

Abortion Law in Canada: Whose Choice?

Josey W. G. Ross

April, 2011

University of Victoria

Women's Studies 499: Honours Thesis

Supervised by: Christine St. Peter

Table of Contents

Table of Contents	2
Acknowledgments	3
Chapter 1: Introduction	5
Theoretical Approach.....	8
Methodology.....	10
History.....	12
Chapter 2: Bill C-43—The First Challenge	20
McLaughlin.....	21
Turner.....	23
Mulroney.....	26
Chapter 3: Private Members’ Bills and Motions	33
Chapter 4: New Tactics	45
Conscience Clause.....	46
Focus on the “Unborn Child”	49
Women’s Health.....	55
Coercion and Consent.....	57
Chapter 5: Conclusion	63
Works Cited	65
For Further Study	80

Acknowledgements

This work has been a labour of love, heartache, joy, exasperation, and determination borne out of a love for humanity so profound it is at times overwhelming. Most of all, it has been an affirmation of the power of community.

My heartfelt thanks go to the amazing and loving people who listened to endless rants about patriarchy, let me muddle through avenues of thought that went nowhere, and believed in me when my own belief was flagging. I am full of gratitude for the ongoing support, love and laughs provided by Katie, Andrew, Ed, Tria, Mel, Tara, Sarah, Jen C., Jesse, my parents and the countless amazing folks that make up the community I am so proud to call my own.

Immense thanks go to the amazing staff of the Women's Studies department, who have challenged me, supported me, pushed me to the brink of existential crisis, and let me find a place I can call home.

Finally, I owe Christine a debt of gratitude larger than I can express. I have been lucky enough to spend two years studying with the most inspiring, challenging and dedicated woman I have ever met. For the hours of hammering out topics that went nowhere, for recognizing a passion I did not know I had, for pushing when I needed to be pushed and kind words when I needed buoying, for demanding no less than my best work, thank you.

“It’s crucial to understand abortion rights in terms of women’s most basic ability to live in freedom—or to live at all.” -Jennifer Baumgardner (2008, p. 20)

Chapter 1: Introduction

Abortion is legal in Canada. In fact, Canada has no abortion law. Rather, under the regulations of Health Canada it is considered a necessary medical procedure and is, in theory, available to any person¹ who seeks one. Thus, it would seem, the debate is over. It is time to move on to more pressing issues. Yet, and despite their legal standing, abortion rights feel tenuous, in the face of an inexhaustible and exceptionally well-funded anti-choice contingent set on stripping women of their basic, inviolable right to bodily autonomy. Their tactics include such approaches as graphic and misleading displays on campuses across the country; speaking tours at churches, schools, youth groups, town halls and public venues; apologetics training; picketing abortion clinics; political preaching; lobbying of politicians; holding aggressive prayer vigils outside of clinics and hospitals; and creating Crisis Pregnancy Centres. This last example, the clinics, might be the most pernicious, as they present as quasi-medical centres focused on providing neutral counseling to women considering abortion but are expressly designed to cause guilt and emotional distress in their clients (Arthur, 2009). While there has been a considerable study of these tactics by reproductive rights scholars and activists on these tactics, I have found no detailed analysis of the litany of attempts in Canada to create anti-choice legislation which would limit or strip abortion rights. Because Canada is one of only three countries in the world with no law controlling abortion,

¹ For the sake of clarity, I will refer to those people who are most affected by abortion law as women, given that the majority identify as such, but I am aware of and sensitive to the fact that our very gendered language erases and obscures the many individuals who do not fit neatly in the binaries our society relies on and apologize if my language choices further that marginalization.

it can be considered an important site for exploring the tensions surrounding reproductive rights. Thus, I will focus on numerous attempts at curbing abortion rights within the heart of the legislative process in Canada, the Canadian Parliament, in the years since abortion was decriminalized in 1988. Because elected Parliamentarians are meant to speak for those who elected them, and because federal legislation has the power to shape people's lives, it is fundamental that legislators be held accountable. Although a vast majority of Canadians have consistently over the years believed women should have "complete freedom on their decision to have an abortion"² (Arthur, 2002), and the Supreme Court has declared multiple attempts at limiting women's right abortion as being in violation of the Constitution, twenty-six private member bills, at least eight private member motions and one government-sponsored bill have been introduced since abortion was decriminalized with the purpose of limiting or banning women's access to abortion. Although relatively small, the anti-choice movement is strong, well-funded and tenacious. It is for this reason that they must be monitored and fought, every step of the way.

Given the apparently settled nature of abortion law in Canada, why do these unsuccessful bills keep getting introduced? Joyce Arthur, coordinator of the Abortion Rights Coalition of Canada, argues that it is because Canada has "an active anti-abortion movement that will...do anything to turn the clock back" and that "the

² Though it must be noted that when "specific questions are asked about when exactly a foetal life should be protected, women's so-called 'complete freedom' to have abortions appears to take a sudden nosedive" (Arthur, 2002).

bills that are introduced are a tool, one of the few tools, really, that they can use” (J. Arthur, personal communication, February 16, 2011). She further states that,

the politicians—the government is always sort of more conservative than the population, so we have a high number of anti-choice MPs in the government which does not reflect the view of the population....So here they are introducing all these bills which [the] majority of Canadians wouldn't support.(J. Arthur, personal communication, February 16, 2011)

These frequent attempts, given how essentially futile they have been to date, could arguably be ignored, with women secure in the knowledge that abortion is legal in Canada. But complacency is dangerous. Though the national tenor may suggest that the abortion debate is settled, the anti-abortion movement is set on re-opening it. These bills and motions, which this study will analyze, may be considered symbolic gestures but it is important to pay attention, as each one represents a way to ensure that the issue remains in the public eye. Although the government (barely) failed to pass a bill to recriminalize abortion, this failure did not stem the tide of anti-choice legislation. Rather, the anti-choice Parliamentarians changed their tactics from overt attempts at banning abortion to convoluted and deceptive attempts creating fetal personhood. The changing tactics which this study will explore call for an increased vigilance on the part of every politician, every activist, and every citizen who recognize women's fundamental human rights.

Theoretical Approach

Because the issue of abortion rights and access is so materially grounded in women's bodies, one needs a theoretical lens that focuses centrally and precisely on

the protection of women's bodily autonomy. An intersectional feminist analysis is the best tool for this, especially as the legislators who are so eager to strip women of their basic human right to bodily autonomy fail to consider in any of their bills and motions any of the variable and crucially important factors of class, age, ethnicity, ability, sexuality or geography—all of which shape the decision women are forced to make when considering whether to continue or terminate a pregnancy.

Clearly, neither this issue nor a feminist focus on it is new. To ground this analysis, I will begin with one of the first feminist thinkers in recent history to make this a major rallying point, Simone de Beauvoir. Her path-breaking work, *The Second Sex*, published in 1949 could be considered the beginning of the so-called Second Wave of feminism. While her approach is certainly based on a kind of biological essentialism, her focus on bodily autonomy remains a constant to this day in feminist thought. "Woman," she writes, "has ovaries, a uterus; these peculiarities imprison her in her subjectivity, circumscribe her within the limits of her own nature" (1949, p. 115). Inherent in focusing on an issue—perhaps the sole issue—that applies exclusively to women is the danger of essentializing "woman" and thus reinforcing cis-sexism (that is, that biological sex and gender identity match). Yet this issue is inherently gendered, and reflects a patriarchal culture that devalues and controls women at the expense of men's wants and experiences.

My method will consist of policy analysis, with a view to parallels in American legislation to elucidate the consequences of these types of legislation. The reader will note that social location—the intersections of race, gender, ethnicity, age, class, ability, sexuality and geography—affects access to abortion. The

legislative discourse we will find in the bills, motions and debates ignores this important fact, thereby increasing the inequalities that already exist in the larger society. Legislative analysis that ignores the material and diverse realities in pregnant women's lives can end up reasserting these blindspots. However, my motivation and inspiration are based in the fight for reproductive justice, which is necessarily intersectional.

The Sistersong collective, a network of local, regional and national organizations representing women of colour in the United States working toward reproductive and sexual health and rights, offers an excellent definition of reproductive justice as “the right to have children, not have children, and to parent the children we have in safe and healthy environments” (Sistersong, 2010). This form of reproductive justice is transformative and radical in its shift from “a narrower focus on legal access and individual choice...to a broader analysis of racial, economic, cultural and structural constraints” (Sistersong, 2010) on women's ability to control their own bodies. “Choice” has in the past too often been constructed in the mainstream feminist movements as being solely about abortion, and thus reflects the legislator's (and society's) assumptions that the subjects of these bills and motions are middle-class urban women with a certain degree of access. Because of these failings in earlier theory and practice, this new way of articulating reproductive justice “emerged as an intersectional theory highlighting the lived experience of reproductive oppression in communities of colour” (Sistersong, 2010). Reproductive justice addresses reproductive oppression as one part of the many issues facing communities of colour, such as immigrant rights, economic justice and

disability rights (Sistersong, 2010). This call for a reproductive rights movement that recognizes the exclusive and White nature of the abortion rights movement echoes noted Black feminist Angela Davis's words in 1981. "The campaign," she wrote, "often failed to provide a voice for women who wanted the *right* to legal abortions while deploring the social conditions that prohibited them from bearing more children" (1981, p. 205-6). Davis complicates the notion of "choice" in her urgent call for a "broad campaign to defend the reproductive rights of all women—and especially those women whose economic circumstances often compel them to relinquish the right to reproduction itself" (p. 206). With these failings of the feminist movement in mind, I go forward with Davis' words echoing in my mind: "birth control—individual choice, safe contraceptive methods, as well as abortions when necessary—is a fundamental prerequisite for the emancipation of women" (p. 202).

Methodology

Sprague differentiates between epistemology, methodology and method. Epistemology is a theory about knowledge that details "who can know what and under what circumstances knowledge can be developed" (2005, p. 5). A method is a technique used for gathering and then analyzing information. Methodology then constitutes the choices researchers make in order to implement their preferred method within a specific epistemology. That is, methodology "works out the implications of a specific epistemology for how to implement a method" (p. 5). Put another way, while method is a research technique, methodology "provides both theory and analysis of the research process" (Maynard, 1994, p. 11).

This project will be located within feminist standpoint theory, an epistemology that privileges the social location and experiences of women (Sprague, 2005, p. 41) and asks how these legislative attempts would affect women's lives, bodies, opportunities and experiences, while simultaneously examining the gendered assumptions and beliefs that shape the anti-choice legislative attempts. Inherent to this feminist grounding is an understanding of the ways that society privileges men's bodies and experiences over women's. But this level of analysis is not broad enough to understand and address the ways that other sites of oppression and marginalization interact with gender—race, class, ability, sexuality and geographic location all act in conjunction with gender to create different barriers to reproductive control and autonomy.

Integral to a feminist analysis of cultural texts—in this case legislative attempts and Parliamentary record—is both an examination and analysis of the text itself as well as the processes of their production. In this study I will be examining both the literal texts—the words on the page—as well as the assumptions and unspoken implications of these words, and, in the case of bill C-43, the discourse around the bill found in the Hansard records. According to Reinharz, the cultural artifacts needed for discourse analysis possess two distinctive properties: they are “found”—that is, not created for the study—and they are non-interactive—the process of studying them does not alter them (1992, p. 147). The bills and motions studied fit both of these criteria. This feminist discourse analysis will be enacted through deconstruction of the texts—unpacking the patriarchal assumptions and

imperatives in these bills and motions, and postulating the effects they would have on women's lives if they passed.

Because no other work provides a careful, thorough analysis of anti-choice legislation and attempted legislation and its potential effects, I have chosen to measure the legal status of abortion in Canada through a close analysis of the discourse used in creating these bills, motions and debates. That is, in examining the wording of the bills and motions introduced, as well as the verbal debates around bill C-43 on the floor of Parliament, we will see that the debate is far from over. Moreover, we shall also understand how the implications of anti-choice legislation—even where it fails—are far-reaching and all attempts must be carefully monitored and fought at every step of the way.

History

The first criminal law on abortion in Canada was introduced in 1869. While the reasons for this focus on women's age-old struggle to control their fertility are beyond the scope of this paper, one could note that the idea of criminalizing abortion was a new and patently misogynistic move. This law banned the procedure completely and mandated life in prison for the person performing the procedure. A hundred years later the *Criminal Code* was amended to decriminalize abortions but only in specific contexts. According to this new law, abortions that had been approved by a therapeutic abortion committee (TAC) from an approved hospital would not be subject to criminal sanctions. TACs were composed of at least three medical doctors who would certify in writing that, "in the opinion of the majority of its members, the continuation of the pregnancy would or would be likely to

endanger the life or health of the female” (Dunsmuir, 1998). The problems with therapeutic abortion committees were numerous. First, while doctors could only provide abortions in accredited hospitals, hospitals were not required to set up TACs—and most did not (Kellough, 1996). This left abortion access spotty and unequal across the country, clearly violating the Health Canada requirements. Second, the time it took for an application to be processed was often as long as six to eight weeks (Arthur, 1999). Doctors and hospitals also imposed informal quotas, which limited women’s access to abortion not on legal or medical grounds but due to a lack of resources (Kellough, 1996). As well, because the law was vague in its allowance of abortions for the preservation of a woman’s “health” each TAC applied the law differently, from very conservative readings that approved few abortions to liberal readings that “rubber-stamped” them (Arthur, 1999). Another problem with TACs was that they were, like the rest of the medical community, predominately staffed by men, which meant that women’s lives and fates were held in the hands of men who would never experience pregnancy first-hand (Arthur, 1999). Finally, many TACs felt the influence of the anti-choice movement and were either disbanded or staffed with anti-abortion doctors who would then deny applications not on health grounds but political grounds (Arthur, 1999). Thus, “sharp regional disparities in all of these factors meant the *Criminal Code* procedure for obtaining a legal therapeutic abortion was in practice illusory for many Canadian women” (Dunsmuir, 1998).

