



# PRE-BORN HUMAN RIGHTS

The issue of abortion is far from settled in Canada. Our world-renowned human rights record<sup>1</sup> is marred by our failure to protect pre-born children at any stage of development.<sup>2</sup> Every other democratic country in the world protects pre-born children at some stage. Canada is the only country in the world to allow abortion at any stage of pregnancy, for any reason.

While there is little appetite in Canada for a full ban on abortion, a majority of Canadians find common ground on some specific policies around abortion. This is where politicians should start: by introducing specific legislation based on this common ground.

Canada has no abortion law. It's time for political leaders to bring forward specific policies that put aside divisive abortion politics and focus instead on meaningful discussion and the promotion of legislation that will protect human life at the earliest stages.

### What is Abortion?

It is important first of all to recognize what abortion entails. Abortion is the intentional ending of a pregnancy by ending the life of a pre-born human child. In simple terms, pregnancy occurs when a sperm and egg fuse, and this zygote quickly begins dividing and becomes an embryo, which implants in the lining of a woman's uterus. Around the

8-week mark and for the rest of pregnancy it is referred to as a fetus.<sup>3</sup> Of course, it is very rare to hear a pre-born child referred to in this way in everyday conversations. Most pregnant women and those around them refer to the developing pre-born child simply, and correctly, as a baby. There is no magical point during or after pregnancy at which the zygote, embryo, or fetus "becomes" a human being; it is a human being from conception onward, albeit at different stages of development.<sup>4</sup>

That the child – whether at zygote, embryo, or fetus stage – is a human being is a question of science. That a human being possesses inherent dignity and value and so is deserving of government protection from violence is a question of philosophy. The philosophy that underpins our commitment to human rights requires a belief that every human being is intrinsically valuable, with no exception made for race, gender, age, or any other factor. This is also in line with the Christian tradition, which relies on the Bible to understand who God is and who

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## AN OVERVIEW OF ABORTION LAWS

	WAITING PERIOD (DAYS)	COUNSELING	GESTATIONAL LIMIT (WEEKS)
Belgium	6	✓	12
<b>Canada</b>	-	-	-
Denmark	-	✓	12
Finland	-	✓	20
Germany	3	✓	12
Iceland	-	✓	16
Italy	7	-	12
Netherlands	6	✓	24
Norway	-	✓	12
United Kingdom	-	-	24
Portugal	3	-	12
Spain	3	-	14
Sweden	-	-	18
Switzerland	-	✓	12

we are. The basis of understanding human value comes from the first chapter of the Bible where we learn that “God said, ‘Let us make man in our image, after our likeness’” (Genesis 1:26). Being created in God’s image grounds the prohibition of killing (Genesis 9:6) and underpins the development of human rights in the Western tradition. Unjustifiably taking the life of another human being is taken very seriously because there is something unique and valuable about who we are as human beings, made in the image of the Creator.

God’s care for us begins before birth, as evidenced by Biblical laws surrounding harm done to a child still in the womb (Exodus 21:22-25). The Bible consistently points to the continuity of life before and after birth. Psalm 139:13-14 beautifully puts it this way: “For you [God] formed my inward parts; you knitted me together in my mother’s womb. I praise you, for I am fearfully and wonderfully made.” Whether you look at the individual cells that make up our being or think of a whole person whom you love, this truth that we are fearfully and wonderfully made is evident. Human beings deserve our respect. This is why we are vigilant as a society about protecting human rights and human life.

That protection of life needs to start before birth. Dr. Philip Hawley Jr. writes, “Every single discovery in the field of human embryology has pointed to conception as the moment in which a whole and complete human being is created. No scientific discovery — not one — points to any other moment along the continuum of life. And technologies like high-resolution ultrasound have made evident the humanness of unborn children at progressively earlier stages of development.”<sup>5</sup>

Abortion needs to be recognized for what it is. It is the taking of human life, while the victim is completely unable to defend himself. This victim is not a parasite – the victim is a human being who is exactly where he or she is meant to be, doing exactly what he or she is meant to do. A mother has a natural obligation of care to her children, and the child’s location in the womb does not change that truth. Yet, our knowledge of life in the womb has not stopped Canadians

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from ending human lives for reasons of convenience, inadequacy of supports, fear, and politics.

