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HER BODY, HER CHOICE: THE EFFECTS OF SOCIAL OPINIONS OF WOMEN ON
LEGALIZING ABORTION IN CANADA FROM 1959 TO 1989

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“My pain around abortion is not in the decision, but in the degrading, frightening and high-risk process which was required to implement the decision”-Penny ¹

Who decides what is important to society? Who decided what clothes are considered professional and what amount of makeup on a woman's face looks nice? Who decides what terms are derogatory and rude? The answer is people, or more specifically, society. This may include neighbours, coworkers, classmates or even one's own country; nevertheless, society plays a significant role in everyone's life. Enacting legislation has always been a very critical function in society as it controls what acts are allowed and not allowed. Society decides who to put in power, society decides who makes the laws. When it comes to the history of abortion laws in Canada, it is quite clear that society's overall beliefs on women have greatly impacted the legalization process. The 1960s, 70s and 80s were very lively time periods in regards to changing abortion laws in Canada and coincidentally they were also very lively for the rise in women's movements. This was due to the various social influences that brought the topic of abortion to light. This essay will argue that through the hostility and complications of legalizing abortion in Canada from 1959 to 1989 that the government and its people reflect their negative views of women through abortion laws. Within this thirty year window, this essay will explore the early 1960s introduction of abortion, the influence of the media, the 1969 legislation, the backlash of

the abortion caravans and anti abortionists/pro-life movements as well as Henry Morgentaler and the 1988 constitution.

Before diving into this topic, definitions will help provide a better understanding of what is being discussed in this essay. For the purposes of this essay, society will be defined as any persons living in Canada between the years 1959 and 1989. Although this may include minors, this will largely be focused around people who are legally able to vote at this time. Abortion will be defined as the intentional termination of a pregnancy in a human female. An unsafe abortion will be defined as “a procedure for terminating an unwanted pregnancy either by persons lacking the necessary skills or in an environment lacking the minimal standards, or both.” (Barzelatto 21) A safe abortion will be defined as a procedure for terminating an unwanted pregnancy performed by a well-trained professional with suitable resources and a safe environment with little risk to the female. (Barzelatto 21)

Unsafe abortions were a major concern for women in the twentieth century. A researcher named Dr. M. M. Spivak found that there were approximately 50,00 illegal abortions performed every year, resulting in at about 200 deaths yearly. (NC 128) In the early 1960's, abortion was still an extremely taboo subject, but the rest of society was changing. Women were starting to marry later in life and more and more these marriages were ending in divorce. (N.C. 124) This was one of the contributing factors that led to an increase in premarital sex as people did not want to wait so long for sexual intercourse; this provided a need for condoms. By the year 1969, teenage pregnancies were increasing by ten to fifteen percent each year. (NC 124) Although the amount of premarital sex was growing, a great deal of women still felt shame when giving birth out of lawful wedlock. A lady named Penny shared her story of how she accidentally got

pregnant in 1961 but because she was unmarried, her and her boyfriend did not want to bring a bastard child into this world. (NC 135) Her and her boyfriend performed the abortion themselves risking the Pennys life to avoid social judgement. (NC 125) Penny stated that “the price paid by women to satisfy the moral demands of society was exorbitant, and the larger price was paid by the young, the uninformed and the socially disadvantaged.” (NC 136) Abortion was seen as equally morally wrong as giving birth out of wedlock but many woman’s solution for unwanted pregnancy was still abortion.

Although rates of premarital sex were increasing, birth control was still a taboo subject and illegal. Large numbers of people felt that legalizing birth control would encourage women's promiscuity. It was so intimidating to society that in the year of 1960 a man named Harold Fine was arrested, convicted, and sent to jail for distributing condoms.(N.C. 123) When a couple from Toronto, Ontario heard this news they were so bewildered that they decided they needed to take action themselves. In 1961, Barbara and George Cadbury founded the Planned Parenthood Association of Toronto. (NC 123) They started sharing their opinions of birth control on the radio and two years later they founded the Planned Parenthood Federation of Canada. (NC 123-124) In 1966, the Association for the Modernization of Canada’s Abortion Laws was founded. (NC 128) Although Planned Parenthood did not have any direct affiliation with abortion laws, they brought the topic into the picture and fighting for something so closely related to abortion made the case for a revision in the abortion laws even stronger. Many other organizations wanted to change the laws surrounding abortion including the Canadian Medical Association and the Canadian Bar Association. (NC 130) Even though there were many organizations that wanted to change abortion regulations, very few believed it should be the

woman's decision. (NC 130) People still did not want to allow women to have control over their bodies.

