



# COMMUNIQUE

EMBARGOED

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## CACSW FINDS FEDERAL ABORTION LEGISLATION UNCONSTITUTIONAL AND URGES GOVERNMENT TO WITHDRAW IT IMMEDIATELY

OTTAWA -- The federal government's proposed legislation on abortion is unconstitutional, and should be withdrawn immediately and replaced with positive measures to ensure equal access to reproductive health care services across the country, according to the Canadian Advisory Council on the Status of Women (CACSW).

A legal opinion prepared for the Council by Montreal lawyer Suzanne Boivin outlines serious flaws in the proposed bill. Boivin found that the legislation is unconstitutional because:

- it interferes with a woman's right to liberty and security of the person under section 7 of the *Canadian Charter of Rights and Freedoms*. The proposed bill imposes restrictive criteria on abortion which are unrelated to a pregnant woman's own priorities and aspirations. As was the case under section 251 of the *Criminal Code*, struck down by the Supreme Court of Canada in January 1988, this bill would subject a woman's right to abortion to the consent of a third party (the medical doctor) and, potentially, of other third parties such as provincial medical associations or provincial governments, through regulations they may enact;

- it fails to respect the principles of fundamental justice required under section 7 of the *Charter*. The meanings of "health" and "opinion" are vague and will create uncertainty. This chilling effect (already acknowledged by the Canadian Medical Association) will affect access to abortion services in Canada;

- it violates women's rights to equality, as defined under sections 15 and 28 of the *Charter*. Women's unequal condition in society is well known. In the Chantal Daigle case last summer, a man attempted to control a woman's life by forcing her to become a mother. This bill attempts to substitute the state for that man, and will exacerbate women's inequality by failing to permit abortions in circumstances that are a major source of women's sexual inequality, such as violence and economic insecurity.

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Boivin also found that the bill:

- makes the threat of criminal liability real. A pregnant woman who obtains an abortion without meeting the criteria as defined in the bill could be charged. In addition, the friend who accompanies her to the interview with the doctor or stays with her before and after the abortion, and the "potential father" who supports the abortion, knowing there is no threat to the pregnant woman's health, could face criminal charges. Also potentially liable to prosecution are members of women's collectives who counsel abortion in cases of economic hardship, if this criteria is excluded in the standards of the provincial medical society, and medical doctors who perform abortions without forming the required opinion.

- may open up new grounds for civil litigation. As one of the stated objectives of the bill is the protection of the fetus, there is the possibility of increased court action by potential fathers (and others) to enforce the provisions of the legislation, to challenge the opinion of the doctor who approved it, or to show that the necessary checks to establish the threat to life or health were insufficient or that the information relied upon was erroneous. A pregnant woman may even be required to submit to further examinations. Further, a woman who claims her psychological health is threatened in order to obtain an abortion may later find that evidence used against her in a custody dispute over her existing children;

In responding to this opinion, CACSW President Glenda Simms, said:

"Members of the Executive of the Canadian Advisory Council on the Status of Women met this morning and reviewed the legal opinion. We were unanimous in our views on this issue. No woman should have to lie in order to obtain a medical procedure. No woman should have to cite mental or psychological reasons for obtaining a medical procedure. No woman should be labelled a criminal because she sought an abortion.

"Abortion is a health issue. Putting abortion back in the *Criminal Code* runs counter to recommendations that the Council has put forward since it was first established in 1973. Regardless of the diversity of our backgrounds, Council members have consistently offered the federal government the same advice for the past 17 years, that abortion does not belong in the *Criminal Code*. As Council members, we have been appointed to advise this government on status of women issues. Yet, we feel that our voices on this issue have not been heard.

"We have now reached a critical juncture in the status of women in Canada. In September and again in December, Council members held lengthy discussions on the issue of reproductive choice for women in Canada and met with the Minister Responsible for the Status of Women, the Hon. Barbara McDougall. We described our sense of profound outrage about this proposed legislation. We told her that we believe that the legislation denies women control of their reproductive health and seems to imply that we are not capable of making responsible and rational decisions about our health and the health of our families.

"We are deeply disturbed that this legislation has been introduced. If it is passed, it will force women (and doctors) to lie to avoid facing criminal charges, it will mean that women must claim mental or psychological problems in order to obtain this medical procedure, and it may possibly jeopardize women's defence in future child custody cases.

"We are again offering the federal government an alternative strategy that we feel better addresses and responds to both our daily and long-term reproductive health needs. We believe that the federal government does have the jurisdiction to deal legislatively with access to health services needed by women. The *Canada Health Act* offers a means to consider both legislative and political measures which would ensure access to a full range of reproductive health services, including counselling on contraceptive needs, sex education, and other reproductive health services.

"Through our news conferences and media interviews, we are calling on all women and equality-seeking groups to make their voices heard and to demand that this legislation be withdrawn. We urge the federal government to place its trust in women, withdraw the legislation, and make abortion a health issue."

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(For further information, contact Anne Marie Smart, Director, Public Affairs at (613) 992-6907. A list of Council spokespersons is attached and they can be contacted directly.)

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