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HOUSE OF COMMONS
Second Session—Twenty-seventh Parliament
1967

STANDING COMMITTEE
ON
HEALTH AND WELFARE

Chairman: Mr. HARRY C. HARLEY

MINUTES OF PROCEEDINGS AND EVIDENCE
No. 1

THURSDAY, JUNE 29, 1967
TUESDAY, OCTOBER 3, 1967

Respecting the subject-matter of
Bill C-122, An Act to amend the Criminal Code (Abortion)
Bill C-123, An Act to amend the Criminal Code (Birth Control);
Bill C-136, An Act concerning the Termination of Pregnancy by
Registered Medical Practitioners.

APPEARING:
Mrs. Grace MacInnis, M.P., Sponsor of Bill C-122;
Mr. Ian Wahn, M.P., Sponsor of Bill C-123; and
Mr. H. W. Herridge, M.P., Sponsor of Bill C-136.

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EVIDENCE

(Recorded by Electronic Apparatus)

Tuesday, October 3, 1967.

The Chairman: Ladies and gentlemen, a quorum is now present and I call the meeting to order.

The members of the Subcommittee on Agenda and Procedure Messrs. Isabelle, Rynard, Knowles, Mrs. Rideout and the Chairman, met last week. Several matters were discussed which I would like to bring to the attention of the Committee. First, the National Film Board have offered to preview for the Committee, if it so wishes, a film on abortion that will be televised on the CBC some time in November. It runs approximately 27 minutes in time and really deals with the social needs for abortion rather than the medical aspects of abortion, if you want to call them that. I think the last two minutes of the film actually show the medical aspects of abortion while the rest of it deals with the problems involved in a pregnancy when somebody attempts to get an abortion, et cetera.

The Steering Committee felt that the offer should be accepted. It was suggested that the film would not be shown at an official meeting and any members of the Committee or of the House of Commons who wished to see this film could do so. We could notify all members of the date, time and place of the showing. Does anyone have any comment on this?

Mr. Isabelle: Will the showing be in the morning or in the afternoon?

The Chairman: The National Film Board have indicated their willingness to show this film to us at our convenience. We can either use their facilities or they will bring their equipment and show it here, if we wish. They will do whatever we want.

Mr. Knowles: We observe that it is in your hands.

Mr. Prittie: Mr. Chairman, I know I am not a member of this Committee but since the Committee is studying this subject it may be

interested in the proceedings of a similar Committee of the British House of Commons and the debates which took place there this past spring and summer. I have been in correspondence with Mr. David Steel, the Scottish M.P., who introduced a bill on this subject and which passed the British House of Commons just before the summer. I am sure the Library of Parliament has the *Hansards* of the British House of Commons and the House of Lords on this subject. There is a great deal there that I think would interest the members of this Committee.

Mr. Rock: Are you asking, then, that all members of the Committee be provided with copies of those debates?

Mr. Prittie: No, I am just saying that the information is available. It was very hotly debated and both sides were presented. I presume the Library of Parliament has the British copies of the *Hansards*.

Mr. Rock: Mr. Chairman, do you think this information could be provided for each member of the Committee?

The Chairman: We can check what is in the Library and see how voluminous it is. It may not be practical to reproduce it. Any member of the Committee who wishes to do so can find it in the Library.

Mr. Herridge: I have a copy of the bill; I was in touch with the same gentleman. I am going to provide this information when I make my comments.

The Chairman: I think Mr Prittie was referring to the complete debate that took place on the bill.

Mr. Prittie: Committee debates and other debates.

Mr. Knowles: I suggest that we be advised of the dates and pages dealing with this subject. This would save at least the necessity of making copies for all of us because if we have to make copies of ours as well for all the members, it will entail quite a lot of work.

The Chairman: We will try to find out the reference dealing with this subject and then anyone who wants to look into it can do so.

An hon. Member: Does the Library of Parliament have a copy?

The Chairman: Yes.

Mr. O'Keefe: Mr. Chairman, were both sides of the topic properly presented?

Mr. Prittie: They were.

Mr. Rock: Mr. Chairman, I am sure there is only one set of these debates in the Library and if any member starts using them when will the other members of the Committee have a similar opportunity unless we all receive a copy?

There is no reason why this could not be done. This is a serious subject.

An hon. Member: Leave it with the Chairman and he will look into it.

The Chairman: Leave it with me and I will report at the next meeting.

Mr. Rock: Very good.

The Chairman: The actual report of the Sub-committee was that 800 copies in English and 400 copies in French of the Committee's Minutes of Proceedings and Evidence be printed and that the Committee meet on Tuesdays and Thursdays at 11 o'clock rather than at 9.30 o'clock as we did in the past. Is there any discussion on these two matters? If not, will somebody move the adoption of the first report of the Sub-committee?

Mr. O'Keefe: I so move.

Mr. Isabelle: I second the motion.

The Chairman: Is there any further discussion? Are all members in agreement?

Some hon. Members: Agreed.

Motion agreed to.

The Chairman: Is it the feeling of the Committee that so far as the film is concerned we should notify all members of the House of Commons that it is available for anyone who wishes to see it? I think this would be a reasonable thing to do.

Mr. Isabelle: Will that be in place of one of our meetings or at the same time?

The Chairman: No, I think we will arrange it separately so that any member of the House of Commons may view it. We will not make it an official meeting of the Committee.

Before we start today's business I might mention that in our possession now are either briefs or requests to present briefs from 10 different organizations or people concerning the problem of abortion. I will read the list quickly: the Anglican Church of Canada; the Canadian Bar Association; the Canadian Medical Association; the Catholic Physicians Guild of Manitoba; a Mr. R. G. Coleman of London, Ontario; the Emergency Organization for the Defence of the Unborn Children; Mr. John Hackett from Downsview; the Humanist Fellowship of Montreal; the Unitarian Church of Vancouver and the United Church of Canada. We have had correspondence from the other organizations and it is likely that we will be receiving more but these are the ones who have so far expressed a wish to present briefs. We have also received briefs and letters from people who do not wish to appear but who wish to have their opinions brought to the attention of the Committee.

