SPECIAL REPORT

Abortion: a review of CMA policy and positions

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The controversy on abortion within the public and the medical profession continues to rage, fanned by the realities of an anticipated 40,000-plus abortions in Canada per year, regional disparities regarding availability of the procedure, ethical-moral-religious positions and a host of other factors.

The receipt at CMA House of hundreds of letters from physicians and the public, public media comment and personal comment indicate marked polarization of vocal minorities in favour of more liberal laws and attitudes (abortion on demand) or more stringent, literal interpretation of the law (abortion only when definitive proof is available that the life or health of the mother is in serious, unquestionable jeopardy). The latter, in the opinion of the minister of justice, Otto Lang, is the intent and spirit of the current law although that has not been firmly established in the legislation via a definition of health, confirmed in the courts; nor has the prime minister confirmed that the opinions of Mr. Lang represent government policy.

There is considerable public and professional support for, and opposition to, the policies of the association and even larger degrees of confusion regarding what is CMA policy on abortion. A sizable proportion of the profession and the public appears to have no conclusive, defined position — indeed gives every indication that they are bored to death with discussion on a distasteful, necessary, "fact of life" subject that they wish would go away.

However the problems and the subject give no indication of disappearing.

One of the most distressing aspects of the abortion controversy has been its overwhelming subjugation of public debate and public education programs on family planning. The medical literature, public media, government officials — society as a whole — appear to have allowed themselves to become obsessed with statistics, concepts of personal rights and moral and religious issues related to abortion rather than applying themselves to developing solutions to the basic causes of the problem. The debate on abortion, in the opinion of many, has become counterproductive. It has obscured and deterred Canadian society from addressing itself to the development of meaningful, effective, coordinated family planning programs. Family planning — conception control — by whatever means the individuals concerned may choose, is the only possible area from which answers to the dilemma of abortion can be found.

The key issues regarding abortion are not medical but rather social, ethical, moral-religious with medical overtones or involvement. While, as a segment of society and involved functioning professionals, physicians must have and offer their opinions on the subjects, they cannot and should not be expected to provide all *the answers* to the myriad of related issues. For the patient, her family, the attending physician and hospital staff concerned, the issue is, and will remain, a very personal one.

Table I—Abortion: Canadians by province of residence

	1970	1971	1972
Nfld.	25	78	133
P.E.I.	17	39	45
N.S.	261	643	837
N.B.	72	146	183
Que.	534	1,881	2,847
Ont.	5,568	16,173	20,272
Man.	283	827	1,178
Sask.	215	756	1,043
Alta.	1,154	3,116	3,887
B.C.	2,901	7,045	8,179
Yukon	6	8	48
N.W.T.	N.A.	N.A.	44
Prov. unknown	161	211	157
Canada total	11,172	30,923	38,853

Source: Statistics Canada

The CMA, as a guide to its members — as an indication of peer opinion, and in order to provide the government and people of Canada with the advice of the medical profession — has established policies and positions on abortion. The CMA policies on this complex, controversial subject are the result of very thorough study over several years. They were established following consideration of all aspects of the problem by expert subcommittees, the Council on Community Health representing all provinces of Canada and types of practice, the Board of Directors, and eventually the "Parliament of Canadian Medicine" — CMA General Council. The debate has been thorough to the point of being exhaustive and, although on occasion emotional, if not heated, of a very high calibre. For the information and benefit of the members of the association, their patients and the people of Canada this summary is provided.

Following several years of study, including consultation with the Canadian Bar Association, the CMA General Council in 1966 passed a resolution that "legislation be enacted to ensure that an operation for the termination of pregnancy is lawful in the following circumstances:

"a) Where it is performed by a duly qualified licensed medical practitioner after consultation with and approval of a hospital appointed therapeutic abortion committee;

"b) If performed in an active public treatment hospital;

"c) If performed with the written consent of the patient and with the consent of the spouse or guardian where

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the committee deems necessary;

"d) Where the continuance of the pregnancy may endanger the life or the physical health or mental health of the mother."

In 1967 General Council approved the extension of the bases for the legal termination of pregnancy from, "where the continuance of the pregnancy may endanger the life or the physical health or mental health of the mother" to:

"If continuation of the pregnancy will endanger the life or health of the pregnant female or there is substantial risk that the child may be born with a grave mental or physical disability . . . or where there are reasonable grounds to believe that a sexual offence has been committed from which pregnancy has resulted."

Hospital policy

The association adhered to its opinion that such abortions should be performed in an active public treatment hospital — indeed stipulated that such abortions should be restricted to "active public treatment hospitals accredited by the Canadian Council on Hospital Accreditation after approval by a therapeutic abortion committee." These policies and positions were duly submitted to the Government of Canada via the minister of justice and the House of Commons standing committee on health and welfare Oct. 31, 1967.