A 1975 government study of therapeutic abortion committees cited by the Canadian Medical Association (CMA) in its 1985 position paper found that “such

committees were costly, that they increased stress levels of patients, that they were not equally accessible to women across Canada and that they often extended the length of pregnancies, increasing the risk of complications” (Canadian Medical Association, 1985, p. 318A). Given that the Canadian health care system is founded on the principle of universality, these realities of therapeutic abortion committees lead the CMA to recommend, multiple times, that the Criminal Code be amended to remove all reference of TACS which would remove restrictions on women getting abortions and put the decision in their hands instead of the hands of a committee of doctors (Canadian Medical Association, 1985).

The *Charter of Rights and Freedoms* came into effect in 1982. It states that “everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with fundamental justice” (*Canadian Charter of Rights and Freedoms*, 1982). This guarantee was to be the basis of the *Morgentaler* decision in 1988 which decriminalized abortion across Canada. To explain the importance of the *Morgentaler* decision, a brief history of Henry Morgentaler and his work is necessary. Morgentaler survived the WW II Auschwitz death camp, where he lost both of his parents. Following the Holocaust he moved to Canada and opened a family practice in Montreal. In 1967 he entered the national stage with his testimony before the Commons Health and Welfare Committee in which he urged the committee to repeal the law against abortion. In 1969 he opened an abortion clinic in Montreal and began openly performing illegal abortions, arguing that access to abortion was a human right (CBC, 2009). In 1974 he was arrested for performing illegal abortions. He was acquitted by jury, but his acquittal

was subsequently overturned by the Quebec Court of Appeal and he served ten months in jail. As a result of this case the law was eventually changed such that a jury's acquittal could not be overturned on appeal (CBC, 2009). Despite many more arrests, clinic raids, a firebombing and huge legal bills, Morgentaler continued to provide women with abortions. He was acquitted twice more by juries who refused to convict him, despite his clearly violating the law. The last acquittal was appealed by the government and a new trial was ordered. At this point Morgentaler appealed to the Supreme Court of Canada, on the grounds that section 251 of the *Criminal Code* (that which criminalized abortion outside of therapeutic abortion committees) was *ultra vires* (that is, outside the powers of) the Parliament of Canada and that it violated the *Canadian Charter of Rights and Freedoms*. In his decision Chief Justice Dickson ruled that

[s]tate interference with bodily integrity and serious state-imposed psychological stress, at least in the criminal law context, constitutes a breach of security of the person. Section 251 clearly interferes with a woman's physical and bodily integrity. Forcing a woman, by threat of criminal sanction, to carry a foetus to term unless she meets certain criteria unrelated to her own priorities and aspirations is a profound interference with a woman's body and thus an infringement of the security of the person.

He goes on to refine the decision:

A second breach of the right to security of the person occurs independently as a result of the delay in obtaining therapeutic abortions caused by the mandatory procedures of s. 251 which results in a higher probability of

complications and greater risk. The harm to the psychological integrity of women seeking abortions was also clearly established. (*R v. Morgentaler*, 1988, p. 33-34)

Interestingly, in *R v. Morgentaler*, there were three different majority decisions that all came to the same conclusion that section 251 was unconstitutional, but did so for different reasons. Chief Justice Dickson's decision was based on women's security of the person, while Justice Beetz found the 1969 law to have set precedent that "the interest in the life or health of the pregnant woman took precedence over the interest in preventing abortions" (Dunsmuir, 2008, section E, para. 8). Justice Wilson argued that criminalizing abortion—which she described as a moral decision—was a violation of freedom of conscience. With section 251 of the *Criminal Code* repealed Canada became one of only three countries in the world with no abortion law.

The first legal tests of the feasibility of having no law on abortion came the following year, in 1989, when two women, Chantal Daigle in Quebec and Barbara Dodd in Ontario, were faced with legal injunctions prohibiting them from obtaining abortions. Having left her physically and emotionally abusive partner, Chantal Daigle sought an abortion. In an interview with *The Toronto Star* she stated "I wasn't going to stay with a man who was violent, insanely jealous and who wanted to control all aspects of my life[...]I knew if I'd had the baby he would always have a hold over me" (Secret Trip—Toronto Star, 1989). Her ex-partner, Jean-Guy Tremblay sought an injunction that was granted by the Quebec Court of Appeal. The three majority decisions ruled against her, with the judgment that a foetus "has the right to life and protection from those who conceived it" (Sweet, 1989) but differed

in their reasoning. Justice Bernier “based his decision on evidence that she would be able to give birth without suffering any physical harm in the process” (Levy, 1989), while Justice Nichols’ decision seemed to be based on the planned nature of the pregnancy and the expected safe delivery. While Justice Lebel acknowledged Daigle’s motivations for seeking an abortion, in his view the interests of the foetus outweighed her own (Levy, 1989). This ruling was appealed to the Supreme Court of Canada, which unanimously overturned the injunction (Canadian Press, 1989), finding that “neither civil law nor common law recognizes the foetus as a ‘juridical person’ therefore, it cannot be presumed that the Quebec *Charter of Human Rights and Freedoms* confers legal personhood upon the foetus” (Dunsmuir, 1998, Chronology section). Due to the time-sensitive nature of pregnancy, Daigle had snuck into the United States to have an abortion while the case was before the Supreme Court, risking a \$50,000 fine and a two-year jail term (Wood, 1989).

The second challenge came from Barbara Dodd, a young mother of two children, facing an unwanted pregnancy. Initially, she said, her ex-boyfriend Gregory Murphy was supportive of her decision to terminate, until she tried to end the relationship following a fight (Bindman, 1989). Murphy sought an injunction, which made the foetus a ward of the court and prevented Dodd from obtaining an abortion anywhere in Ontario. Dodd appealed the ruling to the Ontario Supreme Court and the injunction was overturned.

The Daigle and Dodd cases were cited by many in Parliament as evidence of the necessity of introducing a law on abortion, as did the multitude of petitions introduced. 1989 alone saw thirty-seven different instances of petitions being

presented in Parliament, representing hundreds of thousands of signatures “calling upon Parliament to enact legislation that would truly and effectively protect the life of the unborn child from conception” (Reimer, 1989, p. 7174). 1990 saw a further nineteen instances of petitions being introduced. In the two decades following the 1988 *Morgentaler* decision, twenty-six private member bills, at least eight private member motions and one government-sponsored bill were introduced seeking to limit (or remove entirely) women’s right to attain abortions.

In order to explain and justify my focus on attempted legislation, a brief explanation of relevant parliamentary structure and process is necessary. Parliament is made up of the Queen (represented by the Governor General), the Senate and the House of Commons. This represents the Legislative Branch of the Canadian Government. The Queen is the formal head of the Canadian state but maintains essentially a symbolic role at this point. The Senate is appointed by the Governor General based on recommendations from the Prime Minister. The Senate is limited in that it cannot initiate bills requiring the expenditure of public money or the imposition of taxes. Otherwise, it can initiate any bill. It can also amend or reject any bill. Most importantly, no bill can become law unless and until it has been passed by the Senate. The House of Commons is elected and comprises the major law-making body of Canada. The Prime Minister is the leader of the party that wins the most votes in a general election and chooses the members of the cabinet—a body of ministers who, along with the Queen, make up the government. While any member can introduce a bill, the bulk of Parliamentary time is given to Cabinet members, with one hour per day available for private members’ business.

Understanding the difference between bills and motions and the way that they are treated by the House is important. While a bill is a potential law, a motion passed is an expression of the opinion of the House. Once debated and voted on, whether agreed on or defeated, a motion receives no further consideration by the House (House of Commons—*Private Member's business*, 2008). Because of the allocation of time, and according to a complex set of rules, substantially fewer private members' bills make it to second reading than are introduced. The process of introducing a bill (whether a government-sponsored bill or private member) begins with a Member of Parliament (MP) moving for "leave" to introduce it, which is given without debate or vote. Next, a motion is made that the bill be given first reading. This is also automatic and done without vote. At a later date, a motion is made to send the bill for second reading. At this point the principle of the bill is debated and, if passed, the bill goes to a committee which considers—and possibly amends—the bill before reporting it back to the House. At the "reporting stage" MPs are able to move amendments to various clauses of the bill. Once these have passed or been rejected, the bill goes to third reading. If it passes, it then goes to Senate where it goes through a similar process (bills initiated in Senate go through the three stages then are passed to the House of Commons). In order for a bill to become law it must pass in both the House of Commons and the Senate (Forsey, 1980).

Chapter 2: Bill C-43—The First Challenge

First introduced in 1989 by the Mulroney government, bill C-43 passed third reading in 1990 and moved to the Senate where it narrowly failed in a tie vote. The bill sought to criminalize all abortions except for those that threatened the life or health of the pregnant woman. Bill C-43 would have criminalized the abortion provider, but not the woman who sought the abortion. This is important to note for two reasons. First, by criminalizing only the provider (of an abortion or any drug or instrument to a woman knowing it is to be used to induce an abortion), it sidesteps the question of what is to be done with the woman seeking the abortion. This law would, essentially, make women the site of a crime, the initiator of a crime but excuse them of culpability. It seems logically inconsistent, but may be necessary to gain support from those who hold less extreme anti-choice views. Second, this hints at the paternalistic nature of anti-choice bills. By not punishing the woman, and absolving her of all responsibility, it seems to imply that women are not capable of understanding the realities of abortion and are perhaps coerced or persuaded by others to terminate. An interesting clause included in the bill is that “inducing an abortion does not include using a drug, device or other means on a female person that is likely to prevent implantation of a fertilized ovum” (C-43, 1990, p. 2). This would insure the continued legality of both hormonal birth control and intrauterine devices.

C-43 was, unsurprisingly, a contentious bill, and received months of debate. The debates surrounding it comprise 470 pages in the Federal Hansard. 152 MPs spoke on it at some point during the seconding reading debate, report stage and

third reading debate. Clearly, recounting all of this debate in depth is outside the scope of this paper, so a strategy is necessary to wade through the months of debates. In order to provide an overview of the arguments, I will be focusing on the leaders of the three parties as they were speaking, at least in theory, for their parties: Audrey McLaughlin of the New Democrat Party, John Turner of the Liberal Party (and leader of the Opposition), and Prime Minister Brian Mulroney. Before getting to the meat of the matter, there are three facts important to note. The first is that the NDP had (and has) an official pro-choice position and its members were expected to vote along those lines. The Liberal Party declared the issue to be a matter of conscience and declared its members free to vote however they wanted, as did the Progressive Conservative Party. Finally, though the Progressive Conservative government introduced the bill, many of its most vociferous opponents were in fact fellow Progressive Conservative MPs.³

McLaughlin

Audrey McLaughlin, leader of the Federal NDP, argued passionately against bill C-43 as an “unjust violation of women’s rights” (McLaughlin 1990, p. 12001) on the grounds that it “limits the right to a woman’s choice and to a woman’s control over her own life” (p. 11676). And that limiting the right to the “personal care and control of one’s body” is a violation of a most “basic and fundamental right”, that of “reproductive choice” (p. 11674). She pointed out that, regardless of legality,

³ Progressive Conservative MP Mitges, for example, stated that the bill “amounts to nothing more than abortion on demand. There is nothing in that bill that offers any kind of protection to unborn children. It is important that Bill C-43 be given short shrift in the House of Commons by unequivocally and overwhelmingly defeating it” (Mitges, 1989, p. 6019).

abortions are needed and performed.⁴ Abortions, she argued, “if they are not performed legally in medical facilities under the direction of a physician, will happen in much less favourable circumstances. As ugly as it may seem, women must not be forced to return to those ugly circumstances of using coat hangers, vacuum cleaners, or putting themselves in the hands of quacks. It is an ugly reality, but it is a reality” (p. 11674). These strong words underline the fact that “women die as a result of these kinds of processes” and “the reality is that any amendment that puts abortion back in the Criminal Code will sentence some women somewhere in Canada to sterility or to death. That is not supporting life” (p. 11674).

Next, she pointed out that the issues surrounding access to abortion, whether legal or not, disproportionately affect poor women. In her words, “we know that women of wealth and power have options, and part of what we are debating today is whether or not that freedom will be extended to all women. All women, not just the wealthy, must be free to decide the number and the spacing of their children” (p. 11675). From here, she ably and logically shifted the focus to children and families. “All children,” she said, “have the right to be raised in a family capable of providing housing and food and proper nurturing. All children have the right to be raised in a family free of violence and abuse” (p. 11675).

