

CANADA

Criminal Code (1985-2014)

R.S.C., 1985, c. C-46

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PART I. GENERAL.

Protection of Persons in Authority

45. Every one is protected from criminal responsibility for performing a surgical operation on 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.

R.S., c. C-34, s. 45.

PART VIII. OFFENCES AGAINST THE PERSON AND REPUTATION

Homicide

222. (1) A person commits homicide when, directly or indirectly, by any means, he causes the death of a human being.

223. (1) A child becomes a human being within the meaning of this Act when it has completely proceeded, in a living state, from the body of its mother, whether or not

(a) it has breathed;

(b) it has an independent circulation; or

(c) the navel string is severed.

(2) A person commits homicide when he causes injury to a child before or during its birth as a result of which the child dies after becoming a human being.

R.S., c. C-34, s. 206.

Abortion

287. (1) 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 liable to imprisonment for life.

(2) 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 liable to imprisonment

for a term not exceeding two years.

(3) In this section, “means” includes

(a) the administration of a drug or other noxious thing;

(b) the use of an instrument; and

(c) manipulation of any kind.

(4) Subsections (1) and (2) do not apply to

(a) a qualified medical practitioner, other than a member of a therapeutic abortion committee for any hospital, who in good faith uses in an accredited or approved hospital any means for the purpose of carrying out his intention to procure the miscarriage of a female person, or

(b) a female person who, being pregnant, permits a qualified medical practitioner to use in an accredited or approved hospital any means for the purpose of carrying out her intention to procure her own miscarriage,

if, before the use of those means, the therapeutic abortion committee for that accredited or approved hospital, by a majority of the members of the committee and at a meeting of the committee at which the case of the female person has been reviewed,

(c) has by certificate in writing stated that in its opinion the continuation of the pregnancy of the female person would or would be likely to endanger her life or health, and

(d) has caused a copy of that certificate to be given to the qualified medical practitioner.

(5) The Minister of Health of a province may by order

(a) require a therapeutic abortion committee for any hospital in that province, or any member thereof, to furnish him with a copy of any certificate described in paragraph (4) (c) issued by that committee, together with such other information relating to the circumstances surrounding the issue of that certificate as he may require; or

(b) require a medical practitioner who, in that province, has procured the miscarriage of any female person named in a certificate described in paragraph (4)(c), to furnish him with a copy of that certificate, together with such other information relating to the procuring of the miscarriage as he may require.

(6) For the purposes of subsections (4) and (5) and this subsection,

“accredited hospital” means a hospital accredited by the Canadian Council on Hospital Accreditation in which diagnostic services and medical, surgical and obstetrical

treatment are provided;

“approved hospital” means a hospital in a province approved for the purposes of this section by the Minister of Health of that province;

“board” means the board of governors, management or directors, or the trustees, commission or other person or group of persons having the control and management of an accredited or approved hospital;

“Minister of Health” means

(a) in the Provinces of Ontario, Quebec, New Brunswick, Prince Edward Island, Manitoba and Newfoundland, the Minister of Health,

(b) in the Provinces of Nova Scotia and Saskatchewan, the Minister of Public Health, and

(c) in the Province of British Columbia, the Minister of Health Services and Hospital Insurance,

(d) in the Province of Alberta, the Minister of Hospitals and Medical Care,

(e) in Yukon, the Northwest Territories and Nunavut, the Minister of Health;

“qualified medical practitioner” means a person entitled to engage in the practice of medicine under the laws of the province in which the hospital referred to in subsection (4) is situated;

“therapeutic abortion committee” for any hospital means a committee, comprised of not less than three members each of whom is a qualified medical practitioner, appointed by the board of that hospital for the purpose of considering and determining questions relating to terminations of pregnancy within that hospital.

(7) Nothing in subsection (4) shall be construed as making unnecessary the obtaining of any authorization or consent that is or may be required, otherwise than under this Act, before any means are used for the purpose of carrying out an intention to procure the miscarriage of a female person.

R.S., 1985, c. C-46, s. 287; 1993, c. 28, s. 78; 1996, c. 8, s. 32; 2002, c. 7, s. 141.

288. Every one who unlawfully supplies or procures a drug or other noxious thing or an instrument or thing, knowing that it is intended to be used or employed to procure the miscarriage of a female person, whether or not she is pregnant, is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

R.S., c. C-34, s. 252.

1988 Supreme Court decision

Morgentaler vs. Attorney General of Canada decision, 28 January 1988.

Dr. Henry Morgentaler, Dr. Leslie Frank Smoling and Dr. Robert Scott, *Appellants*
v.