Media played a substantial role in bringing the problem of abortion law into the eyes of the public. It is believed by many that the women's magazine *Chatelaine* first put abortion on the Canadian agenda. (S+G 101) In the year 1959, *Chatelaine* published an article calling for the liberalization of abortion. (S+G 101) They published a story of a fourteen year old girl who became pregnant through rape and wished to have an abortion. She was turned down and in response she argued that when thinking about abortion, "Canadians should consider that "quality of life, for the mother and other members of the family, counted more than that of the fetus." (S+G 101) This young lady also believed that "sociopaths were likely to begin as 'unwanted children'." (S+G 101) After this first introduction into the media, abortion news took off. In October 1961 *The Globe and Mail* published a series on abortion titled "Murder or Mercy?" (NC 126) As well in 1961, *The Toronto Telegram* asked the question "Abortions: Should the Law be Changed?" Articles as outright as these are the kind that get attention, these are the articles that people want to see and the ones that people find interesting. The media was not allowing for anyone to stay ignorant to this issue. The following year the public became very intrigued and involved in a case involving the American mother of four, Sherri Finkbine, whom was asking for an abortion after taking thalidomide. (NC 127) A gentleman named Edward B Ratcliffe personally offered Finkbine, and other American or Canadian women who had taken thalidomide, \$1,000 each for having taken thalidomide. (NC 127) A year after the thalidomide publicity, *Chatelaine* published a piece that had a United Church Minister saying that abortion was right in certain circumstances. (NC 126) The 1960's continued to boom with articles on

abortion. In 1960, there were twelve items (articles, editorials or letters) that mentioned the word abortion in them, in the *Globe and Mail*. (S+D 183) This increased to 58 in 1963, 136 in 1966 and 134 in 1969 for a total of 1066 items written about abortion from 1960- 1969 in *Globe and Mail*. (S+D 183) The talk of abortion was booming in the media, allowing others to voice their opinions. It should be acknowledged that *Globe and Mail* was bias in favour of abortion reform as they “only published editorials that were consistently supportive of abortion law reform” (S+D 184) It is clear that media was a major influence when it came to abortion laws in Canada as they provided widespread information that otherwise people would not know and would not have access to. The media was undoubtedly powerful in canvassing the need for abortion reform and fighting for the rights of women.

Prime Minister, Pierre Trudeau introduced the idea of abortion reform on December 21st 1967 (SG 105) and although it was a lengthy and tedious process, a bill was passed by the House of Commons on May 14th, 1969 to legalize birth control and abortion under specific circumstances. (Pelrine 30) Along with this revision was the introduction of the Therapeutic Abortion Committee (TAC). The TAC is a panel consisting of three or more doctors appointed by the hospital board to determine whether continuing the pregnancy would be dangerous to the life or health of the female if she carried to term; therefore “doctors were given control over women’s reproductive decisions”. (S+G 105) The majority of these doctors were white, upper class men. It was to be ensured that “TACs act as gatekeepers for abortions”. This meant that abortion was only legal if a woman contacted this panel and was approved for an abortion. Three things needed to happen for a woman to genuinely be able to procure her abortion. (S+G 105) First, she must go to an approved hospital where it has been deemed okay for doctors to perform

abortions here. (S+G 105) Second, the hospital must have a TAC and the doctor that would perform the abortion cannot be a member of the TAC. (SG 105) Lastly, the majority of the TAC must confirm that continuing the pregnancy would be danger for the pregnant women. (SG 105) “As a consequence, women did not gain an individual or collective right to abortion in either theory or practice. Rather, they gained the right to seek permission for an abortion from medical authorities.” (SG 105) A lady named Gail had five illegal abortions performed before having her sixth one legally. (NC 145) She was only approved of her last one because she was in her forties and they believed this was a health risk.(NC 145)The TAC initiative did not work out as well as the government had hoped.

Although there were a few changes made to the Canadian abortion laws in 1969, in reality there was very little latitude for women. The “implementation of the TAC system in Canadian hospitals turned out to be challenging and controversial.” (SG 105) There was a great deal of uncertainty around the terms ‘health’ and ‘life’ in section 251 of the Criminal Code which made doctors and the TAC unsure of whether or not the abortion in question would be necessary or not. (SG 105) It also resulted in TAC members having differing opinions on whether or not certain woman should be granted abortions. Many felt that “by not defining “health” in this crucial context, the law gave the country’s medical professionals free rein, and the power to define the country’s morals.” (Dunphy 75) Along this this problem was the issue of finding a hospital. Due to the fact that “no hospital was obligated to have a therapeutic abortion committee,” (Dunphy 74) and not many actually wanted them, “Only a third of hospitals in Canada had accredited TACs in place.” (SG 106) As well, many women lived far away from places with hospitals let alone one that had a TAC and abortion centre, so actual access to

