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Talking Points For the “Protection of Pregnant Women and Their Preborn Children Act”

(also known as “Cassie and Molly’s Law” - Bill C-225)

By the Justice for Expecting Families Coalition of Canada/Molly Matters
(<http://www.mollymatters.org/>)

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A private member's bill called the "Protection of Pregnant Women and Their Preborn Children Act" or "Cassie and Molly's Law" (Bill C-225), introduced by MP Cathay Wagantall on February 23 of 2016.

<http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=8116176&Col=1>

This Bill would amend the Criminal Code to allow additional charges to be laid when a preborn child is harmed or killed in an attack against the mother by someone who knows she is pregnant.

This Bill codifies the existing practice of treating pregnancy as an aggravating factor and would therefore make it so the courts have to acknowledge the choice of a woman to become a mother in the charges against those who harm pregnant women and their babies.

It serves to protect and acknowledge the choice of a woman to become a mother and hold accountable third party violent criminals who commit an offence against that choice.

Here are 14 talking points that can be used to argue for this bill:

- 1. This bill is not in conflict with the Criminal Code as it does not grant personhood to a fetus:** The preamble to the bill states: “Whereas not being considered a human being under the Criminal Code does not mean that a preborn child does not deserve protection under the law.” This bill does not grant personhood and it need not do so in order to provide protection to the pre-born child. Entities other than “human beings” receive criminal law protection (e.g. animals and dead bodies). See: Criminal Code (R.S., 1985, c. C-46), Sections 444, 445, 446, and 447. The bill rightly seeks to amend Part VIII of the Criminal Code, “Offences Against the Person and Reputation” as it pertains to crime(s) committed against pregnant women and their preborn children.
- 2. Cassie and Molly’s Law directly addresses domestic violence against women:** Yes, we do need to reduce violence against pregnant woman, and this bill is one means of achieving

that. The short title of the bill is the *Protection of Pregnant Women and Their Preborn Children Act* as it places the focus on women and their children. The bill includes an amendment to Paragraph 718.2(a) of the Criminal Code which requires the courts to consider pregnancy as an aggravating factor when sentencing those convicted of violence against women. That, coupled with the stiff penalties for causing harm or death to the preborn child, means this bill will be a much needed deterrent against those who wish to carry out violence against pregnant women.

- 3. The bill protects women and their children they have chosen to carry to term:** Intimate partner violence against women is an injustice and this bill will serve as a serious deterrent to those who wish to take abuse pregnant woman. The bill includes an amendment to the Criminal Code which will require the courts to consider pregnancy as an aggravating factor. This bill will protect both women and their preborn children.
- 4. The bill is a logical way to ensure a legal void is filled:** Currently women and families who are violated by those who abuse pregnant women have no recourse in law. In fact, they are told their wanted child means nothing; their choice is not protected. This is not a “feel-good” bill but a much needed law that will respect a woman’s choice by protecting her wanted child. Comparing this bill to so called “fetal homicide” laws in the U.S. is comparing apples and oranges. Unlike many of the U.S. fetal homicide laws, this bill is not a stand-alone offence and will only be engaged when an offence is carried out against a pregnant woman.
- 5. It is impossible for this bill to give fetuses personhood or criminalize abortion:** The bill uses language that is consistent with the Criminal Code. Nowhere in the Criminal Code do we even find the term ‘fetus’ but rather the term ‘child’ is used. For example, in Section 223[1] we read: “A child becomes a human being within the meaning of this Act when it has completed proceeded, in a living state, from the body of its mother.” This bill does not change that and is clear that a criminal offence must have occurred against the mother first. It could not in any way be used to re-criminalize abortion, or criminalize pregnant women for behaviours perceived to harm their preborn children. It is not a stand-alone law. A criminal offence against the mother must exist first to be convicted under this new law.
- 6. The bill guarantees that the child a woman has chosen to carry to term is protected.** There is no conflict between this bill and a women’s right to choose abortion. The courts have always left the door open to Parliament to enact laws that would protect a fetus (as per the Supreme Court in *Dobson vs Dobson*). This bill is needed to protect women and the children they have chosen to carry to term. Without recognizing a fetus in such a way, both options of a woman’s choice cannot be protected.