Her Majesty The Queen, *Respondent* and
The Attorney General of Canada, *Intervener*

File No.: 19556

1986: October 7, 8, 9, 10; 1988: January 28

Present: Dickson, C.J. and Beetz, Estey, McIntyre, Lamer, Wilson and La Forest JJ.

The Chief Justice [Dickson]: ... In summary, s. 251 [of the Criminal Code] is a law which forces women to carry a foetus to term contrary to their own priorities and aspirations and which imposes serious delay causing increased physical and psychological trauma to those women who meet its criteria (pp. 45, 63). ...

"I conclude that the procedures created in s. 251 of the Criminal Code for obtaining a therapeutic abortion do not comport with the principles of fundamental justice. ... (T)he deprivation of a pregnant woman's right to security of the person can never comport with fundamental justice. ... (T)he deprivation of security of the person caused by s. 251 as a whole is not in accordance with the second clause of s. 7" [of the Canadian Charter of Rights and Freedoms] (p. 73).

Note from legal scholar in Canada: The Morgentaler decision struck down former Section 251 in the Criminal Code. However, the same language remains in Section 287 of the current Code below; and the provision prohibiting supplying noxious things, instruments, or drugs to produce abortions is in Section 288; yet both are not being enforced currently because of the court decision. The effect is that there are no restrictions to abortion in Canada.

Criminal Code (1970)

R.S.C., 1970, c. C-34 [changes below enacted in 1969]

251. (1) 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.

(2) 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.

(3) In this section, "means" includes

- (a) the administration of a drug or other noxious thing,
- (b) the use of an instrument, and
- (c) manipulation of any kind.

(4) Subsections (1) and (2) do not apply to

(a) a qualified medical practitioner, other than a member of a therapeutic abortion committee for any hospital, who in good faith uses in an accredited or approved hospital any means for the purpose of carrying out his intention to procure the miscarriage of a female person, or

(b) a female person who, being pregnant, permits a qualified medical practitioner to use in an accredited or approved hospital any means described in paragraph (a) for the purpose of carrying out her intention to procure her own miscarriage, if, before the use of those means, the therapeutic abortion committee for that accredited or approved hospital, by a majority of the members of the committee and at a meeting of the committee at which the case of such female person has been reviewed,

(c) has by certificate in writing stated that in its opinion the continuation of the pregnancy of such female person would or would be likely to endanger her life or health, and

(d) has caused a copy of such certificate to be given to the qualified medical practitioner.

(5) The Minister of Health of a province may by order

(a) require a therapeutic abortion committee for any hospital in that province, or any member thereof, to furnish to him a copy of any certificate described in paragraph (4)(c) issued by that committee, together with such other information relating to the circumstances surrounding the issue of that certificate as he may require, or

(b) require a medical practitioner who, in that province, has procured the miscarriage of any female person named in a certificate described in paragraph (4)(c), to furnish to him a copy of that certificate, together with such other information relating to the procuring of the miscarriage as he may require.

(6) For the purposes of subsections (4) and (5) and this subsection

"accredited hospital" means a hospital accredited by the Canadian Council on Hospital Accreditation in which diagnostic services and medical, surgical and obstetrical treatment are provided;

"approved hospital" means a hospital in a province approved for the purposes of this section by the Minister of Health of that province;

"board" means the board of governors, management or directors, or the trustees, commission or other person or group of persons having the control and management of an accredited or approved hospital;

"Minister of Health" means

(a) in the Provinces of Ontario, Quebec, New Brunswick, Manitoba, Alberta, Newfoundland and Prince Edward Island, the Minister of Health,

(b) in the Province of British Columbia, the Minister of Health Services and Hospital Insurance,

(c) in the Provinces of Nova Scotia and Saskatchewan, the Minister of Public Health, and

(d) in the Yukon Territory and the Northwest Territories, the Minister of National Health and Welfare;

"qualified medical practitioner" means a person entitled to engage in the practice of medicine under the laws of the province in which the hospital referred to in subsection (4) is situated;

"therapeutic abortion committee" for any hospital means a committee, comprised of not less than three members each of whom is a qualified medical practitioner, appointed by the board of that hospital for the purpose of considering and determining questions relating to terminations of pregnancy within that hospital,

(7) Nothing in subsection (4) shall be construed as making unnecessary the obtaining of any authorization or consent that is or may be required, otherwise than under this Act, before any means are used for the purpose of carrying out an intention to procure the miscarriage of a female person.