Our next meeting will be on October 12 when we will hear a presentation from the Canadian Bar Association. After that hearing our next presentation will probably be by the Canadian Medical Association.

The purpose of the meeting this morning is to invite the sponsors of the three bills under consideration to make presentations to the Committee or to discuss their bills. In the order of presentation of these bills to the House of Commons, I will first call on Mrs. MacInnis, the sponsor of Bill No. C-122, to discuss her bill.

Mrs. MacInnis (Vancouver-Kingsway): Mr. Chairman, I doubt that anyone here in this room, with the possible exception of the medical men, has had any personal experience of this problem, but the fact that one has not been burned to death does not excuse one from realizing the importance of measures to be taken against fire. It seems to me that enough opinion now has been formulated on this subject in this country that inevitably several of us would be raising the matter at this session. My own Bill No. C-122 is a very brief and simple one, designedly. I wanted to raise the question in the simplest and most direct way, feeling sure that there would be no lack of detail if we proceeded. There are

only two main features to the bill, the first of which outlines the three conditions under which abortion should be granted. First:

that the continuance of the pregnancy would involve serious risk to the life or grave injury to the health, either physical or mental, of the pregnant woman;

second:

that there is a substantial risk of a defective child being born; or

third:

that the pregnancy is a result of rape or incest.

In addition to these three militating reasons why an abortion should be granted, there is the fact that it should be performed not only on the advice of the physician in attendance on the case, but also that of a second registered medical practitioner, the two acting in good faith upon the three reasons I have just outlined.

The reasons why I have put forward this bill are four in number and I wish to go into them one by one. First, our choice today is not between having abortion in Canada and not having abortion in Canada. The choice is between having a large and increasing number of illegal abortions taking place in this country, and having abortions made legal within these limited grounds and seeing that they are performed under conditions of proper medical competence and sanitation.

I have tried to do quite a bit of reading and talking with people on this matter. I have taken several examples of what I found.

In a very thoughtful article last May in one of the Toronto papers Jean Howarth pointed out that Dr. Donald M. Lowe, former chairman of the Ontario Medical Association's committee on therapeutic abortion, has estimated that between 25,000 and 75,000 criminal abortions are performed every year in Canada. This is a startling figure and Dr. Lowe goes on to say that more than half the admissions to gynaecology wards in Ontario hospitals in recent years have been because of abortions and that in 1963 there were about 20,000 admissions to gynaecology wards in hospitals in the province of Ontario because of illegal abortions having been performed prior to such admissions. These illegal abortions were not mainly performed on unmarried teenagers. More than 65 per cent of the women admitted to these gynaecology

wards were married. Our choice is not whether we will or will not have abortion; our choice is whether we will have abortions performed legally under proper conditions or whether we will continue the practice of back-street bungling and butchery which has been going on in this country and to which we have been closing our eyes.

I believe that a recent issue of the *Reader's Digest* set forth comparable conditions in the United States setting out some rather lurid detail.

I think this is very similar to the situation which we faced in this Committee last year in connection with birth control legislation, where it was seen that birth control information and contraceptives have been widely used across Canada for years and we, as Canadians, let the situation go on pretending that it did not exist and a number of people hoped that it would go away. It did not go away and we finally faced up to the situation that the choice was not between birth control information and contraceptives or no birth control information and contraceptives, the choice was between being honest and straightforward and leaving it to the individual conscience to decide whether he or she wanted birth control information and devices or whether he or she did not. I believe the same situation would apply in connection with abortion legislation. Nobody would be forcing abortion procedures on anybody else. If women desired to have abortions for the limited reasons set out under this bill I propose that they could have them legally on these grounds, and if they d'd not want them nobody would be forcing them to go through with it. The large number of illegal abortions taking place in Canada is my first point.

My second point is that Canada's laws on abortion are already a century old and date from the British laws of 1861. The legislation relies on the British act of 1861 which declares that all abortion is illegal and punishable by sentences up to life imprisonment. The Canadian Criminal Code has two sections dealing with this. Section 209 sets out that it is a crime to kill an unborn child except to save the mother's life. I believe in practice this has been broadened but that is the way the law reads. Section 207, as set out in the British act of 1861, flatly repeats that all abortion is illegal and punishable by terms up to life imprisonment.

In Britain, meanwhile, there has been legal clarification on a number of occasions. In

1929 there was a legal broadening of the act which enlarged its application very considerably. There was a test case in 1938 where a doctor accused of committing an abortion was acquitted, which had the effect of broadening the application of the law again.

In summary, my second point is the fact that our laws on abortion are based on the British act and they are out of date because of the fact that this act was passed in 1861.

The third point I want to make is that other countries throughout the world that we consider progressive have been moving, some of them earlier than others, but certainly moving very definitely in recent years. Reference was made earlier to the British legislation which went through in July of this year. The vote was interesting on that occasion. It passed the House of Commons with a vote of 167 to 83 and with the House of Lords with a majority of 127 to 21. A couple of things or course are interesting there. For one thing, their members of Parliament were evidently as much inclined to absenteeism as we are ourselves for various reasons.

An hon. Member: Not during a vote.

Mrs. MacInnis (Vancouver-Kingsway): Well, a vote of 167 to 83 is not an impressive total for the British House of Commons. One other very interesting point was that the House of Commons was less definitely in favour than was the House of Lords.

In France abortions are still illegal, although the number of women who go from France to Switzerland to obtain abortions is alarming the authorities. In France, where neither birth control nor abortion is legal, another rather horrifying poll speaks the will of that half of the population most directly concerned. The National Institute of Democratic Studies has estimated that illegal abortions equal live births in France. It is an interesting fact that la Commission des Affaires Culturelles, familiales et Social de l'Assemblée Nationale has recently recommended that both contraception and abortion on strictly limited grounds be made legal.

In the United States a number of the states are moving. Colorado passed its legislation in April of this year. California is conducting vigorous campaigns. My third point is that other countries are moving.