abortion was severely limited. (SG 106) Large numbers of approved hospitals and abortion providers were forced to self impose informal quotas on abortion care, which led to even less access for women. (SG 106) There was also no way for a woman to appeal a decision made by the TAC. (SH 470) Even though the law changed very little, many people still did not believe that abortion should be performed under any circumstances and the changes made to the law led to the creation of anti-abortionists; “in some cases, TACs were even disbanded as a result of pressure from anti-abortionists.” (S+G 106) Implementing the new abortion law seemed to only make people more angry at the government.

A great deal of women were enraged with the little change in the abortion law and the failings of the TAC to provide abortion for women. This led the novice women’s liberation group, Vancouver Women’s Caucus (VWC), to identify four top priorities for them. (Sh 464) These included: child care, equal pay for equal work, contraception and abortion access. (SH 464) Women were now demanding the rights they felt they deserved, the VWC wanted to make their platform on the new abortion law clear by caravanning across Canada from Vancouver to Ottawa in an Abortion Caravan in the spring of 1970. (SH 464) Their main feature was having a coffin filled of coathangers of the women who had died from illegal abortions. (SH 463) This act alone was seen as “the first nation act that kick started second-wave feminist activism in Canada as thousands watched their journey. (SH 464) Women wanted their rights and they wanted them now. The VWC fought that the new law “denied all women the right to abortion on request.” (SH 470) While Anti-abortionists argued that “motherhood was a blessing and fulfillment for all women” (SH 470) these women felt that “maternity oppressed women by restricting their choice of career, by discriminating against women in the workplace, and by forcing women to stay at

home to raise their children.” (SH 470) They wanted women to be able to choose when and if they give up their career, some women would rather work and not have children at all. A twenty two year old nurse asked the question “why destroy your stability or self-esteem for another child in this world of too many unwanted or abused children?” (Lunneborg 89) This womens liberalization group strongly believed that the consequences to the lack of choice for women are: illegal abortion, widespread poverty, unhappy marriages, and abused children.” (SH 470) Gail (the lady who had six abortions) stated that “anti-abortion people would have us put unwanted children up for adoption... [they] will never prevent abortions from happening; they will just punish the women who have them with indignity, panic, humiliation, injury and perhaps, death.” (NC 146-147) One cannot stop women from having abortions, they can only provide support and a safe environment to do so.

Along with these pro-choice groups, came the other side of the argument. Before 1969 there was little need for anti-abortion groups due to the fact that abortion was already illegal. When legislation was changed in 1969, many anti-abortion groups rose up and made their voices heard, the Canadian Conference of Catholic Bishops were the most vocal critics immediately following the reform. (SG 108) Many other anti-abortion groups followed their footsteps and took action. The group called Alliance for Life was the first major anti-abortion organization that was founded in 1968 in Toronto (SG 109), they were preparing for the possible legislation change in 1969 and they were right to be ready for it. In 1973 Alliance for Life and Toronto Right to Life wanted to make a political group which would represent all of their values on a political scale, this organization was named Coalition for Life. (SG 109) the duties of this group included canvassing, lobbying politicians and developing election strategies (SG 109) This group

was predominantly academic males. (SG 109) The majority of the lower ranking members were working and middle class members “for whom abortion was a composite symbol of general cultural decadence as well as a threat to traditional family values”(SG 109) In 1978, an even more aggressive group formed called Campaign Life whom were largely Roman Catholic (SG 110) They wanted nothing more than to remind Canadians that abortion was immoral and should be illegal once more. (SG 110) Despite the fact that the bulk of anti-abortion supporters were highly religious, there were also pro-life feminists who wanted their voices heard. “A number of feminist writers have defended the argument that the fetus is a human being and that abortion is therefore wrong because it is murder” (Boonin 301) As well other women fought that “if empathy, nurturance, and taking responsibility for caring for others are characteristics of a feminine voice, then abortion does not appear to be a feminine response to an unwanted pregnancy.” (Boonin 302) Other people were just worried this legalization would lead to sexual liberalization, “whether it is the sale of pornographic materials, sex education in schools, or the distribution of birth control devices,” (Pelrine, 49) they did not want it, they wanted order and control.