Next, she impugned those who “lay claim to a respect for life because they legislated against abortion, while voting for cuts to child care, cuts to shelters for

⁴ Indeed, abundant research has been done that shows that abortion rates remain essentially stable whether the procedure is legal or not (Collins, 1987; Sedgh, Henshaw, et al, 2007), and that the number of abortions performed past the first trimester dramatically drops as does the number of abortion-related deaths when abortion is made legal (Collins, 1987).

abused women, cuts to job creation, cuts to prenatal health and prevention” (p. 11675). She demanded of the Minister of Justice, “why does the government not bring in a humane family policy which will feed our children, clothe our children, provide shelter for our children, instead of sending women and doctors to jail?” (p. 12001). Finally, she notes that going “beyond the legal, medical, and philosophical questions raised by this debate, we see that the real issue is, in fact, very simple. Who is to decide whether a pregnancy should be interrupted?” (p. 11675). She argues,

those decisions should be the responsibilities of the women. They have heard every argument. They know that some families are eager to adopt children. And they know that every child has the right to live a good life....Ten years of legal or medical training do not give anyone the right to impose his or her view. There are things a woman considers in deciding whether or not to terminate a pregnancy, and no matter what her decision, there are no moral or ethical grounds for putting her in prison. (p. 11675)

It must be noted that, while the recriminalizing of abortion opens the doors to legislation further restricting and punishing women who seek abortions, C-43 would not have explicitly punished women who obtained illegal abortions. What would happen to them is unclear, and surely cause for concern, but in such a contentious and carefully observed debate, arguments must be beyond reproach.

Turner

Next, I turn to John Turner, the leader of the Opposition, who opened his remarks by stating that the Mulroney government had “dilly-dallied, refusing to face

up to its responsibilities and, of course, allowing the type of judicial chaos we had during the summer” (Turner, 1989, p. 5728) (referring to the Daigle and Dodd cases). He frames the responsibility of legislators as being to “seek the best equilibrium we can between the two polarized and competing views on the subject of abortion, between two irreconcilable views on abortion” (p. 5728), as if they are equally valid and theoretical positions, while in fact women’s lives hang in the balance. Rather than issues of morality or human rights, Turner states, “the basic question about this Bill is whether it is likely to be approved by the Supreme Court judges” (p. 5729) and rhetorically asks, “is the Bill consistent with the principles of our Charter of Rights? Is it Charterproof...or do we run the risk of seeing the Supreme Court rule at the very first opportunity that it is unconstitutional” (p. 5719).

Like McLaughlin, he asks “where is that child care program that [the government] has been promising for five years? Where are the proposals to eliminate poverty? Where are the proposals to help women who chose to have children in difficult economic circumstances?” (p. 5730). And he states, “until this government gets really serious about these issues, I am afraid that many women with low incomes will continue to be forced to consider abortion as an alternative” (p. 5730). While this is a cogent argument in favour of both decriminalized abortion and family-friendly policies with a hint of intersectional analysis, given Turner’s support for C-43, which would make no room for women seeking abortions for financial reasons, it seems either misapplied or deceptive. Turner cautions that, despite “the deep convictions we all share on a personal basis, as a result of our own

personal religious convictions, moral upbringing and family influence, it is not our personal views that are at issue, it is our views as legislators” (p. 5730). It is due to this position, presumably, that Turner attempts to look at the bill from “both sides”. Speaking from his construction of a pro-choice position he states, “sensing the mood of the country, sensing the mood particularly of this House, I would feel that there would inevitably need to be some control reflecting the collective view of a majority of members and also reflecting the majority of Canadians, that there has to be some law or some control” (p. 5730). His verdict, from a pro-choice perspective, then, is that “if there is going to be a law, maybe this is the best law we are going to get. After all it does leave the decision to a woman and her doctor” (p. 5730). This view is problematic for several reasons. First, as Turner does not identify himself as pro-choice⁵ speaking from a “pro-choice” position in favour of a bill that limits choice is problematic. For another, as all abortion was at the time decriminalized, to assert that a law that would severely limit abortions was “the best..we are going to get” (p. 5730) is both asinine and disingenuous. Finally, to claim that a pro-choice position would support mitigating women’s rights to autonomy and reproductive freedom is a clear misrepresentation of pro-choice politics.

Next, Turner approaches the same issue from a “pro-life” position. He asks, given the mood of the country and the House, “what happens if this legislation is defeated?” (Turner, 1989, p. 5730). First, he says, Canada would be “back to no law so we are back to abortion on demand as we have now” and cautions, “if those who hold a strong pro-life position want to defeat this law and are successful, we are

⁵ in fact, he does not identify his position either way, though his remarks in the debate as well as his support of the bill indicate an anti-choice position

back to abortion on demand” (p. 5730). He then asks if a trimester solution, as suggested by Justice Wilson in her *Supreme Court* judgment, wherein women are given freedom of choice in the first trimester, and later abortions are granted only on medical grounds⁶ would be preferred from a pro-life perspective. Thus, he says, from a pro-life standpoint, this is the best law that can be achieved given the limitations set forth by *Morgentaler* decision. In closing, Turner notes he could be criticized that,

it is not a very theological position to take; that it is not a very philosophical position to take; it does not reflect too much of a moral impulse. If one has a view one way or the other, which each one of us does, then examine this piece of legislation from the process that I have described and let us come to the conclusion, I believe, that this may be the best result we are going to get.
(p. 5731)

These comments, though measured, belie an anti-choice sentiment that not only abhors free choice (“abortion on demand”) but also seems to be built more on political expediency than moral reasoning.

Mulroney

Finally, I turn to Prime Minister Mulroney, whose government drafted and introduced the bill. He opens his argument by saying the government must “achieve a solution that is philosophically sound, constitutionally correct, politically acceptable and administratively practicable; that is, a solution which can be understood and implemented. Our duty is to act for the common good” (Mulroney,

⁶ Incidentally, due to the medical community’s position on performing abortions past 20 weeks gestation, this is the reality of having no abortion law in Canada.

1989, p. 6339). The “solution” is, according to Mulroney, needed to fix the “problem” of abortion on demand. But women having full and complete legal access to abortion can only be a problem if one is anti-choice. Now, we must ask, who defines common good when those in power are predominately outside the marginalized group whose rights are being legislated? Mulroney frames the issue of common good as one of balancing competing rights:

First, there is the right of a woman to security of her person. Second there is the right of a woman to obtain medical services without limits that adversely affect her health. Third, there is the interest of society in protecting the health of the woman and, of course, the interest of the society in protecting the foetus. (p. 6340)

The language used in defining these elements must be parsed to truly understand what Mulroney is saying. First, any limitation on abortion necessarily constitutes a violation of the right of women to security of person. Similarly, any limits on abortion will inherently adversely affect many women’s health. Given the huge physical and emotional demands that pregnancy (never mind childrearing or giving a child up for adoption) requires, forcing a woman to bear a full term pregnancy because it does not, according to some doctor, endanger her life, is a clear violation of this right. The third element neatly conflates women’s health with society’s interest in protecting the foetus. This conflation needs to be analyzed on three fronts: society’s interest in protecting women’s health, society’s interest in protecting the foetus, and why this conflation was made.

Beth Jordan and Elisa Wells detail the ways that many anti-choice activists rely on the assertion that “abortion hurts women,” despite their various claims being soundly debunked. While science has conclusively found there to be no link between either abortion and negative mental health outcomes or abortion and breast cancer, they point out that science alone cannot combat the voracity with which these mistruths are promulgated and accepted. Beginning in the 1980s with the introduction of “post-abortion syndrome” propaganda (a term which has never been recognized by any independent medical authority), the “women-protective anti-abortion” (WPAA) tactics both provided a new avenue for anti-abortion advocates and faced a significant hurdle in that many activists feared that any tactic that deviated in focus from the fetus would lose its moral forcefulness (Jordan and Wells, 2009). The shift towards WPAA strategies was intentional and deliberate, designed to capture both new and older, now-ambivalent, audiences in response to anti-choice market research. The WPAA tactics, particularly Post Abortion Syndrome, proved useful not only in dissuading individual women not to terminate (this tactic is used widely in crisis pregnancy centres), but also for confusing uninformed public audiences already conflicted over abortion and concerned with protecting women’s rights.

It is within this atmosphere that Mulrone’s claims of concern for women’s health emerge. His failure to clearly elucidate what he means by “the health of the woman” further obfuscates the impact that this legislation would have on women’s lives and rights. He references the health of women in two instances. The first is in response to those arguing that the bill will mandate legal punishment for women. He

states, “this bill does not treat women as criminals for seeking a therapeutic abortion. On the contrary, this bill provides penalties only for those who induce an abortion illegally, that is, anyone other than a qualified practitioner” (Mulroney, 1989, p. 6341). While the implication here is that this bill is needed to protect women from unqualified practitioners offering unsafe back-alley procedures, the reality is that this could be used to punish any doctors who agreed to perform an abortion for reasons other than to save the life of the mother. The notion of the barbaric entrepreneur attempting to ply his craft on unsuspecting women is patently false, but conjures an image capable of provoking a visceral reaction that demands recourse. The irony here, of course, is that when abortion is freely available women would never find themselves going to an unlicensed provider. It is only when women are limited in their ability to determine their own reproductive lives—only in desperation—that they turn to unlicensed providers.

Mulroney also argued for the bill on the basis that it is the government’s responsibility to “provid[e] leadership to those provincial governments which have jurisdiction for the delivery of health services” (1989, p. 6340). He quoted Justice Linden of the Law Reform Commission of Canada who stated concern with “the prospect of provincial intrusions” and argued that, “by making abortion a therapeutic procedure covered by the Criminal Code, the provinces will find it much more difficult to jump in with their own legislation and evade their obligations under the Canada Health Act to pay for medical services” (p. 6340). Therefore, “recriminalizing abortion...was needed to ensure that various provinces did not enact Draconian laws to restrict access to the procedure” (p. 6340). While there is

an element of truth in this statement⁷ the conclusion that recriminalizing is the answer is incorrect. Arguing that recriminalizing abortion—which marginalizes abortion services and providers, prevents abortion from being “fully integrated into the healthcare system” and creates “arbitrary obstacles and delays” (Arthur, 2004)—is needed in order to avoid laws that restrict access is simply nonsensical.

Looking now at society’s interest in the foetus, two things are important to note. First, Mulroney never explains how or why society has an interest in the foetus. Second, the issue is framed in terms of society’s interests rather than foetal interests or rights. This approach is refreshing in its candor, though transparency was doubtful not the motivation. Rather, because the Supreme Court had declared that foetuses do not possess rights, arguing on the basis that they do would be self-defeating and would open up the bill to Constitutional challenges. Examining society’s interest in the foetus, we see the connection between anti-abortion politics and nationalism, as well as the moral imperative nationalism confers onto women to ensure future generations of Canadians, and onto society to enforce women’s propagation of citizens. Implicit in this view is a call for self-sacrifice on the part of women, and shame for those who fail in their duty. This argument is compelling in its calls to patriotism—for women through reproduction, for men through enforcing that reproduction—and neatly sidesteps the problem of foetal rights not being legally recognized.

⁷ Prince Edward Island, for example, does not provide abortions at all and chooses, instead, to fund abortions off-island, but only when in a hospital and after a woman has been referred by two doctors (Wright, 2008).

Mulroney, like Turner, tries to play to both the pro-choice side and the pro-life side, though his leanings are more readily apparent. Speaking to the pro-choice side, he states, “this bill declares that abortion is a health matter to be decided between a woman and her doctor on grounds of physical, mental or psychological health” (1989, p. 6340). And he states that, “the law will be in the Criminal Code because...the Criminal Code is the only tool by which the federal government can develop directly a framework within which abortion can be provided” (p. 6340). He then calls those “concerned about protecting the rights and the dignity and the health of women to consider the importance of this bill in providing leadership to those provincial governments which have jurisdiction for the delivery of health services” (p. 6340). To the pro-life side he says, “this is not the very restricted access to abortion that some would have preferred. It is, nonetheless, an approach offering consistent protection throughout the pregnancy. *We have gone as far in this direction as constitutional constraints permit*” (p. 6340, emphasis mine). He later states,

many of us have been brought up to believe, and do believe, that abortion under almost any circumstances is morally wrong. But what we are called upon to do, as elected representatives of the people, is to determine under what circumstances the state should characterize abortion not as a sin, but as a crime. (p. 6342)

This statement would appear to reveal his own position on abortion, and counters the arguments he initially gave for the necessity of such a bill. Rather than being about women’s health, or society’s interest in the foetus, he is arguing to limit

women's rights based on a personal morality that excludes women's experiences from consideration.

The bill passed third reading in a vote of 140 to 131 and was sent to the Senate where it very nearly passed, failing the third reading in a tie, which is counted as a negative vote. Seeing how close C-43 was to passing, realizing that women's right to abortion on their own terms was protected by a single vote it becomes clear how important it is to monitor the repeated attempts at legislating against women's rights to autonomy.

Chapter 3: Private Members' Bills and Motions

Since 1988, bills seeking to curb or halt access to abortion have been introduced nearly every year (while several years saw multiple bills introduced). In the two years immediately following the decriminalization of abortion the focus was on recriminalizing abortion. The first bill, introduced less than five months after the *Morgentaler* decision, was introduced to the Senate by noted anti-choice Senator Stanley Haidasz. S-16 was introduced to “reassert society’s vital interest in its unborn children” (S-16, 1988, p. 1a). It would have criminalized all abortions but those performed to prevent the death of the pregnant woman. S-16 would have punished abortion providers with life in prison, anyone who “shows wanton or reckless disregard for the life or safety of an unborn human being and thereby causes [its] death” with up to five years in prison, and would punish a woman who obtained an abortion with two years in prison.