My fourth point is that I believe Canada is ready for a change in our abortion laws. The

Canadian Institute of Public Opinion, the Gallup Poll, conducted a survey in 1965 and the results showed that 71 per cent of Canadians wanted to see a change in the present abortion laws. Evidently there were no questions as to the nature of that change, but the fact that two years ago 71 per cent of the Canadians polled wanted to see a change is symptomatic of the need for change. Those of you who heard the "Cross-country Check-up" program several weeks ago will have been as surprised as I was with the overwhelming number of those who phoned in on that program who wanted to see a change made in the abortion law.

I believe the change in the abortion laws ought to be made as we recommended in this Committee in connection with birth control—on the basis of individual conscience—and that no one should be obliged to submit to abortion if she does not want to do so. But, on the other hand, no one should be denied it on the basis of these grounds.

Secondly, I think it is high time that we ended a bad law. If you remember, we had certain religious groups who were objecting to birth control for themselves and for their own followers, but who said that they wanted the law cut out because it could not be enforced, and that it was a bad thing to have a law on the statute books that could not be enforced.

Thirdly, I think it is time we ended the danger and risk of the backstreet abortion racket that goes on in this country.

Fourthly—and this is the positive side—I think it is time that we began to work toward quality population in this country. We are beginning to hear about the need for improving population, and certainly to have children born into a country as the result of rape or incest is not going to be too helpful when one considers the environment that they are likely to encounter. Also, I want to say that if conditions like those of thalidomide babies or congenital diseases are known ahead of time, I do not think it is a good thing for Canada to allow those beings to come into the world.

My last reason for recommending a change is that I think it is time we gave parents a chance. I think that women ought to have far more control over what happens to them when monstrosities are to be born. I have known women who have had to put up with lifetimes of that sort of thing, and it would

have been far far better, both for them and for those poor little deformed creatures, to have never been brought into the world.

These are my reasons for putting forward this bill at this time, Mr. Chairman.

The Chairman: Thank you, Mrs. MacInnis. Does the Committee wish to question Mrs. MacInnis now, or do you want to wait until the three sponsors have spoken and then do it collectively?

Some hon. Members: Now.

The Chairman: Everyone wants to do it now. Mr. O'Keefe?

Mr. O'Keefe: Thank you, Mr. Chairman. Mrs. MacInnis, I disagree completely on almost every point you raised, and I suggest to you that we should be considering just what makes a pregnancy unwanted, instead of what to do about an unwanted pregnancy. Would you agree with that?

Mrs. MacInnis (Vancouver-Kingsway): Well, let us hear what else you have to say on this subject as it is not clear yet.

Mr. O'Keefe: Shall I repeat it?

Mrs. MacInnis (Vancouver-Kingsway): No, no, explain it.

Mr. O'Keefe: I noticed no concern at all, Mrs. MacInnis, in either your bill or your comments for the rights of unborn babies. You refer to monstrosities and "these beings". Are you not aware that deformed babies have been born who have turned out to be geniuses? Steinmetz is a glaring example, but I shall have a long list pretty soon. Would you deprive those babies of life?

Mrs. MacInnis (Vancouver-Kingsway): I have said that I would have this legislation on a permissive basis. Where people believe that it is better to produce a monstrosity with the danger, or the likelihood, or the chance of its possibly becoming a genius, I would not interfere with this.

Mr. O'Keefe: And who do you think should make this decision?

Mrs. MacInnis (Vancouver-Kingsway): I think that the mother should have the right to make that decision in consultation with or under the jurisdiction of two qualified medical practitioners.

Mr. O'Keefe: Do you not think that the community has an interest?

Mrs. MacInnis (Vancouver-Kingsway): The community, in my view, has an interest in normal human beings, and in getting the best quality and kind of people it can.

Mr. O'Keefe: And not in deformed human beings?

Mrs. MacInnis (Vancouver-Kingsway): Right.

Mr. O'Keefe: I will let it go at that, Mr. Chairman. There are other members who want to ask questions, I am sure.

Mr. MacDonald (Prince): There are just two questions I would like to raise with Mrs. MacInnis. First of all, she suggests that the choice is not as to whether or not we will have abortions, but the choice is as to whether or not they will be legal or illegal and all that illegality implies. Now, under the conditions you have indicated to us here in your bill, Mrs. MacInnis, have you made any attempt to ascertain what percentage of abortions would be covered under these three conditions? In other words, how many of the yearly illegal abortions that are taking place across this country would be effectively eliminated were these three conditions to be put into law?

Mrs. MacInnis (Vancouver-Kingsway): No, but I have seen some figures on that. Probably some of the medical men here would be in a better position to answer that one than I.

Mr. MacDonald (Prince): It seems to me that this is a pretty crucial question, because unless we are sure that by including these conditions we are going to tackle the problem, we have really not done very much. We may have made it easier in some instances, but if the bulk of the problem still exists, then we have to face it on another plane or with another set of conditions.

Mrs. MacInnis (Vancouver-Kingsway): I think that when our medical witnesses appear before us we could very well inquire about these factors. I think they would be the ones who would have the most up-to-date information on that.

Mr. MacDonald (Prince): My second question is this: You suggested that the Committee's attitude toward this particular problem of abortion should be that which it adopted in connection with birth control—in essence, leaving it to the individual's own conscience. But this seems to be a little contradictory and I do not think that comparison

is a very good one. You are not, in effect, leaving it to the person's own conscience. In other words, you are not making it subject to the decision of the parents involved. You are in fact saying that first, there will have to be not one doctor, but two, giving approval; and second, that it must fall within these three particular conditions. I want to be clear on this. Are you, in effect, making a comparison? Are you now going beyond what you have spelled out here? Or are you limiting it to these three specific instances?

Mrs. MacInnis (Vancouver-Kingsway): As I visualize it, it would apply if a woman wanted to have an abortion if she were pregnant under one of these conditions. If she belonged to a certain kind of religious faith or maybe some other category, she would not ever consult a doctor about it in the first place. She would just go through with the pregnancy or else have an illegal abortion if she were so disposed. But where a woman thought she came within one of these categories and wanted to have an abortion, then I think she would go to her doctor, and if the doctor and another registered medical man thought that it was legal and proper for her to have that abortion, then she would have it. I do not know if that answers your question or not, but to my mind that does leave it pretty largely to individual conscience with, of course, the safeguards on individual conscience that we would put in this bill.

