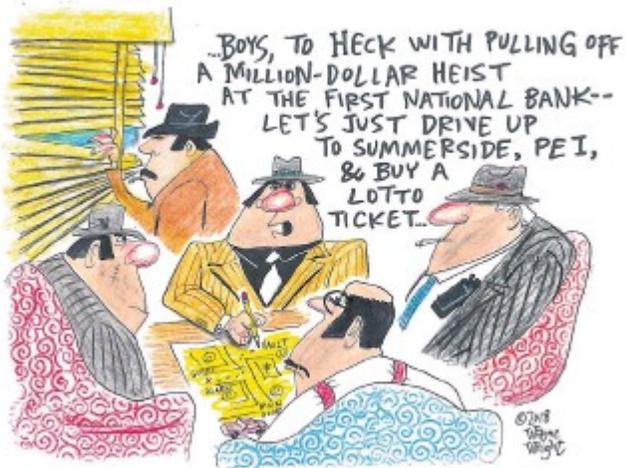


# The changing politics of abortion

Journal Pioneer · 7 Mar 2018 · BY RICHARD DEATON GUEST COMMENTARY Richard Deaton, Ph.D., LL.B., of Stanley Bridge, taught Military Ethics and Law at the Royal Military College of Canada (RMC), Kingston, Ont.

Kevin J. Arsenault is not a lawyer, yet he insists on perpetuating the myth that there is no legal or Charter right to an abortion in Canada in his letters to the Journal Pioneer; more recently he claims that an unborn fetus has legal rights.



Using the 'big lie technique,' he obviously hopes that if he repeats these untruths often enough, somehow, they will become true. However, he fails to mention to readers that his case was thrown out of court when he tried to argue his position regarding abortion a number of years ago. Consequently, he misleads readers, as well as his far-right, militant followers, as to the legal reality and the state of the law. One legal commentator summarized the current state of the law as follows, "provincial and federal court cases related to abortion have upheld women's rights and denied fetal rights on the basis that this would infringe women's established Charter rights. The evolution of Charter and abortion-rights jurisprudence means that women... now have a Charter right to abortion - a right that is significantly more secure today than it was in 1988." In short, the law has evolved since the original 1988 Morgentaler decision. Today it can be argued that failure to provide an abortion not only constitutes an infringement of a woman's Charter rights, especially those under s.7, but also violates her rights under the Canada Health Act, 1984. That act establishes the legislative framework for providing health care services and their funding in Canada. There are five (5) program criteria that must be met by each province in order to qualify for federal funding: public administration; comprehensiveness; universality; portability; and accessibility. Comprehensiveness, portability, and accessibility are particularly relevant to the issue of abortion and its availability. Each of these criteria must be satisfied.

With respect to the politics of abortion and the legal right to an abortion on P.E.I., we should perhaps consider the following. Does Mr. Arsenault really think that the Catholic Church hasn't already consulted the best legal advisers available? Does he seriously believe that the Catholic Church doesn't already have advisory opinions on the abortion issue prepared by Canada's leading law factories?

If the Church could find a legal argument to halt abortions, nationally or on P.E.I., that would stand up to judicial scrutiny, wouldn't the Church have already undertaken such legal action? The Catholic Church certainly has enough financial resources, and there are certainly enough lawyers around.

But there is a reason why the Catholic Church hasn't pursued this course of action. And the reason is self-evident and clear: There is no case to be made in law.

If there was a viable legal case to be made to stop abortions the Catholic Church would have initiated legal proceedings long ago.

But the reality is that where Catholic Church affiliated or sponsored organizations, in other provinces, have attempted to litigate and limit a woman's right to an abortion, they have lost their case.