

23 June 2008

SOGC Position Statement : Bill C-484, *Unborn Victims of Crime Act*

The Society of Obstetricians and Gynaecologists of Canada (SOGC) was founded in 1944 with the mission “to promote excellence in the practice of Obstetrics and Gynaecology and to advance the health of women through leadership, advocacy, collaboration, outreach, and education.” The SOGC is a leading authority on reproductive health care and produces national clinical guidelines for both public and medical education on important women's health issues. The Society's more than 3,000 professional members include gynaecologists, obstetricians, family physicians, nurses, midwives, and allied health professionals across Canada.

The SOGC is profoundly troubled by private member's Bill C-484, entitled the *Unborn Victims of Crime Act*, and opposes its passage into law. This Bill proposes to amend the Criminal Code to allow for a foetus to have legal standing, while in utero, so that a charge can be brought after its miscarriage against a person who deliberately or recklessly assaults a pregnant woman carrying that foetus while committing a crime. The attacker must either know, or ought to have known, that the woman s/he is attacking is pregnant and must attack her meaning “to cause the child's death” or knowing that the injury to the woman “is likely to cause the child's death”.

This Bill can only be interpreted as giving the foetus *in utero* legal status at conception. That would fundamentally change current Canadian law, but would do so by the back door, seeking to circumvent the direct decision taken by Parliament and the Courts to define legal status and rights as accruing at birth. Supporters of this Bill argue that the changes in Bill C-484 are narrow and specific. That is not the case. The Bill is proposed with a purpose – to change current law to afford new legal rights to the foetus. It stipulates that those legal rights accrue at the moment of conception. Indeed, the use of the term “child” throughout the Bill confirms the intent of the drafter that full legal status will now be created in the foetus “at any stage of development before birth”.

This Bill, then, does more than create new legal rights in the foetus at conception. It begins the process of establishing (criminal) sanctions for doctors, nurses or others, including the pregnant woman herself, whose actions might affect those “new rights”. It sets out specific changes to the Criminal Code for interfering with those new legal rights where a foetus in utero miscarries when a pregnant woman is attacked in the situation set out in the Bill. **The impact of this private member’s Bill on the practice of medicine in Canada would be substantial. It creates a new situation where doctors, nurses, and midwives could be charged as criminals simply for providing necessary care to pregnant women and their foetus in utero.**

Bill C-484 would prevent doctors and nurses treating pregnant women from meeting their professional responsibilities to their pregnant patients, at least, but not exclusively, in this specific case. Current law makes it clear that a woman and her foetus in utero are treated legally as one person, not two – as one patient for a doctor, nurse, or midwife. To do otherwise would create very difficult medical and personal situations.

Bill C-484 challenges and changes this fundamental principle of women’s autonomy. It would seriously and negatively affect the ability of a doctor, a nurse, or a midwife to care for a pregnant woman, who under this Bill would become a mere carrier for another person with full legal rights. Her treatment would require care-givers and institutions to seek protection for the foetus’ rights through the intervention of a third party separate from, and other than, the pregnant woman herself. Any decision about her treatment would have to take into account the new legal rights of the foetus in her womb. Her own interests, needs, or choices would be considered in treatment decisions, but these would be subject to the rights of the foetus she is carrying, now newly endowed with legal standing and rights. The foetus’ unexpressed wishes would be interpreted by proxy by courts and legislators.

This Bill, then, would have a chilling effect on the practice of Obstetrics and Gynaecology, including, ironically, on new and high risk surgeries performed on a sick or medically affected foetus *in utero* - even though such high risk surgery, when successful, allows the foetus a chance to survive at birth and develop into a healthy child. As an example, in utero laser surgery is currently used to treat twin to twin transfusion syndrome. In this situation, there would be three individuals with independent rights: the mother and each of the foetuses.

While this Bill deals only with the new criminal sanctions with respect to the specific situation of a foetus in utero, its potential legal impact is far broader. **In creating full legal status for the foetus in utero at conception, the Bill opens the door for the further restriction of women’s reproductive and sexual rights and decision-making.** Women’s equality is an important Canadian value and that equality is enshrined in Canada’s Constitution in the *Charter of Rights and Freedoms*. The erosion of any Charter rights should not be undertaken lightly.

This bill would allow an abusive spouse or partner (male or female) to rely on the defence of provocation by the pregnant woman who is assaulted, injured, or killed in “a crime of passion”, where the pregnant woman miscarries as a result. The SOGC firmly opposes any lessening of protection against domestic violence now afforded all women, especially vulnerable pregnant women. Further, this Bill would require the Crown to prove beyond a reasonable doubt that the defendant “knew or ought to have known” that the woman was pregnant. In such acts of violence, no charge would arise under this Bill, where a pregnant woman is not yet showing her pregnancy.

The SOGC, in its dual roles of official body representing the interests of healthcare professionals who care for pregnant women and the principal organization with a mandate to advance the health of women, opposes the passage of Bill C-484.

These are difficult issues, which have divided the country before. Previous governments have sought to resolve those different views by legislation, but they did so openly, generating extensive debate. Parliament, of course, has the right to change law as it decides. But if there is to be such a fundamental change, let it occur as a result of a formal government policy initiative, with full public disclosure, rather than through the use of a private member’s Bill.

Recommendations

The SOGC respectfully submits that Bill C-484, if passed by Parliament, will have a significant detrimental effect on the health and well-being of pregnant Canadian women and their foetus’. It will dramatically complicate the delivery of care to pregnant women by introducing the necessity of third party intervention in medical decision-making. As the healthcare professionals who deliver that care and are best placed to understand the far-reaching medical implications of this Bill, the SOGC recommends:

- 1. That Parliament reject this Bill as a threat to:
 - a. the health and well-being of pregnant women and their foetus’**
 - b. women’s reproductive and sexual rights**
 - c. the practice of obstetrics and gynaecology****
- 2. That Parliament recognize that Bill C-484 does nothing to address violence against women and that it should renew efforts to protect pregnant women from domestic and other violence that injures or kills them and results in the miscarriage of their foetus in utero**
- 3. That existing Canadian law granting legal status to the foetus at birth be maintained.**