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ABORTION SITUATION BECOMES EVEN MORE CONFUSING

The Supreme Court of Canada, which prides itself on its independence, is a weak vessel since it conforms to feminist "political correctness" as determined by the left-wing media.

A woman gave birth to a female child in an apartment in Mississauga, Ontario. She wrapped it up in a garbage bag and placed the remains on the balcony of the apartment. The superintendent of the apartment, when cleaning up after the woman had moved out, found the dead baby and informed the police (see REALity Nov./Dec. 2012). The woman was charged under S243 of the Criminal Code, which provides that it is an offence to conceal the body of a dead child regardless of whether it died *before, during or after birth*. A pathologist could not determine whether the baby died before, during or after the birth.

In May 2013, the Supreme Court of Canada unanimously decided that S243 of the Criminal Code applied in this case because the child would likely have been born alive. That is, the court decided that since the child had reached a state of development, when, but for some external event or circumstances, that child would likely have been born alive, a charge under S243 of the Criminal Code was applicable.

In reaching this conclusion, the court relied on a judicial decision from England, *R. vs. Berriman handed down in 1854*. In that case, a woman concealed the birth of a child who had a gestational age of between seven to nine months. The judge in the case had instructed the jury not to convict if the child did not have a "chance of life", but since the child in question was at least seven months in gestation, the court concluded that it was more likely to be born alive. The woman, therefore, was found guilty of concealing the body of a dead child.

The Berriman decision took place over 150 years ago, yet the court at that time knew there was a "child" in the womb at seven months' gestation. Yet, here we are in 2013 and the argument that is still being deliberated is whether there is a "child" in the womb prior to birth. This is due to unreasonable political correctness, which defies common sense and medical knowledge. The decision by the court to conclude that a "child" exists if it is likely to survive if born alive is at least an improvement over S 223 of the Criminal Code which provides, improbably, that a child becomes a human being only when it has completely proceeded from the body of the mother.

In 1988 the Supreme Court of Canada had suggested that there is a time line in which Parliament could provide protection for unborn children. Feminist Justice Bertha Wilson, was on the Supreme Court of Canada, in the *R. vs. Morgentaler* case in 1988, when the abortion law was struck down and stated:

> The so-called "liberal" and "conservative" approaches (to developmental abortion) fail to take into account the essentially developmental nature of the gestation process. A developmental view of the fetus, on the other hand, supports a permissive approach to abortion in the early stages of pregnancy and a restrictive approach in the later stages.

Justice Bertha Wilson then went on to say that it was up to Parliament to decide when the State had a "compelling interest" in the protection of the unborn child so as to provide it with some protection.

The notion that the unborn child increases in value as it develops did not sit well with some judges on the Supreme Court of Canada in a later decision.

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In the 1997 *Winnipeg Child and Family Services v. G. (D.F.)* case, Judges, John Major and John Sopinka, in dissent, requested that Parliament do something to protect a child at risk in the womb, and that in doing so, the "born alive" test should be scrapped. That case dealt with a woman who had previously given birth to two children who were permanently handicapped because of her addiction to glue sniffing. The children were taken into care by the Winnipeg Children's Aid. When pregnant with another child, the authorities tried to place the mother into treatment to protect both her and her unborn child. Feminists successfully argued before the Supreme Court of Canada that the mother could not be confined for treatment purposes while pregnant.

In their dissent, the two judges, Major and Sopinka JJ, took quite another approach.

Paragraph 67

> Historically, it was thought that damage suffered by a foetus could only be assigned if the child was born alive. It was reasoned that it was only at that time that damages to the live child could be identified. The logic for that rule has disappeared with modern medical progress. Today by the use of ultrasound and other advanced techniques, the sex and health of a foetus can be determined and monitored from a short time after conception. The sophisticated surgical procedures performed on the foetus before birth further belies the need for the "born alive" principle.

Paragraph 102

> The child must be born alive before any rights accrue or remedies can be sought. In my view, the reliance on this rule was misplaced. The rule is a legal anachronism based on rudimentary medical knowledge and should no longer be followed, at least for the purposes of this appeal.

Paragraph 109

> Present medical technology renders the "born alive" rule outdated and indefensible. We no longer need to cling to an evidentiary presumption to the contrary when technologies like real time ultrasound, fetal heart monitors and fetoscopy can clearly show us that a foetus is alive and has been or will be injured by conduct of another. We can gauge fetal development with much more certainty than the common law presumed. How can the sophisticated micro-surgery that is now being performed on foetuses in utero be compatible with the "born alive" rule?