1989 saw five private members’ bills introduced (in addition to the sponsored Mulroney government-sponsored C-43). Don Boudria, a Progressive Conservative MP from Ontario, introduced two bills in 1989. Bill C-277 was concerned with destruction of the fetus. It sought to amend the *Criminal Code of Canada* to make abortions a criminal offense punishable with life in prison. This law would act as a deterrent in two major ways. First, the illegality and fear of imprisonment would stop many doctors from performing abortions, regardless of their personal stance on the morality and necessity of abortion. More interestingly is the potential of this bill to be used to intimidate women seeking abortions.

Presumably, if doctors and other medical practitioners are being held to account for

performing abortions, the women seeking the procedure could be used as witnesses to charge the doctors. This would have a profound impact on the ability to get illegal abortions. Not only would it cause distrust and suspicion between doctors and their patients, the shaming factor of putting a woman up on the witness stand against her doctor—in effect telling all the world that she had sought an illegal abortion—could act as a powerful deterrent for other women seeking a termination. Another troubling aspect is that it would punish “every one who, in doing anything, or in omitting to do anything that it is the duty of that person to do, shows wanton or reckless disregard for the life or safety of a foetus and thereby causes the death of that foetus” (C-277, 1989, p. 1) with up to five years in prison. The ambiguities inherent in such vague legislation are worrying, and, presumably, intentional. Rather than seeking to actually punish those who violate the bill, it would seem the ambiguity itself is the essence. It has the effect (and perhaps intent) of striking fear in the medical community. Unlike many attempts at legislation, this bill would also have punished the woman seeking the abortion.

The bill does, however, make an exception for “medical treatment necessary to prevent the death of the mother” (C-277, 1989, p. 1). What is not made clear, however, is whether an abortion would fall under the rubric of accepted medical treatments. The wording of the bill states that “no one is guilty of an offence...if the life of the foetus was ended as a result of medical treatment necessary to prevent the death of the mother” (p. 1). This could be interpreted in two ways. More liberally, an abortion could be considered a medical treatment necessary to save the life of the woman. However, it could also be read as allowing only those treatments

that do not directly terminate the foetus. For example, in a position statement from the Association of Pro-Life Physicians, they state that “the necessary medication may injure or kill the pre-born child, but this is no justification for *intentionally* killing the child. If the child is injured or dies from the medication prescribed to the mother to save her life, the injury was unintentional and, if truly medically necessary, not unethical” (Association of Pro-Life Physicians, 2011). They describe several scenarios in which most doctors would routinely recommend an abortion—for example in an ectopic pregnancy, which is often fatal, or if the woman requires chemotherapy which can have disastrous effects on foetal development, and state that “the intentional killing of an unborn baby by abortion is never necessary” (Association of Pro-Life Physicians, 2011). This is included to show the way that legislation of this type could be interpreted. Finally, the bill explicitly defines a foetus as “a human life from the moment of conception until birth, whether conceived naturally or otherwise” (C-277, 1989, p. 2). This redefining of the foetus is necessary in order to make the intentional death of a foetus a crime and is a move that is to be repeated in various iterations over the years.

Bill C-268, had it passed, would have allowed the federal government to discipline any province that paid for non-life saving abortions. This is a fascinating attempt at regulating abortion because of the angle it takes. It sought to amend the *Canada Health Act* such that “no payments may be permitted by the province...for medical services relating to abortions, except where the abortions are provided by a qualified medical practitioner...after two other qualified medical practitioners have certified that continuing the pregnancy would endanger the life of the mother” (C-

268, 1989, p. 1-2). Since the Supreme Court struck down the abortion law the year before as unconstitutional, thereby making abortion legally a medical procedure like any other and subject to the same funding under the *Health Act* as any other necessary medical service, this attempted legislation would appear to violate the *Canadian Charter of Rights and Freedoms* had it passed. The bill is explicit in its intent. In the explanatory note it states “this amendment would penalize provinces that pay for abortions procured when the life of the mother is not in danger” (C-268, 1989, p. 1a). Given the assurance of failure of a bill that is in direct contravention of the *Charter of Rights and Freedoms*, this bill seems a perfect example of introducing legislation simply to keep the debate alive.

In the same year, three separate Liberal MPs introduced anti-choice bills. John Nunziata, a Liberal MP from Ontario introduced a bill (C-261) almost identical to Boudria’s C-277, which would have amended the *Criminal Code* to ban abortion in all cases but would permit “medical treatment necessary to prevent the death of the pregnant woman” (C-261, 1989, p. 1). Whether the approved medical treatments could include a termination is again unclear from the wording available. What is most interesting about this bill, is its use of “unborn” or “unborn human being” where Boudria’s bill used “foetus.” The bill provides a definition of unborn human being as “a human life from the moment of conception until birth, whether conceived naturally or otherwise” (C-261, 1989, p.2). This definition of an unborn human being beginning at conception represents a bold move the intent and potential effect of which is revealed in the explanatory note:

A vacuity now exists in the criminal law of Canada as a result of a recent decision of the Supreme Court of Canada. For the first time in its history, Canada has no enforceable law to protect the most helpless of human beings, the unborn child.

The purpose of this Bill is to reassert society's vital interest in its unborn children. That interest is as fundamental to the continued existence of our society as it is to the existence of the human race (C-261, 1989, p. 1a).

By framing the foetus as the "most helpless of human beings" the reader's emotions and impulse to protect are played upon. This framing is doubly powerful in its use as description of the "unborn child." As a society that frames children as the most vulnerable members, the protection of which we are all, in some way, responsible for, and the violation of which is constructed as the most heinous of crimes possible, to fail to protect the *unborn* child, we must surely be monsters. Further, by using the word "child," which has an agreed-upon definition in our society, it confers personhood to the foetus. Were this definition to be a legal definition, the personhood conferred would make abortion not only necessarily something akin to (if not explicitly) homicide, but a crime most inhuman. The second paragraph brings, explicitly, society's role in the prevention of abortion and the protection of the unborn child. . By constructing our obligation to protect the most helpless of human beings in terms of our society it goes beyond just a single "life" to a broader interest, and the woman's choice to abort becomes not only a crime against the unborn child, but against society as a whole.

At this point, I feel it is important to briefly unpack what it means to say that the foetus is “fundamental to the continued existence of our society.” Speaking within a Canadian context, it becomes important to identify who is included and who is excluded from that Canadian society. The invocation of society necessarily has nationalist—and thus raced and classed—connotations. After all, what does it mean to be Canadian? Who is Canadian? The hegemonic construction of Canada is a White, middle-class country. This version of Canada conveniently ignores the colonial past of Canada, the Indigenous peoples who have inhabited these lands for thousands of years, and the millions of people of colour who make up Canada. Inherent in this statement is the assumption that only “Canadian”—that is, citizens of White European settler heritage—citizens should be producing babies. And as with so many of these anti-choice bills, the woman is made entirely invisible. Although the explanatory note calls on society’s and humanity’s moral imperative to save the foetus, there is not even a single cursory mention of the woman who is bearing it. By ignoring the vital role of the woman, she is not only further invisibilized, but so too are the immense sacrifices she is being called on to make.

Bill C-266, introduced by Liberal MP Ralph Ferguson, sought to “propose a reorganization...of the *Criminal Code* in such a manner that a clear protection is given to the unborn child from the time of conception” (C-266, 1989, p. 1a). This bill is especially draconian in its disregard for women’s lives and autonomy in favour of the foetus. First, the bill would make punishable by a lifetime in prison the destruction of or serious harm to a foetus, whether done intentionally, recklessly or through negligence (including certain medical procedures) (C-266, 1989). This is

interesting for two notable reasons. First, as with so many of these bills, given that the abortion law was struck down because it was judged to be unconstitutional, this too would violate the *Canadian Charter of Rights and Freedoms*. Second, unlike several of the other bills introduced this year, as well as several in years following, this bill does not attempt to redefine the foetus as a person. In fact, it explicitly defines the foetus as “the product of the union in the womb of the human sperm cells and egg cells at all stages of the life of such a product prior to becoming a person” and a person as “a human being who has proceeded completely and permanently from the body of its mother in a living state and capable of independent survival” (C-266, 1989, p. 1). This bill would criminalize, then, not the death of a person (as those bills that redefine foetus would) but the destruction of a person-to-be. This is fascinating both for its strategy and the implications of punishing harm to a non-person—that is, not a rights bearer, but a rights bearer to be.

Next, what is interesting about this bill is that it would punish “every pregnant woman who purposely causes destruction or serious harm to her foetus by any act or by failing to make reasonable provision for assistance in respect of her delivery” (C-266, 1989, p. 1). Not only does this deviate from most anti-choice bills in that it would punish women for having an abortion but also that it would punish serious harm by any act. Arguably this very broad definition could include such diverse acts as substance use during pregnancy, as well as engaging in sports such as skiing and even something as minor as eating mercury-containing fish during while pregnant. The breadth of bills like this, and the Orwellian possibilities of their

enforcement seem to speak to a mindset that constructs “woman” as simply a vessel for procreation—devoid of rights, but overburdened with responsibilities. We see further evidence of the responsibilities of women at the expense of their rights and preferences in the attempt to make criminal “failing to make reasonable provision for assistance in respect of her delivery” (C-266, 1989, p. 1).

With higher-than-ever rates of hospital births⁸ and cesarean sections⁹, as well as laws that allow legal intervention on behalf of the foetus, the United States has seen some particularly disturbing effects of these types of laws. Marsden Wagner, in his book *Born in the USA* (2006), tells the story of a woman in Florida who had previously given birth both vaginally and through a cesarean section that she believed to have been an unnecessary intervention. When she became pregnant again, she decided to have a home birth. Due to an inability to keep fluids down the woman (referred to by Wagner as Ms. P) went to the local emergency room in order to be rehydrated intravenously, with the plan to return home with her midwife for the birth. After refusing to have a cesarean done once her doctor learned that her previous birth had been one, even having to forgo the IV she sought as he attempted to establish a coerced *quid pro quo* she literally fled the hospital on recommendation

⁸ As of 2007, the most recent numbers available, home births in the United States account for less than 1% of all births (MacDorman, Menacker, and Declercq, 2010), which is in sharp contrast to the Netherlands, for example, which has a rate of approximately 30% (DeVries, 2005).

⁹ 32% of American births were cesarean sections in 2007, after having increased for all women from 1996 to 2007 (Menacker and Hamilton, 2010). Canada’s rate in 2005-2006 was 26.3% (University of British Columbia, 2010). Though lower than the American rate, this still falls far outside the World Health Organization’s recommendation that the caesarean section rate should not be higher than 10% to 15% (Chaillet, Dubé, Dugas, Francoeur, Dubé, Gagnon, Potras and Dumont, n.d.), due to “high maternal and neonatal complication rates and increased health-care costs” (Chaillet et al. n.d.).

of a nurse who tipped her off to the possibility of a forced cesarean section. Ms. P's labour was interrupted at home by the local sheriff enforcing a court order mandating her return to the hospital. Once there she was strapped down to the table and given a forced C-section. In 2009, the American Civil Liberties Association filed a friend-of-the-court brief in opposition to Florida's decision to force the hospitalization of a woman against her will after going into premature labour. After her refusal to be admitted to the hospital for the duration of her pregnancy, which would require being away from her two young children for months until the birth of the child she was carrying, Samantha Burton was court-ordered to be confined to the hospital and to submit to, as per the court order, any medical procedure intended to "preserve the life and health of the unborn child" (James, 2010).

Admittedly, both of these cases are extreme, but the potential for this kind of disregard for—and overriding of—women's right to autonomy is inherent in bills like C-266. Another fascinating aspect of bill C-266 is in the stipulation that it would apply "even if the destruction or harm results after the foetus becomes a person" (C-266, 1989, p. 1). This would appear to mean that a woman could be punished for an action performed (or not performed) *in utero* that lead to the development of severe harm or death after birth. Reiterating this for its absurdity, this bill would make action taken or not taken on a non-person retroactively criminal if it affected the non-person being after birth, that is, once it has attained personhood.

Liberal MP Tom Wappel's 1989 bill C-275 sought to redefine "human being" to include "a human foetus or embryo, from the moment of conception, whether in the womb of the mother or not and whether conceived naturally or otherwise" (C-

275, 1989, p. 1) which would not only ban abortion, but define it as homicide. In first reading the bill, what immediately strikes me is its unabashed use of controversial and contentious opinion as fact. The bill states that “the right to life is the most fundamental of all human rights” and then goes on to say “the right to life of a person exists from the time of conception to the time of the natural death of that person” (p. 1). If this assertion is agreed with, then laws mandating forced pregnancy would seem to make sense barring, perhaps, cases in which the woman’s right to life is challenged by the foetus’s. If, however, we are concerned with either bodily autonomy or quality of life, and if we find problematic the erasure of women in bills like this, they become untenable.