### Abortion is not Healthcare

Pregnancy is not a disease.<sup>6</sup> Killing a pre-born child is not a treatment. Abortion is never necessary to save the life of a mother and "[i]n no sane society are women and their unborn children treated as mortal enemies."<sup>7</sup> It may be necessary in rare medical emergencies to remove an ectopic pregnancy or deliver a baby prematurely, even knowing the baby is unlikely to survive, but that is fundamentally different than deliberately killing the child before delivery.<sup>8</sup>

The goal of abortion is always the death of a pre-born child. If the child survives, the procedure is considered a failure. This goes so far as to result in live-birth abortion in Canada, as more than 100 babies annually are accidentally born alive but then abandoned and left to die without medical intervention or palliative care.<sup>9</sup> As human beings whose lives are equal in value to their mothers, these pre-born children deserve to receive the same care from physicians, and their well-being must be considered in all treatment options that affect them.

### Abortion's Legal History in Canada

From 1892-1969, all abortions were illegal in Canada. In 1969, Parliament amended the Criminal Code to permit abortions for health reasons if a panel of three physicians agreed it was justified. These health reasons were never defined in the Criminal Code but were interpreted as including both physical

and mental health.<sup>10</sup> Some still found this amendment too restrictive, as it required access to a therapeutic abortion committee, which not all hospitals had, and required three doctors to agree that a woman was justified in requesting an abortion for health reasons.

Dr. Henry Morgentaler in particular is known for his advocacy for abortion, performing abortions illegally in private clinics and going to jail and to court multiple times as a result. Dr. Morgentaler was a Holocaust survivor<sup>11</sup> who believed the atrocities committed during the Second World War could have been prevented if every child was welcomed and wanted. Morgentaler made an accurate assessment of the problem; denying the full humanity of other people groups can lead to deadly consequences, and this is not the way the world should be. But he responded with the tragically misguided solution of abortion – eliminating unwanted children in case they would grow up to do violence to others. A doctor's or mother's ability (and willingness) to kill a pre-born child can never make the world a more compassionate place. There is no evidence that the children born in a pro-abortion culture are more compassionate or responsible than the children of previous generations.

After years of arrests and trials, Morgentaler appealed to the Supreme Court of Canada and successfully convinced the Court to strike down the Criminal Code law requiring women to get permission for abortion from a panel of doctors. In 1988, "the restrictions on abortion in the Criminal Code were struck down as unduly depriving pregnant women of liberty or security of the person, contrary

to section 7 of the Charter."<sup>12</sup> Abortion in Canada no longer had any legal restrictions and today Canada remains "the sole Western nation without any criminal (or direct governmental) control over the provision of abortion services. Under current Canadian law, a woman may have an abortion at any time, for any reason."<sup>13</sup>

It is important to note that neither the court nor the Charter precluded a different abortion law – in fact, the court expected a new law to be passed. In the Morgentaler decision, justice Bertha Wilson wrote about "the state's compelling interest in the protection of the foetus." She suggested protection would be especially defensible in the later stages of pregnancy but did not specify a gestational age, writing that the "precise point in the development of the foetus at which the state's interest in its protection becomes 'compelling' I leave to the informed judgment of the legislature."<sup>14</sup>

Also noteworthy is that the Supreme Court did not find a constitutional right to abortion.<sup>15</sup> The common misconception that abortion is a right in Canada has been asserted by those who want to promote abortion, but the court was clear that their decision was a specific response to the abortion restriction spelled out in the Criminal Code at that time. Supreme Court Justice Sheilah Martin (appointed by Prime Minister Justin Trudeau in 2018) wrote prior to her appointment that "the Supreme Court did not clearly articulate a woman's right to obtain an abortion... and left the door open for new criminal abortion legislation when it found that the state has a legitimate interest in protecting the fetus."<sup>16</sup>

## Abortion politics do not have to be an all-or-nothing arena but can build on common ground, promoting both the well-being of women and the lives of pre-born children.



Despite dissenting opinions and a split decision, the Supreme Court justices agreed that the government had a legitimate interest in protecting fetal rights at some stage of pregnancy. They rightly left the making of a new law up to Parliament, the law-making body in Canada. In 1990, a bill which would have implemented a less restrictive abortion law was introduced into Parliament. That law, however, was defeated on a tied vote in the Senate, and the issue of abortion has never been meaningfully revisited by Parliament.

