



## Six reasons to oppose Bill C-311

### ***“An Act to amend the Criminal Code (violence against pregnant women)”***

*Updated May 15, 2023*

On January 31, 2023, Conservative MP Cathay Wagantall introduced private member [Bill C-311](#), which would create an “aggravating circumstance” clause in the Criminal Code to allow for greater penalties when a pregnant person is attacked.

Second reading occurred on May 9. Update: The vote occurred on June 14 and the bill was defeated by a vote of 205 to 113. Here is the text of the bill:

**Paragraph 718.2(a)** of the *Criminal Code* is amended by adding the following after subparagraph (ii.1):

- (ii.2)** evidence that the offender, in committing the offence, abused a person whom the offender knew to be pregnant,
- (ii.3)** evidence that the offence caused physical or emotional harm to a pregnant victim,

The Abortion Rights Coalition of Canada opposed this bill and urged MPs to oppose the bill as well. This paper explains why.

### **Summary of reasons to oppose:**

1. The bill is redundant, as other clauses in that *Criminal Code* section can cover pregnant victims.
2. More effective measures are needed to address gender-based violence.
3. Only anti-choice groups support the bill (and no anti-violence groups).
4. Cathay Wagantall’s motivation behind the bill is suspect.
5. The anti-choice movement is hijacking the bill to push for fetal rights.
6. Liberal MPs immediately saw through the bill, and MPs from other parties rallied to oppose it.

### **Background**

In 2016, ARCC said it could support an aggravating circumstance clause, when we opposed Wagantall’s previous [Bill C-225](#) in 2016. See our [position paper](#), page 2.

We took that stance because during the earlier [Bill C-484 from 2007](#), which was almost identical to C-225, we worked with the National Advocates for Pregnant Women in the U.S., now called [Pregnancy Justice](#). Then-ED Lynn Paltrow supported an aggravating penalty clause as a number of states had them and they had reportedly never been used against pregnant women. Therefore, ARCC supported – or at

least did not oppose – an aggravating penalty clause for C-484 and later for Bill C-225. However, we also pointed out that judges already had the discretion to impose greater penalties in such cases. This remains true today.

## ***Why the bill should be opposed***

While the bill’s wording is benign on its face and does not directly implicate abortion rights, ↓ there is considerable room for skepticism around this bill.

### **1. The bill is redundant.**

The bill is not necessary since judges already have the discretion to apply greater penalties for aggravating circumstances.

Section 718.2 of the Criminal Code contains other clauses that could cover this situation, particularly (a)(i), (a)(ii), and (a)(iii.1), as shown in the yellow highlights:

- (a)(i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or gender identity or expression, or on any other similar factor,
- (a)(ii) evidence that the offender, in committing the offence, abused the offender’s intimate partner or a member of the victim or the offender’s family,
- (a)(iii.1) evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation,

Contrary to Cathay Wagantall’s claim, judges are not required to apply these clauses, only to consider them, which further weakens any value of Bill C-311.

### **2. We need different measures to address gender-based violence.**

The government can do better things to address gender-based violence (GBV) than pass a criminal law. Just a few examples include:

- Significantly increase funding for shelters
- Fund Indigenous-led approaches to ending violence
- Provide supports for survivors and families
- Provide GBV training to workers in law enforcement, health care, education, and armed forces

Provincial and territorial governments need to implement the National Action Plan to End Gender-Based Violence, along with mechanisms to compel them to implement it with a timeline and be held accountable.

ARCC recognizes that being pregnant is an added vulnerability because pregnancy increases the risk of intimate partner violence (IPV), and pregnancy is similar to a disability in terms of the medical risks, physical effects, and limitations it places on mobility and other living conditions, especially in later pregnancy. This also makes it a gender equality issue.

Therefore, pregnant people deserve safeguards – everything from free prenatal care, access to midwives and doulas, to post-natal resources, and of course abortion care.

Such protections could hypothetically include a degree of legal protection, but only if that would meet a real need according to the anti-GBV community, and only if the focus was on the pregnant person and their needs, and NOT on the pregnancy itself or the fetus.

That is not the case with this bill.

The federal government can accelerate the implementation of recommendations from the 2015 National Inquiry into Missing and Murdered Indigenous Women and Girls, as well as implement the International Labour Organization Convention No. 190, a global treaty on violence and harassment at work.