In 1991 five more bills were introduced, by three of the same five Liberal and Progressive Conservative MPs that introduced bills in 1989. Four of the five bills were reintroductions of bills from 1989 seeking to ban non-life saving abortions (C-221, a reintroduction of Boudria’s C-277), to penalize provinces that paid for non-life saving abortions (C-222, a reintroduction of Boudria’s C-268) and to change the definition of human beings to include “embryo” and “foetus” or to define a foetus as a person (C-214, a reintroduction of Wappel’s C-275 and C-302, a reintroduction of Ferguson’s C-266). The fifth bill (C-220, introduced by Progressive Conservative MP Dan Boudria, who also introduced bills C-221 and C-222) would punish “every person who directly or indirectly requires a physician, nurse, staff member or employee of a hospital or other health care facility to perform or participate directly or indirectly in an abortion procedure” (C-220, 1991, p. 1). Further, it would criminalize any person who “directly or indirectly discriminates in any manner

against a physician, nurse, staff member or employee of a hospital or other health care facility or against an applicant for such a position who expresses an unwillingness or a refusal to perform or participate in an abortion procedure” (p. 1). Comparing the first clause to the second, we can see how ambiguous the first clause is. Note that the bill wouldn’t protect health care providers who oppose abortion from performing such a procedure, rather it would punish any person who requires a medical professional to perform an abortion. It would seem, then, a logical extension to punish women who seek abortions and thus “require” a medical professional to perform the termination. Although, taken as a whole with the second clause, this bill appears to be a precursor to the conscious clause bills introduced several times in later years, the possible effects of such ambiguously worded bills must be noted, and the language must be interrogated. This bill is a fascinating example of the different tacks anti-choice MPs have taken to limit access without being in direct contravention of the 1989 Morgentaler decision.

No further bills were introduced until 1994 when Don Boudria reintroduced his 1991 bill to criminalize abortion provision (C-253). In 1996 Tom Wappel, Liberal MP, reintroduced his 1989 bill that sought to redefine “human being” to include both an “embryo” and a “foetus” and thus make abortion homicide (C-208). As well, the first motion was introduced, by a Reform MP, Garry Breitkreuz, which called for a “binding national referendum “ to determine “whether or not [Canadians] are in favour of federal government funding for abortions on demand” (M-91, 1996). This motion was reintroduced in late 1997 (M-268). Then in 1999, Jim Pankiw introduced bill C-515 which sought to obtain through a referendum “the opinion of

the electors as to whether the *Canada Health Act* should be amended to provide that a medically unnecessary abortion is not an insured health service under that Act” (C-515, 1999). Were the bill to pass, it would have amended the *Health Act* to deny not just funding, but also hospital facilities or services to be used in providing or performing so-called medically unnecessary abortions. How some abortions would be declared medically unnecessary is not made clear—whether the woman’s life has to be in physical danger, or if emotional duress is deemed an acceptable reason to terminate is left undefined. The effect of limiting which abortions are funded would have hugely varying implications along class lines, wherein wealthy women would be essentially unaffected by having to fund their own abortions, while the cost of an abortion may be prohibitively expensive for poorer women. Added to these implications is the horror of putting the rights of a minority (for women are, as a historically marginalized group, a political minority if not a literal one) in the hands of the majority.

Chapter 4: New Tactics

1997 saw the launch of a sly new tactic to chip away at abortion rights: curbing women's rights by laying the groundwork for more regressive bills to be introduced on the basis of fetal concern or fetal rights. Keith Martin, a Reform Party MP, introduced a bill (C-243) that, had it passed, would have charged pregnant women caught using drugs and alcohol with criminal endangerment of the foetus. Further, it would allow the court to order either treatment or confinement to "a hospital or other suitable facility where the person's access to injurious substances can be controlled for so long as the court considers necessary to protect the growth, development and health of the child" (C-243, 1997). This bill, unlike most of the anti-choice bills introduced in the last two decades, explicitly addresses the relationship between woman and foetus, mother and child, and the competing interests and the tension of trying to ensure rights for both. The preamble states,

WHEREAS certain substances, if they are consumed by the mother during her pregnancy, can damage the growth and development of the foetus, so that the health of the child is significantly injured; WHEREAS the legal protection of the health of children before they are born necessarily affects the rights and freedoms of mothers; AND WHEREAS it is the intention of this Act to provide legal protection for the health of children before they are born, while affecting rights and freedoms of others only to the extent necessary for that purpose...(C-243, 1997)

This was the first of several bills that do not, on first reading, appear to affect abortion rights and, in fact, explicitly defines "child" as including "every foetus that

its mother does not have a fixed intention to abort” (C-243, 1997). This bill, however, opens the door to granting foetuses personhood. From there, it is a terrifyingly short step to the banning of abortion on the grounds that it would then be considered murder. The other worrying effect of bills like this is that they treat women as incubators, whose rights and needs can be ignored in favour of the foetus they are bearing.

Conscience Clause

That same year, Liberal Senator Stanley Haidasz introduced a bill, commonly referred to as the Conscience Clause, which sought to prevent “coercion in medical procedures that offend a person’s religion or belief that human life is inviolable” (S-7, 1997). This bill would have amended the *Criminal Code* to punish any employer that refused to employ or promote a health care practitioner, or fired (or threatened to fire) one who “is, or is believed to be, unwilling to take part in or counsel for any medical procedure that offends a tenet of the practitioner’s religion, or the belief of the practitioner that human life is inviolable” (S-7, 1997). The bill would also extend to educators or schools and professional associations that refuse admission or accreditation on those same grounds. The bill also defines human life as “beginning at conception” (S-7, 1997). These bills are problematic from a pro-choice point of view for two reasons. First, and most obviously, the inclusion of a definition of “human life” as beginning at conception opens the door to further legislation limiting or banning abortion on the grounds that it is the killing of a human being. With that definition on the books it would then be quite easy to then grant fetal personhood, which would essentially sound the death-knell of abortion rights in any

meaningful way. More dangerous for its camouflage, though, is the meat of the bill. These “Conscience Clauses” are much shrewder than they first appear. On the face of it, these bills are intended to protect medical professionals who are personally opposed to abortion. And though this may seem like a reasonable protection, the impact of such clauses can be disastrous. The inability to discriminate entry into an educational program could result in an entire graduating class of gynecologists that not only does not take the elective to learn how to provide abortions¹⁰ but also refuses to counsel on the option of terminating for a woman facing an unwanted pregnancy. The inability to refuse employment on the basis of pro-life leanings could result in entire hospitals or even towns lacking not just abortion providers but even doctors that will refer them or talk about the option with them.

To put this effort into context it is worth noting that most American states have instituted conscience clauses. Several federal clauses in the USA ensure not only that no individual or publicly funded health-care entity be required to provide or assist in providing abortion services and, further, that insurance providers are legally entitled to opt out of funding not just services they are morally or religiously opposed to but also the provision of information itself. These clauses also allow health-care providers (whether an individual or organization) to “refuse to comply with any federal, state or local law and regulation that pertains to abortion services of referrals” (NARAL, n.d., p. 2). At the state-level, there are forty-seven states plus the District of Columbia which “allow certain individuals or entities to refuse to

¹⁰ According to a 2006 study, most Canadian ob-gyn programs offer some elective abortion training, while only some have include it routinely, and it is only a minority of residents who rate themselves as feeling confident in performing medical abortions (Roy, Parvataneni, Friedman, Eastwood, Darney, and Steinauer, 2006).

provide women specific reproductive health services, information, or referrals” (NARAL, 2011).

These laws have had disastrous real-life effects for many women. For example, according to Charo, in Illinois, a woman was refused transportation by an emergency medical technician to an abortion clinic because the EMT’s religious beliefs did not allow for elective abortions (2005). These clauses have impacts on abortion in less direct ways as well. In Wisconsin a survivor¹¹ of sexual assault was met with a refusal to fill a prescription for emergency contraception allowable because of the passing of a conscience clause. As a result the woman became pregnant and had to procure an abortion (Charo, 2005). In some instances these clauses have been used to defend refusing to even refer women to pro-choice doctors or doctors that would prescribe birth control (Charo, 2005). Thus, while these bills seem like straight-forward bills protecting medical professionals, the implications of them are much darker.

That same Conscience Clause bill was reintroduced in Canada once in 1998 (C-461), three times in 1999 (C-207, S-11, C-422), and once in 2002 (C-246). In 2008 a similar bill (C-537) designed to prevent the coercion of medical personnel or a refusal to employ medical personnel on the grounds of their religious belief or pro-life stance was introduced.

¹¹ The use of “survivor” vs. “victim” is used to recognize the agency of anyone who has experienced sexualized violence and to stop the disempowerment that often occurs in the legal system and in a society that stigmatizes sexual assault. This note is included as an explanation and a reflection of the feminist ethic of this paper.

Focus on the Unborn Child

In February of 1998, just weeks before he retired, Stanley Haidasz introduced a motion to create a “Special Joint Committee on the Unborn Child” tasked to examine and report on the feasibility of “legislating in the area of fetal rights and the protection of the unborn child” (Senate, Motion to establish, 1998). The Special Joint Committee would focus on five areas, including “the lack of protection in current Canadian law of the unborn child”, “the interests of the state in providing some measures to protect the unborn child, thereby securing the well-being of future generations of Canadians” and “the application of the rights and freedoms entrenched in the *Canadian Charter of Rights and Freedoms* and how they relate to the unborn child” (Senate, Motion to establish, 1998). Once again, we see the connection between anti-abortion politics and nationalism, as well as the moral imperative nationalism confers onto citizens to ensure future generations of Canadians. Fascinating in this is the complete erasure of a woman’s role (whether voluntary or coerced) in bearing an unborn child, in populating future generations. So essential to woman is motherhood, that her identity and existence is entirely subsumed by it—to the point of not even existing beyond being the unnamed site of foetal incubation. We do, however, see the patriarchal role of the state, and its obligation to “secur[e] the well-being of future generations of Canadians” (Senate, Motion to establish, 1998). Implicit in this worldview is the notion that women are reproductive tools to be maintained and employed by the men, whether interpersonally or societally. The motion clearly states the necessity of any recommendations or proposals finding a way to “protect the unborn child” in a

manner that does not contradict the Constitution of Canada. Although it is conceivable that this bid for constitutionality is a nod to women's human rights, and the inherent tension between the interests of a woman and her foetus, due to the failure to even mention the existence of women, never mind their rights and interests, it seems much more likely that any requirement of constitutionality is pragmatic and nothing more. The motion died because Haidasz retired only weeks after introducing it, but it signaled the start of a new tactic (seen once before in 1988's bill C-266) focusing on—and attempting to redefine—the foetus as “unborn child.”

The switch from earlier tactics of redefining human beings as including embryos and fetuses to a focus on the unborn child served to make these bills more appealing, less transparent, and much more emotionally manipulative. The use of “unborn child” with no explanation or qualification activates not only emotions but also assumptions. Children, we recognize, are inherently vulnerable. Surely, then, the *unborn* child needs even more care. Thus, the “lack of protection” (Senate, Motion to establish, 1998) of this most vulnerable being must be simply an egregious oversight. This manipulative language not only pulls on heartstrings but erases women from the conversation entirely. Women are so tangential to the conversation that they aren't even mentioned. Left out of the conversation around granting fetuses *Charter Rights* is the disastrous effect it would have on women's rights. 2001 saw another motion introduced (M-392, 2001), this time by Alliance MP Garry Breitkreuz, that the Standing Committee on Justice and Human Rights review the current legal definition of “human being” and report “whether the law needs to

be amended to comply with the United Nations Convention on the Rights of the Child so as to provide appropriate legal protection for a child before as well as after birth” and “whether the law should be amended so that the unborn child is considered a human being at the point of conception, when the baby’s brain waves can be detected, when the baby starts to move within the womb, or when the baby is able to survive outside the womb” (M-392, 2001). This motion was preceded in that year by Breitreuz’s failed M-228—which, had it passed, would have become an opinion of expression of the House—which sought to define human beings as beginning at conception, and to then amend the law as necessary in light of the changed definition.

Unpacking the specifics of these two directives is fascinating. First, the invocation of the United Nations Convention on the Rights of the Child seems almost to be a tool of misdirection. Although the Convention does state, in accord with the Declaration of the Rights of the Child, that “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth” (UN General Assembly, 1989, p. 1) The convention explicitly defines a child as a “human being below the age of 18” (UN General Assembly, 1989, p. 2). That is, to be covered by the rights and protections of the Convention, the definition of human being would have to be changed to include foetuses, thereby granting foetuses legal personhood. Which is to say, referring to a foetus as a “child” is, legally, nonsense, but that simple act of misdirection could be used to confer personhood or legal rights upon foetuses at the expense of the women carrying them. That same convention, in article 24, details the role of the

State “to develop preventive health care, guidance for parents and *family planning education and services*” (UN General Assembly, 1989, p. 7, emphasis mine).

Further, though the UN Convention on the Elimination of All Forms of Discrimination against Women does not explicitly mention abortion, it does state that states must ensure, “on a basis of equality of men and women” (UN General Assembly, 1979, Article 16, section 1) the “same rights to decide freely and responsibly on the number and spacing of their children, and to have access to the information, education and means to enable them to exercise these rights” (UN General Assembly, 1979, Article 16, section 1d). The means to decide on the number and spacing of children necessarily include both contraceptives and abortion. Thus, for the reasons stated above, this reference to the UN Convention on the Rights of the Child as if it could provide justification for introducing legislation that would, in effect though not name, restrict women’s right to autonomy is at best misguided, at worst deceptive.