Abortion today is self-regulated by hospitals and physicians, with some reference to unenforceable guidelines from the Canadian Medical Association. None of the provincial Colleges of Physicians and Surgeons (who have legal authority to regulate the profession) have guidelines outlining how

late an abortion can be performed.<sup>17</sup> When a woman requests an abortion, there is no waiting period or legally required counseling to ensure she has support and meaningful access to other options. Pregnancy care centres that seek to help women can only help those who seek them out, and they are targeted by the federal government for their failure to promote abortion.<sup>18</sup> Abortion is seen as a necessary option because too often it is presented as the only option.

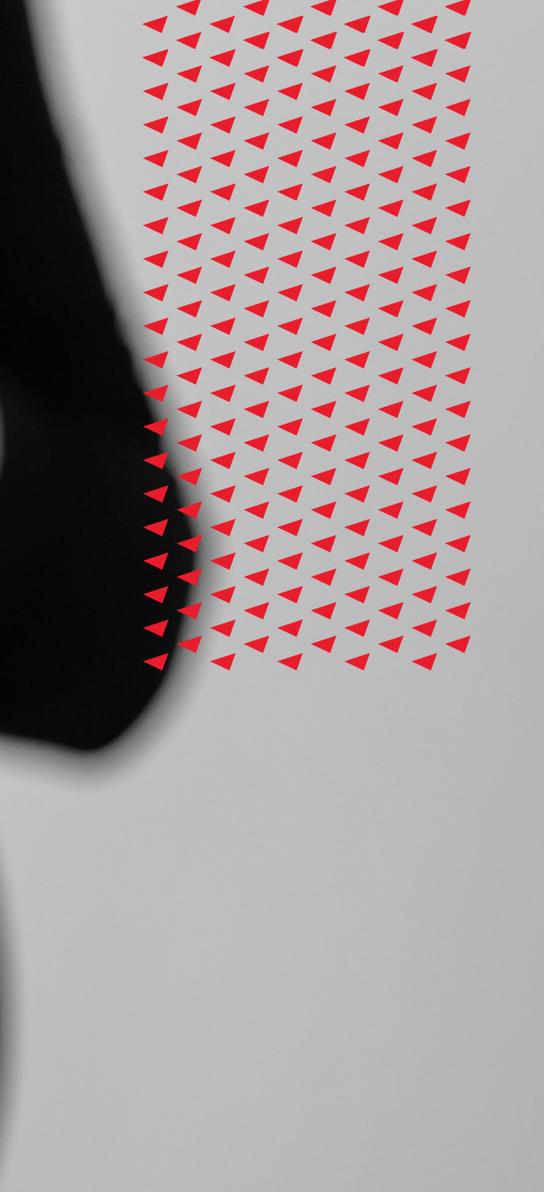
### Specific Laws to Work Toward

Recognizing that most Canadians are not currently receptive to a full ban on abortion, progress can still be made to bring the law in line with public opinion and provide some protection for pre-born children. Abortion

politics do not have to be an all-or-nothing arena but can build on common ground, promoting both the well-being of women and the lives of pre-born children.<sup>19</sup> With this in mind, we advocate for specific policies around which pro-life legislation can be built and that most Canadians would support.

### SEX-SELECTIVE ABORTION LAW

Sex-selective abortion refers to abortions sought because the sex of the pre-born child does not match the sex that the parents want. Evidence shows that girls are targeted for abortion more often than boys, simply because they are girls.<sup>20</sup> Allowing sex-selective abortion to occur condones sexism and obstructs efforts to break down gender stereotypes.<sup>21</sup> In a country that values equality of the sexes, it is unconscionable to



A law banning sex-selective abortion would require all women requesting an abortion to be informed that abortions for reasons of sex selection are illegal. Mara Hvistendahl, a researcher who notes that sex selection is rarely used in first pregnancies but more frequently with subsequent pregnancies, says, “The fact that sex selection is a medical act... neatly divides the moral burden between two parties: parents tell themselves their doctor knows best, while doctors point to overwhelming patient demand for the procedure.”<sup>24</sup> A sex-selective abortion law would give doctors the tools to say “no” when asked to abort a baby based on sex, while also ensuring doctors are not criminalized as long as they have shared the information that sex-selective abortion is illegal.

