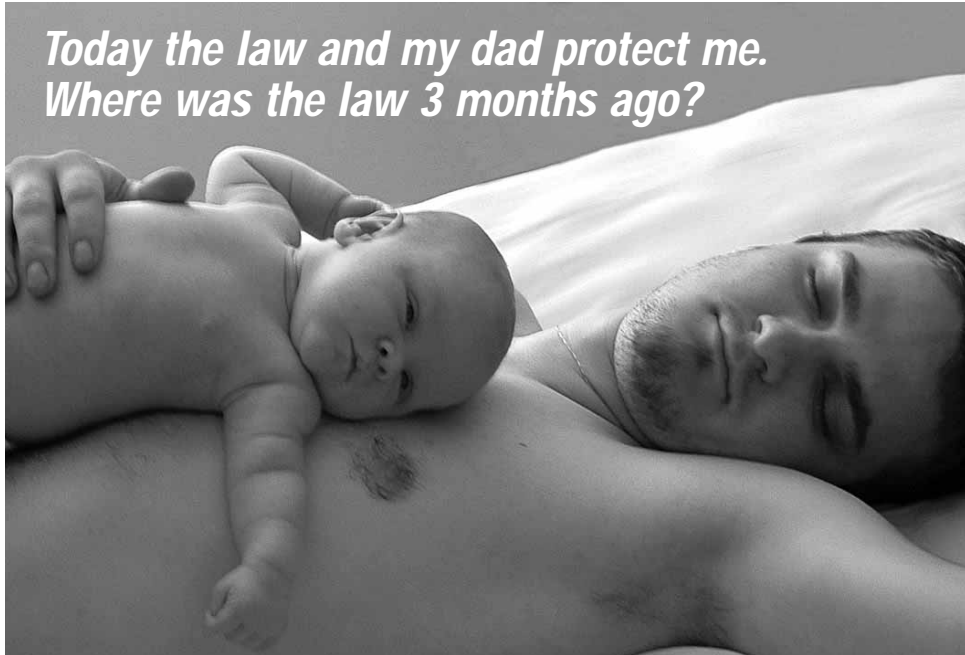
Dr. Somerville's column encouraged public debate and discussion on the question and she predicted that at some stage, parliament would have to address the question.

You call this a poll?

In 2005, The Gallup Organization polled Americans, Britons and Canadians on the same question for comparative purposes. Unfortunately, the question was completely inappropriate in the Canadian context. Gallup asked: "Would you like to see abortion laws in this country made more strict, less strict, or remain as they are?" Britain has restrictions on late term abortions as do some states in the U.S. In Canada, however, there are no "abortion laws" so the question and the answers are meaningless. In the poll, 52% of Canadians said the laws should "remain the same." Twenty percent said they should be less strict and 24% said they should be "more strict."

Pro-Life Primer

***Today the law and my dad protect me.
Where was the law 3 months ago?***



What does the Charter say about abortion?

The Canadian Charter of Rights and Freedoms was added to the Constitution when it was repatriated from Britain in 1982. The charter says nothing about abortion. It does not accord a right to abortion, nor has any Supreme Court decision ever "read-in" a charter right to abortion. Section 7 of the Charter guarantees "everyone" the right to "life, liberty and the security of the person." You can read the entire charter at <http://laws.justice.gc.ca/en/charter/index.html>.

If the Charter guarantees the "right to life", why is abortion allowed?

In several cases, beginning in 1989, the Supreme Court of Canada has determined that a fetus is not a "human being" or "person" under the law until it is born alive and completely outside the body of the mother. These included the famous Tremblay v. Daigle [1989] and R. v. Sullivan [1991]. So, even though science and biology tell us that the fetus developing in the womb is alive and human, under the court's interpretation of the law, that human being is not accorded the same human rights as all other Canadians.

Does Canada have a law restricting abortion?

No. Currently, there is no legal restriction on abortion. Abortions can be performed in hospitals or private clinics at any time during pregnancy right up to the moment of birth. Abortion advocates often say there are restrictions on abortion. In Alberta, the College of Physicians and Surgeons has guidelines for abortions. These do not have the force of law and do not in any way say that abortion cannot be performed at any stage of pregnancy. The guidelines are available at the CPSA website at <http://www.cpsa.ab.ca/home/home.asp>.

There is no requirement for a medical reason, no restriction on repeat abortions, no parental consent requirement for minors and no informed consent requirements specifically on abortion. There is no requirement that spouses or partners be informed or consent to the abortion. In addition, all abortions performed in Alberta, and most in Canada, are paid for by taxpayers through the publicly funded system.

The Guttmacher Report provides a profile of abortion

By Joanne Byfield

One of the challenges we face in Canada in trying to educate ourselves and others about abortion is the lack of good statistical information about the subject. Statistics Canada releases national abortion statistics each year but the numbers are not very reliable. StatsCan itself admits that the number it reports for total abortions in Canada is probably underestimated by at least 10%. That's because of non-reporting, primarily by private clinics. Alberta is the only province in which the numbers for private clinics are fully reported. Hospitals report their totals but they are not required to report gestational ages. We have virtually no information on the women who have abortions or their reasons. It's difficult to get reliable information on repeat rates, again except in Alberta, where the repeat rate is now 40%.

