

House of Commons of Canada

Bill C-

An Act to amend the Criminal Code (Section 287)

First Reading: When Paul Mitchell (Red Deer - Mountain View) is Elected to the House of Commons

Mr. Mitchell

Summary

This enactment amends Section 287 of the *Criminal Code* to limit the lawful intentional termination of pregnancy to the first 24 weeks of the pregnancy to protect preborn children in the late stages of development.

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An Act to amend the *Criminal Code* (Section 287)

Preamble

Whereas a preborn child is sufficiently developed to be viable with a high probability of long term survival by the 25th week of development if delivered with proper medical care;

Whereas Canada has no valid abortion law and the Supreme Court of Canada was unanimous in *R v Morgentaler* in 1988 finding that the state has a legitimate interest in the protection of preborn children;

Whereas Chief Justice Dickson (and Justice Lamer concurring) agreed "that protection of foetal interests by Parliament is also a valid governmental objective. It follows that balancing these interests, with the lives and health of women a major factor, is clearly an important governmental objective". (*R v Morgentaler* page 75);

Whereas Justice Beetz (and Justice Estey concurring) wrote "S. 1 of the *Charter* authorizes reasonable limits to be put on a woman's right having regard to the state interest in the protection of the foetus". (*R v Morgentaler* page 124);

Whereas Madam Justice Wilson wrote "In the early stages the woman's autonomy would be absolute; her decision, reached in consultation with her physician, not to carry the foetus to term

would be conclusive. The state would have no business inquiring into her reasons. Her reasons for having an abortion would, however, be the proper subject of inquiry at the later stages of her pregnancy when the state's compelling interest in the protection of the foetus would justify it in prescribing conditions. The precise point in the development of the foetus at which the state's interest in its protection becomes 'compelling' I leave to the informed judgment of the legislature which is in a position to receive guidance on the subject from all the relevant disciplines. It seems to me, however, that it might fall somewhere in the second trimester". (R v Morgentaler page 183);

Whereas Justices McIntyre and La Forest argued "there has always been a clear recognition of a public interest in the protection of the unborn and there is no evidence or indication of general acceptance of the concept of abortion at will in our society. The interpretive approach to the *Charter* adopted by this Court affords no support for the entrenchment of a constitutional right of abortion." (R v Morgentaler page 39);

Whereas Canada's lack of any protection for preborn children is completely out of line with the laws of the other democratic countries of the world, and no Western country with federally regulated abortion laws allows those abortions beyond 24 weeks;

And, Whereas Parliament wishes to specifically protect preborn children in the later stages of development;

Now, therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Short Title

This Act may be cited as the **Protection of Preborn Children Act**.

Criminal Code

The **Criminal Code** is amended by repealing and replacing Section 287 with the following:

287. (1) Everyone who uses or attempts to use any means to terminate a pregnancy is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

Serious Cases

(2) Every person who commits an offence under subsection **(1)** and

- (a) Acts without the informed consent of the pregnant person except in cases of medical emergency when the pregnant person is unable to consent; or
- (b) Recklessly causes danger of death or serious harm to the pregnant person or preborn child;

Is guilty of an indictable offence and liable to imprisonment for life and to a minimum punishment of imprisonment for a term of five years.

Person terminating their own pregnancy

(3) Everyone who, being pregnant, uses or attempts to use any means to terminate their own pregnancy is guilty of an offense punishable on summary conviction.

Definition of “means”

(4) In this section, “means” includes

- (a) The administration of a drug or other noxious thing;
- (b) The use of an instrument; and
- (c) Manipulation of any kind.

Exceptions

(5) Subsections **(1)** and **(3)** do not apply where a qualified medical practitioner before using or attempting to use any means to terminate a pregnancy has confirmed by certificate in writing that

- (a) The qualified medical practitioner has determined the pregnant person is not more than 24 weeks into the pregnancy;
- (b) The pregnant person is not being coerced to terminate the pregnancy; and
- (c) The qualified medical practitioner has explained the significance of the intervention, especially about the order of events, risks and possible physical or psychological consequences.

(6) The limitation in paragraph **(5)(a)** does not apply if the qualified medical practitioner has, by certificate in writing, stated that in their opinion, the termination of the pregnancy is necessary

- (a) To save the life of a pregnant person whose life is endangered by a physical disorder, physical illness, or physical injury, including a physical condition caused by or arising from the pregnancy itself; or
- (b) To prevent severe pathological physical morbidity of the pregnant person, or when the preborn child has a lethal abnormality or no cognitive function.

(7) Subsections **(1)** and **(3)** do not apply where a qualified medical practitioner before using or attempting to use any means to terminate a pregnancy has confirmed by certificate in writing that according to the *bona fide* opinion of a medical practitioner

- (a) An unlawful act has been committed against the pregnant person under Sections **151 - 155, 265 or 271-273** of the *Criminal Code*; and
- (b) The pregnancy resulted from the unlawful act;

Information requirement

(8) The Minister of Justice must by order annually require a medical practitioner who has terminated the pregnancy of any person to furnish them with a copy of all certificates required in subsections **(5)**, **(6)** and **(7)** and such other information relating to the termination of the pregnancy as they may require.

(9) Everyone who knowingly contravenes subsection **(8)**

- (a) Is guilty of an indictable offence and liable to a term of imprisonment of not more than two years; or
- (b) Is guilty of an offence punishable on summary conviction

Requirement of consent not affected

(10) Nothing in subsection **(5)**, **(6)** or **(7)** shall be construed as making unnecessary the obtaining of any authorization or consent that is or may be required, otherwise than under this Act, before any using or attempting to use any means to terminate the pregnancy of a person.

Definitions

(11) For the purposes of this section,

"Qualified medical practitioner"

"Qualified medical practitioner" means a person entitled to engage in the practice of medicine under the laws of the province in which the termination of pregnancy occurs;

"Termination of pregnancy"

"Termination of pregnancy" means the act of using or prescribing any instrument, medicine, drug or any other substance, device or means with the intent to end the clinically diagnosable pregnancy of a person with knowledge that the termination by those means will cause the death of the preborn child.

"Preborn child"

"Preborn child" means a child at any stage of development that has not yet become a human being within the meaning of section 223.