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SUPREME COURT OF CANADA DECLARED LATE-TERM ABORTION A THREAT TO WOMEN'S SECURITY

Ottawa, Canada, January 13, 2017 – In its Morgentaler Decision of 1988, the Supreme Court stroke down committees that lead to late-term abortion, decreeing that "the evidence shows that the risks of legally-induced abortion, whatever the method, increase exponentially with each week of gestation". Mr. Henri Morgentaler, in his book *Abortion and Contraception* of 1982, describes in detail said risk progression, as corroborated by hundreds of studies. As for abortion in early pregnancy, the Supreme Court declared itself satisfied, in the light of mortality and morbidity statistics published in the *Canada Therapeutic Abortions Survey*, that earlier abortion is "relatively safe". However, participation in this survey is elective and many establishments performing abortions do not participate in it or disclose incomplete data, so as to avoid any negative impact on their reputation and/or bottom line. Also, statistics world-wide on morbidity and mortality due to legally-induced abortion are non-reliable as they are subject to World Health Organization coding rules which obligate or allow coders to code this data under categories other than "legally-induced abortion", like "medical misadventure", "unspecified abortion" and "pregnancy in general".

So late-term abortion is strongly advised against by the Supreme Court of Canada as representing an unacceptable risk to women's security. Women's right to security and also their right to informed consent obligate persons and establishments procuring abortions or referring to them to indicate to the woman that the risks of legally-induced abortion increase exponentially with each week of gestation and that the risks of late-term abortion have been deemed unacceptable for women by the Supreme Court of Canada.

There exists support for open, semi-open or closed adoption of both healthy and ill or handicapped children. To be in accordance with women's right to security and their right to informed consent, these organizations should be included in the references of the genetic counselling programs that are proposed to all pregnant women. The latter programs should also refer to the post-abortion therapy programs, like Rachel's Vineyard, in which thousands of women are registered to attempt to resolve the physical and psychological suffering that they struggle with following the violence of abortion (those who survive the substance abuse or suicidal tendencies that post-abortion trauma often leads to). Or, genetic counselling programs could simply be abolished altogether in view of the unacceptable risks of late-term abortion for women, along with the risks the tests involve for the child and the fact that test results mostly give probabilities of genetic predisposition, when expression of illness also depends on environment and lifestyle. The significant frequency of live births following late-term abortion attempts also constitutes a serious issue, involving considerable trauma for the woman and caregivers, as well as liability if the child is not dying but is left to die or otherwise killed outside the womb (homicide).

Lastly, provincial health insurance plans should not be arbitrarily decreeing, as they do, that all abortions are medically necessary, as this is contrary to women's right to informed consent and women's right to security as well as the *Canada Health Act,* which devolves the duty to determine what is medically necessary, or even medically indicated, to physicians and their colleges, and not to provincial health insurance programs.

-30-

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Attached: excerpts from Morgentaler Decisions on abortion risks. See also: www.supremecourtabortion.ca

Morgentaler Decision excerpts on how late-term abortion threatens a woman's security
See http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/288/index.do

Important observation: The official French version of the Decision has important points that are *absent* from the English version – see, in the French version, the end of article 113 through article 119. For example, the Court is assured, in that passage, that legally-induced abortion, in early pregnancy, is a "relatively safe" procedure, based on the Statistics Canada *Therapeutic Abortions* elective survey, which Statistics Canada itself admits is totally non-representative of reality.

p. 33, under the "Held" paragraph, and then under the "Per Dickson and Lamer" paragraph: "A second breach of the right to security of the person occurs independently [of the obligation to pursue a pregnancy under the threat of criminal sanction] as a result of the delay in obtaining therapeutic abortions caused by the mandatory procedures of s. 251 which results in a higher probability of complications and greater risk".

Chief Justice Dickson, p. 57:

"Although this interference with physical and emotional integrity [i.e. "overlong subjection to the vexations and vicissitudes of a pending criminal accusation", p. 55] is sufficient in itself to trigger a review of s. 251 against the principles of fundamental justice, the operation of the decision-making mechanism set out in s. 251 creates additional glaring breaches of security of the person. The evidence indicates that s. 251 causes a certain amount of delay for women who are successful in meeting its criteria. In the context of abortion, any unnecessary delay can have profound consequences on the woman's physical and emotional well-being.

More specifically, in 1977, the *Report of the Committee on the Operation of the Abortion Law* (the Badgley Report) revealed that the average delay between a pregnant woman's first contact with a physician and a subsequent therapeutic abortion was eight weeks (p. 146). Although the situation appears to have improved since 1977, the extent of the improvement is not clear. The intervener, the Attorney General of Canada, submitted that the average delay in Ontario between the first visit to a physician and a therapeutic abortion was now between one and three weeks. Yet the respondent Crown admitted in a supplementary factum filed on November 27, 1986 with the permission of the Court that (p. 3):

. . . the evidence discloses that some women may find it very difficult to obtain an abortion: by necessity, abortion services are limited, since hospitals have budgetary, time, space and staff constraints as well as many medical responsibilities. As a result of these problems a woman may have to apply to several hospitals.

If forced to apply to several different therapeutic abortion committees, there can be no doubt that a woman will experience serious delay in obtaining a

page 58

therapeutic abortion. In her *Report on Therapeu- tic Abortion Services in Ontario* (the Powell Report), Dr. Marion Powell emphasized that (p. 7):

The entire process [of obtaining an abortion] was found to be protracted with women requiring three to seven contacts with health professionals . . . .