Mr. MacDonald (Prince): Well, you treat these three conditions with some seriousness, but I am wondering what attitude you take with regard to deprived homes—homes in which there is a good deal of poverty where there may have been a steady succession of children and the mother finds herself pregnant again and desires in that case to have an abortion realizing that she cannot possibly give adequate care to another child. There may be cases where the parents have become separated after the mother has become pregnant. A number of other instances could be mentioned. Do you have any provision for these people, or do you think that they should not be considered in the scope of this particular—

Mrs. MacInnis (Vancouver-Kingsway): I think that in this bill, if you look at subsection (2) (a):

that the continuance of the pregnancy would involve serious risk to the life or grave injury to the health, either physical or mental, of the pregnant woman;

there is quite a bit of leeway in that. This still does not go as far as a great many people would like to see it do; for instance, where in any way it would interfere with the family life in general or the capacity of the woman to do other things, and so on. This bill does not cover that. I think myself that it is a much wiser thing to begin with a piece of legislation for which the country is ready. I think that very large sections of the country are ready for this degree. I would like to try this out and then, if we found that the grounds needed widening, I would leave that for some future occasion.

We have two abortion societies that I know of in Canada now: one in London, Ontario, and one here. We will also be hearing from the Humanist Society in Montreal and from other groups that are interested. But there are two societies, both of whom have requested these terms exactly as I have put them. It seems to me that this is what we are ready for at this time in Canada, and I think it is very evident from what I have said that it would be on the basis of individual conscience whether or not the person, in the first instance, even wanted to apply for it or use it.

Mr. MacDonald (Prince): In other words, you would be prepared to give a fairly broad interpretation to section (A), as suggested in this bill?

Mrs. MacInnis (Vancouver-Kingsway): Yes, but obviously it is not as broad as the world. There are restrictions in it.

Mr. Stanbury: Mrs. MacInnis, I am with you, I think, most of the way on your argument but I run into difficulty when you mix your motivations for this bill between the need to recognize the choice of individuals and what apparently is also motivation behind your bill, with the feeling that society should be protected against a low quality of child. I am frankly a bit shocked by this. I would appreciate some further development of your idea on what I think you refer to as the need for us to develop a quality population. I think that was the term you used.

Mrs. MacInnis: Yes.

Mr. Cowan: They would all be Liberals, then.

Mrs. MacInnis: That will be manifested—

Mr. Stanbury: While your bill does not specifically indicate it, this to me raises the spectre of "someone up there"—perhaps

members of Parliament are among those that you feel should make such decisions—is going to decide for Canadians what is and what is not quality among our children, and what we should produce and what we should not produce. That seems in conflict with your original motivation of allowing people to protect themselves from damage to their own family and allowing them to make a personal choice according to their own conscience. Do you mind explaining a little further your thoughts on this need to ensure that we have a quality population?

Mrs. MacInnis (Vancouver-Kingsway): Mr. Stanbury, I am not a lawyer, although you are.

Mr. Stanbury: I used to be but I do not have time for it any more.

Mrs. MacInnis (Vancouver-Kingsway): The fact is that it will not be what I think is set down on this paper. My motivations and ideas in putting forward this matter are not what are going to go into the legislation.

Mr. Stanbury: We have to understand the reasons for it.

Mrs. MacInnis (Vancouver-Kingsway): Let me make it perfectly clear that no matter if I did want—which I certainly do not—members of Parliament or anybody else going to individual families and saying, "You will have this child. You will not have that child", I certainly do not want that. However, even if I did, there would be no earthly way of my getting it under the terms of this bill. That is the thing I wish to make clear.

Now, if you want my personal thinking behind it, that is something else, but that has nothing whatever to do with the terms of this bill. It is straight and forward. We say an abortion can only be granted if two registered doctors acting in good faith say so and there is danger of grave injury, and so on, to health and, secondly, there is danger of a badly defective child being born and, thirdly, the pregnancy is the result of rape or incest.

Now, I will be very glad to explain my own thinking but, you must remember, that will not and cannot affect the terms of this bill. I want that to be clearly understood.

My own thinking is that there are different grades or, let us say, degrees of thinking among the people of this country. Some people honestly believe that every child that is conceived ought to be brought to life no mat-

ter what the result may be. Other people do not; they feel it is a tragedy and, even more than that, if it can be prevented it is a crime for people, or for themselves, to bring something into the world that will have no chance at life or living as we understand it. I have seen such vegetables in our mental hospitals, I know what they look like and I know they have no chance of a normal life. Because we are a democratic country I think it is very important that we provide a freedom of choice. In my thinking, I would like to have this legislation available for those people who in my opinion have reached the stage where they want to have normal children and they can use this legislation to prevent accidents happening in the early stages of pregnancy.

On the other hand, if there are people who do not believe in this they do not have to do it. In Canada I would be content to leave it to the development of public opinion, which has already moved along on a number of matters to determine the rate at which people's thinking proceeds. That is all that is behind my thinking in this regard. I suggest that people be free to move along the lines of being responsible for producing human beings with a chance for living in the fullest sense of the word, to live fully, and that others who do not have that type of belief shall not have violence done to their conscience.

Mr. Stanbury: Do you see this as a first step toward the development of public opinion to the point where one of the aims of public policy will be to produce a higher quality population than we presently have and to rid ourselves of these physically handicapped babies that you say are not good for Canada?

Mrs. MacInnis (Vancouver-Kingsway): I think public opinion is moving in the direction where it realizes that it is not, in every case, desirable for two people to produce a creation. I think we are moving that way. Not long ago there was a lawsuit in the United States where a boy who was handicapped in many serious ways I believe sued the doctor for bringing him into the world because it was so dreadful.

Mr. Stanbury: Do you see our moving towards a situation where the government will decide who can mate and who cannot?

Mrs. MacInnis (Vancouver-Kingsway): No. I am not dealing with science fiction at this stage at all. All I want to do is to update a law which is based on conditions as they were in 1861. We are living in 1967.