No debates on this issue, according to the media, are reasonable and acceptable, and only the woman (not the child) should have legal rights.

The Supreme Court has acknowledged in the baby on the balcony case, that there is a child in the womb if it can survive outside, relying on a 150 year old case to do so. The court, therefore, has placed this issue firmly before Parliament, relying on it to deal with the problem of when life begins and at which stage unborn children should be protected. This is where the decision properly belongs. However, the court was not so reluctant to reach conclusions in other cases that were "socially progressive" or politically correct. Examples of this include the court striking down the abortion law, ordering the continued operation of the Vancouver Drug Injection Site, and awarding homosexual special rights and endorsing same-sex marriage. Why then, was the Supreme Court so reluctant to go further on the abortion issue?

The answer is the power of the left wing mainstream media which determines what is permissible in regard to the abortion issue. No debates on this issue, according to the media, are reasonable and acceptable, and only the woman (not the child) should have legal rights.

The Supreme Court of Canada, which prides itself on its independence, is a weak vessel since it conforms to feminist "political correctness" as determined by the left-wing media.

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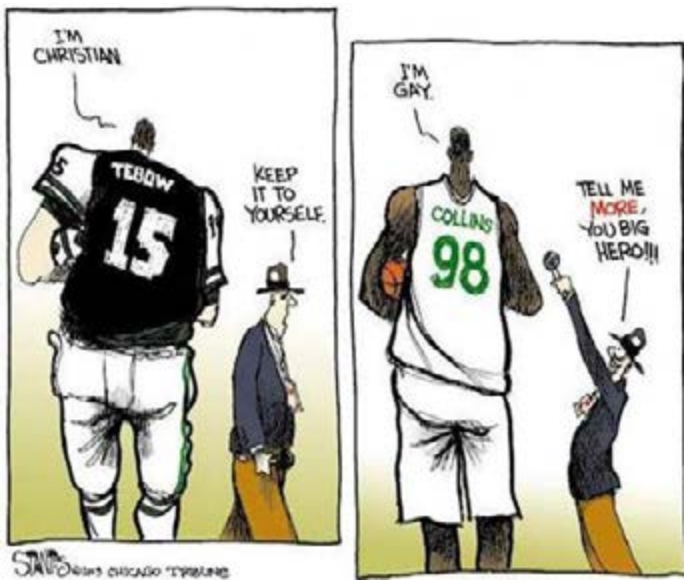

› This cartoon is illustrated by Scott Stantis. It first appeared in The Chicago Tribune on April 30, 2013.

IS THE SUPREME COURT EVER WRONG?

Is the Supreme Court ever wrong? In a word: yes. Will the Supreme Court ever admit it's wrong? In a word: no. The latter was apparent when the Supreme Court of Canada refused, in April 2013, to grant William Whatcott a re-hearing on whether his pamphlets constituted hate. The re-hearing was sought because the court had misread or committed a factual error in interpreting the contents of one of Mr. Whatcott's pamphlets (see REALity—March/April 2013).

Mr. Whatcott had written in his pamphlet, "… gays are three times more likely to abuse children". This was based on statistical findings. He did not state, as alleged by the Supreme Court, that all homosexuals are pedophiles. That is a fundamentally different statement.

The Supreme Court of Canada, however, refused a re-hearing for Mr. Whatcott. Undoubtedly, the refusal was based on the court's concern that if it reconsidered its rulings, it would undercut the finality of the appeal process in Canada whereby the Supreme Court is the final court of appeal or the end of the line on legal challenges. Also, in refusing a re-hearing, based on its mistake of the facts, the court was attempting to protect its own credibility.

It is disturbing that the Supreme Court in the Whatcott case, which defined "hate", had examined the same pamphlets, using the same legal tests applied by the Saskatchewan Court of Appeal, which had concluded that the pamphlets did not constitute hate literature. These diametrically opposed conclusions by the two courts make utterly clear that "hate" lies in the eye of the beholder. Undoubtedly, it is difficult to define the emotional term "hate" but the conflicting opinions of the two courts indicate that it is determined by the personal and political views (ideology) of the judges—not by any objective standard.

Further, the Supreme Court, in the Whatcott case, decided that, in a charge of "hate," there was no need to prove harm or if there was an intent to discriminate, or if the statements were, in fact, true. As a result, we are in deep trouble. That is, we will never be able to decide ahead of time whether anything we say or write constitutes "hate". Rather, it requires a panel of lawyers (judges) to peer down at us from the bench to arbitrarily tell us so.