Henry Morgentaler was the most influential character when it came to the removal of abortion from the Criminal Code of Canada in 1988. It is important to note that this was a man standing up for women's rights. In the year 1964, he became the president of the Humanist Fellowship of Montreal. (MP 28) He was a key advocator for women to receive abortion upon request, he did not feel that they needed a reason for it, it was their body and their choice. After he first voiced his opinion he expressed that “it was an awkward situation. [He] hadn't expected the avalanche of requests and didn't realize the magnitude of the problem in immediate, human

terms.” (MP 28) With so many women coming to him for abortions his only response he could offer them was:

I sympathise with you. I know your problem, but the law won't let me help you. If I do help you, I'll go to jail, I lose my practice- I have a wife and two children. I'm sorry but I just can't! MP 28

He had turned down so many helpless women and everytime he did, he felt disgusted with himself, he felt like a cowardly hypocrite for supporting abortion publicly but not doing anything about it. (Dunphy 81) He was trying so hard to change life for Canadian women but was not achieving anything. He finally decided that he must confront the law, not matter what the cost. It was against everything he was taught for he was brought up strictly Roman Catholic, but he couldn't listen to any more stories of failed birth control and heart broken women for any longer. (MP 31)

On January 9th 1968, Morgentaler performed his first illegal abortion (Dunphy 81) and then became a practicing abortionist. Later in 1968 he helped a woman named Ellen have an abortion for she already had two kids and did not think she could survive anymore postpartum depression. (NC 148) Just more than two years later on June 5th, 1970 he was charged with committing illegal abortion. (Dunphy 91) Fortunately for him he did not spend any time in jail for those charges. Meanwhile in America, things were moving much quicker than in Canada. On January 22nd 1973, the case Roe .v. Wade legalized abortion completely in the United States. (Dunphy 106-107) This influenced Morgentaler to publicly announce that he had performed more than 5,000 abortions in Canada, all of which were illegal, but safe. (Dunphy 106) His

philosophy was “Every mother a willing mother, every child a wanted child.” (Scott 27) This was a bold move that put many women on his side and willing to fight with him. Unfortunately for him, in 1974, he was sentenced to 18 months in prison; he was released in 1976. (Scotts 27) Even this did not slow him down from his goal. In 1983 he opened two more abortion clinics located in Toronto and Winnipeg. (Scotts 27) Morgentaler was fighting for women and he was determined to win.

In 1988 came the case that change the lives of copious amounts of people. In this year the case of Morgentaler .v. The Queen, (Jenson 4) also referred to as R .v. Morgentaler, came to an end, resulting in victory for Morgentaler. A 5 to 2 vote of the Supreme Court of Canada struck down the current abortion law as unconstitutional. (Dunphy 303) It was seen as an infringement upon the section seven rights of the Canadian Charter of Rights and Freedoms which declared that:

Everyone has the right to life , liberty and the security of the person and the right to not be deprived thereof except in accordance with the principles of fundamental justice. (Mudoon 177)

Morgentaler said that “for the first time, it gave women that status of full human beings able to make decisions about their own lives.” (Scott 27) The big mistake made was that it was not put into the health section of the Charter, not made legal, it was simply just removed from the Criminal Code. Many felt that “by refusing to modify section 251 of the Criminal Code of Canada and striking it down instead, the court threw the ball back to Parliament and/or the provincial legislatures. In doing so the Court contributed to an undermining of the idea that abortion was a medical matter.” (Jenson 17) This was the opposite issue as before, for previously

the government was arguing that it was only a medical issue and did not affect women at all. Morgentaler said that the absence of law left this wide-open and a free-for-all. (Dunphy 312) Although the” battle [was] won, the struggle [was] far from over. (Dunphy 313) Almost immediately after the 1988 abortion law removal, in November of 1989 a bill was tabled at the House of Commons to recriminalize abortion. (177 Muldoon) Although this was struck down, several proposals were made in favour of anti-abortion legislation that were framed in ways that often appeared to have an anti-women tone.” (Stettner 267)

It is apparent through the evidence provided in this essay that the government's inability to provide proper legislation on abortion and its difficulty in implementing any reasonable laws are due to the overall view of women in this time period. Even with the Abortion Caravans, Anti-Abortionists and Second Wave Feminists arguing for laws to be made, very little was done until the male physician, Henry Morgentaler fought for women. Even after abortion was removed from the Criminal Code it was still not truly legalized or made to appear acceptable by the government, they simply seemed tired of fight this battle they clearly did not deem worth the fight. Although abortion was removed from the Criminal Code thirty years ago, women are still facing issues with abortions. Being legal has not stopped abortions from being a taboo subject and women are still criticized for having them. Society needs to work towards accepting its’ women the way they are and supporting their decisions as a human being.