

A fetus is a fetus, not an "unborn baby"

Complaints of "misinformation campaign" against Bill C-484 are misinformed

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Conservative MP Ken Epp says that opponents of Bill C-484 have been overwhelming the media and MPs with "so much misinformation that it has become almost impossible to have thoughtful discourse on the bill." The "Unborn Victims of Crime Act" is a Conservative bill that would create a separate offence for killing or injuring a fetus during an attack on a pregnant woman. It has passed second reading in Parliament.

We agree with Epp about the near-impossibility of engaging in thoughtful discourse with him. For example, on May 20, we sent Epp [a paper](#) with detailed evidence and arguments on how C-484 can be used to criminalize pregnant women, a rebuttal to his [assurances](#) that it can't be. We also explained how the bill's language establishes legal personhood for fetuses in numerous ways, which endangers abortion rights and the rights of pregnant women.

Yet on June 10, Epp issued a [press release](#) and [public statement](#) and held a press conference, in all of which he failed to even acknowledge that evidence. Instead, he continues to spout the same false propaganda about the bill.

Regardless of Epp's stated intent when he originally introduced the bill – to protect pregnant women and wanted fetuses from violence – he should realize that once enacted, the bill can be used in ways he did *not* intend. [He admits](#) that fetal homicide laws in the U.S. have been used to arrest and prosecute pregnant women, but he claims the U.S. experience wouldn't happen in Canada because the bill is narrow and specific, applying only during the commission of an offence against a pregnant woman.

Even with the best of intentions, laws can be used and manipulated to ends that can't be predicted in advance. This has happened over and over again with American fetal homicide laws, even though the laws were intended to apply only to third party attacks on pregnant women.

Hundreds of pregnant women in the U.S. have been [arrested and many convicted](#) for harming or "murdering" their fetuses. Most of these women are poor minority women, or women with drug or alcohol abuse problems. But some women have been charged with homicide for suffering a stillbirth, in one case after not following a doctor's recommendation to have a Caesarean section.

In many of the American cases, it also made no difference if the state's fetal homicide law was narrowly written or if it exempted pregnant women from liability, because women were often charged under a different law (such as a child endangerment law) that explicitly relied on the *authority* of a fetal homicide law. Epp seems unaware that Bill C-484 could be used the same way in Canada – to establish a precedent that leads to criminalizing pregnant women in other contexts and via other laws.

Epp claims that C-484 does not change the definition of a human being. In fact, the language of the bill grants legal personhood to fetuses on eight different fronts. A full discussion is in [our rebuttal to Epp](#), but briefly stated, these arguments are :

- 1) The bill negates the current “born alive” definition of human being by disallowing it as a defence. This in effect makes the fetus a human being under the bill.
- 2) The terms "child" and “unborn child” are used repeatedly throughout the bill to refer to a fetus, in a way that is unprecedented in the Criminal Code.
- 3) The term "mother" occurs throughout to refer to a pregnant woman, which is also unprecedented and legally inaccurate.
- 4) The current use of these terms in the Criminal Code is limited only to the context of *childbirth*, while the bill uses them to refer to almost the entire pregnancy. This usage is inconsistent with the Criminal Code, contrary to Epp's claim otherwise.
- 5) The bill arbitrarily sweeps aside two well-established legal principles in Canadian jurisprudence: the “born alive” rule under which rights for the fetus materialize only upon birth, and the unity of a pregnant woman and her fetus.
- 6) The bill's official “short title” is the *Unborn Victims of Crime Act*, but only legal persons can be victims.
- 7) The penalties under the bill for killing or injuring a fetus are the same as or similar to those for homicide and attempted homicide.
- 8) The bill's offences are included in the Criminal Code's Part VIII for "Offences Against the Person and Reputation," and the bill specifies that the offences are not against the pregnant woman herself.

Epp claims that it's impossible to protect pregnant women in law without using terms like “mother” and “child”— even though the alternatives “pregnant woman” and “fetus” immediately spring to mind. However, Epp is anti-abortion, so that may explain his easy use of the words “child,” “unborn child,” and “mother.” These terms are the hallmark of anti-abortion activists – loaded language that signals the real sentiment behind the bill.

Indeed, some [anti-abortion activists](#) have already stated their desire to use the bill to recriminalize abortion, since they can plainly see that the bill begins to provide rights to fetuses and will give them something to build from. After all, if the fetus is a new legal person, it's a small and logical step to introduce abortion restrictions to protect it. Epp can give all the reminders he wants to his fellow anti-abortionists that the bill is “not about abortion,” but he has no control over how the bill would be used once enacted.

Over [70 diverse groups](#) have come out against Bill C-484, including anti-violence groups, women's shelters, medical organizations, legal associations, drug policy groups, labour unions, anti-racist groups, and an eclectic range of women's groups. We did a search and found only 20 groups that publicly support the bill – 19 are anti-abortion, religious, or right-wing, and one is a victims' rights group. Ironically, Epp complains that supporters of the bill have been “lumped together” as “right-wing ideologues,” when that is mostly what they are!

Epp does cite a [new poll](#) he commissioned in Quebec that shows 50% public support for the bill, as well as two other previous polls that showed about 70% public support. But when people are asked whether they support a law that seems to address violence against pregnant women, of course most people will say yes. The poll questions on this issue have been simplistic and misleading, while the full implications of the bill are not well-known to the public. Even so, it's telling that 25% of all Quebecers *strongly* oppose the bill, 11% are moderately opposed, and 15% are unsure.

Further, Epp has chosen to downplay the results of a second question he asked in his poll. More people thought the bill was an attempt to recriminalize abortion in Canada than not – 39% to 35% – while 26% were unsure. That means that 65% of Quebecers are far from convinced that the bill won't impact abortion rights. The results of Epp's poll are a positive sign that our message about the bill's dangers is finally getting through.

We all abhor violence against pregnant women, but this bill is the wrong tool and unnecessary. The fetus does not need its own special legal status, because we already have legal means available to address the uniquely serious harm of a criminal attack on a pregnant woman. If a miscarriage results, that constitutes an assault against *her*, even if she is not otherwise injured.

Further, if the assault is motivated by the pregnancy, as it often is, that should constitute an aggravating circumstance and carry increased penalties. We could enshrine that principle in law, but in fact, judges already have the discretion to apply harsher penalties in such cases, and they have done so.

These legal measures, important as they are, are still band-aid solutions that don't treat the underlying problem – violence against women. Pregnant women in particular are at increased risk for violence.

We all value life and we all want to protect a woman's choice to have a baby, but this should be done in a way that values the woman who brings that life into the world. By focusing on fetuses, not injured pregnant women, Bill C-484 is offensive to the full humanity of all women, not just pregnant women. It is a radical bill that positions the fetus as a woman's co-equal, and opens the divisive abortion debate unnecessarily. By recognizing the "rights of the unborn," Bill C-484 creates profound and troubling implications for the health, rights, and independence of all women.

Instead of this bill, society needs to focus on women by implementing substantive measures to prevent domestic violence, including more supports for abused women, more public education, and better enforcement of existing criminal laws against violence. We need equality-advancing programs and policies to help women leave abusive relationships, such as measures to reduce poverty, racism, and economic inequality, as well as a childcare program.

The key is to provide pregnant women with the supports and protections they need for a healthy pregnancy and baby. Because when a pregnant woman is safe, so is her fetus.

Joyce Arthur is the Coordinator and a national spokesperson for the Abortion Rights Coalition of Canada. She has written numerous articles and essays on abortion rights and other social issues. As a professional technical writer, she has also written over 100 manuals.