Mr. Stanbury: I think there is a great deal of merit to your bill. I am concerned, from what you said, that there seems to be a step in the direction of a sort of big brother approach to people's problems.

Mrs. MacInnis (Vancouver-Kingsway): It is just the reverse.

Mr. Stanbury: From your explanation of the bill it seemed to be that rather than freeing people to make their own choice.

Mrs. MacInnis (Vancouver-Kingsway): I have learned all my life, Mr. Stanbury, if I want a loaf of bread to take half a loaf if I cannot get a whole loaf and if I cannot get that, to take a few crumbs, knowing that each attempt will strengthen me to get a little more of the bread later on.

Mr. Stanbury: This is what concerns me. It seemed to me that this was just a crumb on the way to a loaf of bread, which was a bit repugnant to me.

I want to ask about one specific part of the bill which bothers me, and that is clause (c) which, in effect, asks medical practitioners to come to the conclusion—which is a legal one, I think that the pregnancy is the result of rape or incest. I wonder if you could explain that a bit. I think it would be terribly difficult if medical practitioners were placed in a position where the only possible way in which they could arrive at that conclusion would be by the word of their patients. It implies coming to conclusions which would, in effect, convict third parties without a trial, unless you are going to wait for a trial, in which case it might be too late for a therapeutic abortion.

Mrs. MacInnis (Vancouver-Kingsway): The law was passed in Colorado in April. Just two or three weeks later, I believe, there was a case where a man was convicted of rape against a child who was even under age, and this law was applied to get her an abortion. That is one case that I know of where this was done. The story appeared in *Time*, actually, and I have the clippings. I feel sure that the law and the medical profession can find ways and means, if rape or incest is indicated, by which the process of getting the abortion could be speeded up. There are difficulties but they can be resolved. There must be cases where it is within the knowledge of either the law or medicine that the pregnancy is the result of either rape or incest. We have had such cases. It is a matter of having them dealt with quickly.

Mr. Stanbury: You would not wait for a trial to establish whether or not rape or incest had occurred?

Mrs. MacInnis (Vancouver-Kingsway): I think it would be too late for abortion in that case.

Mr. Stanbury: I think so, too. But you would be satisfied to have doctors come to a conclusion that courts have not yet come to?

Mrs. MacInnis (Vancouver-Kingsway): I think that doctors would very frequently be able to consult legal people in connection with it, too.

Mr. Stanbury: Would they consult judges, lawyers or justices of the peace?

Mrs. MacInnis (Vancouver-Kingsway): I do not think it necessary to go into all these details.

Mr. Stanbury: I consider this very important, and I am curious about how it would work. I must say I cannot imagine how it must say I cannot imagine how it would.

Mrs. MacInnis (Vancouver-Kingsway): Well, neither do I but let us wait until we get the details of the British legislation. I have been over it, too. There must be such details in the legislation which has just been passed.

Mr. Stanbury: Do you not think that in that situation it might perhaps be better brought under the terms of subsection 2(a), that if a patient has suffered rape or incest it might well be interpreted that the continuance of the pregnancy would involve serious risks to her physical or mental health? To ask doctors to come to legal conclusions seems to me to be rather dangerous.

Mr. Knowles: May I ask Mr. Stanbury if the phrase "of the opinion that the pregnancy is the result of rape or incest" is equivalent to a legal conclusion?

Mr. Stanbury: I have suggested that I am interested in Mrs. MacInnis' opinion on how the doctor would arrive at this opinion, and for the life of me I cannot imagine how he could on the word of the patient. Every patient who wanted an abortion would undoubtedly advise her doctor that she had been the victim of rape or incest. It would be the simplest thing in the world.

Mrs. MacInnis (Vancouver-Kingsway): I do not know how this can be made legally watertight, but our newspapers inform us every

day of young girls being raped, and it is happening all over the country. If the case gets into the press I am quite sure that the police have the details. It should not be impossible to work out safeguards for getting the information to doctors.

Mr. Chatterton: I have a supplementary question. What would be the position if such an abortion were allowed and the person charged with rape were subsequently acquitted by the courts?

Mrs. MacInnis (Vancouver-Kingsway): I am not Solomon. I do not know.

The Chairman: I hope everyone realizes that there are certain medically-accepted proofs of rape. There is the question of who performed the rape. There are certain medical proofs that might or might not be present in any particular case. It has nothing to do with the legal opinion whether a certain person did it or not. But those facts are not present in every case, of course.

Dr. Isabelle, have you a supplementary question?

Mr. Isabelle: No.

The Chairman: Mr. Stanbury?

Mr. Stanbury: No; I think I have pursued this as far as Mrs. MacInnis can take me today.

Mrs. MacInnis (Vancouver-Kingsway): Farther.

Mr. Rock: Mrs. MacInnis, in your interesting exposé you mentioned two states—California and another—which are—

Mrs. MacInnis (Vancouver-Kingsway): Colorado has the legislation. California has not yet passed it.

Mr. Rock: You also mentioned that there is no such legislation in France and that many women there go to Switzerland for an abortion. Do you mean Switzerland, or do you mean Sweden?

Mrs. MacInnis (Vancouver-Kingsway): I mean Switzerland.

Mr. Rock: Switzerland. I understand, of course, that in Sweden there have been changes—

Mrs. MacInnis (Vancouver-Kingsway): Sweden has legislation very much along these lines. That is, there are limited grounds on which abortion is permitted.

Mr. Rock: Do you feel that many American and Canadian girls take vacations in Europe for the purpose of visiting Sweden?

Mrs. MacInnis (Vancouver-Kingsway): I would not know. About a year or so ago there was a very much publicized case of an American woman who went to Japan, I understand. I believe that for about a \$1,000 economy fare and \$30 for the operation she secured an abortion there. I doubt that there would be any records anywhere of the others.

Mr. Rock: Do you feel that at the moment the rich are able to have legal abortions in other countries and others are not?

Mrs. MacInnis (Vancouver-Kingsway): I think that would be obviously possible.

Mr. Rock: Do you feel that if we take a more liberal attitude towards abortion in this country we would have girls from the United States taking vacations in Canada for this purpose? Their laws are not as liberal as ours would be if we passed this legislation.

