

BRIEF TO THE SPECIAL JOINT COMMITTEE OF SENATE
AND OF HOUSE OF COMMONS ON THE CONSTITUTION OF
CANADA SUBMITTED BY CANADIAN ABORTION RIGHTS
ACTION LEAGUE

The primary concern of the Canadian Abortion Rights Action League (C.A.R.A.L.) is to achieve for women in Canada, the right to choose to have a medically safe abortion.

C.A.R.A.L. considers this to be a fundamental right of women and one that is essential to women's freedom and health. Part I of the Constitution Act 1980, makes no mention of this right, and for that reason alone it is seriously deficient.

C.A.R.A.L. is generally concerned with reproductive rights. We are concerned not only to guarantee women the right to choose a medically safe abortion but as well to guarantee to women the right to choose to have children should they so desire. Also we are concerned that men and women have access to information concerning contraception and medically safe contraceptive methods.

It is the view of C.A.R.A.L. that the proposed Charter of Rights and Freedoms is a poorly drafted document. It may ultimately serve to deprive rather than guarantee people in Canada of various rights and freedoms.

In part its deficiencies can be explained by the fact that it is being rushed through Parliament without any significant opportunity for popular or parliamentary participation in the legislative process. The Joint Committee for which this brief is

prepared has not been given nearly enough time to fulfill its historically important task. It would be unfortunate if the Committee were to merely provide the appearance of democracy while the reality was denied.

It is therefore the view of C.A.R.A.L. that the Committee would best serve the people of Canada by refusing to sanction, in whole or in part, the Constitution Act, 1980.

Of course, the Committee may choose to do otherwise. Therefore C.A.R.A.L. would like to refer to the specific inadequacy which is of most concern to our organization.

Section 7 of the Charter reads as follows:

Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

This section uses language which could provide the basis for litigation directed at depriving women of the right to choose an abortion. Specifically, it could be argued that "the right to life" is meant to extend rights to the embryo or fetus and that therefore the sections of the Criminal Code which allow women to have an abortion [for reasons of life or health when approved by a therapeutic abortion Committee and performed by a doctor in a hospital] are "inoperative and of no effect" in that they are "inconsistent with the provisions of this Charter".

[The likelihood of such litigation is great. Even today there is a case pending before the Supreme Court of Canada in which

the sections of the Criminal Code allowing abortion are being challenged.]

Should the hypothetical argument posed above succeed in the Courts the result would be as follows.

The intention of Parliament to allow abortions under certain circumstances [which is legislated in Section 251 of the Canadian Criminal Code] would be frustrated by judicial interpretation of the Charter. Surely Parliament does not intend Section 7 of this Charter [or any other section] to extend rights to the embryo or fetus. Therefore, it is incumbent on Parliament to remove any doubt on that question or any opportunity for litigation.

In the view of our organization the surest method of making Parliament's intentions clear would be to include an additional paragraph following the subtitle "General" and following the present Paragraph 25 which would state:

Nothing in this Charter is intended to extend rights to the embryo or fetus, nor to restrict in any manner the right of women to a medically safe abortion.

Such an amendment would not change the present laws concerning abortion but would prevent any clause of the Charter from being used to limit the presently lawful right of women to an abortion. It would serve to ensure that the Charter does not speak to the issue of abortion at all.

It would thus guarantee that Parliament was not inadvertently legislating concerning this subject.

Without such an amendment there will be a continuous stream of litigation aimed at frustrating Parliament's will concerning the right of women to therapeutic abortion.

Submitted by the Canadian Abortion Rights Action League (C.A.R.A.L.)

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