#### *PRE-BORN VICTIMS OF CRIME LAW*

In 2008, Tashina General was strangled to death by her boyfriend while pregnant with a pre-born child she had named Tucker. Tucker died before delivery. Tashina’s boyfriend was charged with only one count of murder and served less than 10 years in prison.<sup>25</sup> In 2014, Cassandra Kaake was murdered while 7 months pregnant with a daughter she had named Molly.<sup>26</sup> Molly died before she could be delivered. In 2017,<sup>27</sup> Arianna Goberdhan was murdered by her husband when she was 9 months pregnant. Her pre-born daughter, Asaara, did not survive the attack. In both cases, their killers were charged with only one murder.<sup>28</sup>

Our failure to acknowledge the humanity and personhood of pre-born children means they are also unrecognized by our criminal law. When a woman is violently attacked by someone who knows she is pregnant (or even because she is pregnant), there are no legal repercussions for the harm to her baby, and the pre-born child is not counted as a victim. This gap in Canadian law means justice is not fully meted out for criminals in these cases.

There are more than 80 cases in recent Canadian history of women who died along with their pre-born children as a result of violent crime. Many others face assaults that harm both them and their pre-born children. Pregnancy is a particularly vulnerable time for women, and their risk of intimate partner violence increases during this time.<sup>29</sup>

Legislators must ensure that true justice is served in the case of violent crime against pregnant women. The pre-born child should be recognized by the law as a victim in cases of violent crime. Sentencing provisions of the Criminal Code should be amended to account for the vulnerable state of a pregnant woman and any harm done to her pre-born child. This would not directly impact the legality of abortion but would improve justice for women and pre-born children.

#### *INTERNATIONAL STANDARDS ABORTION LAW*

All democratic countries except Canada protect pre-born children at some stage of pregnancy. Most also require a waiting period and counseling for women requesting an abortion. An International Standards Law would bring Canada in line with accepted international standards by implementing a ban on abortion after the first trimester (13 weeks). This law would include a standard 48-hour waiting period between requesting and receiving an abortion and, in connection with this, a counseling requirement, ensuring women have access to independent counseling with screening for coercion and abuse.

When a woman goes to an abortion clinic, the doctors there have a vested financial interest in her choice to have an abortion, and it is unlikely that other options or support will be offered to her. Pregnancy care centres attempt to fill this gap, but they can only serve women who seek them out. A waiting period that allows for both personal reflection and independent counseling can offset this bias and give a woman space to consider her decision more fully.

When abortion is not an option, women do indeed find a way to carry on successfully with pregnancy and motherhood or adoption. In The Turnaway Study, Diana Greene Foster shares how researchers talked to 1,000 American women who sought an abortion at clinics that had a second trimester gestational limit. The study followed women who were just before the cutoff and so were given an abortion, as well as those who were turned away because they were too far along in their pregnancy. One week after being refused an abortion, only 65% of participants still said they wanted an abortion – that

allow parents to abort their pre-born children based on their sex. Polls show that most Canadians are opposed to using abortion for sex selection.<sup>22</sup>

Under the Assisted Human Reproduction Act, sex selection of embryos is illegal in most cases with in vitro fertilization (IVF).<sup>23</sup> Yet those embryos, once implanted and growing in a mother’s womb, can be aborted based on their sex. IVF can also lead to pregnancy with multiples (e.g. twins), at which point some parents opt for a selective reduction (killing one or more of the “extra” babies) and may base their decision on the biological sex of their pre-born children. A sex-selective abortion law would be consistent with the Assisted Human Reproduction Act in banning the practice of sex selection in Canada.

## We need laws that celebrate diversity within equality, that value the unique gift of childbearing, and that honour and support motherhood.

means that 35% already, mere days later, had changed their mind. By the child's first birthday, only 7% said they still wished they could have had an abortion.<sup>30</sup>

Follow up over the next five years revealed that being denied an abortion had virtually no negative impact on women's mental health. Foster writes, "I admit I was surprised by this finding. I expected that raising a child one wasn't planning to have might be associated with depression or anxiety. But this is not what we found over the long run. Carrying an unwanted pregnancy to term was not associated with mental health harm. Women are resilient to the experience of giving birth following an unwanted pregnancy, at least in terms of their mental health."<sup>31</sup> In addition, Foster reports "no difference in whether the women achieved a five-year aspirational plan by whether they received or were denied the abortion"<sup>32</sup> and emphasizes that "an unwanted pregnancy does not mean the resulting child is unwanted."<sup>33</sup>

Pre-born children are human beings who deserve legal protection. Women deserve resources and support that empower them to make an informed choice between meaningful options, not a choice of desperation. An international standards law would ensure that pre-born children are protected after the first trimester while also providing time and resources to women facing an unplanned pregnancy.