Mrs. MacInnis (Vancouver-Kingsway): I do not know. I think the situation in the United States is such that they have enough places for people to go to without crossing the border, if they so desire.

Mr. Rock: Do you feel that when a single girl becomes pregnant the pregnancy itself can create a mental condition and, therefore, she becomes qualified under your bill? That is, of course, depending on the doctor.

Mrs. MacInnis (Vancouver-Kingsway): That would not be for me to decide. That would be for the doctors to decide.

Mr. Rock: Do you feel that there is a mental condition as soon as the single girl finds out that she is pregnant?

Mrs. MacInnis (Vancouver-Kingsway): I would not know anything about that. It would be for doctors and psychiatrists to decide that.

Mr. Rock: Will you have some doctors and psychiatrists testifying before this Committee?

The Chairman: Some doctors will be here, and it would be a good idea to have a psychiatrist also. I am not looking at any particular member of the Committee!

Mr. Brand: Mrs. MacInnis I understood from what you said that you thought that by

enacting the sort of provisions which you are suggesting we could do away with the illegal abortion racket. Am I correct?

Mrs. MacInnis (Vancouver-Kingsway): Or reduce it. I do not suppose that we can stop it, but we can certainly cut it down.

Mr. Brand: Do you know that there are no therapeutic abortions done now in Canada?

Mrs. MacInnis (Vancouver-Kingsway): Oh, yes, there are.

Mr. Brand: The provisions of your bill, I presume, then, would be related more to (b) and (c) than to (a)?

Mrs. MacInnis: Well, (a) is probably wider than would be the common practice with therapeutic abortions at the moment.

Mr. Brand: Do you really think so?

Mrs. MacInnis (Vancouver-Kingsway): I do, from what I have been able to learn and read.

Mr. Brand: I do not think it is, you know. You did give us the interesting statistic from one study done in Ontario that of the abortions performed sixty-five per cent of them were on married women.

Mrs. MacInnis (Vancouver-Kingsway): Yes.

Mr. Brand: David MacDonald touched on what I think is the most important part of this whole business, the fact that 65 per cent of the women are married. Do you think many of them would be related to the problem of the substantial risk of a defective child or pregnancy as a result of rape or incest?

Mrs. MacInnis (Vancouver-Kingsway): I would not know. Probably more of them might fall into the first category.

Mr. Brand: The defective child being born?

Mrs. MacInnis (Vancouver-Kingsway): No, the first category—(a).

Mr. Brand: Under (a)?

Mrs. MacInnis (Vancouver-Kingsway): Probably.

Mr. Brand: Which, would you not agree, is, to a degree at least, presently covered under section 209(2) of the present Criminal Code?

Mrs. MacInnis (Vancouver-Kingsway): It is the opinion of the abortion societies that have

been formed and of numerous people I have heard and of social workers who have discussed this that they do not think that it covers it now.

Mr. Brand: Do you know of any doctors who have been sentenced to the penitentiary for doing a therapeutic abortion under this particular section?

Mrs. MacInnis (Vancouver-Kingsway): No. The only case that I know about is one that was acquitted in Britain in 1938 or whenever it was.

Mr. Brand: Yes, *Rex v. Byrne*.

Mrs. MacInnis (Vancouver-Kingsway): Yes.

Mr. Brand: That was the 14 year old rape case; that is getting down to (c); I am talking about (a). So, in actual fact, it would appear from the statistics you have presented that a lot of these abortions are being done for convenience rather than anything else.

Mrs. MacInnis (Vancouver-Kingsway): Oh, I would not say that; no, I would not say that.

Mr. Brand: Certainly in my experience in practice this is true.

Mrs. MacInnis (Vancouver-Kingsway): Well, maybe that is from your experience, but—

Mr. Brand: ...for the convenience of the mother who decides she has had quite enough children, or that it is interfering with what she is doing. This is certainly one of the commonest causes you hear, and this is what concerns me, of course, Mrs. MacInnis. I will not go into the things that bothered Mr. Stanbury; they bother me too—the thought of setting up a super race in Canada—

Mrs. MacInnis (Vancouver-Kingsway): Well, I do not know where you will find that in the bill. What is bothering you is what is in here, in my head, but it is not what is on this paper.

Mr. Brand: What is bothering me is what you have said.

Mrs. MacInnis (Vancouver-Kingsway): I know, but that is not on the paper, and I would urge you to realize that when it is legislation it is what is on the paper that matters.

Mr. Brand: But the fact of the matter, you would have to agree, is that even by so doing we are not going to cut out illegal abortions really, are we?

Mrs. MacInnis (Vancouver-Kingsway): Cut down, anyway.

Mr. Brand: You think we will cut down to a degree?

Mrs. MacInnis (Vancouver-Kingsway): Well, no matter what we do with alcohol control or tobacco control we are not going to cut out either one of those habits, but if we could help them—

Mr. Brand: Oh, that is a nasty one. Would you agree then that if we did amend the Criminal Code to allow the sort of things as suggested in your bill, then, perhaps, the full majesty of the law should be brought to bear against those—and certainly this is not being done now—who perform illegal abortions?

Mrs. MacInnis (Vancouver-Kingsway): If a thing is illegal I think the law should be enforced.

Mr. Brand: Do you agree that it is being enforced now?

Mrs. MacInnis (Vancouver-Kingsway): Obviously not or we would not be having all these illegal abortions.

Mr. Brand: Fine, thank you very much.

The Chairman: Dr. Isabelle.

Mr. Isabelle: Mrs. MacInnis, there is one general observation I want to make on your bill. First, I am not too sure that we can achieve a change. I am for change, but how are we going to achieve this change? Another thing is this: you are aware of the fact that for the past 25 years many countries, especially the Scandinavian countries, Russia, and some other countries, have widened their legislation on legal abortion and since this legalization has been brought along, strangely enough there has been an increase of illegal abortions in those countries. This is something that we cannot understand, but it could be easily understood in the light of Mr. Stanbury's point of view that therapeutic abortion committees formed of judges, lawyers, doctors, and people like that sometimes never agree on these matters, so that the rate of therapeutic abortions has fallen and that of illegal abortions has increased.