Revealing the full extent of this problem, Dr. Augustin Roy, the President of the Corporation professionnelle des médecins du Québec, testified that studies showed that in Quebec the waiting time for a therapeutic abortion in hospital varied between one and six weeks.

These periods of delay may not seem unduly long, but in the case of abortion, the implications of any delay, according to the evidence, are potentially devastating. The first factor to consider is that different medical

techniques are employed to perform abortions at different stages of pregnancy. The testimony of expert doctors at trial indicated that in the first twelve weeks of pregnancy, the relatively safe and simple suction dilation and curettage method of abortion is typically used in North America. From the thirteenth to the sixteenth week, the more dangerous dilation and evacuation procedure is performed, although much less often in Canada than in the United States. From the sixteenth week of pregnancy, the instillation method is commonly employed in Canada. This method requires the intra-amniotic introduction of prostaglandin, urea, or a saline solution, which causes a woman to go into labour, giving birth to a foetus which is usually dead, but not invariably so. The uncontroverted evidence showed that each method of abortion progressively increases risks to the woman. (See, e.g., Tyler, et al., "Second Trimester Induced Abortion in the United States", in Garry S. Berger, William Brenner and Louis Keith, eds., *Second-Trimester Abortion: Perspectives After a Decade of Experience*.)

page 59

The second consideration is that even within the periods appropriate to each method of abortion, the evidence indicated that the earlier the abortion was performed, the fewer the complications and the lower the risk of mortality. For example, a study emanating from the Centre for Disease Control in Atlanta confirmed that "D & E [dilation and evacuation] procedures performed at 13 to 15 weeks' gestation were nearly 3 times safer than those performed at 16 weeks or later". (Cates and Grimes, "Deaths from Second Trimester Abortion by Dilation and Evacuation: Causes, Prevention, Facilities" (1981), 58 *Obstetrics and Gynecology* 401, at p. 401. See also the Powell Report, at p. 36.) The Court was advised that because of their perceptions of risk, Canadian doctors often refuse to use the dilation and evacuation procedure from the thirteenth to sixteenth weeks and instead wait until they consider it appropriate to use the instillation technique. Even more revealing were the overall mortality statistics evaluated by Drs. Cates and Grimes. They concluded from their study of the relevant data that: Anything that contributes to delay in performing abortions increases the complication rates by 15 to 30%, and the chance of dying by 50% for each week of delay.

These statistics indicate clearly that even if the average delay caused by s. 251 *per arguendo* is of only a couple of weeks' duration, the effects upon any particular woman can be serious and, occasionally, fatal.

It is no doubt true that the overall complication and mortality rates for women who undergo abortions are very low, but the increasing risks caused by delay are so clearly established that I have no difficulty in concluding that the delay in obtaining therapeutic abortions caused by the mandatory procedures of s. 251 is an infringement of the purely physical aspect of the individual's right to security of the person. I should stress that the marked contrast between the relative speed with which abortions can be obtained at the government-sponsored community clinics in Quebec and in hospitals under the s. 251 procedure was

page 60

established at trial. The evidence indicated that at the government-sponsored clinics in Quebec, the maximum delay was less than a week. One must conclude, and perhaps underline, that the delay experienced by many women seeking a therapeutic abortion, be it of one, two, four, or six weeks' duration, is caused in large measure by the requirements of s. 251 itself.

The above physical interference caused by the delays created by s. 251 , involving a clear risk of damage to the physical well-being of a woman, is sufficient, in my view, to warrant inquiring whether s. 251 comports with the principles of fundamental justice."

p. 35, Judges Beetz and Estey

"According to the evidence, the procedural requirements of s. 251 of the *Criminal Code* significantly delay pregnant women's access to medical treatment resulting in an additional danger to their health, thereby depriving them of their right to security of the person. This deprivation does not accord with the principles of fundamental

justice. While Parliament is justified in requiring a reliable, independent and medically sound opinion as to the "life or health" of the pregnant woman in order to protect the state interest in the foetus, and while any such statutory mechanism will inevitably result in some delay, certain of the procedural requirements of s. 251 of the *Criminal Code* are nevertheless manifestly unfair. These requirements are manifestly unfair in that they are unnecessary in respect of Parliament's objectives in establishing the administrative structure and in that they result in additional risks to the health of pregnant women.

The primary objective of s. 251 of the *Criminal Code* is the protection of the foetus. The protection of the life and health of the pregnant woman is an ancillary objective. The primary objective does relate to concerns which are pressing and substantial in a free and democratic society and which, pursuant to s. 1 of the *Charter*, justify reasonable limits to be put on a woman's right [to security]. However, the means chosen in s. 251 are not reasonable and demonstrably justified.

p. 38, Judge Wilson:

"Protection of the foetus is a perfectly valid legislative objective. Section 1 of the Charter authorizes reasonable limits to be put on the right to security."

p. 32-33, Judges Dickson and Lamer:

Forcing a woman, by threat of criminal sanction, to carry a foetus to term unless she meets certain criteria unrelated to her own priorities and aspirations, is a profound interference with a woman's body and thus an infringement of security of the person. A **second** breach of the right to security of the person occurs independently as a result of the delay in obtaining therapeutic abortions caused by the mandatory procedures pf s. 251 which results in a higher probability of complications and greater risk."