Judges, however, are no more than well-connected lawyers, who have the political clout to secure their appointments to the bench. They have no special or secret knowledge with which to interpret "hate". Many of them use their own prejudices to guide them.

This case points out how inadequate the courts are today to make a decision that deals with social issues that directly affect our daily lives.

Unlike Parliament, courts do not have access to the social facts of the issues before them; they do not have the luxury of time to adequately reflect on issues, they do not have access to research facilities available to Parliamentarians; and they do not have access to the practical experiences of the public on issues which are growing increasingly complex, economically, socially and scientifically. Nor are the courts equipped to evaluate the full range of policy alternatives that are available. As a consequence, it is not possible for the courts to always understand the long range implications and ramifications of the arguments on the narrow set of facts placed before them by the litigants.

The inadequacy of the courts to deal with these decisions was previously exposed in the decision on the Vancouver drug injection site, handed down in September 2011. In that case, the court relied on the information provided by the operators of the drug site (a hugely lucrative business for them) and the lobbyists for the establishment of the site in the first place, who also carried out research on the drug issue and on the supposed "advantages" provided by the drug injection site.

These political activists/researchers were awarded $18,696,101 in grants to conduct research on drug addiction and the injection site. In all of the many research papers these political activists/researchers provided, they only found positive outcomes for the operation of the drug injection site. It is significant that these politically motivated research papers were peer reviewed only by those supporting the harm reduction approach to drug use. The authors also refused to release their data to other researchers to allow them to replicate their work.

The thirteen interveners at the Supreme Court of Canada hearing on the drug injection site, with the exception of REAL Women of Canada, all had a financial, political or professional interest in the continued existence of the injection site. Unfortunately, when REAL Women was granted leave to intervene in this case, we were restricted by the Supreme Court as to what we could argue before the court. As a result, REAL Women of Canada was not able to expose the critical information about the bias of the studies supporting the injection site, which were pivotal to the court's decision to keep the injection site open.

Such a situation would not have occurred if the matter had been placed before Parliament to decide, because the false and misleading studies would then have been easily exposed.

The public mistakenly believes that the courts apply the law as written by the legislators. Rather, judges often rewrite the law to suit themselves.

WHAT TO DO ABOUT OUR MPs

Unfortunately, growing voter apathy leaves those with vested interests and the powerful cliques, whose views are usually reflected in the mainstream media, to both dominate and decide public issues. Thus, on critical issues, results are ruled by the elites, not the people.

On April 18, 2011, about a month before the last federal election, the leader of the Conservative Party, Stephen Harper, after being hammered consistently about a "secret agenda" by the left wing media (mostly located in Toronto), was accused of having a "secret agenda" on abortion. So, what is this much maligned "agenda"? Prime Minister Harper said, "As long as I am Prime Minister, we are not reopening the abortion debate".

This set the stage for a long running drama in Parliament as to the proper role of MPs. Are they merely trained seals, responding to the decisions of the party leader and those around him, who dominate the whole process of politics?

This question became a major issue, first in September 2012, with Motion 312 of Conservative MP, Stephen Woodworth (Kitchener Centre, Ontario), to debate when life begins. This motion was supported by over half the Conservative caucus (87 MPs) and included eight cabinet ministers. The same day Motion 312 was defeated, Conservative MP, Mark Warawa (Langley, BC), introduced Motion 408, which condemned sex-selective abortions. The Motion was non-binding, and would have only condemned the practice that most Canadians (92%) consider undesirable.

The mainstream media and the opposition asserted that Mr. Harper did have a secret agenda on abortion by bringing it in through the back door by means of these private members' bills. NDP Women's critic, Niki Ashton (Churchill), took her customary hysterical position whenever abortion is mentioned. She ranted, claiming women's reproductive rights were being rolled back, etc. by these nefarious motions.

Mr. Harper decided, therefore, to cut off the serpent's head once and for all. His party Whip, Gordon O'Connor, (Carleton-Mississippi Mills) was instructed to remove the two pro-life Conservative MP's who were members, the others being a NDP and a Liberal MP, from the Sub-Committee on Private Members' Business and replace them with two more amenable and co-operative Conservative MP's. This new Committee unanimously decided that Mr. Warawa's bill was non-votable so that it could not be brought to the floor of the House of Commons for debate. It was strangled at birth. The decision was made despite the fact that the expert analyst from the Library of Parliament had three times firmly advised the Committee that the Motion was well within federal jurisdiction and was, indeed, votable.