Recently you were talking about Colorado; they have trouble with the same thing. They do not know how to put the mechanism in place in order that legal abortions could take place. And you are talking about California. California has passed legislation three times

to bring about a legal abortion law, and three times it has been repealed. So there are certainly some things that we cannot touch that we feel need to be changed, but how are we going to do it? I think the very basic principle of all these discussions will rest on the definition of the words. We are not talking the same language. A medical man, a layman, a judge and anyone who does not belong to the medical profession, sometimes use words that do not mean the same thing in the mind. So unless we agree from the very beginning on what we are talking about, we will never get anywhere. This is why the United States and the Scandinavian countries in Europe have failed in bringing in new legislation that would be good legislation, but unfortunately it cannot be implemented.

Mrs. MacInnis (Vancouver-Kingsway): This is precisely why I was so pleased that these three bills have been referred to a committee this year, because if you remember, Dr. Isabelle, when we began our sessions for discussing the birth control legislation we were talking very, very many different languages in the committee. Then, at the end, after all the witnesses and all the discussions, we were able to find an accommodation. We found out that there was ground on which we did agree, and we were able to come to an almost unanimous report.

I am not devoted to the terms of this particular bill, but it is my hope that when we get together we can take all the bills we have and again find areas where we do agree and widen those areas. None of us will get 100 per cent what we want but if we can get a suitable change, that is all I want.

(Translation)

Mr. Matte: In sub-paragraph (a) you say: "—would seriously endanger the physical or mental health of the woman".

Mrs. MacInnis (Vancouver-Kingsway): Yes.

Mr. Matte: Can you explain the word "mental"? Is fear of childbirth a mental reason? Who would determine the mental reason?

Mrs. MacInnis (Vancouver-Kingsway): This is a question for doctors; I am not going to lay down these conditions, but rather two doctors must decide if it is dangerous for the mother, for her mental or physical health. It is not my opinion which is important, but the opinion of two doctors.

Mr. Matte: Is this an easy thing to determine, doctor, mental condition?

(English)

Mr. Isabelle: In medicine I think that two doctors are not enough to decide on something important like this, but when you are three, three is a crowd.

The Chairman: Are there any other questions of Mrs. MacInnis? Mr. Cowan.

Mr. Cowan: I would like to ask Mrs. MacInnis this: do you know that picture of Queen Victoria in the foyer of the Senate?

Mrs. MacInnis (Vancouver-Kingsway): Yes, the one with her arm short.

Mr. Cowan: That is the one. The guides point out that it is the only known painting where her short left arm is visible; she used to keep it concealed after that. Do you think that she should have been born?

Mrs. MacInnis (Vancouver-Kingsway): What was all right for 1861 is not all right for 1967.

Mr. Cowan: Do you not think that Queen Victoria would have been all right in 1967?

Mrs. MacInnis (Vancouver-Kingsway): I am not quarreling over things that happened over 100 years ago; I am talking about 1967.

Mr. Cowan: I was talking about defective births; they were the words used in—

Mrs. MacInnis (Vancouver-Kingsway): I know, but you and I were not around to deal with Queen Victoria's parents whereas we are around to deal with the people today.

Mr. Cowan: The question I wanted to ask is since you are so strongly in favour of birth control, if my memory serves me right, why do we need these abortion rules if you have your way on birth control?

Mrs. MacInnis (Vancouver-Kingsway): We would not, if birth control could be carried out wisely and well, but there will always be cases where it will not.

Mr. Cowan: Well, why not go right on through with your birth control measure first and then bring up abortion later? Why bring up the two practically simultaneously?

Mrs. MacInnis (Vancouver-Kingsway): Because there are a great deal of arrears to be dealt with in this country and it will take both kinds of measures to do it.

Mr. Cowan: Well, do you want abortions for those cases where the rubber is torn?

Mrs. MacInnis (Vancouver-Kingsway): Well, again, we have to deal with various forms of shortcomings in different ways, and I do not think torn rubber is the whole story.

Mr. Cowan: Well, I gathered the impression a year ago that with planned parenthood and birth control we would be in a perfect world.

Mrs. MacInnis (Vancouver-Kingsway): Well, we do not have them, and I do not think my hon. friend is helping us to get them, or did help us to get them either.

Mr. Cowan: And I will not either. But why not carry the one through? To me, one countermands the other. If you have birth control you do not need the proposed abortion law; and if you are going to have the abortion law then you would not need the birth control measure. Why ask for both?

Mrs. MacInnis (Vancouver-Kingsway): Because people are human and they fail sometimes. If they fail in one regard there ought to be a second chance in some cases.

Mr. Cowan: Is it possible for doctors to tell the sex of a child before it is born?

Mrs. MacInnis (Vancouver-Kingsway): We will have to ask a doctor how far in advance they can do that because I do not know. We have several doctors and maybe they could tell you.

Mr. Cowan: With a doctor as Chairman, might I be allowed to advance the statement that it is impossible to foretell the sex of a child until birth. This is generally accepted.

The Chairman: No, this is not completely true, with certain tests.

Mr. Cowan: What percentage of it is true then?

The Chairman: The tests that make it possible to foretell the sex of a child are not in common usage; I think that is the proper terminology to use. It is possible, but the tests are not normally carried out on every pregnancy.

Mr. Cowan: Oh, I know that for a fact, but I would make the statement that it is impossible to tell the sex of a child before birth, and I was wondering how they can tell if a child is going to be born defective before birth.

Mrs. MacInnis (Vancouver-Kingsway): Would one of the medical people like to answer that? That seems to be a technical question.

The Chairman: I think that what is meant by the substantial risk of a defective child is this: for instance, a woman having taken thalidomide early in her pregnancy would be considered to have a substantial risk of having a defective child. Also a pregnant woman who was exposed to german measles at, say, somewhere between the sixth and twelfth week of a pregnancy has a substantial risk of having a defective child in some way. Do the medical practitioners agree with me?

Mr. Cowan: Well, thalidomide has been outlawed in Canada so we do not have that danger anymore.

The Chairman: But german measles has not.