The second directive, to report on if the “unborn child” (a phrase that is, again, legally meaningless) should be considered a human being at various points of a pregnancy is a fascinating use of language. The casual move from “unborn child” to “baby” signifies another attempt at manipulation based on common understandings and beliefs. While “unborn” has the connotation of “potential” and can act as an implicit nod to the reliance of a foetus on its mother for ongoing survival, “baby” removes the potentiality and lends an air of inevitability. “Baby” evokes images of life and hope, something to be treasured and protected. It calls to mind an image of motherhood that is rosy, chosen and familial. It easily ignores the reality that for a

foetus to exist and be carried to term and then delivered requires huge sacrifices on the woman's part, whether the pregnancy is wanted or not. Unlike "unborn child", which is a term used only in discussions of abortion, and only by those hoping to limit or ban it, "baby" is a commonly used, culturally evocative term that represents a being and a relationship that we hold sacrosanct. Remembering that passed motions represent the opinion of Parliament, we can see how monumental an effect a motion like this could have. If the opinion of Parliament is that fetuses constitute human beings, surely legislation must follow to protect them. That the motion provides so many possible points at which abortion should be criminalized is telling. At the risk of boring the reader with repetition, I would be remiss if I failed to mention the complete erasure of women's experience in this motion. Although there is mention of the womb—which is, of course, housed by a living, breathing human being—there is not a single mention of the impact any amendments to the *Criminal Code* would have on women's lives. This motion was reintroduced later that year as M-287.

The use of "unborn child" was used in a new fashion by Conservative MP Gary Breitkreuz in 2004 when he introduced a motion (M-560) to Parliament that would create a new offence in the *Criminal Code* that would "ensure that any person who murders a woman knowing she is pregnant, shall be charged with the murder of the unborn child" (M-560, 2004). This failed motion was a precursor to two bills later introduced that attempted to amend the *Criminal Code* to include fetuses as victims of violent crime. 2006's C-291 would have amended the *Criminal Code* in such a way that

everyone who injures or causes the death of a child before or during its birth while committing or attempting to commit an offence against the mother who is pregnant with the child is guilty of the offence of which the person would have been guilty had the injury or death occurred to the mother, and is liable to the punishment prescribed for that offence. (C-291, 2006)

This bill would have, *de facto*, granted fetuses legal personhood, by criminalizing violence against them as if they were independent human beings. This type of bill departs from many of the former attempts at granting fetuses personhood in two notable ways. First, it does not mention abortion at all. Ostensibly, this is purely about protecting wanted children from violence perpetrated against their mothers in which they are the unintended victims. Second, this bill actually mentions the woman and her relationship to the foetus. By framing it as an issue of protecting wanted children, and calling to mind images of injured and grieving mothers, the issue of abortion is not mentioned and yet is endangered. The danger is seen in the stipulation of subsection (2) which states that “it is not a defence to a charge under subsection (1) that (a) the child is not a human being” (C-291, 2006). If the *Criminal Code* asserts that the death of a foetus is a crime, regardless of its status as a non-human being, how long can it possibly be before abortion is recriminalized for the death of a non-human being “unborn child”? The bill also asserts that any offence committed against the foetus in the commission of an offence against its mother must be treated as a separate offence.

A similar bill (C-484) was introduced the next year called the “*Unborn Victims of Crime Act*.” This bill would set a minimum sentence of ten years in prison (and a

maximum of life) for anyone who “directly or indirectly, causes the death of a child during birth or at any stage of development before birth while committing or attempting to commit an offence against the mother of the child, who the person knows or ought to know is pregnant” (C-484, 2007) if the person “means to cause the child’s death” or “means to cause injury to the child or mother that the person knows is likely to cause the child’s death, and is reckless as to whether death ensues or not” (C-484, 2007). There are several other stipulations in this bill that lessen the severity of the crime depending on if it is committed in the heat of passion, or causes injury but not death to the foetus. This bill, like C-291 before it, would also prevent the defence that the foetus is not a human being, and would make separate offences against the foetus and against the mother. However, unlike C-291, would also make punishable with a lifetime prison term any attempt at causing the death of a foetus by perpetrating an offence against the mother. Further, unlike C-291, this bill does directly address abortion. This bill would not apply in three instances: the lawful and consented termination of the foetus, an act necessary to preserve the life of the woman, or “any act or omission by the mother of the child” (C-484, 2007). While this outwardly seems to protect abortion as a medical procedure, and women’s right to it, the act of granting personhood to the foetus, whether *de facto* or *de jure*, by its nature opens up avenues to banning abortion.

Women’s Health

In his unremitting decade long attempt at limiting or banning abortion, MP Garry Breitkreuz relied on a variety of tactics. In 2002, he introduced the first motion looking at the “health” of abortions. M-523 would have had the Standing

Committee on Health “fully examine, study and report to Parliament on: (a) whether or not abortions are medically necessary for the purpose of maintaining health, preventing disease or diagnosing or treating an injury, illness or disability; and (b) the health risks for women undergoing abortions compared to women carrying their babies to full term” (M-523, 2002) This motion reads not as concern for women but as a grasping at straws in the fight to ban abortion. Regardless of whether abortions are declared “medically necessary” or not—and debate will always rage on what constitutes medical necessity—the option of abortion will always be a positive in women’s lives, and a necessary component of any attempts at gender equality. Plus, it must be noted that the question of medical necessity relies on the qualified pro-choice position that constructs two types of abortion: acceptable (medically necessary) and unacceptable (so-called elective). This division of good and bad abortions not only reinforces the concept that women should not have control over their own bodies, but would put the decision power in the hands of the medical establishment rather than individual women’s hands much like in the era of therapeutic abortion committees where three doctors controlled women’s fates. Further, regardless of the health risks of abortion vs. carrying a pregnancy to term—and it must be noted that the incidence of complication in abortion vs. even a normal, healthy pregnancy is much lower¹²—there will always

¹² According to Jennifer Baumgardner, noted American abortion-rights activist and third-wave feminist, “the death rate at all stages is 0.6 per 100,000 abortions...nearly ten times as safe as carrying a pregnancy to full term” (Baumgardner, 2008, p. 20).

be women who will choose abortion over carrying a pregnancy to term¹³. Breitkreuz reintroduced this same motion later that same year (M-83).

Coercion and Consent

In 2003, Garry Breitkreuz introduced a motion to create a “*Women’s Right to Know Act*” (M-482). This motion, though only a single sentence long, has two important components. First, it would “guarantee that all women considering an abortion would be given complete information by their physician about all the risks of the procedure before being referred for an abortion and provide penalties for physicians who perform an abortion without the informed consent of the mother” (M-482, 2003). Motions like this are based on the supposition that women do not actually understand what they are doing in having an abortion, and hope to scare women into changing their decision. Further, they treat abortion as though it is some anomalous medical procedure that is exempt from the requirements of informed consent, and frame doctors as nefarious abortion pushers attempting to trick women into terminating their pregnancies. By promising punishment for doctors who fail to get informed consent, and opening doors to more invasive requirements for what constitutes “informed consent”¹⁴ this motion is another

¹³ Multiple studies have proven that the number of abortions performed remains essentially the same whether abortion is legal or not (Henshaw, Sing and Haas, 1999; Sedge, Henshaw, Singh, Åhman and Shah, 2007).

¹⁴ According to the National Abortion and Reproductive Rights Action League, there are currently thirty-two states that mandate biased-counseling requirements (for example, requiring that women be told of the disproven claim that abortion causes breast cancer) and/or mandatory delays (NARAL, n.d. Biased Counseling). These are enacted in a bid to either convince women to change their minds or to construct so many obstacles that terminating simply isn’t feasible. For example, for women in rural areas who have to travel large distances to find an abortion provider, returning after twenty-four hours may just not be possible.

example of attempted legislation that is presented as being pro-woman, but is in reality an attack on all women's rights. Finally, this motion sought to introduce a bill that would punish physicians for performing "an abortion that is not medically necessary for the purpose of maintaining health, preventing disease or diagnosing or treating an injury, illness or disability in accordance with the *Canada Health Act*" (M-482, 2003). While the intent of this motion is clearly to criminalize so-called elective abortions, all abortions performed in Canada are deemed "medically necessary" given the somewhat circular reasoning of the *Canada Health Act* that all procedures that must be performed by a medical doctor are considered medically necessary procedures (CARAL, 2003). A similar motion (M-70) was introduced in 2004 by MP Breitzkreuz. It too would penalize physicians who performed abortions not considered "medically necessary" but it does not mention the *Canada Health Act*.

In 2006 (and again in 2007) Liberal MP Paul Steckle introduced a refreshingly straightforward (though no less damaging to women's reproductive rights) bill, C-338, which endeavoured to criminalize abortions after twenty weeks gestation. This bill would amend the *Criminal Code* to punish with up to five years in prison anyone who, "with intent to procure the miscarriage of a female person who he or she knows or ought to know is past her twentieth week of gestation, uses any means or permits any means to be used for the purpose of carrying out his or her intention" (C-338, 2006). The bill is not explicit either way, but would appear to punish equally a doctor performing an abortion and a woman getting an abortion after 20 weeks. The bill would allow for two exceptions: to save the life of a woman and to "prevent severe pathological physical morbidity of the woman" (C-338,

2006). The bill makes no exception for abortions needed due to grave or fatal foetal impairment which, along with health risks to the woman, make up the vast majority of all late term abortions. According to a position paper put forth by the Abortion Rights Coalition of Canada, “most women who terminate their pregnancies after 20 weeks wanted to have a child, and were forced to consider abortion for medical reasons” (Abortion Rights Coalition of Canada, 2005). By not allowing an exception for cases in which the foetus will not survive, the bill would punish women by forcing them to continue a pregnancy with no hope of a happy outcome. Given that almost all late-term abortions are performed because of medical conditions for which there is no other alternative¹⁵ this bill is baffling. Even more so is that it was drafted to combat a problem that essentially does not exist. According to Statistics Canada data, abortions past twenty weeks make up for less than 1% of all abortions (Statistics Canada, 2003). It would appear, then, that bills of this type are meant not to deal with the issue they speak to, but rather to erode abortion access and thus women’s rights from the edges inward.

Finally, 2010 saw the introduction of a bill to ban so-called “coerced abortion” via threats, illegal acts or harassment. Specifically, under this bill, “committing, attempting to commit or threatening to commit physical harm to the female person, the child or another person” or “any act prohibited by any provincial or federal law”(C-510, 2010) in order to cause a woman to consent to an abortion she otherwise would have refused would all be illegal. The Abortion Rights Coalition

¹⁵ According to Joyce Arthur, those late-term abortions required for reasons other than severe maternal health or foetal anomalies were due to “compelling social reasons” such as women in abusive relationships or teenage girls who were in extreme denial that they were pregnant (Arthur, 2008).

of Canada put out a response to this bill that problematized it in a variety of ways. First, the authors point out, the bill is mostly redundant. Criminalizing violence, threats, or “any act prohibited by any...law” (C-510, 2010) is unnecessary and nonsensical. Second, counselors screen women seeking abortion for signs of coercion and abortions clinics will not provide abortions for women they suspect are coerced, or who are conflicted over the decision. This bill, therefore, is not only redundant but harmful to women. By implying that abortion is a coerced act it both denies women agency in their own lives and presents abortion as a “social harm to be criminalized” (Abortion Rights Coalition of Canada, 2010). Its use of “child” rather than foetus would recognize the foetus as a person with legal status which would, as with all of the previous attempts at granting foetuses legal personhood, open the door to the criminalizing of all abortions. Further, the bill would criminalize “denying or removing, or making a threat to deny or remove, financial support or housing from a person who is financially dependent on the person engaging in the conduct” and “attempting to compel by pressure or intimidation including argumentative and rancorous badgering or importunity” (C-510, 2010). That is, it attempts to make illegal interpersonal conduct generally considered outside of the criminal domain. Although threatening to deny your spouse funding if they continue a pregnancy you do not support is unsavoury, it is not illegal. And “rancorous badgering,” unless perpetrated at a level that constitutes harassment, while annoying, is not illegal. The difficulty and subjective nature of determining what would constitute “rancorous badgering” but not harassment would be difficult.

In a novel move that accounts for these difficulties, the bill also includes a severability clause that would allow

any provision of this section that is held by a court of law to be invalid or unenforceable by its terms, or as applied to any person or circumstance [to] be construed so as to give it the maximum effect permitted by law, unless the court has determined that the provision is utterly invalid or unenforceable, in which case the provision shall be deemed severable from this section and shall not affect the application of the other provisions of this section or the application of the provision to other persons not similarly situated or to other, dissimilar circumstances. (C-510, 2010)

Looking at the preamble, we see that it is both telling and misrepresentative. It states first that, “Roxanne Fernando was a Winnipeg woman whose boyfriend attempted to coerce her to abort their unborn child and subsequently murdered her for refusing to do so” (C-510, 2010). However, as NDP MP Irene Mathysen stated in her opposition to the bill, “the murderer himself, his lawyer and the crown prosecutor all agree that this was not the motive” (Mathysen, 2010, p. 1120) and, in fact, the judge in his decision wrote that “The murder was apparently motivated by...[the defendant’s] irritation and panic that Ms. Fernando, who was carrying his baby, was insistent on having a relationship with him” (Mathysen, 2010, p. 1120). This misrepresentation of a tragic case of domestic violence is a manipulative attempt to limit abortion, rather than to actually protect women. It goes on to state that “many pregnant women have been coerced to have an abortion and have suffered grievous physical, emotional and psychological harm as a result” (C-510,

2010) but fails to cite any statistics. Although it is true that some women have experienced reproductive control (which runs the gamut from coerced abortion to being pressured to carry the pregnancy to term) in abusive relationships (Moore, Frohwirth and Miller, 2010), “the vast majority of women make their own decision to have an abortion and take responsibility for it” (Abortion Rights Coalition of Canada, 2010). The preamble also quotes the Supreme Court as saying that “pregnancy represents not only the hope of future generations but also the continuation of the species. It is difficult to imagine a human condition that is more important to society” (C-510, 2010) and then goes on to state that “Parliament wishes to ensure pregnant women are able to continue pregnancy free of coercion” (C-510, 2010), thus implying that anyone who does not support the bill, not only does not want to stop coerced abortions, but is perhaps unconcerned with future generations and the continuation of the species.