### We Need a Law

Canada has gone without an abortion law for more than three decades, and abortion in some cases was legal two decades before that. Millions of Canadian babies have lost their lives to abortion, and Canadian society has accepted the killing of pre-born children

as a necessity of equality. We need laws that celebrate diversity within equality, that value the unique gift of childbearing, and that honour and support motherhood. The policies recommended here are specific, realistic, and palatable to most Canadians.

## RECOMMENDATIONS

As the Baird Report stated, a key public policy goal is to avoid creating situations where conflict affecting children is likely to occur.<sup>76</sup> With this goal and the harms of surrogacy in mind, it is clear that Canadian law cannot condone surrogacy. The following recommendations outline how Canadian law around surrogacy ought to be improved.

### 1. Introduce a Sex-Selective Abortion Law

Strengthen Canada's position on gender equality and give doctors a way to say no when a family is seeking an abortion because of the sex of the child.

### 2. Introduce a Pre-born Victims of Crime Law

Ensure that violent criminals are charged and sentenced accordingly when they harm a pregnant woman and her pre-born child.

### 3. Introduce an International Standards Law.

Bring Canada in line with other democratic countries by banning abortion after the first trimester, ensuring access to independent counseling to screen for coercion or abuse, and implementing a waiting period between requesting and receiving an abortion.

### 4. Support Pregnancy Care Centres

These organizations exist to help women who want a choice other than abortion and to support women walking through abortion or struggling post-abortion. Their tax status should never be threatened based on their belief in the sanctity of life at conception. The federal government should survey these organizations to assess the reasons women are seeking abortions and to make meaningful steps to ensure social programs are designed to better support women and families.

### 5. Cease Pressuring Provincial Governments to Fund Abortions

Pregnancy is not a disease and abortion is not healthcare. There should be no requirement for provinces to fund abortions to qualify for full federal health transfers. The federal government should never use health funding as leverage to promote abortion.

### 6. Omit Abortion Funding From International Aid Targeting Women's Health Initiatives

Do not use Canadian taxpayer dollars to promote abortion internationally. Focus on real healthcare that will benefit women and their children, both born and pre-born.

