



Abortion Rights
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The Case Against a "Fetal Homicide" Law

Five recent murder cases in Canada have involved a pregnant woman being murdered by a male partner or boyfriend. As a result, people have urged that the perpetrator be charged with two homicides – of both the woman and her fetus.

The victims and families of these horrific tragedies deserve our deepest sympathy, and they deserve justice. However, the issue of creating a "fetal homicide" law so that murder charges can be laid for the death of the fetus is complex. This article explains why creating such a law would be an unconstitutional infringement on women's rights, and would likely result in harms against pregnant women.

Five Murder Cases

Here are synopses of the five Canadian murder cases:

Liana White of Edmonton, 29, was four months pregnant when she was stabbed to death by her husband Michael White on July 12, 2004. Her body was found in a ditch by her husband's search party after an intensive police search. He was convicted of second degree murder in December 2006. Anti-choice groups and individuals called for double murder charges to encompass the fetus as well, including the investigating detective, Campaign Life Coalition, Western Standard magazine, and Conservative MP Maurice Velacott, who vowed to draft a law that would allow murder charges to be laid in the death of a fetus.

Olivia Talbot of Edmonton, 19, was seven months pregnant when she was shot to death by a male childhood friend, on November 23, 2005. Jared Baker was convicted of first-degree murder (on Oct 22-07), after his defense failed to convince the jury that he wasn't criminally responsible for the death due to drug problems and mental health issues. (Baker allegedly believed Talbot's fetus was "the son of Satan.") A month after her murder, Olivia Talbot's family launched a petition to create a law to protect "unborn victims of violence," in association with LifeCanada.

Manjit Panghali of Surrey BC, 30, was four months pregnant with her second child when she disappeared on October 18, 2006. Her charred remains were found eight days later along a shore road in South Delta. Her husband, Mukhtiar Panghali, has been charged with second-degree murder in connection with her death.

Roxanne Fernando of Winnipeg, 24, was in the early stages of pregnancy on February 15, 2007 when she was beaten and killed by a youth she had been dating, apparently because she refused to have an abortion. The man is 17 and can't be named, but has pled guilty to first-degree murder as part of a deal not to be raised to adult court.

Aysun Sesen of Toronto, 25, was seven months pregnant with her first child when she was murdered by multiple stab wounds to the abdomen on October 2, 2007. Her husband, Turan Cocelli, has been charged with her murder, but the family is calling for double homicide charges to be laid. Sesen's fetus was still alive when she was taken to hospital, but when doctors performed a Caesarean section, the fetus was stillborn.

As a result of the two Edmonton cases, Conservative MP Leon Benoit introduced a bill in Parliament in May 2006, to amend the Criminal Code to recognize "Unborn Victims of Violence" (Bill C-291). The bill would make it a separate offence to kill or injure a fetus while committing a violent crime against the pregnant woman. However, the bill was deemed non-votable and unconstitutional by a parliamentary subcommittee dominated by Conservatives, and advised by the Attorney General of Canada, anti-choice Conservative Vic Toews. It was later reported that Toews had been sent a briefing note from higher-ups that said: "Any change to the definition of a 'human being' in the Criminal Code could have the effect of criminalizing abortion," which would violate a Tory vow to avoid the abortion issue.

An issue of domestic violence

Pregnant women being assaulted or killed is largely a domestic violence issue, and the rights of fetuses should not take precedence over the rights of the woman. When media coverage focuses on the victim's fetus, and whether it should have rights or not, the pregnant woman is overlooked, and so is the problem that killed her – domestic violence.

Homicide is a [leading killer](#) of pregnant women, and it's well-known that violence against women increases during pregnancy. What we need to address are better measures to protect women in general, and pregnant women in particular, from domestic violence.

We also need to understand why pregnant women experience an increase in domestic violence. Perhaps some men feel threatened by the impending birth of a child, or perhaps they feel a loss of control over the woman and the relationship. During pregnancy, a woman has more control over what's happening with her body, plus she often becomes the center of attention from others. Do some men perceive that as a threat to their dominance? Domestic violence in general probably reflects a man's need for power and control, with pregnancy often seen as an excuse to control women even more. Also, a man may resort to abuse as a way to pressure his partner into having an abortion OR a baby, or just to express his resentment either way at her choice. For these reasons, the level of a woman's emotional and physical attachment to the fetus should have nothing to do with the rationale for a "fetal homicide" law, as some have claimed. In other words, if a pregnant woman loses her fetus in an attack, the injury to her is equally as serious when the pregnancy is unwanted as when it's wanted.

A "fetal homicide" law would completely sidestep the issue of domestic abuse and do nothing to protect pregnant women from violence before it happens. It would also do nothing to protect women who are abused shortly after giving birth or having an abortion. Before we start talking about laws to protect fetuses, let's make sure women's rights are protected first, by addressing the systemic problem of domestic violence.

Legal rights conflict

In Canada, women have guaranteed rights and equality under our *Charter of Rights and Freedoms*. Persons do not gain legal status and rights in our society until they have completely exited from the birth canal, alive (as per the Criminal Code). Also, the Supreme Court has ruled that a woman and her fetus are considered "physically one" person under the law ([Dobson vs. Dobson](#)). If we give any legal rights to a fetus, we must automatically remove some rights from women, because it's impossible for two beings occupying the same body to enjoy full rights. If we try to "balance" rights, it means the rights of one or both parties must be compromised, resulting in a loss of rights. Legally speaking, it would be very difficult to justify compromising women's established rights in favour of the theoretical rights of fetuses.