Subsequently the relevant sections of the Criminal Code were amended and exist today as sections 251 and 252 (see pages 476-477). It should be noted that while the changes in the Criminal Code concerning abortion generally reflected the recommendations of the CMA, the federal government did not accept as indications for the termination of pregnancy "substantial risk that the child may be born with a grave medical or physical disability" nor that abortion should be permitted "where there are reasonable grounds to believe that a sexual offence has been committed from which pregnancy has resulted." Private conversations with senior officials of the department of justice indicated the difficulty or impossibility, technically and politically, of including such grounds for legal abortion in the Criminal Code which is primarily designed to prohibit specific action. Furthermore it was suggested that such patients should invariably qualify for an abortion on the basis of the effect on the mental health of the mother attendant to such pregnancies.

It should be remembered that during this period the association was also actively campaigning for the repeal of that section of the Criminal Code making it illegal to prescribe, advertise or market contraceptives. Further, that public and medical profession attitudes relative to abortion have been liberalized considerably during the intervening eight years. Indeed one of the major reasons for the 1966 recommendation that abortion require approval by a "hospital-appointed therapeutic abortion committee", rather than be a matter to be decided between the patient and her physician, was the belief that neither the government nor the public was prepared to vest such authority and responsibility in individual practitioners. Indeed few, if any, physicians voiced such a proposal or indicated they were willing to accept such responsibility.

In a marathon debate at the 1971 meeting of CMA General Council, the association further revised its position on abortion to "recognize that there is justification on non-medical social grounds for the deliberate termination of pregnancy." The association also recommended that the Criminal Code be amended further by deletion of all reference to hospital therapeutic abortion committees — so that the performance of an abortion by a qualified, licensed physician in an approved hospital would become a matter to be decided upon by the patient and physician concerned.

The CMA *has never recommended* that reference to abortion be completely removed from the Criminal Code.

Rejects abortion on demand

In contrast to a common misconception, or deliberate misinterpretation of CMA policy by pro-abortion groups, the association *has steadfastly rejected* the philosophy and position of "abortion on demand". Similarly it *has been opposed* to the legalization of abortion in private hospitals, private nursing homes or other private facilities. To protect the individual rights of both the physician and the patient the association has stated that "when faced with a request for an abortion, a physician whose moral or religious beliefs prevent him from recommending and/or performing this procedure should so inform the patient so that she may consult another physician." In a similar vein the association has opposed the proposal that all publicly funded hospitals should be required to make provision for voluntary sterilization and abortion procedures. It has recommended that at least one hospital in all regions should provide such facilities and that provincial hospital insurance agencies should recognize the added demands that this places on such hospitals — via the provision of additional facilities, funds, etc.

With respect to the controversy surrounding the aborting of "a viable fetus" the association has stated that abortion should be defined as the termination of a pregnancy before 20 weeks of gestation.

Repeatedly the association has stressed in the strongest possible terms that induced abortion should not be considered as an alternative to contraception as a method of responsible family planning or population control.

In addition to successfully lobbying the federal government to permit the prescribing, advertising and marketing of contraceptives the association has recommended:

- That advice and assistance on family planning be made readily available to all residents of this country;
- That provision of advice and information on family planning be recognized as the responsibility of the practising physicians of Canada. Further that within the community this responsibility should be shared with other educational health agencies;
- That facilities, in addition to physicians' offices, for dissemination of advice on family planning be established throughout the country, further that these facilities be developed in consultation with and under the supervision of the medical profession to assure adequate medical follow-up.

While there have been isolated, individual studies of the long- and short-term effects of abortion (see bibliography, page 477) the association's direction to its Council on Community

Table II—No of hospitals in Canada, and by province, with therapeutic abortion committees (TACs) 1974

	No. of hospitals	Hospitals with TAC
Nfld.	48	6
P.E.I.	12	2
N.S.	56	12
N.B.	41	7
Que.	281	27
Ont.	357	108
Man.	108	9
Sask.	147	10
Alta.	164	24
B.C.	130	52
N.W.T.	8	1
Yukon	7	1
Canada	1359	259

Of the 259 Canadian hospitals with TACs, two have 1-24 beds, 24 have 25-49 beds, 56 have 50-99 beds, 55 have 100-199 beds, and 122 have 200 or more beds. To be empowered to set up a TAC and conduct abortions, a hospital must either be accredited by the Canadian Council on Hospital Accreditation or receive special approval from the minister of health in the province in which it is located. Only 21 such approvals have been given - three in Quebec, seven in Ontario, one in Saskatchewan, two in Alberta and eight in British Columbia.