Mr. Cowan: Through you, Mr. Chairman, I ask, why not let the child be born and then if it is defective, kill it? Why would you not favour that?

Mrs. MacInnis (Vancouver-Kingsway): Would you be in favour of that?

Mr. Cowan: No. I am not in favour of this abortion law either. I was just wondering why you would not allow the pregnancy to come to completion and when the child was proven to be defective, then we could kill it. Would you not favour that? Why worry about whether you kill it three months before birth or one week after the birth.

Mrs. MacInnis (Vancouver-Kingsway): It was not my intention to get into theological arguments today. I think those will be forthcoming when we have the different church bodies in front of us. I would rather not get into the theological side today because it would be too lengthy.

Mr. Cowan: You do not define "defective". If you favour not taking the substantial risk of a defective child being born, do you think that President Roosevelt should have been shot the day he was paralyzed? He was defective when he was about 40 years old.

Mrs. MacInnis (Vancouver-Kingsway): But he was not paralyzed before he was born.

Mr. Cowan: But why kill human beings if they are paralyzed before they are born if

you do not kill them when they are paralyzed after they are born? This is the point I am raising.

Mr. Knowles: She does not believe in capital punishment.

Mrs. MacInnis (Vancouver-Kingsway): No, that is right.

Mr. Cowan: In my opinion, Roosevelt did nothing wrong.

Mr. Knowles: You are the believer in capital punishment.

Mr. Cowan: I certainly am when a man has committed a crime but Roosevelt never committed a crime. Mrs. MacInnis says you should do it because a baby may be defective. I might make the broad statement that all people who are defective do not commit crimes. Or do you allege that all defective people do commit crimes?

Now that the hon. member for Winnipeg North Centre—I always feel pretty pleased that I do not get him mixed up with Mr. Churchill—has brought up the matter of capital punishment do you Mrs. MacInnis hold up to us the fact that California has an agitation going for abortion laws? Do you realize that California has restored capital punishment? Which example do you wish us to follow, the restoration of capital punishment or—

Mrs. MacInnis (Vancouver-Kingsway): I think we are getting a little off the subject.

Mr. Cowan: Mr. Knowles brought the subject up.

Mrs. MacInnis (Vancouver-Kingsway): Well, all right. I think that we want legislation which will make it possible for people, if they fit into these categories and wish to have abortions under the limited terms of such legislation to do so, and for other people not to have abortions forced on them. I believe in freedom of choice.

Mr. Cowan: Why do you say that you favour abortion if the pregnancy is the result of rape or incest only? Why do you not say if the pregnancy is the result of prostitution, rape or incest because chances are, under this regulation, if it was ever passed, the prostitute would immediately claim that she was raped. Do you realize that Lincoln's father is unknown to history? He was the son of the Hanks woman. Would you have favoured having that foetus killed off too?

Mrs. MacInnis (Vancouver-Kingsway): I do not really think, Mr. Chairman, that we are going to get any place by going so far afield.

Mr. Cowan: I think my question is right on the button. The Chairman has not ruled me out of order. It was my last question.

The Chairman: Are there any other questions? If not, we want to thank you, Mrs. MacInnis, for presenting your bill.

We will move on to Mr. Wahn's bill. Although I have not mentioned it to the sponsor I think it is obvious we are discussing only Clause 1 of Bill C-123. Clause 2, dealing with birth control is not within the Committee's terms of reference at this time.

Mr. Wahn: Mr. Chairman, I welcome the opportunity to explain this bill to members of the Committee. As you pointed out today, we are dealing only with Clause 1 which deals with therapeutic abortions. Clause 2, which deals with contraceptives, was dealt with last session.

Therapeutic abortion means an abortion performed for the purpose of safeguarding the life or health of the pregnant woman. The purpose of this bill is not to make any radical change in the existing law. Rather, its purpose is extremely modest, that is, to clarify the confusion which now exists in our Canadian law on this subject. I think it is probably generally recognized that an abortion is legal today in Canada if it is performed for the purpose of preserving the life of the pregnant woman. There is some question as to whether it is legal if it is performed for the purpose of preserving her health. Just to illustrate how serious the confusion is I would like to refer to the provisions of the Criminal Code which I think most everyone finds very difficult to interpret.

First there is Section 209 which states that:

Every one who causes the death of a child that has not become a human being, in such a manner that, if the child were a human being, he would be guilty of murder, is guilty of an indictable offence and is liable to imprisonment for life.

Then subsection (2) says:

This section does not apply to a person who, by means that, in good faith, he considers necessary to preserve the life of the mother of a child that has not become a human being, causes the death of the child.

So this section is quoted to establish the principle that an abortion is not illegal, or putting it positively, an abortion is legal if it is performed in good faith to preserve the life of the mother.

However, we have another section, Section 237, which reads:

Every one who, with intent to procure the miscarriage of a female person, whether or not she is pregnant, uses any means for the purpose of carrying out his intention is guilty of an indictable offence and is liable to imprisonment for life.

And:

Every female person, who being pregnant, with intent to procure her own miscarriage, uses any means or permits any means to be used for the purpose of carrying out her intention is guilty of an indictable offence and is liable to imprisonment for two years.

There are no exceptions whatsoever. This creates a serious difficulty of interpretation because it seems to be inconsistent with Section 209 which provides specifically that if you kill an unborn child for the purpose of preserving the life of the mother it is not a criminal offence.

The explanation may possibly be found in Section 45 of the Criminal Code which states:

Every one is protected from criminal responsibility for performing a surgical operation upon any person for the benefit of that person if (a) the operation is performed with reasonable care and skill, and (b) it is reasonable to perform the operation, having regard to the state of health of the person at the time the operation is performed and to all the circumstances of the case.

Now this section was not passed with abortions in mind. I believe it was passed to protect medical practitioners who perform surgical operations with reasonable skill, perhaps in cases where the patient died or was injured and the medical practitioner required the protection which is provided in this section. But in terms it does seem to go far enough to indicate that someone who performs a surgical operation with reasonable skill, which is justified, having in mind the state of health of the patient, is protected from criminal responsibility.

I cite these sections merely to show that there is real confusion as to what the state of