Mr. Warawa appealed the decision of the Committee on the Private Members Bills to the House of Commons Standing Committee on Procedure and House Affairs. None of the MP's on this all party Committee had any questions for Mr. Warawa after his brief appearance before them. The Committee then went behind closed doors, and in just five minutes, the Conservative Chair, Joe Preston (Elgin-Middlesex London), emerged to say that the Committee had reached a decision which was to reject Mr. Warawa's appeal.

To further add to Mr. Warawa's distress, and that of other pro-life MP's, he was not permitted to speak from the floor for a 60-second statement, that according to the House of Common rules, may be made 15 minutes before Question Period—a privilege enshrined in Parliamentary Standing Orders. The Conservative Whip, Mr. O'Connor, claimed that only the party whips had the right to decide who may give the 60-second statement and raise questions in Question Period. Question Period, incidentally, is a little drama provided each day for the public's enjoyment by MP's who are very bad actors, while reading from their assigned scripts.

Mr. Warawa appealed this issue of being denied the right to make this brief statement, to the Speaker of the House, Andrew Scheer. The latter ruled that MP's did have the right to seek the floor at any time by catching the Speaker's eye, so as to be recognized to speak—both in making a statement prior to Question Period and during Question Period itself.

INDEPENDENCE OF MP'S NOT A NEW PROBLEM

The right of MP's to be independent of his/her party's control, is by no means a new problem. It has been around since confederation. Canada's first prime minister, Sir John A. Macdonald, for much of his career, spent a great deal of time chasing after and negotiating with what he called the "loose fish" in his caucus. He had to endure listening to endless hours of their incoherent speeches, on which he would later lavish praise in order to flatter the MP's so as to obtain their cooperation in voting for government bills.

Over the years, the opposition parties have muzzled their MPs, but continuously and hypocritically attack Harper for doing so today.

It was Liberal Prime Minister, Pierre Trudeau, and his key advisers, in fact, who were essentially responsible for inaugurating the centralized power in the prime minister's office that exists today. Liberal Prime Ministers, Jean Chretien and Paul Martin, also followed this top-down

party power structure. Although Mr. Harper is constantly attacked today by the media for his supposed ruthless style of control of his caucus, he is no match for former Liberal Prime Minister, Jean Chretien. The latter was called a "closet autocrat" by Maclean's Magazine (October 19, 1998) as he furiously crushed even minor dissent on his watch. It was also Mr. Chretien who came up with the idea that it was required that he personally sign all the Liberal candidates' nomination papers and "parachute" selected candidates into ridings without the consent of the riding associations. What better way to keep the caucus members under tight control and, of course, control any "unsuitable" choice of candidates by the riding associations? In addition, MP's usually enjoy their work on Committees. However, it is the party leaders who decide who will sit on each Committee and it is the Prime Minister who decides who will Chair these Committees. Unfortunately, the Committee work is also controlled by the party. Seldom do the Committee members raise independent questions or vote independently of their party's position when sitting on a Committee.

Canadian MPs do not have the ability to keep their leaders in check as is the case with MPs in the British Parliament. That is, Canadian MPs have no counter-balancing strength to offset the power of the Prime Minister and his advisors.

Unfortunately, Canadian MPs do not have the ability to keep their leaders in check as is the case with MPs in the British Parliament. That is, Canadian MPs have no counter-balancing strength to offset the power of the Prime Minister and his advisors. Not only are MPs future nominations vulnerable to the Prime Minister's opinion, but so are their foreign travel perks and future appointments to the cabinet. These perks are granted only if MPs are very, very good and act as directed. Consequently, according to Maclean's magazine (October 19, 1998), the night that MPs are elected, we pretty well know what they are going to do for the next four years: vote as the party tells them whenever required. MPs should just fax in their votes.

This is markedly different from the UK, where party leaders serve at the pleasure of their caucus. Remember how Margaret Thatcher was turfed out as Prime Minister when she offended too many of her caucus members? UK MPs can speak independently on most matters. Also, most votes in the UK Parliament are free votes, except, for example, on the budget when MPs are ordered to vote according to their party's direction. This is a far cry from the situation here. When Liberal Prime Minister, Paul Martin, brought in same-sex marriage, the Cabinet was ordered to vote for the legislation and individual MPs were strong-armed to vote with the party, regardless of their conscience and the views of their constituents. Contrast that with the experience of UK Prime Minister, David Cameron, on the same-sex marriage bill he recently brought forward. Over half of his caucus voted against the bill. Also, his support for the UK's membership in the European Union is not generally supported by his caucus. As a result, Mr. Cameron's position as party leader remains precarious.