Source: therapeutic abortions unit, DNH&W, for data other than N.W.T., which was obtained by *CMAJ* staff.

Health that "it study the effects of abortion upon the health and social welfare of the people of the community" remains largely unfulfilled. The major reason has been the lack of valid data relative to the numbers of abortions conducted in Canada, short- or long-term physical and mental complications, etc. The association has assisted Statistics Canada in the evolution of a uniform national reporting form and it is anticipated that 1974 will see full reporting by all provinces and territories relative to numbers of abortions, patient characteristics, medical procedures used, complications, etc. Such a data base will, of course, not contain information on the 6000-plus Canadian females known to have abortions each year outside the country. In the absence of extensive, valid Canadian information the association has studied with interest information on the subject available from other countries and in particular the report of the UK commission chaired by Mrs. Justice Lane of the High Court of England. The UK situation is in general comparable to that in Canada. The report of this ten-woman, five-man commission concluded:

We are unanimous in supporting the act and its provisions. We have no doubt that the gains facilitated by the act have much outweighed any disadvantages for which it has been criticized. The problems which we have identified in its working, and they are admittedly considerable, are problems for which solutions should be sought by administrative and professional action, and by better education of the public. They are not, we believe, indications that the grounds set out in the act should be amended in a restrictive way. To do so when the number of unwanted pregnancies is increasing and before comprehensive services are available to all who need them would be to increase the sum of human suffering and ill health, and probably to drive more women to seek the squalid and dangerous help of the back-street abortionist.

The association has not specifically, via a formal policy statement, announced its position with respect to the questions of when, if not at conception, does the fetus become a human being and consequently when does abortion become infanticide. Via defining abortion as "the deliberate termination of pregnancy before 20 weeks of gestation" the association has suggested that abortions should not be permitted (declared illegal???) after 20 weeks gestation. The figure 20 was established in accordance with generally held medical opinion re the absolute minimum age at which fetus viability could be maintained as a separate entity. It is also significant that, in keeping with a recommendation of the Vital Statistics Council of Canada, provincial governments are requiring the registration of "births-stillbirths-deaths" of each fetus of 20 weeks gestation or of 500 g mass. The 20-week figure may be subject to change as medical knowledge

Excerpts from the Criminal Code of Canada

Procuring miscarriage

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.

Woman procuring her own miscarriage

(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.

"Means"

(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.

Exceptions

(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.

Information requirement

(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

and technical expertise are extended.

The association recognizes that the majority of abortions conducted in Canada are for non-medical — social, psychosocial or socioeconomic — reasons. While it has recognized that there is justification on non-medical social grounds for the deliberate termination of pregnancy, it has declined the suggestion that the CMA — the medical profession — should develop and present to the federal government guidelines outlining the socioeconomic indications for abortion. As indicated earlier, it is the opinion of the association that while physicians must have and offer their opinions on the subject, they cannot and should not be expected to provide *the answers and solutions.* The prerogative and responsibility for providing leadership in this area rest with the country's duly elected legislators — the representatives of Canadian society as a whole. In this regard it is to be hoped that the legislators will direct their deliberations not so much to what moral standards society should have, but to what society's present moral standards and needs are because laws, in order to be respected and obeyed, must at least reflect the current moral climate of society.

The Canadian Medical Association remains convinced that the solution to the controversy and problems surrounding abortion rests in responsible family planning. Family planning requires an informed and responsible public and ready access to effective contraceptive techniques. That in turn requires a comprehensive, coordinated, continuing public education program: a program involving parents, schools, the medical profession, voluntary agencies, government — all segments of society. It means that there must be free access to active medical consultation, counselling, and whatever contraceptive product or device is indicated or selected by the individual.

The time has arrived for government, the medical profession, for all segments of Canadian society to disengage themselves from the unproductive debate on abortion and address themselves to a top priority program on family planning. The offence given to many at the sacrifice of at least 40,000 potential human lives per year and the social, medical and economic costs of large-scale abortion, together with its cost in human suffering — physical, mental and moral — demand it.

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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.

Definitions

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

"accredited hospital" «*hôpital accrédité*»

"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" «*hôpital approuvé*»

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

"board" «*conseil*»

"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" «*ministre...*»

"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" «*médecin...*»

"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" «*comité...*»

"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.

Requirement of consent not affected

(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. 1953-54, c. 51, s. 237; 1968-69, c. 38, s. 18.

Supplying noxious things

252. 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 is liable to imprisonment for two years. 1953-54, c. 51, s. 238.