

October 6th, 2008

Bill C-484 threatens women's human rights and equality

Bill C-484, *Unborn Victims of Crime Act*, seeks to amend the *Criminal Code* to create a separate offence and penalties for causing the injury or death of a fetus in situations where a pregnant woman is a victim of an offence.

The Bill is, at best, a seriously misguided and ineffective attempt to protect pregnant women from violence. Without actually offering any real protection to pregnant women, Bill C-484 threatens woman's reproductive choice. Indeed, it contains provisions that will seriously undermine women's *Charter* protected constitutional rights.

By creating a specific crime for the killing of an "unborn child", this proposed legislation will in effect grant separate legal status to the fetus. It is well established under Canadian law that the fetus has no independent legal status and hence no right to life. The fetus is not recognized as a "child" until it is born. If enacted, Bill C-484 would provide unprecedented legal recognition of the fetus and fundamentally change Canadian law. This creates the potential for legal conflict between the rights of the fetus and the rights of the pregnant woman. By elevating the legal status of the fetus, Bill C-484 opens the door to recriminalizing abortion. C-484 could lead to significant violations of women's right to reproductive autonomy and equality. This proposed change in the law is contrary to well established Canadian jurisprudence and contrary to the law in most western jurisdictions. Bill C-484 would result in profound social, political, moral and economic impacts on women, men and children.

It could criminalize pregnant women

If passed into law, this Bill could lead to the regulation and punishment of pregnant women in a variety of situations not explicitly addressed in the Bill. Although the Bill specifies that it does not apply to a lawful abortion, or to any act or omission by the "mother of the child", the experience with similar legislation in the United States shows that the Bill will have serious consequences in limiting women's rights, consequences that are not in strict keeping with the language of the Bill.

It could be used to undermine abortion rights

The Bill has been introduced and is strongly supported by anti-abortion advocates. Many of the MPs who support Bill C-484 have longstanding ties to anti-abortion organizations and constituencies. If passed, it will be used as a tool by those who wish to limit women's access to legal abortion.

It could lead to further violations of women's autonomy

This proposal will also have far reaching impacts in other areas of law, including health law, child welfare law, employment law, tort law and constitutional law. Furthermore, these consequences and inequitable intrusions would be most strongly felt by women who are already marginalized in society, such as poor women, racialized women, immigrant women and disabled women. This Bill, rather than offering protection to women who are most marginalized in society, will in reality further their marginalization and the state's intrusion into their lives.

Defence of Provocation

Bill C-484 specifically includes the defence of provocation and extends its use to the new offences created. Historically, and currently, the provocation defence has been used to excuse male violence against women who are murdered by their husbands and boyfriends. This defence shifts responsibility for male violence to the victim, by focusing on the behaviour that allegedly provokes a violent attack. There has been a long history of opposition to this defence by organizations, academics and individuals who reject its implicit endorsement of male rage in the "heat of passion" as excusable in criminal law. It is highly objectionable that this questionable defence should be further extended in the *Criminal Code*.

It fails to address a very real problem: male violence against wives and female partners

While this proposed legislation endangers the equality rights of all women, it would also fail to address the very real problem of spousal violence against women. It shifts the public focus away from the woman who is the immediate, intended target of harm. Notably, Bill C-484 does not make any reference to the harm done to a woman resulting from an attack that causes damage to the fetus. This is inexplicable when one considers that a fetus is never assaulted without the woman who carries the fetus also being assaulted.

In effect, the Bill attempts to mask the real issue calling out for redress: male violence. Male violence against women does indeed increase during pregnancy. However, this Bill will not effectively address this problem. Rather than this proposed legislation, we desperately need the commitment of resources for effective measures to enforce existing legislation to protect all women from violence. Protecting a pregnant woman from violence will also protect the fetus.

We need to provide pregnant women with all of the necessary resources and support to ensure a safe and healthy pregnancy, including protection from male violence.

It is not necessary

It is not necessary to introduce new legislation to recognize that pregnancy and spousal violence are aggravating factors when women are assaulted. The *Criminal Code* and case law already recognize these factors for the purpose of sentencing. Given that most sentences arising out of the same act are served concurrently, this amendment is unlikely to have any impact on the time an offender spends in prison.

It would undermine women's rights

We should be focusing on legal tools that can actually help to address and reduce violence against all women, including those who are pregnant. C-484 will not help to protect women from violence and will only further women's inequality. By focusing on the rights of the fetus, instead of the rights of pregnant women, Bill C-484 has profound and disturbing implications for the health, safety and independence of all women. To pass this bill into law would be to seriously undermine women's reproductive rights, women's *Charter* rights, and women's human rights.

We therefore recommend that Bill C-484 be defeated, with a clear message that women's rights to autonomy and reproductive choice must be affirmed.