### 3. No anti-violence group has expressed support for the bill.

The bill is supported only by anti-choice groups and individuals, as well as the Conservative Party of Canada. As of May 2023, the *only* groups or public figures known to have promoted the bill include:

- ARPA Canada (Association for Reformed Political Action)
- Brad Vis, Conservative MP for Mission–Matsqui–Fraser Canyon (BC)
- Campaign Life Coalition
- Chilliwack Pro-Life
- CLC Youth ProLife
- Evangelical Fellowship of Canada
- LifeSiteNews
- National Right to Life News (American)
- ONB Conservative Association (Oakville North — Burlington)
- REAL Women of Canada
- Right Now (“committed to nominating and electing pro-life candidates”)
- The Interim (“Canada’s life and family issues newspaper”)
- There Were Two (an ARPA Canada campaign)
- We Need a Law (an arm of ARPA Canada)

### 4. The motivation behind the bill is suspect.

The bill was brought forward by an anti-choice MP with a history of anti-choice bills that would threaten abortion rights. Cathay Wagantall has introduced two previous private member bills that were defeated:

- Bill C-225 from 2016 would have given rights to fetuses when they are injured or killed during an attack on a pregnant person (ARCC’s response).
- Bill C-233 from 2020 would have criminalized sex selective abortion and sentenced providers to up to five years in jail (ARCC’s response).

Wagantall has claimed that her new Bill C-311 has nothing to do with abortion, but when promoting her bill, she has referred repeatedly to the lack of an abortion law and the need to protect fetuses. This reveals her true intent and the potential danger to abortion rights if this bill passes:

- She has two paper petitions, a “Pro-Life” petition and a “Pro-Choice” petition. These terms relate to the abortion debate, not violence against pregnant women. Also, having two petitions means she is soliciting support for her bill based on peoples’ views on abortion. Why is that relevant if the bill has nothing to do with abortion?
  - The “Pro-Life” paper petition is heavily focused on fetal protection and abortion, and Wagantall has repeated this language when presenting the petition in Parliament:

“Currently, **the injury or death of preborn children as victims of crime** are not considered aggravating circumstances for sentencing purposes in the Criminal Code of Canada. **Canada has no abortion law. This legal void is so extreme that we don’t even recognize preborn children as victims of violent crimes.** Justice requires that an attacker who abuses a pregnant woman **and her preborn child** be sentenced accordingly.” [emphasis added]

- The “Pro-Choice” paper petition has language more focused on the pregnant woman but says: “We, the undersigned citizens of Canada, call upon the House of Commons to legislate the abuse of a pregnant woman **and/or the infliction of harm on her child** as aggravating circumstances for sentencing purposes in the Criminal Code.” [emphasis added]
- Wagantall also hosts an e-petition on her website, which states: “We, the undersigned, citizens of Canada, call upon the House of Commons to legislate the abuse of a pregnant woman **and the infliction of harm on her child** as an aggravating circumstance for sentencing purposes within the Criminal Code.” [emphasis added]
- In a video about her bill, Wagantall states: “The Violence Against Pregnant Women Act would **recognize the death or injury of a child in the womb** as an aggravating circumstance in sentencing under the law.” [emphasis added]
- On her website, she states: “Canada is failing its pregnant women **and the children they have chosen to carry to term.**”

## 5. The bill is being used to promote fetal rights.

Several anti-choice groups have hijacked Bill C-311 to further their goals of establishing fetal personhood and re-criminalizing abortion. If this bill passes, they would certainly leverage the bill for these purposes.

- ARPA Canada (Association for Reformed Political Action):
  - Analysis of Bill C-311: “Although this bill does not specifically mention pre-born children or give any legal rights to pre-born children, this bill is still a win for the pro-life movement. It shifts the Overton window a hair by recognizing that harming a pregnant woman is a greater offence than harming a non-pregnant woman. While different groups might justify why this is true (e.g. feminists might argue that this protects not only the mother but her choice to carry a child), pro-life Canadians can use this law as a stepping stone to argue for the personhood of pre-born children.”
  - This article gives more extensive fetus-focused messaging on the bill, for example: “In crimes against pregnant women, there are always two victims, we want the law to see them both.” And: “[The bill] would instruct judges to consider pregnancy as an aggravating factor in sentencing, thereby considering any harm done to a pre-born child. This would be a step toward real justice for pregnant women and their children who are victims of violence.”
  - Text from sample letter to MPs: “When a pregnant woman is a victim of violent crime, the child in her womb means that there are two victims. But right now, our law only sees the mother – we need to see them both. Bill C-311 would help make that happen. Pregnant

women are uniquely vulnerable, and harm done to them also risks harm to their pre-born child. That pre-born child should be recognized as a victim too. Bill C-311 would add sentencing requirements that would make sure the sentence would better match the crime.”