In the United States, however, there is far more information available on abortion and on the women who choose abortion and why. The pro-abortion organization, The Guttmacher Institute, surveys women and gathers statistics on abortion. An Overview of Abortion in the United States, published in June 2005, provides important information about abortion that in many cases is relevant to the Canadian landscape.

Abortion, the report tells us, is one of the most common surgical procedures in the United States. There were 1.29 million abortions in the U.S. in 2002. Abortion in Canada now stands at about 115,000 per year (if we add the 10% underreporting suggested by Statistics Canada) and is probably one of the most common surgical procedures here too.

Guttmacher also reports on a survey of 1,800 women who had abortions. They were asked why they had an abortion. Most women gave more than one reason (see chart). The most common reasons were inadequate finances and not ready for the responsibility. These were followed closely by "woman's life would change too much," "problems with relationship" and "too young." Only 3% cited health risks to the mother and another 3% cited possible fetal health problem. Only 1% said rape or incest.

In the area of gestational age for abortions, 89% of all the abortions occurred in the first 12 weeks. An additional 10% were performed between 13 and 20 weeks with slightly over 1% performed after 20 weeks.

The survey asked women who had abortions after 16 weeks, why they waited so long. 71% said they didn't know they were pregnant. Almost half said they had trouble making arrangements, 33% were afraid to tell their parents or partner and 24% said they couldn't decide what to do.

The report also charts the age, socio-economic status, race, religion and other characteristics of aborting women. This is important information that helps us to understand why women seek abortion and suggests ways in which they might be helped and supported to make another decision.

It is time that federal and provincial bodies in Canada began collecting and disseminating this information about abortion.

The full report can be accessed from the Guttmacher Institute website at www.guttmacher.org.

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Most Important Reasons Given for Terminating an Unwanted Pregnancy

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| Inadequate finances..... | 21% |
| Not ready for responsibility | 21% |
| Woman's life would be changed too much | 16% |
| Problems with relationship; unmarried | 12% |
| Too young; not mature enough | 11% |
| Children are grown; woman has all she wants..... | 8% |
| Fetus has possible health problem | 3% |
| Woman has health problem | 3% |
| Pregnancy caused by rape, incest | 1% |
| Other | 4% |
| Average number of reasons given | 3.7 |

Sources: Torres and Forrest, 1988 (1987)

New Brunswick Right to Life

P.O. Box 113, Station A, Fredericton, NB E3B 4Y2
Tel. (506) 459-8990 or toll-free 1-888-796-9600. Fax (506) 454-8093. Email nbrl@nb.sympatico.ca
Office: 562 Brunswick St., Fredericton, NB
Life for All. Love for All.

February 22, 2006

The Honorable Tony Clement
Minister of Health
0916A Brooke Claxton Building, 16th Floor
Tunney's Pasture
Ottawa ON K1A 0K9

Dear Mr. Clement,

We ask you to undertake an investigation of possible Medicare fraud by provinces that fund private abortion clinics.

Under the Canada Health Act abortion may only be covered (by the Act's Medicare provisions) when proved medically necessary. Yet private clinics perform on demand without reasonable evidence of medical necessity. The six provinces that fund such clinics within their jurisdictions would therefore appear to be defrauding the Medicare system. These provinces are: Newfoundland, Manitoba, British Columbia, Alberta, Ontario and Quebec.

Please see our enclosed news release for further information.

We also urge you to drop the dispute with New Brunswick over our province's refusal to fund a private abortion clinic. We do so for the following reasons:

1. We can attest that there definitely is no provision for assessing or demonstrating medical necessity at the Morgentaler clinic in Fredericton.
2. For the federal government to ask New Brunswick to fund this clinic is to ask it to contravene the Canada Health Act's Medicare provisions requiring medical necessity.
3. For the federal government to drop the dispute now is not about being for or against abortion, it is a question of respect for the law of the land.
4. Abortions at the clinic in question are performed on demand, on the mere basis of an unwanted pregnancy. An unwanted pregnancy is not a reasonable criterion of medical necessity. We know of no reputable medical body in Canada that holds that terminating a pregnancy because it is unwanted is by definition a matter of medical necessity.
5. Constitutionally, health care is fundamentally under provincial jurisdiction. It is only proper for the federal government to allow the provinces to determine what procedures are medically necessary, including under what circumstances abortion may be considered medically necessary.
6. Just because a province designates a certain procedure, such as abortion, as medically required under certain circumstances does not mean that procedure must automatically be deemed medically required under all circumstances. There is always a need for reasonable demonstration of medical necessity. That demonstration is lacking with the private clinic in question, as well as with similar clinics across Canada.
7. The Canada Health Act does not prevent provinces from funding abortion on demand, whether at public hospitals or private clinics. However, it does not allow provinces to use transfer payments provided by the national Medicare system, as established under the Act, to fund abortions that are not demonstrably medically required.
8. Abortions performed simply on the basis of demand reflect a pregnant woman's choice, rather than a situation of medical necessity. They are more properly designated as "electives" by any insurance scheme a province may operate outside the Canada Health Act.

We thank you for considering these two matters and look forward to your reply.

Yours sincerely,
Peter Ryan, Executive Director

SPECIAL Report

For more information about this insert, contact Alberta Pro-Life
Toll Free 1-877-880-5433 www.albertaprolife.com