## Endnotes

- 1 [Canada's approach to advancing human rights](#). Government of Canada.
- 2 Neustaeter, B. (May 5, 2022). [What is the legal status of abortion in Canada?](#) CTV News.
- 3 "One of the main effects of fertilization is to restore the diploid number of chromosomes, that is, the normal number of chromosomes contained in typical body cells. Because egg and sperm chromosomes are united in a single cell at fertilization, establishing a new cell called the zygote, fertilization also results in the production of a new cell having a unique genome, different from that of the cells of its mother or father. In addition to restoring the diploid number of chromosomes, another main effect of fertilization is to activate the egg, allowing subsequent phases of human embryology to occur." Schoenwolf, G.C. (2021). *Larsen's Human Embryology*. 6th Ed. (Philadelphia: Elsevier Inc.)
- 4 Jacobs, S.A. (2018). *Biologists' consensus on 'when life begins'*. Available online on SSRN.
- 5 Dr. Philip Hawley Jr. "On abortion, medical science is still waiting to be heard." *The Public Discourse*, Sept 15, 2015.
- 6 "I agree entirely that pregnancy is not characterized properly as a sickness or an accident." Chief Justice Dickson on behalf of a unanimous court in *Brooks v. Canada Safeway Ltd.*, [1989] 1 SCR 1219.
- 7 Mathewes-Green, F. (2013). *Real Choices*. Felicity Press.
- 8 "I noted how rarely those who spoke and wrote about the life of the mother seemed interested in determining if the child could be delivered early and given the best possible care in an incubator. Surely if the baby has a chance, that chance ought to be offered." Charen, M. (2018) *Sex Matters*, Crown Publishing Group a division of Penguin Random House LLC. at p 95.
- 9 [Live-birth abortion numbers increase in Canada](#). June 7, 2022; We Need a Law.
- 10 Dunsmuir, M. (1989). [Abortion: Constitutional and Legal Developments](#). Government of Canada Law & Government Division. Updated periodically since original publication date.
- 11 Evans, G. (May 30, 2013). [A glimpse into what motivated Henry Morgentaler](#). Montreal Gazette; see also We Need a Law's analysis of this in "[Morgentaler promoted abortion in hopes of increasing compassion](#)"; January 26, 2022; weneedalaw.ca
- 12 Hogg, P. W., & Bushell, A. A. (1997). The Charter Dialogue between Courts and Legislatures (or Perhaps the Charter of Rights Isn't Such a Bad Thing After All). *Osgoode Hall Law Journal*, 35, 75-124.
- 13 Nelson, E. (2011). Regulating Reproduction. In J. Downie, T. Caulfield, & C. Flood, *Canadian Health Law and Policy* (4th ed., pp. 295-340). LexisNexis Canada Inc.
- 14 *R. v. Morgentaler*, [1988], 1 S.C.R. 30; Justice Wilson at page 183.
- 15 Gollom, M. (May 4, 2022). [Why Canada's Roe v Wade didn't enshrine abortion as a right](#). CBC News.
- 16 Martin, S. L. (2002). *Abortion Litigation*. In R. Jhappan (Ed.), *Women's Legal Strategies Canada* (pp. 335-378). Toronto: University of Toronto Press Inc., at p. 340.
- 17 The one exception is the College of Physicians and Surgeons of Alberta's Non-Hospital Surgical Facility's Termination of Pregnancy Standards, which includes a gestational limit of 20 weeks. This applies only to abortion clinics in the province, not to hospitals.
- 18 Pregnancy care centres have been targeted by the Liberal government under accusations of providing misinformation. [In the Liberal Party of Canada 2021 election platform](#) it was promised that these centres would lose their charitable tax status. In fact, these centres provide care the government has typically failed to provide to women facing crisis pregnancies, and these centres should be expanded and utilized to support women and to understand and assess the circumstances that lead women to seek abortion. Information gathered in collaboration with these centres could help the government to develop programs and policies that better support women and families.
- 19 [Canadian Opinions on Abortion: Abortion polls summarized](#). We Need a Law; June 4, 2020.
- 20 [Unnatural Selection](#): A CBC I-Unit Hidden Camera Investigation; CBC.ca.
- 21 Vogel, L. [Sex selection migrates to Canada](#). *Canadian Medical Association Journal*, 184(3) Feb 21, 2012
- 22 [Abortion: A Canadian public perspective after three decades](#). Dart and Maru/Blue Voice Canada Poll; February 1, 2020; [Canadians attitudes towards abortion](#). Environics Research Group; October 2011.
- 23 *Assisted Human Reproduction Act*, S.C. 2004, c. 2, s 5(1)(e).
- 24 Hvistendahl, M. (2011) *Unnatural Selection*. *PublicAffairs*. NY. P 46.
- 25 Postmedia Network: "[He's still a coward](#)" – [Six Nations man who strangled woman pregnant with his baby leaves court a free man](#). *National Post*; Nov. 22, 2016.
- 26 Jan 23, 2017. [Disturbing details of Cassandra Kaake's murder revealed in Windsor, ON court](#). CBC News.
- 27 Sacheli, S. (Jan. 30, 2017) [Murderer of pregnant woman sentenced to at least 22 years behind bars](#). Windsor Star.
- 28 Patton, J. & McDonald, C. (May 2, 2019). [Pickering man who murdered wife sentenced to life with no chance of parole for 17 years](#). Global News.
- 29 Government of Canada [Women Abuse – Overview Paper](#)
- 30 Foster, Diana Greene. (2020) *The Turnaway Study: Ten years, a thousand women, and the consequences of having – or being denied – an abortion*. Scribner; an imprint of Simon & Schuster Inc. NY.
- 31 *Ibid*. p. 109
- 32 *Ibid*. p. 184
- 33 *Ibid*. p. 204





We hope you enjoyed reading this policy report.

We know that championing our policy recommendations will take courage, dedication, and hard work. We at ARPA Canada strongly believe that doing so would be consistent with God's calling for you in a position of civil authority (Romans 13), and for promoting the well-being of our neighbours, in line with Canada's constitution and legal history. We are grateful for your service and we remember you in our prayers.

**RESPECTFULLY SUBMITTED**

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