- We Need a Law:
  - “Use this bill to start a conversation about the humanity of pre-born children. Have the conversation with your family, your friends, your neighbour, and your member of Parliament. We need to use every opportunity we have to point out the humanity of pre-born children and continue to move Canadian law in the right direction.”
  - Transcribed video: “...[judges] would be required to consider the harm done to a pre-born child when a crime is committed against a pregnant woman. Advocating for pre-born victims of crime has been one of We Need a Law’s initiatives since day One. Canada’s lack of an abortion law means that pre-born children are not recognized as persons under our law, so they also cannot be counted as victims when they are killed as a result of violent crime. The *Violence Against Pregnant Women Act* recognizes the unique vulnerability of pregnant women and the value of pre-born children.”
- CLC Youth ProLife: “Thank you @cathayw for introducing Bill C-311, an act to bring justice to violence committed against pregnant women and their unborn children. This is a common-sense bill that affirms the humanity of the unborn.”
- Campaign Life Coalition says: “It is hard to believe that Canada has offered no specific legal protection for pregnant women and their preborn children up to this point.”
- There Were Two: “We call on MPs to support Bill C-311, the Violence Against Pregnant Women Act, to improve justice for pregnant women and their pre-born children.”
- REAL Women of Canada: “ALERT – Bill C-311 ... A private member’s bill to protect pregnant women and their babies from violence, has been introduced in the House of Commons by Conservative MP Cathay Wagantall.”

## 6. Liberal MPs saw through the bill, and MPs from other parties rallied to oppose it.

When the bill was first introduced, two Liberal MPs immediately saw through the bill:

**Rachel Bendayan** (Liberal, Outrement), Jan 31 [article in French](#), translated:

The Trudeau government wants to give itself time to analyze the bill, but already, Montreal MP Rachel Bendayan expresses concern that Cathay Wagantall wants to "open the debate through the back door again. I know a little bit about her history, she has shown on several occasions that this is a priority," Bendayan said, pointing out that in the last Conservative leadership race, Wagantall supported Leslyn Lewis, who is also fiercely anti-abortion.

**Pam Damoff**, (Liberal, Oakville North—Burlington), [Feb 7, Twitter](#)

"#CPC continue their push to restrict women's rights and access to abortion. MP Cathay Wagantall introduced a Private Members Bill with a (now deleted) petition and support from anti-abortion groups. Canadian women have the right to choose and will not let you turn back the clock."

After the bill received second reading on May 9, party leaders and MPs spoke out:

- Prime Minister **Justin Trudeau** responded to a question in Parliament, saying that in Canada abortion is health care. "It's so disappointing to see another thinly veiled attempt by the Conservative Party of Canada to restrict a woman's right to choose."
- NDP Leader **Jagmeet Singh** said at a pro-choice rally that the bill is "a veiled attempt — and not very veiled" to limit abortion rights through indirect means. "What we've seen from Conservatives again and again is, while they don't openly often go after choice, they find ways to go after choice in hidden techniques."
- Minister of Foreign Affairs **Mélanie Joly** said on Twitter: "Bill C-311 is yet another clear attempt for the Conservatives to impose their will on a woman's body. They know Canadians don't want to re-open the abortion debate, so instead they're trying to restrict access to safe abortions under false pretext."
- In response to the bill, **26 Liberal MPs** [spoke out in a video](#) to proclaim their "proudly pro-choice" stance.

During the [May 9 debate at second reading](#), the following MPs spoke at length against the bill:

- Rachel Bendayan (Liberal), Parliamentary Secretary to the Minister of Tourism and Associate Minister of Finance
- Andréanne Larouche (Bloc Québécois, Shefford)
- Leah Gazan (NDP, Winnipeg Centre)

Finally, Laval University law professor **Julie Desrosiers** has explained that judges already have leeway to take into account a victim's vulnerability including the context of domestic violence, of which pregnant women are often victims: "There is no need to codify something that already exists in jurisprudence," she said. But she warned that by codifying the aggravating factor of being pregnant in the Criminal Code, Bill C-311 creates a risk of allowing a later amendment that would give legal status to the fetus. "That's what makes me wary of this proposal." [quotes translated]