Source: *Morgentaler v. The Queen* [1976] 1 S.C.R. 616.

The Criminal Code, 1892

55-56 Victoria, c. 29

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PART II. MATTERS OF JUSTIFICATION OR EXCUSE.

57. Every one is protected from criminal responsibility for performing with reasonable care and skill any surgical operation upon any person for his benefit, provided that performing the operation was reasonable, having regard to the patient's state at the time, and to all the circumstances of the case.

PART XVII. HOMICIDE.

218. Homicide is the killing of a human being by another, directly or indirectly, by any means whatsoever.

219. A child becomes a human being within the meaning of this Act when it has completely proceeded, in a living state, from the body of its mother, whether it has breathed or not, whether it has an independent circulation or not, and whether the navel string is severed or not. The killing of such child is homicide when it dies in consequence of injuries received before, during or after birth.

PART XXI. RAPE AND PROCURING ABORTION.

272. Every one is guilty of an indictable offence and liable to imprisonment for life who, with intent to procure the miscarriage of any woman, whether she is or is not with child, unlawfully administers to her or causes to be taken by her any drug or other noxious thing, or unlawfully uses any instrument or other means whatsoever with the like intent.

R.S.C., c.162, s.47.

273. Every woman is guilty of an indictable offence and liable to seven years' imprisonment who, whether with child or not, unlawfully administers to herself or permits to be administered to her any drug or other noxious thing, or unlawfully uses on herself or permits to be used on her any instrument or other means whatsoever with intent to procure miscarriage.

R.S.C., c.162, s.47.

274. Every one is guilty of an indictable offence and liable to two years' imprisonment who unlawfully supplies or procures any drug or other noxious thing, or any instrument or thing whatsoever, knowing that the same is intended to be unlawfully used or employed with intent to procure the miscarriage of any woman, whether she is or is not with child.

R.S.C., c. 162, s. 48.

An Act Respecting Offences Against the Person (1869 A.D.)

32-33 Victoria, Ch. 20

“The Criminal Law Consolidation and Amendment Acts of 1869, 32-33 Vict., for the Dominion of Canada,” by Henri Elzear Taschereau, one of the judges of the Superior Court for the Province of Quebec, Vol. I (Montreal: Lovell Printing and Publishing Company, 1874).

ATTEMPTS TO PROCURE ABORTION.

Sect. 59.—Every woman, being with child, who, with the intent to procure her own miscarriage, unlawfully administers to herself any poison or other noxious thing, or unlawfully uses any instrument or other means whatsoever with the like intent, and

whosoever with intent to procure the miscarriage of any woman, whether she be or be not with child, unlawfully administers to her, or causes to be taken by her any poison or other noxious thing, or unlawfully uses any instrument or other means whatsoever with the like intent, is guilty of a felony, and shall be liable to be imprisoned in the Penitentiary for life or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement.—24-25 Vic., ch. 100, sect. 58, Imp. ...

In order to constitute an offence under the first part of section 59, the woman must be with child, though not necessarily quick with child. The poison or other noxious thing must have been administered, or the instrument used with the intent to procure the miscarriage. It must be proved, according to the fact stated in the indictment, that the woman administered to herself, etc., or that the defendant administered, etc., or caused to be taken, etc., the drug, as therein stated, and that the drug was noxious, or that the defendant used the instrument, *or other means*, mentioned in the manner described in the indictment.—1 Burn's Justice 14.

Where the prisoner gave the prosecutrix the drug for the purpose of procuring abortion and the prosecutrix takes it for that purpose in the prisoner's absence, this was held to be a causing of it to be taken within the Statute.—*R. vs. Wilson*, *R. vs. Farrow*, 127, 164, Dears. & Bell. ...

Under the second part of this section, the fact of the woman being pregnant is immaterial. But, the prisoner must have believed her to be pregnant; otherwise there could be no intent under the Statute. Under an indictment for this offence, the prisoner may be convicted of an attempt to commit it, under sect. 49 of the Procedure Act of 1869.

PROCURING DRUGS TO CAUSE ABORTION.

Sect. 60.—Whosoever unlawfully supplies or procures any poison or other noxious thing, or any instrument or thing whatsoever, knowing that the same is intended to be unlawfully used or employed with intent to procure the miscarriage of any woman, whether she be or be not with child, is guilty of a misdemeanor, and shall be liable to be imprisoned in the Penitentiary for the term of two years, or to be imprisoned in any gaol or place of confinement for any term less than two years, with or without hard labor.—24-25 Vict. ch. 100, s. 59, Imp.