7. **The bill does not separate a woman from her fetus.** It strengthens the law regarding offences carried out against a pregnant woman by ensuring that the perpetrator is charged with a separate offence based on the reality she is carrying a child. There is no possibility of a conflict of rights as the bill doesn't grant fetal rights. Rather, it protects the woman and her child, both of whose interests are perfectly aligned in these circumstances: making it safely through the pregnancy. The suggestion that a woman will be threatened with arrest for abusing drugs under this law is nothing less than baseless fear-mongering. The new offences created in this bill are not stand-alone offences but will only be invoked when someone commits an offence against a woman that the person knows is pregnant.
8. **The bill clarifies the law as it regards a pregnant woman and her preborn child.** It does not pit fetal rights against women's rights. Firstly, the bill does not grant independent legal rights to the fetus—the new offences against the fetus are *not* stand-alone offences. Secondly, it strengthens women's rights by protecting pregnant women and the preborn children they have *not* chosen to abort from attacks by third-parties. The new offences for harming or killing the fetus cannot apply to consensual abortions or acts or omissions by the pregnant woman herself, because the new offences won't be engaged unless there's an offence being committed against the woman in the first place. And with consensual abortion and acts against herself, there's no offence being committed against the woman to trigger the new offences.
9. **Pregnant women will not be arrested under Cassie and Molly's Law:** Comparing examples from the U.S. to this bill is simply a smoke screen in an attempt to discredit this bill. There are isolated incidents in the U.S. where cases were brought by prosecutors under "fetal homicide" laws, but these cases were later dismissed or distinguished on their facts and are in no way representative of application of the legislation in the nearly 40 States with these laws. ¹ By definition, this is not a "fetal homicide" law.
10. **The bill is titled the "Protection of Pregnant Women and their Preborn Children Act" and creates a second offence** which can only be engaged when a person has committed or attempted to commit an offence against a "female person that the person knows is pregnant". This bill is NOT a stand-alone offence and thus could never be used to wrongly prosecute pregnant women; it creates a second offence only when an offence has been carried out against a pregnant woman. This bill provides for appropriate criminal charges in regard to the actions of anyone who would harm or kill a pregnant woman's pre-born child against her will. ²
11. **People who decide to end the pregnancy of a woman against her choice will be prosecuted.** The bill creates a second offence and can never stand-alone. Therefore, if a woman consents to a doctor (or anyone else) to ending her pregnancy this bill would be

¹ http://www.mollymatters.org/wp-content/uploads/2015/12/Epp_response_to_ARCC_C484.pdf

² http://www.mollymatters.org/wp-content/uploads/2015/12/Epp_response_to_ARCC_C484.pdf

irrelevant. This bill will enhance women's rights by protecting the children they have chosen to carry to term.

12. Polls show that an overwhelming number of Canadians support making it a separate crime to injure or kill a pre-born child during an attack on the mother. In 2008 when Parliament last debated a similar bill, Angus Reid Strategies found that 70% of Canadians – and 72% of women – supported such legislation.³

13. Pregnant women and their preborn children who are victims and never receive justice can't possibly advocate for this bill – they are dead. Those who have the duty to enact this legislation, the elected lawmakers, must be open to hearing from all Canadians. Naturally the families of the deceased will be the first to call for legislative changes. We don't tell the families of those who have been negatively affected by drinking and driving that their perspective doesn't matter; to do so would be callous. So also we should not dismiss those who were eagerly anticipating the birth of a son or daughter by telling them their voice is unwanted. In fact, our criminal justice system recognizes the importance of hearing from the victims by allowing them to make Victim Impact Statements which the court considers when offenders are sentenced. In a democracy everyone has a voice, including victims and their families.

14. This bill adds pregnancy as an aggravating circumstance in sentencing. The unique state of pregnancy should not threaten women's rights. Although judges can already treat pregnancy as an aggravating factor, codifying it in criminal law is a way to clearly and strongly denounce violence against pregnant women.⁴ This bill fits into the framework of extra protection for women who are more vulnerable to abuse. This bill does not allow for a separate charge of homicide but rather a charge for a newly defined offence that is only invoked against those who commit an offence against a woman they know is pregnant and thereby cause injury to, or the death of her child.

Send a letter supporting the bill to your MP. Here's a sample letter:

<http://www.mollymatters.org/wp-content/uploads/2016/03/Cassie-and-Mollys-Law.-Generic-letter-to-MPs-to-support-bill-C-225-for-anyone-to-use..pdf>

Sign our petition support bill: <http://www.mollymatters.org/wp-content/uploads/2015/05/Molly-Matters-petition-1.pdf>

This Talking Points document is on the Internet at <http://www.mollymatters.org/wp-content/uploads/2016/03/Bill-C-225-Talking-Points.pdf>

³ http://angusreidstrategies.com/uploads/pages/pdfs/2008.03.13_Unborn.pdf

⁴ The Supreme Court of Canada recognized in *Dobson v. Dobson* [1999], "pregnancy represents not only the hope of the future generations but also the continuation of the species. It is difficult to imagine a human condition that is more important to society."