Chapter 5: Conclusion

From the overt to the convoluted, the past twenty-three years have seen scores of anti-choice bills and motions introduced in Canada. These legislative attempts work in conjunction with other anti-choice tactics like pickets, Crisis Pregnancy Centres and aggressive presentations on university campuses to challenge women's right to bodily autonomy. Though inventive in their ability to evolve with the times, these tactics focus narrowly on making abortion illegal or practically impossible to access rather than addressing the social inequalities that make most abortions necessary. These legislative attempts are potentially disastrous for women regardless of social location, but are particularly damaging to women in marginalized locations. Attention to the legislative attempts to limit abortion are, to be sure, only one component of the work feminists must do in the fight for reproductive justice. It is, however, an essential component in the fight for abortion rights as the law, or in this case, no law, is the only real protection of reproductive justice for *all* women, not just the few. We must continually monitor and respond to anti-choice legislation and we must demand pro-choice and family-friendly legislation from our elected officials, even as we simultaneously resist the tours, presentations, pickets, vigils and misinformation of the anti-choice movement whose mission is to strip women of their basic human right to self-determination.

We must also pay attention to and decry the actions of our elected officials that impinge on women's right to bodily autonomy around the world. A Conservative MP's recent announcement that he worked in conjunction with anti-abortion groups to create government policy to defund the International Planned

Parenthood Foundation is one such example, though the policy has not yet been announced by government and has created a brief stirring of pre-election controversy (Lilley, 2011). Another example is the Harper government's decision not to fund abortion services in his G8 funding initiative. These actions are not only indicative of Harper's anti-choice stance, but are an urgent call to action for all those concerned with women's most basic rights. Finally, we must demand that women's issues are not simply a symbolic addendum for our elected officials but an integral part of their platforms. Women's lives, needs and experiences must be included in the drafting, shaping and implementing of public policy and national interests.

The work is demanding, at times discouraging in its relentless return, but crucially important not just for pregnant or potentially pregnant women but for the whole society that needs wanted children, loved and protected by law and by custom.

Works Cited

- Abortion Rights Coalition of Canada. (2005). *Position paper #22: late term abortions (after 20 weeks)*. PDF Retrieved January 25, 2011 from <http://www.arcc-cdac.ca/postionpapers/22-Late-term-Abortions.PDF>
- Abortion Rights Coalition of Canada. (2010). *Pro-choice group calls for law banning coerced childbirth*. PDF Retrieved January 22, 2011 from <http://www.arcc-cdac.ca/press/ARCC-CDAC-release-apr19-10-english.pdf>
- Arthur, J. (1999). *Abortion in Canada: history, law and access*. Retrieved from <http://www.hackcanada.com/canadian/freedom/canadabort.html>
- Arthur, J. (2002). *How to interpret polls on abortion*. Retrieved November 30, 2010 from <http://www.prochoiceactionnetwork-canada.org/articles/abortion-polls.shtml>
- Arthur, J. (2004). *Canada: The civilized outlaw*. Retrieved March 20, 2011 from <http://www.prochoiceforum.org.uk/al14.php>
- Arthur, J. (2006). *Liberal MP Paul Steckle introduces bill to ban abortions after 20 weeks*. Retrieved March 4, 2011 from http://www.arcc-cdac.ca/action/bill_c338.html
- Arthur, J. (2008). *Canada does not need an abortion law*. Retrieved January 2, 2011 from <http://www.arcc-cdac.ca/action/dont-need-abortion-law.html>.
- Arthur, J. (2009). *Exposing crisis pregnancy centers in British Columbia*. Retrieved January 2, 2011 from <http://www.arcc-cdac.ca>

- Association of Pro-Life Physicians. (2011, April 6). *Are there rare cases when an abortion is justified?* [Position Statement]. Retrieved from <http://www.prolifephysicians.org/rarecases.htm>
- Baumgardner, J. (2008). *Abortion & life*. New York, New York: Akashic Books.
- Bill C-43: *An Act respecting abortion*. 3rd Reading, May 29, 1990, 34th Parliament, 2nd Session, 1990. Ottawa: Public Works and Government Services Canada, 1990.
- Bill C-207: *An Act to amend the Criminal Code to prohibit coercion in medical procedures that offend a person's religion or belief that human life is inviolable*. 1st Reading, October, 1999, 36th Parliament, 2nd Session, 1999. [Online]. Ottawa: Public Works and Government Services, 1999. Retrieved from: <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=2330558&Language=e&Mode=1&File=16>
- Bill C-208: *An Act to amend the Criminal Code (human being)*. 1st Reading, February 29, 1996, 35th Parliament, 2nd Session, 1996. Ottawa: Public Works and Government Services Canada, 1996.
- Bill C-220: *An Act to amend the Criminal Code (abortion)*. 1st Reading, June 3, 1991, 34th Parliament, 3rd Session, 1991. Ottawa: Public Works and Government Services Canada, 1991.
- Bill C-221: *An Act to amend the Criminal Code (destruction of the foetus)*. 1st Reading, 1991, 34th Parliament, 3rd Session, 1991. Ottawa: Public Works and Government Services Canada, 1991.

Bill C-222: *An Act to amend the Canada Health Act (abortion)*. 1st Reading, 1991, 34th Parliament, 3rd Session, 1991. Ottawa: Public Works and Government Services Canada, 1991.

Bill C-243: *An Act to amend the Criminal Code (protection of child before birth)*. 1st Reading, September, 1997, 36th Parliament, 1st Session, 1997. (Online). Ottawa: Public Works and Government Services Canada, 1997. Retrieved: <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=2330143&Language=e&Mode=1&File=16> (via WWW) [February 26, 2011].

Bill C-246: *An Act to amend the Criminal Code to prohibit coercion in medical procedures that offend a person's religion or belief that human life is inviolable*. 1st Reading, October 30, 2002, 37th Parliament, 1st Session, 2002. [Online]. Ottawa: Public Works and Government Services Canada, 2002. Retrieved from: <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=2331104&Language=e&Mode=1&File=16>

Bill C-253: *An Act to amend the Criminal Code (abortion)*. 1st Reading, May 27, 1994, 35th Parliament, 1st Session, 1994. Ottawa: Public Works and Government Services Canada, 1994.

Bill C-261: *An Act to amend the Criminal Code (protection of the unborn)*. 1st Reading, September 27, 1989, 34th Parliament, 2nd Session, 1989. Ottawa: Public Works and Government Services Canada, 1989.

Bill C-266: *An Act to amend the Criminal Code (offences against the foetus)*. 1st Reading, October 10, 1989, 34th Parliament, 2nd Session, 1989. Ottawa: Public Works and Government Services Canada, 1989.

Bill C-268: *An Act to amend the Canada Health Act (abortion)*. 1st Reading, October 26, 1989, 34th Parliament, 2nd Session, 1989. Ottawa: Public Works and Government Services Canada, 1989.

Bill C-275: *An Act to amend the Criminal Code (human being)*. 1st Reading, November 7, 1989, 34th Parliament, 2nd Session, 1989. Ottawa: Public Works and Government Services Canada, 1989.

Bill C-277: *An Act to amend the Criminal Code (destruction of the foetus)*. 1st Reading, November 9, 1989, 34th Parliament, 2nd Session, 1989. Ottawa: Public Works and Government Services Canada, 1989.

Bill C-291: *An Act to amend the Criminal Code (injuring or causing the death of a child before or during its birth while committing an offence)*. 1st Reading, 2006, 39th Parliament, 1st Session, 2006. [Online]. Ottawa: Public Works and Government Services Canada, 2006. Retrieved:

http://www2.parl.gc.ca/HousePublications/Publication.aspx?Language=E&File=24&Parl=39&Ses=1&Mode=1&Pub=Bill&Doc=C-291_1

Bill C-338: *An Act to amend the Criminal Code (procuring a miscarriage after twenty weeks of gestation)*. 1st Reading, 2006, 39th Parliament, 1st Session, 2006. [Online]. Ottawa: Public Works and Government Services Canada, 2006. Retrieved:<http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=2494993&Language=e&Mode=1&File=24>

Bill C-422: *An Act to amend the Criminal Code to prohibit coercion in medical procedures that offend a person's religion or belief that human life is inviolable.*

1st Reading, December, 1999, 36th Parliament, 2nd Session, 1999. [Online].

Ottawa: Public Works and Government Services, 1999. Retrieved from:

<http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=2330776&Language=e&Mode=1&File=16>

Bill C-484: *An Act to amend the Criminal Code (inuring or causing the death of an unborn child while committing an offence).* 1st Reading, November 21, 2007,

39th Parliament, 2nd Session, 2007. [Online]. Ottawa: Public Works and

Government Services Canada, 2007. Retrieved from:

<http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=3127600&Language=e&Mode=1&File=24#1>

Bill C-510: *An Act to prevent coercion of pregnant women to abort (Roxanne's Law).*

1st Reading, April 14, 2010, 40th Parliament, 3rd Session, 2010. [Online].

Ottawa: Public Works and Government Services Canada, 2010. Retrieved:

<http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4427296&Language=e&Mode=1&File=24#1>

Bill C-515: *An Act to provide for a referendum to determine whether Canadians wish medically unnecessary abortions to be insured services under the Canada*

Health Act and to amend the Referendum Act. 1st Reading, June 2, 1999, 36th

Parliament, 1st Session, 1999. [Online]. Ottawa: Public Works and

Government Services Canada, 1999. Retrieved:

<http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=2330422&Language=e&Mode=1&File=21#1>

Bill C-537: *An Act to amend the Criminal Code (protection of conscience rights in the health care profession)*. 1st Reading, April 16, 2008, 39th Parliament, 1st Session, 2008. [Online]. Ottawa: Public Works and Government Services Canada, 2008. Retrieved:

[http://www2.parl.gc.ca/HousePublications/Publication.aspx?Docid=3429427&file=4\(via WWW\) \[January 17, 2011\].](http://www2.parl.gc.ca/HousePublications/Publication.aspx?Docid=3429427&file=4(via WWW) [January 17, 2011].)

Bill S-7: *An Act to amend the Criminal Code to prohibit coercion in medical procedures that offend a person's religion or belief that human life is inviolable*. 1st

Reading, November 19, 1997, 36th Parliament, 2nd Session, 1997. (Online).

Ottawa: Public Works and Government Services Canada, 1997. Retrieved:

[http://www2.parl.gc.ca/content/Senate/Bills/361/public/S-7/S-7_1/S-7_text-e.htm \(via WWW\) \[January 28, 2011\].](http://www2.parl.gc.ca/content/Senate/Bills/361/public/S-7/S-7_1/S-7_text-e.htm (via WWW) [January 28, 2011].)

Bill S-11: *An Act to amend the Criminal Code to prohibit coercion in medical procedures that offend a person's religion or belief that human life is inviolable*.

1st Reading, November, 1999, 36th Parliament, 2nd Session, 1999. [Online].

Ottawa: Public Works and Government Services Canada, 1999. Retrieved

from: http://www2.parl.gc.ca/content/Senate/Bills/362/public/S-11/S-11_1/S-11_text-e.htm

Bill S-16: *An Act to amend the Criminal Code (protection of the unborn)*. 1st Reading, May 18, 1988, 33rd Parliament, 2nd Session, 1988. Ottawa: Public Works and Government Services Canada, 1988.

Bindman, S. (1989, July 13). 'Whatever is done is done'; Barbara Dodd describes her 'humiliation' in abortion ordeal. *The Gazette*.

Bloch, J. P. (2007). Cyber wars: Catholics for a Free Choice and the online abortion debate. *Review of Religious Research*, 49(2): 165-189.

CBC. (2009). *Abortion rights: significant moments in Canadian history*. Retrieved from <http://www.cbc.ca/news/canada/story/2009/01/13/f-abortion-timeline.html>

Canada. Parliament. House of Commons. (2008) *Private Member's business: Practical guide* (9th ed.). Retrieved from http://parl.gc.ca/information/about/process/house/PMB_PracticalGuide/PractGuide_4PMB-E.pdf

Canada. Parliament. Senate. "Motion to establish special joint Parliamentary committee". *Debates*, 36th Session, vol. 137, Issue 44, February 26, 1998. (Online). Retrieved: http://www.parl.gc.ca/36/1/parlbus/chambus/senate/deb-e/044db_1998-02-26-E.htm?Language=E&Parl=36&Ses=1#0.2.X57BJ2.YURZ7K.UOMP0H.WH1

Canadian Charter of Rights and Freedoms. (1982). Retrieved from the Government of Canada, Department of Justice Canada website: http://laws.justice.gc.ca/en/charter/const_en.html#charte

Canadian Medical Association. (1985). Abortion [Position paper]. *Canadian Medical Association Journal*, 13: 318.