In Canada, the party leaders are chosen by a small group of Canadians who pay a nominal sum to obtain a party membership and from time to time attend a convention to vote in the leader. This vote is usually assisted by "instant" party members who arrive and vote only on that occasion and generally do not participate in other party affairs.

The impotence of Canada's MPs contributes to voters' apathy, as reflected in the steep decline in the number of voters at elections.

According to Professor Donald Savoie, an expert in Parliamentary Policy and Procedures at the University of Moncton, NB, "If people can't elect a member of Parliament who has some say, some influence, some role to play, what's the point of voting?" (Ottawa Citizen, April 24, 2013).

Unfortunately, growing voter apathy leaves those with vested interests and the powerful cliques, whose views are usually reflected in the mainstream media, to both dominate and decide public issues. Thus, on critical issues, results are ruled by the elites, not the people.

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CANADIAN NEWSPAPERS ARE FAILING

For many years, newspapers in Canada lived privileged existences. They asserted their views on a number of issues which were regarded as self-evident truths. Criticism of newspaper policies was rare. Money from advertisers flowed in, and the circulation of the newspapers soared. The newspaper world was secure and invincible.

Today, however, Canada's largest newspapers are experiencing difficult times with revenues dropping faster than can be compensated by way of job cuts and other money saving initiatives. On-line advertising revenue has not been sufficient to compensate for their losses.

For example:

- The Toronto Star, known locally as the "Red Star," which has the largest circulation in the country, experienced a 16% decrease in advertising revenue last year. Its quarterly profit fell 76% to $4.2 million in the first quarter, with its overall revenue falling to $332 million. The company has cut 50 employees.
- Sun Media's profits plummeted 62% to $5.7 million in the last quarter. To offset this, Sun Media has cut managers and publishers from many of its newspapers and also trimmed staff across its dozens of daily newspapers across the country. Last November, it cut 500 from its staff which was approximately a 10% cut.
- The Post Media National Post and the Globe and Mail have announced buyouts last month to compensate for reduced revenue since their advertisers are looking for other, more efficient ways to get their message across.

Although the economy and the loss of revenue from advertisers are contributing to the loss of newspaper profits, there are also other contributing factors leading to this downturn for newspapers.

This obviously includes the development of the internet, iPads, iPhones, etc. where up to the minute news is readily available for free. Few of the younger generation read newspapers today to obtain their news—only the older generation does.

Another factor contributing to the failing of newspapers is the loss of credibility as they have now become the poster child for biased news. The lack of objectivity by the newspapers on the abortion issue is a prime example. The January "March For Life" in Washington, D.C., and the "March For Life" in Ottawa, in May 2013, received limited coverage in most newspapers, even though unprecedented numbers turned out to participate in these important events. The lopsided coverage of the abortion issue alienates many people, and is not a winning business model to follow.

It is not just newspapers, however, that are experiencing a loss of credibility and, therefore, a loss of revenue. Marsha Blackburn, of Tennessee, together with 71 of her colleagues in the House of Representatives, wrote a letter to the executives of ABC, NBC, CBS, inquiring why they did not cover the trial of Philadelphia abortionist Kermit Gosnell, whose clinic was a house of horrors. Baby parts were kept in jars as trophies; there were cat feces everywhere and filthy equipment, and unqualified assistants, which led to the death of a patient, etc. Gosnell's clinic had not been inspected by health officials for 17 years because of political considerations in that officials did not want to expose the dark side of abortion in America. Yet, despite the "trial of this century", in which Gosnell was found guilty of murder on three counts due to his cutting the spine with scissors of three babies born alive in his clinic, only 25% of Americans (Gallup) reported they know about Dr. Gosnell's trial. This gruesome trial was one of the least followed news stories since 1991 because of the remarkable lack of media coverage.

In Canada, the CBC is just as biased as the American networks. As an example, CBC downplayed the numbers attending the March for Life and gave it only cursory coverage. If thousands of pro-abortionists had demonstrated on Parliament Hill, it would have been the lead story on the CBC.

This is similar to coverage given by the media on homosexual issues. Only positive stories are allowed, portraying homosexuals as victims of discrimination. No mention is ever made of the debauched, promiscuous lifestyle of homosexuals which leads to the prevalence of physical and mental illness, and a shortened life span. Nor is coverage given to homosexuals who oppose same sex marriage and transgender rights.

Until the consensus media become fair and balanced, they will continue to fail.

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