Separating a woman from her fetus under the law creates a harmful, adversarial relationship between a woman and her fetus. For example, if pregnant women are threatened with arrest for abusing drugs, they are [less likely to seek pre-natal care](#). In reality, the best way to protect fetuses is to protect pregnant women – by giving them the supports and resources they need for a good pregnancy outcome (which can be an abortion), and by protecting their safety during pregnancy by reducing domestic violence in general.

Who's behind the call for a "fetal homicide" law?

Some of the victims' families have called for a "fetal homicide" law. While we deeply sympathize with them and understand their wish, it must be recognized that victims of violence are not those who should be making decisions about justice in a democratic society. Appropriate laws and penalties must be determined by impartial parties who do not allow emotion or personal bias to colour their decisions. This is done to fairly protect everyone's democratic rights, such as the rights of the accused.

Other than the victims' families, those calling for a "fetal homicide" law are mostly anti-abortion groups and anti-abortion MPs, and other anti-abortion individuals such as McGill University ethicist [Margaret Somerville](#). This shows that a "fetal homicide" bill has little to do with protecting pregnant women. Instead, the intent is to use that law as a route to criminalizing abortion. Recognizing the personhood of fetuses opens the door to abortion bans because abortion could be deemed as murder. In the United States, anti-abortion groups and legislators have actually stated they want to use these laws to [restrict abortion](#). Also, when the federal law *Unborn Victims of Violence Act* passed in 2004 in the U.S., its anti-abortion sponsors [rejected proposals](#) to protect the woman herself under the law.

A [recent poll](#) in Canada, commissioned by anti-abortion group LifeCanada, found that 72% of respondents support legislation that would make it a separate crime to injure or kill a fetus during an attack on a pregnant woman. Although such a law sounds reasonable on the surface, most people don't realize there's a hidden agenda against abortion behind the promotion of these laws. The public would probably be much less willing to support a "fetal homicide" law if they understood its real effects. Here, we can look to the United States for evidence.

Negative impact of "fetal homicide" laws

In the United States, 37 states have enacted so-called "fetal homicide" laws, which make it a crime to cause harm to a fetus. 24 of these state laws define a fetus as a person and a separate homicide victim. This gives the fetus legal rights distinct from the woman who was attacked. In practice, these laws punish pregnant women, compromise women's rights in general, and do nothing to address domestic

violence. Not only do these laws imperil abortion rights by giving personhood and rights to fetuses, but [they target all pregnant women](#), including those trying to have a baby.

Under state “fetal homicide” laws, [it’s been shown](#) that pregnant women are more likely to be punished for behaviours and conditions that are not criminalized for other people, such as drug or alcohol abuse and mental illness. Women have also been charged or jailed for murder for experiencing a stillbirth after refusing a caesarean section, or just from suffering a stillbirth. Some states have proposed punishing pregnant women in abusive relationships who are unable to leave their batterers. Arrests of pregnant women have occurred even under state fetal protection laws that make exemptions for the pregnant woman herself. Courts have so far struck down these latter prosecutions, but arrests continue based on a growing body of law declaring that fetuses have rights separate from those of pregnant women. The worst offender is [South Carolina](#), where dozens of pregnant women with drug abuse problems have been arrested under fetal protection laws, even though they had virtually no access to drug treatment programs.

Even where pregnant women themselves are not prosecuted under “fetal homicide” laws, others may suffer grave injustice. In 2005, Texas teenager [Gerardo Flores](#) was found guilty on two counts of murder and sentenced to life in prison for helping his girlfriend end her five-month pregnancy of twins. At the time, anti-abortion legislators lamented that Texas’ law would not allow prosecution of his girlfriend, too. The desperate couple had decided to self-induce an abortion because they couldn’t get one legally – Texas had recently banned abortions after 16 weeks. This example also shows how fetal homicide laws can seriously impact abortion rights.

The anti-choice movement is right about one thing. When a law exists that recognizes fetal rights, it creates a legal contradiction. Because if a fetus has the right not to be “murdered” in the womb by a third party, why doesn’t it have the right not to be “murdered” by its own mother? This is why fetal homicide laws are being used in the U.S. to target pregnant women, including those who have sought illegal self-induced abortions. Even when narrowly drawn to exclude the pregnant woman from prosecution, these laws create contradiction and confusion, resulting in a real and dangerous slippery slope towards criminalizing pregnant women for their behaviours while pregnant. In another example from the U.S., the states of Illinois and Maryland have “fetal homicide” laws that specifically state that legal rights or fetal personhood are not conferred on a fetus. However, both laws make the death of viable fetuses a second homicide in maternal murder cases, thereby contradicting themselves and creating that slippery slope towards prosecuting pregnant women.

How can we achieve justice in these cases?

In Canada, the judicial system routinely takes aggravating circumstances into account. In the case of an assault or murder of a pregnant woman, even though a third party cannot be charged separately with harm to the fetus, prosecutors may recommend more serious charges (such as first degree murder or aggravated assault), judges may impose harsher penalties, and parole boards may deny parole to convicted perpetrators.

Perhaps we want a new law that codifies such practices. Thirteen U.S. states have laws that simply apply stiffer punishments for murdering a pregnant woman, but do not make the death of the fetus a separate crime. Such a solution would avoid the controversy about giving rights to fetuses or interfering with abortion rights, and would ensure that women do not lose their rights while they are pregnant.