- CARAL. (2003). Freedom of choice: protecting abortion rights in Canada. *A Special Report to Celebrate the 15th Anniversary of the Decriminalization of Abortion*.
- Chaillet, N., Dubé, E., Dugas, M., Francoeur, D., Dubé, J., Gagnon, S., Potras, L. and Dumont, A. (n.d.) Identifying barriers and facilitators towards implementing guidelines to reduce caesarean section rates in Quebec. *Bulletin of the World Health Organization*. Retrieved February 24, 2011 from:
<http://www.who.int/bulletin/volumes/85/10/06-039289/en/>
- Charo, R.A. (2005). The celestial fire of conscience—refusing to deliver medical care. *The New England Journal of Medicine*, 352 (24): 2471-3.
- Collins, B. G. (1987). Transforming Abortion Discourse. *Affilia*, 2(1): 6-17.
- Canadian Press, The. (1989, November 18). Daigle hails abortion ruling. *The Toronto Star*.
- Davis, A. (1981). *Women, race & class*. New York: vintage.
- De Beauvoir, S. (1989). *The second sex*. (H. M. Parshley Trans.). Vintage. (Original work published 1949).
- Devries, R. (2005). *A pleasing birth: midwives and maternal care in the Netherlands*. Philadelphia, Pennsylvania: Temple University Press.
- Dunsmuir, M. (1998). *Abortion: Constitutional and legal developments*. Ottawa: Depository Services Program. Retrieved from <http://dsp-psd.pwgsc.gc.ca/Collection-R/LoPBdP/CIR/8910-e.htm#B.%20History>
- Forsey, E. (1980/2010). *How Canadians govern themselves* (7th ed.). [pdf]. Retrieved from

- http://www2.parl.gc.ca/Sites/LOP/AboutParliament/Forsey/PDFs/How_Canadians_Govern_Themselves-7ed.pdf
- Henshaw, S.K., Singh, S., Haas, T. (1999). The Incidence of abortion worldwide. *International Family Planning Perspectives* 25(Supplement):S30–S38.
- Hollander, D. (2005). Abortion support slipping. *Perspectives on Sexual and Reproductive Health*, 37(2): 60.
- James, S. D. (2010, January 14). Pregnant woman fights court-ordered bed rest. *ABC News*. Retrieved from <http://abcnews.go.com/Health/florida-court-orders-pregnant-woman-bed-rest-medical/story?id=9561460>
- Jordan, B. and Wells, E. S. (2009). A 21st-century Trojan horse: the “abortion harms women” argument disguises a harmful movement. *Contraception* 79: 161-164.
- Kellough, g. (1996). *Abortion law: an exploration of the politics of motherhood and medicine*. Toronto: University of Toronto Press.
- Levy, H. (1989, July 29). Abortion dilemma how Quebec judges let Daigle down. *The Toronto Star*.
- Lilley, B. (2011, April 21). Planned parenthood group not defunded, despite reports. *Canoe Canada Votes* Retrieved from:
<http://cnews.canoe.ca/CNEWS/Canada/CanadaVotes/News/2011/04/21/18052676.html>
- MacDorman, M., Menacker, F., Declercq, E. (2010). Trends and characteristics of home and other out-of-hospital births in the United States, 1990-20006. *National Vital Statistics Reports* 2010, 58(11).

- Mathyssen, I. (2010, Nov. 1). "An Act to Prevent Coercion of Pregnant Women to Abort (Roxanne's Law)". Canada. Parliament. House of Commons. *Edited Hansard 091*, 40th Parliament, 3rd Session. Retrieved from <http://www2.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&Parl=40&Ses=3&DocId=4746353>
- Maynard, M. (1994). *Methods, practice and epistemology: the debate about feminism and research. Researching women's lives from a feminist perspective*. Bristol, PA: Taylor and Francis Inc.
- McLaughlin, A. (1990, May 22). "An Act respecting abortion". Canada. Parliament. House of Commons. *Edited Hansard vol. IX*, 34th Parliament, 2nd Session.
- Menacker, F. and Hamilton, B. E. (2010, March). *Recent trends in cesarean delivery in the United States* [Brief]. National Center for Health Statistics.
- Mitges, G. (1989, Nov. 29). "An Act respecting abortion". Canada. Parliament. House of Commons. *Edited Hansard vol. V*, 34th Parliament, 2nd Session.
- Moore, A. M., Frohwirth, L., and Miller, E. (2010). Male reproductive control of women who have experienced intimate partner violence in the United States. *Social Science and Medicine*. Doi: 10.1016/j.socscimed.2010.02.009
- Motion M-70: Private Members' notices of motions, No. 3. October 5, 2004, 38th Parliament, 1st Session, 2004. [Online]. Ottawa: Public Works and Government Services, 2004. Retrieved from: <http://www.garrybreitkreuz.com/Private%20Members%20Motions/oct-6-2004b.htm>

Motion M-83: Private Members' notices of motions, No. 1-2. September 30, 2002, 37th Parliament, 2nd Session. [Online]. Ottawa: Public Works and Government Services, 2002. Retrieved from:

<http://www.garrybreitkreuz.com/Private%20Members%20Motions/M-83.htm>

Motion M-91: Referendum on Defunding Abortion. March 14, 1996, 35th Parliament, 2nd Session, 1996. Ottawa: Public Works and Government Services, 1996.

Motion M-228: Private Members' notices of motions, No. 6. February 5, 2001, 37th Parliament, 1st Session, 2001. [Online]. Ottawa: Public Works and Government Services, 2001. Retrieved from:

<http://www.garrybreitkreuz.com/Private%20Members%20Motions/Motions.htm>

Motion M-268: Referendum on Defunding Abortion. November 20, 1997, 36th Parliament, 1st Session, 1997. [Online]. Ottawa: Public Works and Government Services, 1997. Retrieved from:

<http://www.garrybreitkreuz.com/Private%20Members%20Motions/Motions.htm>

Motion M-287: Private Members' notices of motions, No. 15. October 25, 2002, 37th Parliament, 2nd Session, 2002. [Online]. Ottawa: Public Works and Government Services, 2002. Retrieved from:

<http://www.garrybreitkreuz.com/Private%20Members%20Motions/M-287.htm>

Motion M-392: Private Members' notices of motions, No. 80. September 18, 2001, 37th Parliament, 1st Session, 2001. [Online]. Ottawa: Public Works and Government Services, 2002. Retrieved from:
<http://www.garrybreitkreuz.com/Private%20Members%20Motions/M-392.htm>

Motion M-482: Private Members' notices of motions, No. 139. October 20, 2003, 37th Parliament, 2nd Session, 2003. [Online]. Ottawa: Public Works and Government Services, 2002. Retrieved from:
<http://www.garrybreitkreuz.com/Private%20Members%20Motions/M-482.htm>

Motion M-523: Private Members' notices of motions, No. 208. June 18, 2002, 37th Parliament, 1st Session, 2002. [Online]. Ottawa: Public Works and Government Services, 2002. Retrieved from:
<http://www.garrybreitkreuz.com/Private%20Members%20Motions/M-523.htm>

Motion M-560: Private Members' notices of motions, No. 4. March 11, 2004, 37th Parliament, 3rd Session, 2004. [Online]. Ottawa: Public Works and Government Services, 2004. Retrieved from:
<http://www.garrybreitkreuz.com/Private%20Members%20Motions/march-11-2004.htm>

Mulroney, B. (1989, Nov. 28). "An Act respecting abortion". Canada. Parliament. House of Commons. *Edited Hansard vol. V*, 34th Parliament, 2nd Session.

- NARAL. (n.d.) *Biased counseling & mandatory delays*. NARAL Pro-Choice America. Retrieved January 29, 2011 from http://www.prochoiceamerica.org/what-is-choice/fast-facts/biased_counseling.html
- NARAL. (n.d.) *Refusal clauses in current law*. [PDF]. Retrieved January 29, 2011 from <http://www.prochoiceamerica.org/media/fact-sheets/abortion-refusal-clauses-current-law.pdf>
- NARAL. (2011). *Refusal to provide medical services*. Retrieved January 29, 2011 from <http://www.prochoiceamerica.org/what-is-choice/fast-facts/refusal-to-provide-medical.html>
- R. v. Morgentaler, 1 S. C. R. (1988). Retrieved from <http://csc.lexum.org/en/1988/1988scr1-30/1988scr1-30.html>
- Reimer, J. (1989, Dec. 19). "An Act respecting abortion". Canada. Parliament. House of Commons. *Edited Hansard vol. V*, 34th Parliament, 2nd Session.
- Roy, G., Parvataneni, R., Friedman, B., Eastwood, K., Darney, P. D., and Steinauer, J. (2006). Abortion training in Canadian obstetrics and gynecology residency programs. *Obstetrics and Gynecology*, 108(2):309-114.
- Sangillo, G. (2009). Abortion's shaky middle ground. *National Journal*: 1-4.
- Sedgh G, Henshaw S, Singh S, Åhman E, Shah IH. Induced abortion: rates and trends worldwide. *Lancet* 2007; 370: 1338-45
- Shaw, G. M. (2003). The polls—trends: abortion. *Public Opinion Quarterly*, 67: 407-429.

- Sistersong. (2010). *What is RJ?* Retrieved April 2, 2011, from http://www.sistersong.net/index.php?option=com_content&view=article&id=141&Itemid=65
- Sprague, J. (2005). *Feminist methodologies for critical researchers: bridging differences*. Walnut Creek, California: AltaMira Press.
- Statistics Canada. (2003). *Percentage distribution of induced abortions by gestation period*. Retrieved from www.arcc-cdac.ca/StatsCan-gestation-times-1995-2003.xls
- Sweet, L. (1989, July 29). Abortion dilemma when women need late abortions, should the cut-off point be a purely medical matter or one based on approaching human dignity? The Chantal Daigle case puts that question into sharp and poignant focus. *The Toronto Star*.
- Toronto Star, The. (1989, August 13). Secret trip spurred by fear 'of negative judgment'. *The Toronto Star*.
- Turner, J. (1989, Nov. 8). "An Act respecting abortion". Canada. Parliament. House of Commons. *Edited Hansard vol. IV, 34th Parliament, 2nd Session*.
- UN General Assembly. (1979). *Convention on the elimination of all forms of discrimination against women*. United Nations, Treaty Series, vol. 1249. [Online]. Retrieved at: <http://www.unhcr.org/refworld/docid/3ae6b3970.html> [accessed 7 April 2011]
- UN General Assembly. (1989). *Convention on the Rights of the Child*. United Nations, Treaty Series, vol. 1577. [Online]. Retrieved at:

<http://www.unhcr.org/refworld/docid/3ae6b38f0.html> [accessed 7 April 2011]

University of British Columbia. (2010, May 31). *Regional differences in C-section rate not a result of maternal request: UBC study* [Press release]. Retrieved from: <http://www.publicaffairs.ubc.ca/2010/05/31/regional-differences-in-c-section-rate-not-a-result-of-maternal-request-ubc-study/>

Wagner, M. (2006). *Born in the USA: how a broken maternity system must be fixed to put women and children first*. University of California Press.

Wood, N. (1989, July 27). Abortion ban 'out of date'—Daigle vows to go ahead. *The Toronto Star*.

Wright, T. (2008, July 7). Abortion policy to remain the same: Ghiz. *The Guardian*. Retrieved from <http://www.theguardian.pe.ca/Health/2008-07-07/article-1285738/Abortion-policy-to-remain-same-Ghiz/1>

Bibliography

- Bonavoglia, A. (2001). *The choices we made: twenty-five women and men speak out about abortion*. Seal Press.
- Cannold, L. (2002). Understanding and responding to anti-choice women-centred strategies. *Reproductive Health Matters*, 10(19): 171-179.
- Collins, B. G. (1987). Transforming Abortion Discourse. *Affilia*, 2(1): 6-17.
- Gatens-Robinson, E. (1992). A defense of women's choice: abortion and the ethics of care. *The Southern Journal of Philosophy*, XXX(3): 39-66.
- Ludlow, J. (2008). Sometimes, it's a child and a choice: toward an embodied abortion praxis. *Feminist Formations*, 20(1):26-50.
- Martin, E. (1987). *The woman in the body*. Boston: Beacon Press.
- Mason, C. (1999). Minority unborn. In L. M. Morgan and M. W. Michaels (Eds), *Fetal subjects, feminist positions*. Philadelphia: University of Pennsylvania.
- MeHaffy, M. N. (2000). Fetal attractions: the limit of cyborg theory. *Women's Studies*, 29: 177-194.
- Mitchell, L. M. (2001). *Baby's first picture: ultrasound and the politics of fetal subjects*. Toronto: University of Toronto Press Incorporated.
- Smith, A. (2005). Beyond pro-choice versus pro-life: Women of Color and reproductive justice. *NWSA Journal*, 17(1): 119-140.